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ABUSE OF DOMINANCE IN DIGITAL MARKETS – Contribution from Korea

- Session II -

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More documentation related to this discussion can be found at: oe.cd/dmkt.

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Abuse of dominance in digital markets

- Contribution from Korea –

1. Introduction

1. An online platform refers to an electronic system, such as internet websites, etc., for trading goods, services, information exchange, and interactions between two or more of users. In the digital economy based on the Internet, it serves as an ecosystem that connects economic players and helps them interact. Online platforms are growing so fast that it is safe to say that we are living in the platform economy. In addition, platforms are diversifying their services, including price comparison, real estate brokerage, media contents, etc.

2. Online platforms are characterized by a two-sided market and cross-network effects. If a platform has cross-network effects, its users are likely to become more locked in and reliant on it. For suppliers, the more consumers use a platform, the more attractive it is to them. Similarly, there is an incentive for consumers to use a platform that provides a wider variety of products and services. If the market keeps tipping towards monopoly due to the cross-network effects, the platform will create and reinforce its market dominance power.

3. As with other markets where dominant players exist, it is difficult to expect that dominant operators will voluntarily refrain from abusing their monopoly power in the online platform market. In fact, concerns are growing over unfair practices by platform operators, including coercion to sign a contract with unreasonable terms and conditions, self-preferencing of its own products and services through the use of unfair means¹, etc. Competition authorities around the world are also paying attention to the impact of dominant platform operators on the market, and reshaping competition regulations to respond to their abuse of market dominance.² In this regard, the KFTC recently imposed remedies against Naver, Korea's leading web portal, for restricting competition by abusing its market dominance in the real estate information platform market and online marketplace. In addition, the KFTC took action against Delivery Hero Korea, which operates the delivery app “Yogiyo,” for abusing its superior trading power and interfering with business activities of restaurants that deliver. The following looks into the details of these cases.

¹ According to a survey, 42% of small and medium companies in the EU said they use online marketplaces to sell their products and services and nearly 50% of European businesses operating on platforms experience problems. (Source: European Commission, Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platform’s trading practices, Press Release, 14 February 2019)

² "The EU Regulation on platform-to-business (SMEs) relations" was enacted in September 2019, and entered into force in July 2020. It specifies obligations to disclose main parameters determining rankings of online platforms, such as shopping malls and search engines, and adopt internal complaint handling system. In June 2017, the European Commission fined Google €2.42 billion for favoring its own shopping services (Google Shopping) in its search results over those of rivals.

2. Corrective measures against Naver's abuse of market dominance

2.1. Market situation

4. Naver is the biggest online search engine in Korea³, and also an online platform operator that provides various free services, such as shopping searches and real estate information, etc. Naver signs partnerships with contents providers (CPs) to get information on properties for sale and rent, and provides it to users through its portal.⁴ In addition, Naver provides an online marketplace platform as well as an online shopping-comparison service that helps users search and compare information on products⁵ sold on various shopping malls. Therefore, Naver's shopping search results display products sold both on its online stores and competing platforms. Naver is the top company in both the online real estate information platform market and the online shopping-comparison service market.

2.2. Naver's practices and KFTC's corrective measures

2.2.1. *The practice of foreclosing competitors by Naver Real Estate*

5. Naver used its dominant position in the online real estate information platform market to prevent CPs from providing information on properties for sale to its rival platform. Naver found out that the rival platform tried to establish business ties with its CPs, and inserted a clause prohibiting the contracted CPs from providing information on properties for sale to a third party. It also added a penalty clause to immediately terminate contracts with CPs if they breached this new rule.

6. As a consequence, its rival real estate information platform relying on CPs suffered from a drastic decline in listings and sales and was eventually removed from the market.⁶ On the other hand, Naver further reinforced its market dominance, limiting the choices of end users.

7. Hence, in September 2020, the KFTC decided to impose a corrective order and an administrative fine of KRW 1.032 billion(USD 888,506) on Naver for excluding its competitors, the practice of which falls under abuse of market dominance.

³ As of 2019, Naver has 55% and Google has 37% of the market share in Korea's search engine market. (Source: Internet Trend, Korean Market Research Institute.)

⁴ Naver posts information on properties for sale provided by CPs on its real estate information platform and receives a certain amount of commission per case, and consumers check the sales information and contact number of the realtors through Naver real estate platform.

⁵ Naver offers a service that allows customers to search and compare products sold on various online markets through its Naver Shopping, the main category of its search engine. In particular, Naver generates advertising revenue by receiving fees for displaying advertisers' products or services at the top of Naver Shopping search results.

⁶ Since April 2018, the rival platform has been operating a real estate service by outsourcing the service to another firm.

2.2.2. The practice of self-preferencing by Naver Shopping

8. Naver manipulated its search algorithms⁷ to place the products sold on its platform on the top of search results and lower the rankings of products sold by its competitors by abusing its dominance in the online shopping-comparison service market, thereby restricting competition in the online marketplaces. The KFTC found out that Naver continuously manipulated the shopping search algorithms in favor of its online marketplace in a way aligned with market growth from the beginning of the launch of online marketplace business.

9. In addition, the company analyzed and managed the impact of algorithmic changes on the exposure of products on its online marketplace by running a prior simulation and post testing. As a consequence, the exposure rate of products provided on its online marketplace in search results had increased, while the exposure rate of products sold on other rival online marketplaces had declined. Products listed on the top of search results generate more clicks from consumers. Therefore, the increased exposure of products on Naver's online marketplace led to the growth of online shopping transactions on its platform, sharply raising the company's share in online marketplace.

10. In response to such unfair practices, in October 2020, the KFTC decided to impose a corrective order along with an administrative fine of KRW 26.5 billion(USD 22.8 million) on Naver for abusing its market dominant position.

3. Corrective measures against Delivery Hero Korea's abuse of superior trading power

3.1. Market situation

11. Delivery apps provide intermediary services connecting consumers with restaurants. In other words, they provide consumers with information on nearby restaurants and deliver the order information to the restaurants. Yogiyo, which has been run by Delivery Hero Korea, ranks as the second largest food delivery app in Korea, accounting for 26% of the market share⁸.

3.2. Practices by Delivery Hero Korea (Yogiyo) and the KFTC's corrective measures

12. In June 2013, Yogiyo unilaterally implemented the lowest price guarantee policy on restaurants registered with its app, through which the company prohibited the restaurants from selling at lower prices via other sales routes, such as ordering by phone or other delivery apps. The company even went as far as to detect restaurants that violated its lowest price policy and terminated the contract if the restaurants refused to abide by the policy.

⁷ Naver's shopping comparison service displays search results calculated by a shopping search algorithm designed by the company, which has a calculation process consists of two steps. First, the algorithm ranks the listings of products registered on Naver's shopping comparison service based on the relevance (determined by scoring the suitability or popularity of the search query for a product) to the search word(s). Second, the algorithm recalculates the scores of the top 300 products by applying the diversity function and determines the final ranking of the top 120 products which will appear on the first 3 pages.

⁸ According to the Korea Investors Service, the annual sales of three major delivery app operators in Korea amounted to 251.7 billion won and the number of net users who had downloaded and used a delivery app at least once amounted to 65.26 million in 2017. As of late 2017, 40,118 restaurants were registered with Yogiyo.

13. In June 2020, the KFTC decided to impose a corrective order along with an administrative fine of KRW 400 million(USD 327,198) on Yogiyo for intervening in delivery restaurants' right to freely set prices, which constitutes abuse of superior trading power.

4. Implications

14. Dominant platform operators that have preempted the market often engage in various strategies to maximize cross-network effects and attract more users to their platform. Thus, competition authorities are required to monitor and properly intervene in platform operators to prevent abuse of dominance or unfair trade practices that could take place in the process.

15. The Naver case is noteworthy as the KFTC regulated the country's biggest web portal operator for interfering with the business activities of rival operators and restricting competition in adjacent markets by abusing dominance in the search services market. Such regulatory measures helped promote competition and innovation, and protect consumer's right to choice in the digital economy.

16. The case has significance in the real estate sector as the KFTC regulated prevention of multi-homing by a platform operator with monopoly power where it prohibited CPs from providing information to its competitors. The case also improved online shopping since the KFTC imposed regulation on a platform operator playing a dual role as a platform provider and an online shopping mall operator for favoring its own products and services over those of competitors. In particular, it was the first case in Korea to regulate a platform operator for self-preferencing search results by manipulating the search algorithms in its favor.

17. The case of Yogiyo is the first case in Korea to regulate interference with the business activities of small online stores by a platform operator with a superior trading power based on an MFN clause. These cases described on the above are deemed as major cases reaffirming the KFTC's commitment to enforce the law on competition restrictive practices as well as unfair trade practices of online platform operators.