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**Theories of Harm for Digital Mergers – Note by Korea**

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This document reproduces a written contribution from Korea submitted for Item 8 of the 140th OECD Competition Committee meeting on 14-16 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/theories-of-harm-for-digital-mergers.htm>

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### 1. Introduction

1. Traditional merger review assumes that *competition in the market* is taking place, which means firms are competing with each other aiming to increase their share in an already established market. Analysis of competition concerns caused by a proposed merger also focuses on a decrease in competition in an *existing market*—mainly focusing on a decrease in price competition caused by a horizontal merger and upstream or downstream foreclosure caused by vertical merger. And precise market definition and calculation of market share/concentration are considered as important prerequisites for assessing potential harm to competition.

2. In many parts of the digital economy, however, *competition for the market* is taking place, which means firms are trying to create a new market and dominate the market in advance by developing new technologies. As digital platforms create strong network effects, those who gained an early foothold in the market are likely to lock in business users and consumers, which leads to a “winner-takes-it-all” market.

3. Platforms, major players of the digital economy, has been seeking growth through mergers and acquisitions (M&A). Platform companies have grown rapidly by securing innovative technologies through M&A between different industries and acquisition of startups and by providing innovative services through convergence of products.<sup>1</sup> In addition, they employ a strategy that provides users with a wide range of services by acquiring add-on services through conglomerate mergers and adding the services to existing core ones.

4. As stated above, M&As in the digital economy can produce greater efficiency, promoting technology development and widening the scope of services offered to consumers. However, there are concerns that M&As may restrict market competition and further entrench the dominant platforms.

5. Meanwhile, traditional approach to merger assessment would be insufficient in the digital economy. In the digital economy, as mentioned above, markets continue to change dynamically, and companies compete over *creating new markets* according to developing technologies and products. When analyzing such markets, it could be difficult to apply traditional market definition tools which assume that companies are competing with each other over market share *in an existing market*.

6. The same goes for the assessment of competition harm, so there is a need to present new theory of harm that considers the characteristics of the digital sector.

7. Against this backdrop, the Korea Fair Trade Commission (hereinafter the “KFTC”) has been working to revise its current Guidelines for M&A Review (hereinafter “merger review guidelines”). The primary focus is to modernize the merger review standards so that they reflect the characteristics of the digital economy and fix the loopholes. The KFTC is in the process of revising the guidelines and plans to enforce the new guidelines as early as this year.

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<sup>1</sup> The number of acquisitions of six major Big Tech firms (Apple, Google, Meta, MS, Nvidia) over the recent five years (2017-21) amount to 218. (National Information Society Agency, Sep 2022)

8. Apart from revising the merger review guidelines, the KFTC has already successfully analyzed competitive concerns raised by mergers between platforms, which are major players of the digital economy, and imposed remedies. This paper introduces a particular merger case between two food delivery platforms Delivery Hero and Woowa Brothers, and discusses how the KFTC improved and applied the traditional merger review system that is fit for the digital economy.

## 2. Delivery Hero-Woowa Brothers M&A Case

### 2.1. Overview of merger review

9. In December 2019, Delivery Hero, a German-based food delivery platform that owns delivery apps Yoigyo and Baedaltong in Korea, filed its merger notification to the KFTC to acquire 88% of shares in Woowa Brothers, which operates Korea's No.1 delivery app Baedal Minjok. Following a year of thorough review, the KFTC found that the transaction raised concerns of harming competition in relevant markets.

10. The merging parties were offering 1) food ordering app services, which intermediate food orders between restaurants and consumers, 2) food delivery services, which quickly deliver food from restaurants to consumers, and 3) sharing kitchen services, which offer shared kitchen spaces for restaurants. The KFTC defined the relevant markets as the 1) food ordering app market, 2) food delivery service market and the 3) sharing kitchen service market.

11. The KFTC set out theories of harm that focused on the following two aspects and used various direct evidence to prove them.

12. First, the KFTC found that through a horizontal merger in the food ordering app market, the merging parties would become a dominant platform with a combined market share amounting to 99.2%. Accordingly, the KFTC proved that the merger could restrict not only price competition whereby the parties could increase fees they receive from restaurants and reduce discount benefits offered to customers, but also non-price competition such as deteriorating the quality of various data provided to restaurants.

13. Second, the KFTC found that conglomerate mergers between food ordering app-food delivery service markets and food ordering app-sharing kitchen service markets could arise. In addition, it also found that parties could leverage its strong market power in the food ordering app market onto other adjacent markets, including food delivery and sharing kitchen service markets. The KFTC assessed that competitors could be excluded or new entry could become difficult due to higher entry barriers in the food delivery service market and sharing kitchen service market.

14. To resolve such competitive concerns, the KFTC ordered Delivery Hero to divest its shares in Yogiyo, Korea's No.2 food ordering app. In addition to structural remedies, the KFTC also imposed behavioral remedies, such as prohibiting the parties from increasing fees for restaurants, reducing discount benefits for consumers, and merging data they owned.

15. The following paragraphs discuss in more detail how the KFTC took into account characteristics of the digital economy while reviewing this case. The primary focus will be on: 1) defining food ordering app markets as two-sided markets, 2) considering network effects, 3) proving the possibility of non-price competition harm driven by merging data, and 4) platforms leveraging their market power through conglomerate mergers.

## 2.2. Defining food ordering app markets as two-sided markets

16. There is a need to take into account various dimensions of platforms when defining relevant markets during merger review. Digital platforms facilitate exchange or interaction between distinct groups of users. This raises the issue<sup>2</sup> of whether platforms are providing a single service of ‘facilitating exchange or interaction’ to all users of various sides, or whether they are providing different services to users of each side respectively. If the former holds true, the platform would be part of a multi-sided market that includes all users of both sides, and if the latter holds true, the platform would be part of each one-sided market. This is an important issue for merger review as<sup>3</sup>the scope of competitors may change depending on whether a particular platform belongs to either a multi-sided or one-sided market.

17. Food ordering apps are also digital platforms which intermediate food orders between two different users: consumers and restaurants. Thus, the key issue during merger review was to determine whether the food ordering market that includes Delivery Hero and Woowa Brothers should be seen as a multi-sided market.

18. The KFTC defined the relevant market as the multi-sided ‘food ordering app market’ by applying the multi-sided market definition approach that had only been discussed as a theory. The KFTC took into account that 1) positive cross-side network effects occur between consumers and restaurants, 2) food ordering apps mediate food orders, 3) surveys and market inquiries sent to interested parties indicated that both consumers and restaurants do not consider food ordering app services and other methods for ordering food (call-in or website orders etc.) as substitutes. In particular, the KFTC conducted an economic analysis, such as a SSNIP test, to analyze substitutability perceived by consumers and restaurants and examined whether users would divert to other food ordering services by fixing prices on one side of the market and changing prices on the other. To be more specific, the KFTC examined whether consumers would divert to other services when food price discounts offered by food ordering apps fell by 5%, and whether restaurants would divert to other services when fees paid to food ordering app operators increased by 5%.

## 2.3. Considering network effects

19. One of the most prominent features of digital platforms is the network effect. Network effects are often broken into two different types, where an increase in the number of users on one side of the platform leads to increased utility on the same side (direct network effects) or on the other side (cross-side network effects). When platforms merge,

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<sup>2</sup> Food ordering platforms serve two distinct groups, the consumers and restaurants. Thus, food ordering platforms intermediate food orders between all users, or consumers and restaurants.

However, newspapers are platforms that connect advertisers and subscribers, but provide different services to each of them. Advertising services are offered to advertisers while subscribers receive various news and information.

<sup>3</sup> Regarding the example from footnote 2, competitors of food ordering platforms could be firms that provide similar services of intermediating food orders. However, competitors of newspapers do not necessarily have to be a firm that provides both advertising/news and information at the same time. In the market for newspaper-subscribers, firms that only provide news and information (without providing advertising services) can be regarded as competitors of newspapers, while in the market for newspaper-advertisers, other firms that provide only advertising services (without providing news and information services) can be seen as competitors of newspapers.

the number of users on the merged platform rises significantly which in turn, create network effects.

20. Horizontal mergers between platforms lead to more users or more data owned by platforms. Growth in customer numbers lead to a higher preference for that platform, and a larger database increases the likelihood for platforms to provide personalized services based on the data they own. This may cause users to “tip” toward the merged platform while previous customers will be locked in. Direct network effects may entrench dominance of the merged platform which makes it more likely for them to engage in anticompetitive conducts such as raising prices.

21. During the Baedal Minjok-Yogiyo merger case, the KFTC analyzed<sup>4</sup> the effect of data concentration post-merger, the difficulty of competitors in securing users and concerns of locking-in customers. Baedal Minjok and Yogiyo had accumulated a significant amount of data on transactions between consumers and restaurants by operating its food ordering app. The KFTC anticipated that if two firms merged, it would be impossible for competitors to compete against the vast amount of data the merged entity would own. In such circumstances, if the merging parties pursued highly efficient marketing strategies by using the merged data they own, consumers would be locked in to their platform and it would be impossible for competitors to secure a critical mass of users to effectively compete with the parties.

22. Such gap between competitors and merging parties in their capability to compete reduces competitive pressure for the merged platform which in turn, enhances their incentives to engage in anticompetitive conduct (e.g. increasing fees for restaurants, reducing discount benefits for consumers).

#### **2.4. Proving the possibility of non-price competition harm driven by data merging**

23. In the digital economy, innovative competition, not price competition, often takes place, while “free” services are frequently offered as well. When taking these factors into consideration, there is a need to examine not only traditional price, but also non-price aspects of competition during competitive assessment of digital mergers.

24. While reviewing the Baedal Minjok-Yogiyo case, the KFTC analyzed that the merger would not only potentially harm price competition for consumers and restaurants, but also non-price competition for restaurants. Before the merger, the merging parties had provided management know-hows on attracting more restaurants to their platform, customer reviews on restaurants and various statistics (number and amount of orders, number of clicks etc.) for free. The KFTC anticipated that if the two platforms merged, competitive constraints for attracting restaurants would weaken, thereby raising concerns of restricting non-price competition as the merging parties could degrade quality or reduce the range of data provided to restaurants.

25. The KFTC found that even if non-price competition is restricted by deteriorating data quality, there is a significant gap between the merging parties and competitors in the amount of data they hold and thus, the possibility of restaurants switching away from the parties’ food ordering app would be low.

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<sup>4</sup> Network or “tipping” effects were not explicitly stated in the written final decision for this case, but it still set out the same reasoning that was used for analyzing network effects followed by data concentration.

## 2.5. Platforms leveraging market power through conglomerate mergers

26. Platforms can leverage their market power onto other adjacent markets through various means. When entering adjacent markets through conglomerate mergers, digital platforms can leverage its market power in core platform markets onto the adjacent markets through self-preferencing or tying/bundling strategies. The higher their market shares or customer loyalty in core platform markets, the more likely platforms will leverage their strong market power onto adjacent markets.

27. With regard to the Delivery Hero-Woowa Brothers case, the KFTC found that conglomerate mergers between food ordering app-food delivery service markets and food ordering app-sharing kitchen service markets could arise and accordingly, merging parties were likely to leverage their strong market power in the food ordering app market onto each adjacent market.

28. First, the KFTC examined the possibility of competitors being excluded through parties' self-preferencing strategies. Post-merger, the parties would become a *de facto* dominant platform in the food ordering app market and determine restaurants' ranking, exposure frequency, geographic scope etc. in their food ordering app. Even if restaurants did not agree with the parties' ranking system, diverting away from the parties' app would not be their optimal choice unless they had another alternative solution. In such circumstances, if restaurants that use the parties' food delivery or sharing kitchen services were ranked high on the app, restaurants would have no other choice but to use such food delivery or sharing kitchen services offered by the merging parties. If this excluded other competing food delivery or sharing kitchen service platforms, competition would inevitably decrease in both markets.

29. Moreover, the KFTC examined whether competitors could be excluded from the market by bundling food ordering app and food delivery services. Consumers order food through food ordering apps and receive the food they ordered through food delivery services. In other words, consumers use two distinct services of 'food ordering' and 'food delivery' at the same time. However, if the merging parties, which hold strong market power in the food ordering app market, bundle 'food ordering + food delivery' services and offer food delivery services at a lower price compared to its competitors, competitors would find it impossible to compete fairly with the merging parties and would inevitably be excluded from the market.

30. Besides the aforementioned concerns of excluding competitors by leveraging market power, the KFTC found that self-preferencing/bundling strategies could solidify market entry barriers and thereby entrench parties' market dominance. Such exclusion strategies pursued by merging parties, in effect, compelled new market entrants to enter the food delivery or sharing kitchen market only if they owned food ordering apps that could hold a certain level of market share. However, this was impossible when the merging parties *de facto* dominated the food ordering app market. Thus, the parties' exclusion strategies could function as an entry barrier in the food delivery or sharing kitchen service market, and in this regard, the KFTC found that the merger raised concerns of competition harm.