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THE PENINSULA

**Digital Trade Wars: What U.S. Policymakers Need To Understand
about South Korea's Tech Regulation**

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In the past few years, US tech companies and their advocates have leveled strong criticisms against digital regulation around the world. While the European Union (EU) has been the main target, proposed regulation in other countries has also raised concerns. Recently, there has been a push from a range of Washington, DC policy voices, including several former Trump administration officials, against South Korea's proposed digital regulations. While it is true that the Platform Competition Promotion Act (PCPA), initiated by the South Korean Fair Trade Commission (KFTC), could impact major US tech companies operating in the country, the digital platform ecosystem in South Korea differs from that of Europe and many other places: South Korea features its own domestic competitors, and it is these local companies that may bear the brunt of the impact from any regulation. Indeed, the PCPA is now colloquially referred to as the "Nekao (Naver + Kakao) Regulation Law," underscoring its potential impact on two major South Korean tech companies. In crafting a response to any South Korean regulation, US policymakers and advocates need to be aware of the uniqueness of the Korean digital market.

KFTC's Platform Competition Promotion Act

In December 2023, the Chairman of the KFTC announced its intention to enact the PCPA, aiming to prevent unfair practices by large online platforms that could undermine emerging innovative companies and startups. This action followed a strong

condemnation from South Korean President Yoon Seok Yeol against the country's dominant ride-hailing service, "Kakao T," during the 21st Emergency Economic Livelihood Conference, which had taken place the previous month. Responding to a taxi driver's complaints about commission fees and call monopolization by Kakao Taxi, Yoon responded that the monopoly by Kakao Taxi is highly "unethical," marking an unusual instance of a sitting president openly criticizing a specific company.

The PCPA, modeled on the European Union's Digital Markets Act (DMA), designates a few major platform operators as "dominant entities." In doing so, it identifies businesses with a certain level of revenue, user base, and market share, and proactively regulates four business practices: self-preference, multi-homing, tying sales, and preferential treatment. According to news reports, in a press conference related to the announcement, the KFTC Chairman stated that the seriousness of platform monopolies and their harmful effects have been acknowledged in the EU and other regions, leading to legislation to address the problem. The KFTC has continued to assert that the regulation of online platforms is a global phenomenon.

With the strong advocacy of the KFTC for the PCPA, the prevailing expectation was that the specific details of this Act would be finalized before the South Korean general election in April. However, in early February, the KFTC said it would "reconsider" the Act, citing the need for additional input from industries, academia, and other stakeholders. The postponement was influenced by pressure from both at home and abroad, particularly by the opposition expressed in the United States, including concerns raised by the US Chamber of Commerce. As of this moment, the timeline for completion of the legislative process is uncertain.

US Policy Wonks Put the Pressure on South Korea

In reaction to these Korean regulatory developments, there has been pushback from a number of US policy voices, as US advocates have made the case that the prospective regulations in South Korea are "protectionist" measures that will harm US tech companies the most and will help the Chinese. Notably, three former Trump administration officials have weighed in publicly on this issue, signaling its potential priority in a second Trump administration.

Most recently, Clete Willems, former deputy director of the US National Economic Council in the Trump administration, in an interview with the South Korean press, cautioned the Korean government against proceeding with this regulation: "If this bill [PCPA] becomes a reality, the activation of Section 301, which provides remedies for unfair trade practices abroad, could escalate tensions between the two countries. Hope that the South Korean government makes a wise decision."

Along the same lines, Jamieson Greer, who was the Chief of Staff for U.S. Trade Representative Robert Lighthizer during the Trump administration, argued that the proposed PCPA would entail "discrimination against U.S. firms," because it "targets only companies above a set market capitalization, annual revenue, and number of users." He further stated that "[t]here is no question that innovative US tech companies are the obvious target of such regulatory protectionism simply because they are American and are competing with favored chaebols." Greer was also concerned with "the apparent exclusion of massive Chinese companies from the KFTC's proposed regulatory scheme."

And Robert O'Brien, who served as the U.S. national security adviser during the latter part of the Trump administration, argued that the Korean legislation would "be a gift to the Chinese Communist Party (CCP)." In this regard, he said, "[t]he most innovative tech leaders, primarily American companies, are likely to be the only ones designated as 'dominant platform business entities' by ROK regulators." By contrast, "Chinese tech giants like Alibaba and TikTok parent company ByteDance, which present clear national security threats, would be left untouched."

Criticism of the South Korean legislation is not limited to former Trump administration officials. Two trade experts at the think tank CSIS recently argued that "Korea's pro-tech government has tabled [an EU] Digital Markets Act-like bill that would unfairly target U.S. platforms while giving Chinese platforms a pass, a policy very much not in U.S. companies' interests." They concluded that "Korea's proposed act and the bills under discussion set limits that unfairly target U.S. companies which will, in turn end up helping Chinese companies gain larger market share." And as Robert Atkinson, founder and president of the Information Technology and Innovation Foundation, put it: "The PCPA would unfairly discriminate against American companies like Alphabet, Amazon, Apple, Meta, and others."

Understanding the South Korean Digital Market

What many of the arguments coming from the United States overlook is the distinctive nature of the South Korean digital landscape, where domestic tech companies are prominent. While US tech companies are the worldwide leaders in search, video-sharing, social media, and e-commerce platforms, the dynamics vary in each foreign market, and in a few countries, including South Korea, there are powerful homegrown competitors.

South Korea boasts robust online platforms, featuring domestic versions of nearly every online service, ranging from food delivery to banking. For example, South Korea's domestic tech giant, Naver, has long dominated the nation's online search market, accounting for 59.25 percent as of February 19, 2024, standing out as a rare case globally of a market not dominated by Google. Another example, Kakao, which runs a popular messenger app, Kakao Talk, has over 48.5 million active users (4Q 2023 data) out of a population of 50 million. The ride hailing service it also provides, Kakao T, holds a dominant position as the market leader, with a share of over 90 percent.

At the same time, it is important to acknowledge that there are major US tech companies – such as Google and Meta – who are big players in the South Korean digital market, which is why US policymakers are raising this issue. Chinese tech companies, especially e-commerce platforms, like Temu operated by Pinduoduo and AliExpress by Alibaba, are rapidly penetrating the market, but the overall South Korean digital platform ecosystem today remains predominantly influenced by Korean and American tech companies. However, while there are foreign players, it is crucial to recognize the significant role played by South Korean tech companies, outside of the traditional chaebols, in shaping discussions around regulation in the country. This dynamic has implications for how Americans should view and approach these regulatory developments.

South Korea vs. the EU

Unlike the EU, which crafted the DMA with foreign big tech companies in mind, the concerns arising in Seoul regarding the implications of the PCPA on the competitiveness of local platforms are significant. Indeed, while the proposed Act is expected to address both domestic and foreign companies, given the nature of the South Korean digital market, it is possible that the regulations will be enforced mainly against domestic ones, which could allow foreign companies to gain a competitive advantage in the market.

A related issue is that South Korean regulators are concerned about the economic and security relationship Seoul values with its foreign counterparts, especially Washington. Their apprehension is centered around not wanting to be perceived as cracking down too hard on global tech companies. This diplomatic consideration could potentially influence South Korean regulators to grant more flexibility on compliance with regulations to foreign tech companies than to the domestic competitors.

A recent example of this took place in 2019 with the “Nth Room” criminal case, involving blackmail, cybersex trafficking, and the dissemination of sexually exploitative videos, mostly featuring underage women, through the Telegram app. This shocking case prompted the enactment of the “anti-Nth Room” legislation, which took effect in 2021. The legislation imposes responsibility on platforms to manage, supervise, and take measures against illegal videos. However, some foreign companies managed to evade the regulation, given that their servers are not based in South Korea. More generally, regulating foreign tech companies with servers located abroad has presented an ongoing challenge for South Korean regulators, and Telegram was not the only example of this.

What's Next for Korean Digital Regulation

It is no surprise that South Korea's National Union of Small Business Owners, who feel the biggest impact from the unfair practices of large platform companies, held a press conference amid the temporarily postponed PCPA legislative efforts, urging the government to promptly enact the Platform Act. Since the February announcement to “reconsider,” the KFTC Chairman has expressed an interest in pushing ahead with the Act, commenting, “We are committed to pursuing legislation aimed at swiftly and effectively preventing fallout from monopolistic online platforms,” but without offering any concrete plans.

As tech becomes ever more entrenched in our lives, and governments struggle with how to regulate it, international disputes over domestic regulations and their impact on foreign companies are inevitable. However, it is crucial to recognize that each country's market situation is different. When US policymakers look into South Korea's regulatory measures, they should take this unique context into account. Understanding the specific digital market landscape of South Korea is essential in formulating an informed stance on their regulations, including thinking about how to weigh in on the digital policy debate on South Korea.

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