

South Korea



Rules In Force

A recent amendment to Korea's Telecommunications Business Act imposes specific obligations on app store operators. Other digital regulations have been introduced as bills in parliament, although the new Government is looking at setting up a framework of digital platform self-regulation as an alternative. Digital markets remain an enforcement priority area for the Korean competition authority under existing competition law rules.

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1. What rules govern competition in digital markets in South Korea?

Competition in digital markets is governed by general Korean competition law, including the Monopoly Regulation and Fair Trade Act.

Korea was the first jurisdiction to implement—and enforce—legislation targeting specific exclusionary and unfair conduct by digital platforms. In particular, the Telecommunications Business Act has been amended to impose particular obligations on app store operators (the “**TBA Amendment**”) (*see* Question 5). This amendment took effect on September 14, 2021.

Other proposed legislation and rules governing competition in digital markets include:

- The Fairness in Online Platform Intermediary Transactions Act and the Act on Protection of Online Platform Users, which include restrictions on the terms and conditions of online intermediation platforms, price transparency obligations, and rules on the use of data generated on the platform.
- The Act on the Consumer Protection in Electronic Commerce, which includes consumer protection rules for online retailers and other platform operators.
- The Act on Protection of Newspapers, which imposes an obligation on online news service providers to remunerate news publishers.

Following the 2022 elections, the Government is considering setting up a framework for platform self-regulation as an alternative to these measures. Whether and when these proposals will enter into force therefore remains uncertain.



2022

FOLLOWING THE 2022 ELECTIONS, THE KOREAN GOVERNMENT IS CONSIDERING SETTING UP A FRAMEWORK FOR SELF-REGULATION AS AN ALTERNATIVE TO THE PROPOSED RULES IT IS CONSIDERING.

In July 2022, a pan-governmental consultative body was established to develop South Korea's new digital platform self-regulation policy.¹ This body includes representatives from other authorities such as the Ministry of Science, the Korea Fair Trade Commission ("KFTC"), the Korea Communications Commission ("KCC"), and the Personal Information Protection Commission.² It aims to establish a private, self-regulatory organization, incentivize those participating in self-regulation, support the organization in devising self-regulatory measures, and conduct a comprehensive study into digital markets.

In the meantime, in August 2022, the KFTC announced a survey into online platform sectors in order to identify unfair trade practices.³ The KFTC intends to use the survey to identify potential enforcement cases and devise a suitable and timely policy for digital platforms.



August 2022

IN AUGUST 2022, THE KFTC ANNOUNCED THAT IT WILL CONDUCT A SURVEY INTO ONLINE PLATFORM SECTORS IN ORDER TO IDENTIFY UNFAIR TRADE PRACTICES.

2. What is the status of any forthcoming digital regulation in South Korea?

The TBA Amendment, which introduced new rules specific to app stores, came into force on September 14, 2021.⁴ The status of other legislative proposals remains unclear due to the Government's new emphasis on self-regulation by digital platforms (*see* Question 1).



September 14, 2022

THE TBA AMENDMENT, WHICH INTRODUCED NEW RULES SPECIFIC TO APP STORES, CAME INTO FORCE ON SEPTEMBER 14, 2021.

3. How are the rules enforced or expected to be enforced?

The KFTC is generally responsible for enforcing competition law and digital markets regulation in Korea. In January 2022, the KFTC announced that its "ICT Task Force" would be reorganized into a more comprehensive "digital market response team" that will be better able to deal with fast-paced and multi-faceted digital markets.

¹ See MLex, [South Korea launches effort to develop platform self-regulation policy](#) (July 6, 2022).

² See MLex, [Self-regulatory body for online platform launches in South Korea](#) (August 19, 2022).

³ See MLex, [South Korean competition regulator to conduct survey of online-platform sectors](#) (August 2, 2022); MLex, [Online platforms target of survey by South Korean antitrust regulator](#) (August 2, 2022).

⁴ [Telecommunications Business Act](#), Article 22-9 and Article 50.



January 2022

IN JANUARY 2022, THE KFTC ANNOUNCED THAT ITS “ICT TASK FORCE” WOULD BE REORGANIZED INTO A MORE COMPREHENSIVE “DIGITAL MARKET RESPONSE TEAM” THAT WILL BE BETTER ABLE TO DEAL WITH FAST-PACED AND MULTI-FACETED DIGITAL MARKETS.

The Telecommunications Business Act, which includes the new rules specific to app stores, is enforced by the KCC, despite the competition law focus of the rules.

If the Government follows its current proposed path of self-regulation, it is unclear whether there would be any oversight of the firms subject to the rules that are introduced.

4. Which firms do the rules apply to?

Currently, the only new digital sector regulation in force—the TBA Amendment—applies to businesses that operate app stores that intermediate transactions of mobile content.

Other rules that have been proposed (*see* Question 1) would apply to digital platforms such as app stores, online marketplaces, online shops, online news services providers, search engines, and others.

5. What are the main substantive rules that govern the firms covered by the digital regulation?

The TBA Amendment prohibits app store operators from:⁵

- Requiring app developers to use a specific payment method or preventing promotion of other payment methods by unfairly taking

advantage of their superior bargaining position in intermediating transactions involving apps;

- Unfairly delaying the review of apps;
- Unfairly removing apps from their app stores; or
- Unfairly imposing discriminatory conditions and restrictions on app developers.

6. Are there specific rules governing digital platforms’ relationships with publishers?

If passed by the National Assembly, the proposed Amendment of the Newspaper Act would impose an obligation on online news service providers to pay compensation to news suppliers. It also provides for the establishment of a committee that would mediate disputes regarding payment of compensation by online news service providers and would have the authority to request submission of relevant materials.

The rules are not expected to come into force before 2023 at the earliest, though, and their future is uncertain in light of the Government’s recent exploration of self-regulation as an alternative to legislation (*see* Question 1).

7. Does the authority need to establish the effects of certain conduct in order to establish a breach of the rules?

Liability for breaches of the app store provisions of the Telecommunications Business Act referred to in Question 5 is strict. There is no need for the KCC to establish anticompetitive effects in order to find an infringement. However, certain aspects of the provision, such as notions of unfairness and superior bargaining power, imply that there needs to be unmeritorious conduct established based on evidence before an infringement can be found.

⁵ [Telecommunications Business Act](#) (April 20, 2022), Article 22-9 and Article 50.

8. Can firms defend or objectively justify their conduct under the new or proposed rules?

Liability for breaches of the app store provisions of the Telecommunications Business Act referred to in Question 5 is strict. There is no scope for firms to objectively justify their conduct.

9. What procedural safeguards do the rules include?

Under the Telecommunications Business Act, the KCC must inform the company of any measures it may seek to take and provide the company with an opportunity to be heard before issuing a formal order. The KFTC's investigatory powers under general antitrust law are subject to the usual procedural safeguards. KFTC and KCC decisions are subject to appeal on the merits.

10. What kinds of penalties or remedies can be imposed following a breach of the rules?

The regulator can issue a corrective order and/or impose a fine of up to 3% of the company's average annual Korean revenue during the three preceding years. A criminal fine of up to KRW 300 million (approximately USD 250,000) is also possible.

11. Has the authority issued any guidance or reports regarding the digital regulation?

An amended Enforcement Decree providing guidance on the new provisions in the TBA Amendment took effect on March 15, 2022.⁶ The guidance includes detailed information on relevant standards included in the app store rules, such as “*bargaining position*,” “*forcedness*,” and “*unfairness*”.⁷

⁶ Enforcement Decree Of The Telecommunications Business Act (March 15, 2022).

⁷ KCC Press Release, [KCC Draws Up Standards To Determine Violation Of Prohibited Acts By App Market Business Operators](#) (March 10, 2022).

The KFTC has a rich pipeline of reports in the digital sector. For example, it has commissioned a study titled “*Review on M&A in the online platform sector and establishment of regulatory measures*,” scheduled for completion in Q4 2022. It has also completed, but has not yet published, studies titled “*Investigation of Conditions in Digital Ad Markets*” and “*Competition/Consumer Issues and Proposals for Establishment of a Fair Trade Order in the Data Sector*”, which may lead to additional rules or enforcement in these areas.

The KFTC has also launched a survey on cloud services that will examine, among other things, whether concentration of data may be hindering competition in the cloud services sector. The agency is expected to announce the results of its survey in December 2022.



December 2022

THE KFTC HAS LAUNCHED A SURVEY ON CLOUD SERVICES. IT IS EXPECTED TO ANNOUNCE THE RESULTS OF THE SURVEY IN DECEMBER 2022.

Finally, the KFTC has published for comment a set of proposed Draft Guidelines for Review of Abuses of Dominance and Unfair Trade Practices by Online Platform Operators, which include self-preferencing as a representative type of anticompetitive conduct in the online platform sector. It remains uncertain, though, when these guidelines will be implemented.

12. Has the authority issued any decisions under digital regulations in South Korea?

No. Under the TBA Amendment, the KCC has conducted an initial examination of app market operators like Google, Apple, and One Store to identify possible violations of the new app store

rules.⁸ The examination found that Google, Apple and One Store may be violating the new rules. As a result, in August 2022, the KCC announced that it would begin a fact-finding investigation to determine whether there have been any specific violations of the app store rules that warrant the imposition of a penalty or other corrective measures.⁹



August 2022

IN AUGUST 2022, THE KCC ANNOUNCED THAT IT WOULD BEGIN A FACT-FINDING INVESTIGATION TO DETERMINE WHETHER THERE HAVE BEEN ANY SPECIFIC VIOLATIONS OF THE APP STORE RULES THAT WARRANT THE IMPOSITION OF A PENALTY OR OTHER CORRECTIVE MEASURES.

13. Is the new regime competition based, or does it target other types of conduct, such as consumer protection, moderation of content, or privacy?

The TBA Amendment that imposes obligations on app store operators is principally competition-based, but some rules have a consumer protection flavor.

Other new laws in the digital sector that may be adopted are also expected to be competition-based with consumer protection and privacy elements. The self-regulation proposal is likely to seek to achieve similar goals.

14. What is the current enforcement practice with respect to conduct that is expected to be addressed by the digital regulation?

Digital markets remain a priority area for the KFTC. For example, the agency is launching a market survey into online platform sectors with a view to identifying potential new cases and areas of concern. In recent years it has pursued investigations into the practices of international digital companies, including Meta,¹⁰ Google,¹¹ and Apple,¹² as well as large Korean digital platforms, such as Naver¹³ and Kakao.¹⁴ In September 2022, the KFTC conducted a dawn raid in Apple's Korea headquarters in connection with alleged abuse of its dominance in app stores.¹⁵

15. Are there merger rules specific to digital platforms in South Korea?

No. However, in December 2021, a transaction value jurisdiction threshold took effect under the Monopoly Regulation and Fair Trade Act. Under the new threshold, a transaction is notifiable if its value exceeds KRW 600 billion (approximately USD 540 million) and the acquired company is substantially active in the Korean market. This jurisdiction test applies to all firms, not only digital platforms. However, as with other jurisdictions that have implemented transaction value tests (e.g., Germany and Austria), its introduction follows growing concerns about so-called “killer acquisitions” where large firms, especially in the digital sector, acquire nascent potential competitors with small current revenues.

⁸ KCC Press Release, [KCC Begins Fact-Finding Examinations Of App Market Operators Regarding Possible Violations Of Prohibited Acts In Telecommunications Business Act](#) (May 16, 2022).

⁹ KCC Press Release, [KCC Begins Fact-Finding Investigation Of Three App Market Operators Including Google, Apple](#) (August 16, 2022).

¹⁰ MLex, [Facebook's South Korea office inspected by KFTC for alleged anticompetitive conduct in digital ad market](#) (April 14, 2021).

¹¹ CNBC, [South Korea's antitrust regulator fines Google \\$177 million for abusing mobile market dominance](#) (September 14, 2021).

¹² The Korea Herald, [Regulator to refer Apple Korea to prosecution for hampering probe](#) (March 31, 2021).

¹³ The Korea Herald, [Naver faces 26.7b-won fine, accused of manipulating algorithms](#) (October 6, 2020); Competition Policy International, [South Korea Raids Naver Over Allegedly Abusing Market Position](#) (August 14, 2022).

¹⁴ The Korea Economic Daily, [Antitrust body takes aim at Kakao's taxi-hailing app, Coupang](#) (September 12, 2021).

¹⁵ PaRR, [KFTC raids Apple Korea over alleged abuse of dominance - report \(translated\)](#) (September 27, 2022).



KRW 600mn

UNDER THE NEW THRESHOLD, A TRANSACTION IS NOTIFIABLE IF ITS VALUE EXCEEDS KRW 600 BILLION (APPROXIMATELY USD 540 MILLION) AND THE ACQUIRED COMPANY IS SUBSTANTIALLY ACTIVE IN THE KOREAN MARKET.

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