

13 September 2024

Korea Fair Trade Commission
95, Dasom 3-ro, Sejong-si
Republic of Korea

Ministry of Science and ICT
477 Galmae-ro, Sejong-si
Republic of Korea

Ministry of Trade, Industry and Energy
402 Hannuri-daero, Sejong-si
Republic of Korea

Korea Communications Commission
47 Gwanmun-ro, Gwacheon-si, Gyeonggi-do
Republic of Korea

Ministry of SMEs and Startups
180 Gareum-ro, Eojin-dong, Sejong-si
South Korea

RE: ACT | The App Association Views Regarding Proposed Legislation, the Online Platform Monopoly Regulation Act (PMRA)

ACT | The App Association represents small business application developers and connected device companies, located both in the Republic of Korea (ROK) and around the globe. These companies drive a global app economy [worth more than KRW 1,605 trillion](#), [providing nearly 500,000 jobs](#) in the ROK. App Association members leverage the connectivity of smart devices to create innovative solutions that introduce new efficiencies across consumer and enterprise use cases and rely on a predictable and fair approach to digital economy regulation to succeed and create new jobs. Therefore, the Korean Fair Trade Commission's (KFTC) proposal to advance the Platform Monopoly Regulation Act (PMRA), a law that would mirror the European Union's Digital Markets Act (DMA), is directly relevant to the App Association. As we discuss below, the proposed PMRA creates a substantial risk of undermining the ROK's digital economy, which is supported by platforms that compete with each other to provide small business developers with a means for secure and ubiquitous access to customers at low cost and with few barriers to entry. In fact, many global ICT companies are already giving up on launching new technology-integrated services in the EU due to the high compliance costs, complexity of regulatory requirements, and the risk of massive fines for non-compliance caused by the newly implemented DMA. This is having negative impacts within the EU, such as hindering competition in the ICT industry, slowing ICT industry growth, and depriving consumers of opportunities to use advanced services. Further, enactment of the proposed PMRA would give rise to conflicts with the ROK's trade commitments and would subvert its international competitiveness.

The Value of Platforms to the Small Business Digital Economy Innovator Community

The single most important factor in the app ecosystem's dynamic growth and success is the presence of curated platforms, or app stores. Trusted app stores serve as a vital foundation for the growing uses of apps across industries and enterprises. Three key attributes led to the

revolution in software distribution. Today every successful platform for mobile, desktop, gaming, and even cloud computing must provide these features or risk failing in the marketplace:

1. The provision of a bundle of services that reduces overhead costs;
2. Instantaneous and cost-effective consumer trust mechanisms; and
3. Cost-effective access to a global market.

One of the central markets at issue in the debate around the role of antitrust in the platform ecosystem—informally, we could call it the market for developer services, where a developer pays a platform for various services including distribution, marketing, etc.—also experiences vigorous competition. Certainly, app markets offer immense value that developers realize through lower overhead and compliance costs, built-in customer trust, increased speed to market, and wider distribution and market access. With lower costs and barriers to entry, both fledgling and established app developers can find success. These platforms provide a centralized framework for app developers to engage and secure visibility with the 5 billion app users worldwide while also serving consumers and enterprise users, representing a vibrant two-sided market.

A platform's safety and security are also important elements of developer services. Platforms' security features improved markedly over the course of their existence. Whereas unlocking a device used to require a four-digit passcode, devices are now capable of biometric-based authentication, and platforms make these authentication measures available to developers as well so that they can also benefit from these heightened security measures. But the high stakes game of cat-and-mouse between cybersecurity professionals and hackers will never end, and security must continue to evolve to meet and beat the threats. Although some platforms do not control device security, developers want the platforms' security features to work seamlessly with any relevant hardware and that they account for all attack vectors. Platforms should continue to improve their threat sharing and gathering capabilities to ensure they protect developers across the platform, regardless of where threats originate. Moreover, they should approve and deploy software updates with important security updates rapidly to protect consumers as well as developers and their clients and users. The same is true when it comes to privacy controls. App developers strongly desire platform-level privacy controls they can adapt for their products and services. The types and nature of these controls vary among platforms and this variation should result in continuously improving options that iterate with end user expectations and privacy risks.

Similarly, platforms play an important role in helping small developers enforce their intellectual property (IP) rights. Our member companies' IP helps eliminate the inherent disadvantages of being a small, innovative company by enabling them to protect the fruits of their ingenuity from larger firms that might want to take it. Unfortunately, some of our member companies fall victim to IP thieves that succeed in selling the pirated content or using it to steal ad revenue on platforms. Ad networks can and do help mitigate the pirated ad revenue problem, but platforms must also vigorously police their app stores for stolen content. With vast online stores, it is difficult for a platform to verify legitimate requests to remove allegedly pirated content. But a single app developer should not need the help of a legal team or trade association to resolve the issue. In recent years, IP resolution processes have improved across the board, and they are important

and in-demand developer services that platforms should improve in order to compete for developers.

If regulating gatekeepers is the primary objective of the proposed legislation, it must be supported by clear and specific justification. A 2024 report titled “Review of Regulatory Issues for Dominant Platform Operators,” published by the National Assembly Research Service,¹ raised significant concerns about the gatekeeper approach. Specifically, it argued that pre-designating certain platform operators based on predetermined criteria may create a stigma effect, effectively labeling companies as potentially abusive before any illegal acts have been established. The report also pointed out that in the rapidly changing platform market, this approach could incentivize platform operators to give up growth opportunities, dampen internal and external investment in platforms, and conflict with the principle of respecting private autonomy.

Given that gatekeeper regulation is a relatively new concept, it should be carefully designed and implemented, with a clearly defined regulatory purpose. Prior to introducing such regulation, policymakers must thoroughly assess both the benefits and potential adverse effects on users and consumers. It is crucial that any proposed regulation does not impede competition or stifle innovation in ROK.

There is a risk that such regulations could undermine the various benefits currently provided by the existing platform market and potentially restrict competition. A comprehensive review of the effects of gatekeeper regulation is necessary, taking into account the complex nature of online platforms. Particular attention should be paid to ensuring that the regulation does not impair the essential functions of online platforms that protect consumers, such as fraud prevention, privacy protection, and usability enhancement.

Notably, with respect to concerns with self-preferencing and tying that the proposed PMRA would address, blanket characterizations of self-preferencing and tying practices should be avoided because they are more likely to be pro-competitive examples of vertical integration. For example, when an online platform that does not hold a dominant position engages in self-preferencing, it is difficult to argue that such behavior causes significant harm to competition because there are likely multiple alternative competing platforms in the market that partner companies can choose from. Additionally, regulations on tying do not properly consider the specificities of the online platform market. The online platform market is a dynamic market where products and services are constantly evolving to meet consumer demands, and consumers often view the various services provided by an online platform as a single product or service. It is unreasonable to dichotomize online platform services and other goods/services without justifiable rationale and to consider any linkage between the two as illegal tying. Comprehensively regulating this would result in not allowing consumers to use more integrated online platforms and ultimately harm consumer choice, so it should be avoided.

¹ <https://www.nars.go.kr/report/view.do?cmsCode=CM0043&brdSeq=44067>

We strongly urge ROK policy to recognize that where such practices can produce greater efficiency, better quality, or lower costs for consumers, and there are minimal antitrust issues when users can easily switch to another platform, they will not be prohibited through government mandates. Considering that smartphones are music players, cameras, and multimodal communications devices, a narrowly focused view of one of these features without recognizing the value derived from other aspects of smart devices is incompatible with the way consumers experience them. Moreover, Korean policymakers should expect competition to discipline examples where self-preferencing is bad for consumers because those consumers can leave the platform due to demonstrably low switching costs. Just like other categories of market activity, an antitrust inquiry into self-preferencing is generally only appropriate where the company at issue has market power and where it is using that market power to harm competition and consumers.

While it is argued that the greater the tendency of users towards single-homing, the greater the influence of online platforms can be, the phenomenon of single-homing (or multi-homing) itself cannot be seen as indicative of an online platform's market power. Therefore, it is inappropriate to use this homing phenomenon as a factor in determining market dominance. There is no clear evidence to suggest that single-homing or multi-homing by online platform operators should be used as a basis for determining market dominance. For example, the higher the cost of multi-homing, the more intense the competition between platforms can become, which can lead to intensified competition for marginal consumers. This competition can have a sufficient effect in curbing the exercise of potential market power, making it inappropriate as a key factor in determining market dominance.

Further, it is unreasonable to evaluate Most-Favored-Nation (MFN) requirements solely in terms of their anti-competitive effects while ignoring their pro-competitive effects. To prevent online platform users (i.e., app developers) from free-riding on platforms and to increase the efficiency of the online platform market, platforms should be permitted to require app developers to set prices on the platform that are equal to or more favorable than those in their own distribution channels. Otherwise, app developers may incentivize direct transactions through their own distribution channels, effectively avoiding the platform fees while still benefiting from the platform's user base and services. This form of free-riding, if left unchecked, could lead to reduced investment in platforms, degraded user experience, and an overall decline in platform value. Ultimately, such a situation would likely harm small and medium-sized businesses that depend on platforms while benefiting only large-scale businesses capable of sustaining their own distribution channels, potentially reducing overall market competition.

Further Study and Deliberations are Needed Before Advancing the PMRA

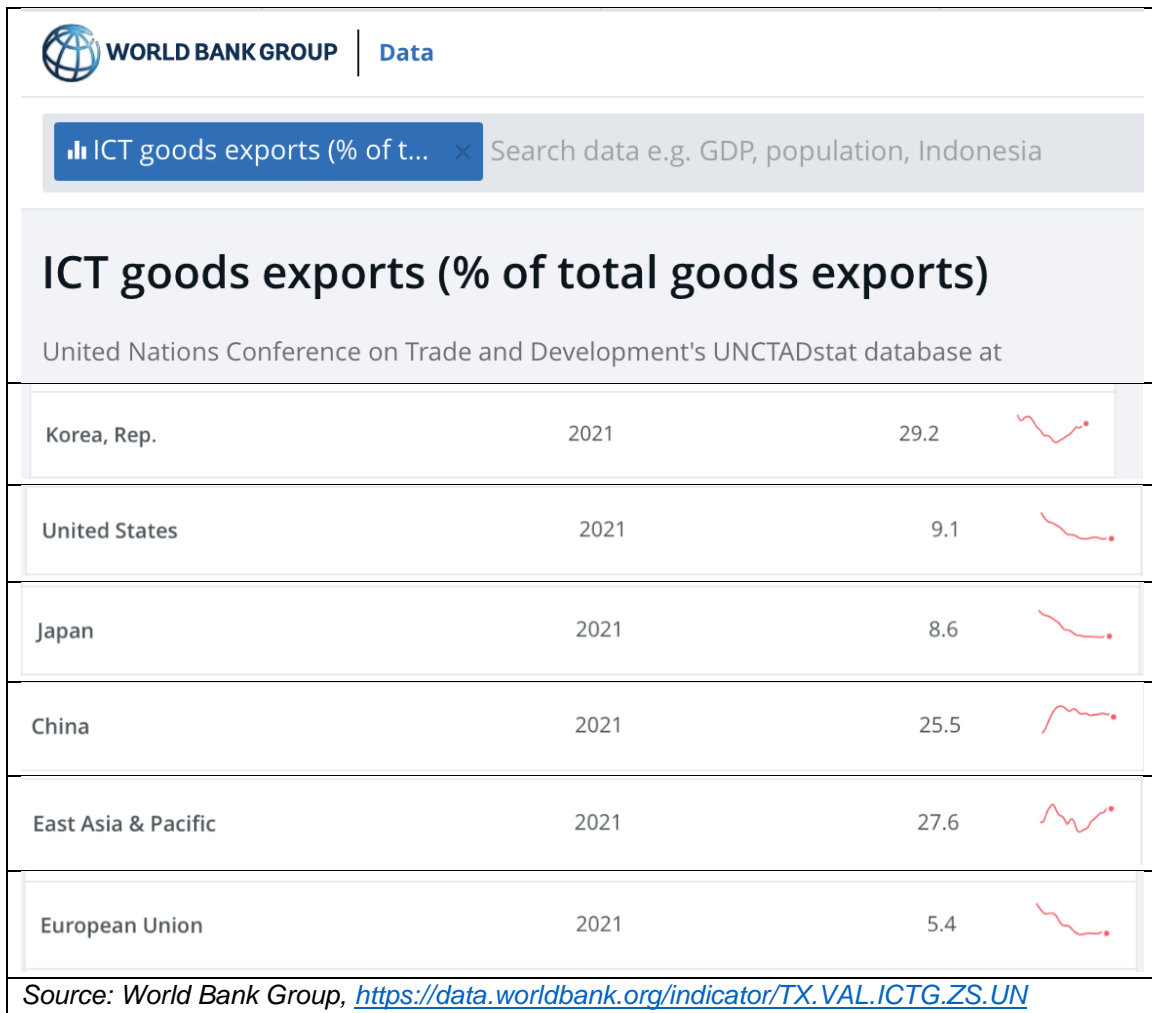
In considering whether to advance the proposed PMRA, it is vital that Korean policymakers carefully consider the above, and that a strong evidence base is developed to support any changes to Korean laws impacting digital economy innovation before any changes are made. The foundation for making digital economy policy changes should be based on well-established and systemic harms, not edge use cases or hypotheticals. At this time, the Korean digital economy exhibits very strong indicators of healthy competition and growth, and advancing the proposed PMRA is therefore irresponsible. Notably, a report from the National Assembly Research Service (NARS) discourages adoption of the PMRA and explains how the bill's proposals give rise to concerns based in (1) legitimacy aspects of pre-appointing gatekeepers; (2) inappropriate designation criteria issues for platform operators; (3) inconsistent and unfair platform regulatory policies; and (4) the possibility of hindering innovation in the platform ecosystem in the ROK.²

In addition, sufficient study should be done to examine whether existing Korean laws, including the Fair Trade Act, the Telecommunications Services Act, and others already provide the means for ensuring competition and consumer protection in the digital economy; and whether the proposed PMRA violates Article 7 of the Framework Act on Administrative Regulations, which requires an examination of alternative measures to ensure the avoidance of overlapping regulation with existing law.

²

<https://www.nars.go.kr/report/view.do?page=1&cmsCode=CM0043&categoryId=&searchType=&searchKeyword=&brdSeq=44067>.

Further, as NARS notes, the European Union's DMA is unquestionably a protectionist anti-trade measure that Korean policymakers should carefully avoid aligning with. In addition, the DMA is not fully implemented, nor is its impact on domestic and international digital commerce known.



Asia Digital Competitiveness Ranking (World Ranking of 64 Countries)			
1. Singapore (3 rd)	2. South Korea (6th)	3. Taiwan (9 th)	4. Hong Kong (10 th)
5. Australia (16 th)	6. China (19 th)	7. New Zealand (25 th)	8. Japan (32nd)
9. Malaysia (33 rd)	10. Thailand (35 th)	11. Indonesia (45 th)	12. India (49 th)
13. Philippines (59 th)	14. Mongolia (63 rd)		

Source: International Institute for Management Development (IMD), <https://www.msit.go.kr/bbs/view.do?sCode=user&bbsSeqNo=94&nttSeqNo=3183750>.

According to World Bank data on ICT goods exports by country, while the EU's most recent ICT goods export value has declined to 5.4, Korea's most recent ICT goods export value has risen to

29.2. Furthermore, in the 2023 World Digital Competitiveness Ranking published by the Swiss International Institute for Management Development (IMD), Korea ranked 6th out of 64 countries evaluated, improving by two positions from the previous year. In contrast, Japan ranked 32nd globally. Among the 14 Asian countries assessed, Korea placed 2nd while Japan was 8th. These rankings demonstrate Korea's strong global competitiveness in the ICT sector. Considering Korea's high competitiveness in the ICT field worldwide, it should be taken into account that Korea is not in a position to introduce protectionist online platform regulatory policies similar to those of the EU or Japan. The country's digital economy is thriving under the current regulatory environment, and introducing overly restrictive measures could potentially hinder this progress.

Korean policymakers should carefully track the DMA's implementation and its effects before mirroring the European Union's protectionist digital economy policies (which have not propelled the EU to global leadership in the digital economy to date). The ROK has the advantage of observing another major jurisdiction's experimental intervention into a nascent and dynamic digital economy and should fully capitalize on its opportunity to build on the lessons learned in the creation and implementation of the DMA. On this basis alone, advancing the proposed PMRA is ill-advised. Relatedly, the App Association notes that U.S. policymakers have rejected legislative proposals consistent with the DMA. Even in the United States, which has globally dominant online platform companies, there has been no introduction of a system that regulates unfair trade practices specifically for online platform companies.

Finally, in addition to the public policy and feasibility issues discussed above, we urge Korean policymakers to carefully consider whether the proposed PMRA would create risks of violating obligations under important trade agreements. These include Article 16 of the General Agreement on Trade in Services, which requires that all regulations affecting trade in services "are administered in a reasonable, objective and impartial manner;" as well as several commitments made by the ROK in the U.S.-Korea Free Trade Agreement in chapters addressing investment and electronic commerce.

Conclusion

Based on the above, the App Association requests the withdrawal of the proposed PMRA. We welcome the opportunity to provide further perspectives and data and appreciate the ability to share our views on this critical proposal.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive, flowing style.

Morgan Reed
President
ACT | The App Association

cc: The Right Honourable Kim Jin-pyo, Speaker of the National Assembly
Kim Young-joo, Deputy Speaker of the National Assembly
Chung Woo-taik, Deputy Speaker of the National Assembly
Yoon Hanghong, Chairman of National Policy Committee
Choi Sang-mok, Deputy Prime Minister and Minister of Economy and Finance
Park Sang-Chul, Chief of the National Assembly Research Service