

15 January 2025

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

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

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

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

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

**RE: ACT | The App Association Views Regarding Online Platform
Regulation/Legislation**

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.

The Korean National Assembly proposed the Platform Competition Promotion Act (PCPA) and the Online Platform Monopoly Regulation Act (PMRA), both of which followed an ex-ante regulatory model like the European Union's Digital Markets Act (DMA). Ex-ante regulations proposed in both the PCPA and PMRA would impose substantial burdens on software and internet of things (IoT) developers, which include many of our members, and would undermine the dynamic nature of Korea's business development sector and create additional complexity for the ROK's digital economy. Considering the dynamics of Korea's online digital ecosystem in the global market, we kindly ask you to review ways to support Korea's platform market and app developers through more practical and effective self-regulation. Self-regulation, where companies voluntarily set regulatory requirements in a preventive manner before specific issues arise, is understood as a way for individuals or organizations to exercise their fundamental rights in pursuit of legitimate interests.

ACT | The App Association would like to offer its perspective on online platform regulations draft/bills. We urge that, when drafting or amending related laws or policies, a balanced self-regulation approach be adopted that effectively addresses proven market dominance abuse, without hindering the development of Korea's online digital market, which has positioned the country as a global leader in innovation.

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

The App Association has previously described the history and dynamics of today's digital markets that enable secure and seamless app distribution for countless small businesses in the ROK.¹ 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 experience 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 want platform-level privacy controls they can adapt to 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.

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,

¹ <https://actonline.org/wp-content/uploads/App-Association-Ltr-re-PMRA-13-Sept-2024-KR.pdf>.

innovative company by enabling them to protect the fruits of their ingenuity from larger firms that might want to take it. Compared to the past, IP resolution processes have significantly improved across the board, and they are important and in-demand developer services that platforms should improve to compete for developers.

Considerations for Market Dominance Threshold and Competitive Impacts

In the roadmap, the KFTC proposes significant changes by adopting separate thresholds for the ex-post presumption of online platform operators' (or "gatekeepers") market dominance. The KFTC's decision withdrew the ex-ante "gatekeeper" designations, akin to the EU DMA and charged it to the ex-post presumption of online platform business operators. However, under the ex-post presumption requirements, the concerns of businesses still remain. We believe Korea's online ecosystem differs substantially from others (e.g., the EU) and urge the ROK to continue nurturing the dynamic nature of Korea's digital market where global tech companies and small developers coexist and flourish. Maintaining this vibrant ecosystem requires a flexible regulatory approach that avoids disproportionately burdening small developers by distorting pro-competitive dynamics within the existing ecosystem. Given that gatekeeper regulation is a relatively new concept, it should be carefully crafted and implemented with a clearly defined purpose. Before introducing such regulation, policymakers should thoroughly assess both the benefits and potential adverse effects on users and consumers, carefully evaluating the impacts of existing regulations and their impact on competitiveness and trade. Ultimately, it is essential that any proposed regulation does not impede competition or stifle innovation in the ROK.

In this light, amendments to the MRFTA to regulate gatekeepers in nascent and developing markets must be backed by clear and specific justification to avoid unintended consequences. A 2024 report titled "Review of Regulatory Issues for Dominant Platform Operators," published by the National Assembly Research Service,² 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 warned that in a rapidly evolving platform market, this approach could discourage platform operators from pursuing growth opportunities, reduce internal and external investment, and conflict with the principle of respecting private autonomy.

The role of existing platforms in supporting and growing smaller companies across both developed and developing markets is a critical goal when balancing the benefits and potential drawbacks of broad regulations on online platforms. A comprehensive review of such a regulation may be necessary, but special attention should be given to ensuring that regulation does not impair the essential functions of online platforms that protect consumers in preventing fraud, protecting privacy, and enhancing usability. We urge the KFTC to carefully consider the potential negative impact on digital businesses and markets in the ROK when discussing regulations related to dominance-related regulations, and to consider self-regulation as a potential solution.

² <https://www.nars.go.kr/report/view.do?cmsCode=CM0043&brdSeq=44067>

Refinement and Clarity Needed on the Scope of the MRFTA Roadmap

Proposed turnover and market dominance thresholds discussed in the MRFTA Roadmap should be clarified to provide certainty of fair and objective application of the law, which will benefit all who operate within or benefit from digital markets. The KFTC's proposal states that any online platform operator with platform-related (direct and indirect) turnover under KRW 4 trillion (approx. USD 3 billion) will be excluded from the dominance presumption. However, the scope of "platform-related turnover" and "indirect turnover," and the applicability of domestic revenue, is unclear. Without clear definitions, it may become difficult for global platforms to predict whether the regulation applies to them, creating uncertainty for the small business developer communities that rely on platforms for reduced overhead, trust, and access. We urge the KFTC to provide detailed guidance to help both domestic and international operators understand and comply with these requirements, promoting a transparent and predictable regulatory environment.

Clarified Rules Needed on Prohibited Conduct

The KFTC's roadmap provides some new specifications on the types of abusive market dominance conducted by online platform operators, such as self-preferencing, tying, and Most-Favored Nation (MFN) demands, which may help clarify expectations for developers and platforms alike. However, blanket characterizations of these practices should be avoided when pro-competitive practices that enhance consumer choice can – and do – fall within the areas described. For example, in markets with multiple viable platforms, self-preferencing and tying practices often promote efficiency and quality improvements for consumers. Additionally, proposed regulations on tying fail to account for the specific dynamics of online platform markets, which very often consist of products and services constantly evolving to meet consumer demands, with consumers perceiving the various services provided by a platform as a single, integrated experience. It is unreasonable to separate platform services from other goods/services without a justifiable rationale and to treat any linkage as illegal tying. Regulating these practices, as defined in the MRFTA roadmap, would limit consumers' ability to use more integrated online platforms, ultimately reducing consumer choice.

We strongly urge ROK policy to recognize that practices yielding greater efficiency, quality, or lower costs for small business developers and the consumers they serve—with minimal antitrust issues particularly when users face little-to-no switching costs—should not be prohibited by government mandates. Considering that smartphones now serve as music players, cameras, and multi-modal communication devices, a narrow view of one feature without recognizing value derived from other aspects is inconsistent with how consumers experience these devices. Moreover, ROK policymakers can, and should, expect hyper-competition in digital markets to discourage harmful self-preferencing since consumers can easily leave platforms due to low switching costs. Just as in other market categories, antitrust inquiries into self-preferencing are only warranted when a company first possesses market power and then uses that power to harm competition and consumers.

Carefully Considering the Impacts on International Trade and the ROK's Trade Commitments

Finally, in addition to the public policy and feasibility issues discussed above, we urge Korean policymakers to carefully consider whether proposed changes to the MRFTA would violate 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

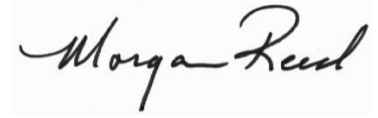
The flexibility and accessibility offered by platforms are crucial for the growth and sustainability of small companies across Korea. These platforms reduce overhead costs and provide effective distribution channels, allowing these businesses to compete globally. Imposing improperly scoped regulation to this nascent ecosystem risks undermining these benefits, particularly if platforms restrict access or increase costs due to compliance burdens. We believe the KFTC's approach should prioritize maintaining a competitive environment that supports small companies and startups. The presumptions proposed by the MRFTA amendments could jeopardize the existing relationship between online platforms and small developers, balancing enforcement efficiency and accuracy within competition law. In situations where market definition and market failure are unclear and the risk of overregulation is greater, choosing competition and innovation over unprecedented and excessive regulatory approaches would reflect an appropriate direction in the ROK's approach to digital competition.

Ultimately, the MRFTA Roadmap primarily creates the potential of altering today's hyper-competitive app economy to resemble an environment where high compliance requirements widen the moat around established players, and raise costs and reduce operational flexibilities for the small businesses. Any changes to the MRFTA should be preceded by substantial study and effort to preserve the pro-competitive dynamics of curated online marketplaces discussed above.

We urge for the ROK to adopt a self-regulation approach in revising the online platform laws, one that supports the growth of businesses and job creation in the ROK. Additionally, we request that the legislation discussion ensures fair competition while fostering the continued innovation of Korea's vibrant online digital economy, and that the opinions of various stakeholders are adequately reflected through transparent and ongoing discussions with the industry.

Thank you for the opportunity to share our perspectives on this important issue. We welcome further discussion on how best to support fair and effective regulation in Korea that sustains and strengthens the vibrant online digital economy.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive style with a light grey background behind it.

Morgan Reed

President

ACT | The App Association