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Drawing the Line: Japan's Crackdown on Messenger App Signals Need for International Digital Rules

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Line, a popular messenger and social media platform in Japan used by around 70 percent of the population, has emerged as the next potential challenge for the fragile relationship between Seoul and Tokyo. Run by Line Yahoo, Line is jointly owned by the South Korean tech company Naver and the Japanese company SoftBank, each holding a 50 percent stake. In April, the Japanese government twice issued administrative guidance that urged Line Yahoo to review its financial relationship with Naver. The Japanese directives were prompted by a massive leak of Line users' data in late 2023, which was attributed to the hacking of Naver's cloud server. Even on its own, the Line case would be garnering attention, but it is occurring amid similar pressure in the United States to ban TikTok, a Chinese-owned social media platform, putting ownership issues and national security front and center in the platform industry.

In response to Japan's move, the South Korean Ministry of Foreign Affairs stated that none of the country's firms should encounter discriminatory measures in Japan and expressed an intention to engage in talks with Tokyo, if necessary. Echoing this sentiment, South Korea's Minister of Science and ICT vowed to prioritize ensuring fair treatment for the Korean tech company. Most recently, the Presidential Office weighed in and pledged to respond firmly to any unfair treatment of Korean companies abroad. However, with Line Yahoo now announcing plans to potentially reduce Naver's equity in the platform, the "discrimination" dispute is likely to persist. These developments underscore the urgent

need for clear international norms on governmental obligations and policy-based exceptions in the digital realm. When there are allegations of disguised protectionism alongside defenses based on privacy or security, international rules can help sort out those disagreements and avoid a spiral of accusations and retaliation.

Line's Nationality Dispute: Korean or Japanese?

Initially planned and developed by Naver Japan, a subsidiary of the South Korean tech giant Naver, Line has faced constant scrutiny over its country of origin since its inception in 2011. In its early stages, Naver Japan primarily employed Korean staff, who played a crucial role in driving the platform's success in Japan, leveraging their technological expertise from South Korea. To bolster and fortify its foothold in Japan amidst recurring challenges stemming from the intricate dynamics of Seoul-Tokyo relations, Naver partnered with Yahoo Japan, one of the dominant search portals in the country, in 2019. Together, they merged to create Line Yahoo, a strategic move aimed at expanding Line's reach and solidifying its position in Japan. This collaboration effectively mitigated the controversy surrounding Line's nationality in the eyes of the public and stakeholders.

However, the issue of Line's nationality was reignited due to national security concerns following two major data breaches in 2021 and 2023. In the first incident, the Japanese media drew particular attention to the fact that Line's servers were located in South Korea. Previously, many in Japan had regarded Line as a Japanese platform, but the revelation that it was operated from Seoul began to reshape public perceptions. The second incident, which saw the leak of as many as 510,000 items of personal data due to malware infecting a server of Naver Cloud, prompted the Japanese Ministry of Internal Affairs and Communications to issue administrative guidance twice within about a month, which is regarded as highly unusual.

The first administrative guidance, issued in March of this year, cited Line Yahoo's excessive reliance on Naver for system operations, resulting in inadequate cybersecurity measures. It called for a review of the financial relationship with Naver to rectify the situation. Although Line Yahoo submitted a prevention plan, the ministry found the response insufficient and issued follow-up guidance in April. This subsequent directive demanded swifter progress on security governance measures, including, again, a reevaluation of Line Yahoo's financial relationship with the Korean tech company by early July. Against this backdrop, Japan's Personal Information Protection Commission made a request to its counterpart in Seoul for cooperation in investigating Naver's cloud system, which was responsible for managing Line Yahoo's servers.

Under this mounting pressure, Line Yahoo's CEO confirmed that the company has urged Naver to reduce its ownership stake in the platform business. Naver has also put out an official statement that it is exploring all possibilities, including selling its stake, and engaging in sincere discussions with SoftBank. If successful, this move would ultimately force Naver to relinquish some or all of its power and control over the business, a scenario Naver wishes to avoid.

Data Protection, National Security, and Digital Disputes

In the aftermath of data leaks, governments typically enforce remedial actions and impose penalties, such as fines. However, the request for an adjustment in ownership that results in a change in management control – here, from the current situation of Naver's 50 percent

Last October, when Japanese telecommunications company Nippon Telegraph and Telephone Corporation (NTT) disclosed the leak of approximately 9 million sets of customer information, the Japanese government instructed NTT, through an administrative directive, to establish measures for preventing recurrence and later accepted NTT's proposal for improvement. Similarly, when a hack of Japanese IT service provider Fujitsu was detected in late 2022, affecting at least 1,700 companies and government agencies, the Japanese authorities responded with comparable measures. However, in the case of Line, the Japanese government's directives went further, with the consequence being a reduction or even a complete buyout of Naver's shares in the platform business. This is why, despite the Japanese government's goal of protecting its citizens' personal information, the financial divestment remedy that is being implicitly pushed here has been interpreted by some as Tokyo's desire to target the South Korean company – one that has been thriving in Japan – by abusing the concept of national security.

Tokyo's actions parallel recent developments in the United States related to the possible forced sale of TikTok. There, concerns about the Chinese government's control of TikTok and Beijing's access to Americans' personal data have led to the passage of a statute that could force the sale of the popular platform within a year. In response, ByteDance, the owner of TikTok, has filed a lawsuit against the US government to contest the law and the compelled divestment of its American assets. Tensions between South Korea and Japan, while heated, have not reached the level of the ongoing conflict between the United States and China, so the escalation of tensions is not comparable. Nevertheless, when a decades-old rivalry is combined with national security concerns, the outcomes can be uncertain, and escalation can occur quickly.

Consultations and Dispute Settlement in International Fora

Rather than unilateral actions that could lead to escalation, South Korea and Japan should first look for ways to resolve the dispute amicably before it spirals into something more contentious. Given that this dispute is still at an early stage, bilateral consultations are a realistic possibility, and perhaps, the newly established Korea-Japan Digital Policy Forum – a ministerial-level consultative body created following the summit meeting between South Korean President Yoon Suk-yeol and Japanese Prime Minister Kishida Fumio in March 2023 – could serve as an avenue for addressing the dispute. But the chances of success under any ad hoc bilateral mechanism may be limited, and a formal institutional mechanism could also be considered.

At the multilateral level, the World Trade Organization (WTO) offers a long-standing and well-developed set of rules and institutions to handle trade conflicts, featuring committees for discussion and a formal mechanism for dispute resolution. However, the WTO lacks detailed rules on both digital trade and investment at the moment, which may limit the potential for success in this case. South Korea and Japan have both been part of a group of WTO members negotiating rules on e-commerce, but the prospects for concluding a set of rules that would cover the Line situation may not be very high. In addition, the WTO's dispute settlement mechanism has been, to a great extent, paralyzed since 2019 due to the United States blocking the appointment of judges to the WTO's Appellate Body. While

Japan is a party to an alternative appeals mechanism set up by several WTO members, known as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), South Korea has not signed up.

Another option is the Regional Comprehensive Economic Partnership (RCEP), which includes both an e-commerce chapter and an investment chapter, as well as a set of dispute procedures. However, RCEP, of which both Seoul and Tokyo are members, is relatively new and lacks experience with settling disputes. Moreover, e-commerce is carved out of the full dispute procedures. Although consultations and referral to an RCEP committee are possible for e-commerce, and Japan did request discussions under RCEP in 2023 regarding China's suspension of Japanese imports of aquatic products, formal disputes under RCEP in the digital space are untested.

Against this backdrop, it is worth noting that the current international system is quite fragmented in the area of digital trade. Japan has a digital trade agreement with the United States that was signed during the Trump administration and has a digital trade chapter in its Economic Partnership Agreement with the European Union. On the other side, South Korea recently joined the Digital Economic Partnership Agreement (DEPA), an initiative led by Singapore, New Zealand, and Chile. DEPA shows promise as a flexible set of rules that governments can utilize for digital trade regulation and disputes, but it does not include Japan.

What's Coming Down the Line?

Making judgments about whether government actions discriminate against a foreign company is inherently controversial. A unilateral judgment by one government about another government's actions or policies inevitably leads to perceptions of unfairness on both sides. In this case, accusing Japan of digital protectionism could lead to counteraccusations about South Korea's response, potentially straining relations between Seoul and Tokyo. As a result, hard-earned reconciliation between the two neighbors under the leadership of President Yoon and Prime Minister Kishida would once again encounter friction, this time over platform ownership. Renewed tension would likely face added challenges, particularly considering the domestic political risks facing both leaders. Yoon narrowly avoided the possibility of impeachment after his party experienced a devastating loss in the general election, and Kishida's party suffered a complete defeat in by-elections due to a corruption scandal.

The Line dispute illustrates the risks of unilateralism leading to escalation and the need for an international system in the digital realm to handle these kinds of tensions. Rather than unilateral accusations of "discrimination" or "unfairness," there should be the possibility of an objective examination by an international tribunal as to whether the specific domestic legislation or regulations violate agreed-upon rules. The Line case highlights the clear need for South Korea, Japan, and other governments to develop a comprehensive and coherent set of digital trade rules that can serve as guidance, which is needed more than ever as we witness digital trade wars escalating around the world.

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