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Competition in Digital Advertising Markets – Note by Korea

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More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-in-digital-advertising-markets.htm>

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1. Introduction.

1. Large online platform operators provide various contents and services to consumers and generate revenue from advertising based on their attention and personal information collected through those services. As a tactic to maximize their advertising revenue, search platforms and SNS platforms provide free services to consumers, and offer targeted advertising by analyzing big data of their usage patterns and interests.
2. In fact, traditional advertising using broadcast media, print media (e.g. newspapers and magazines), and outdoor media is in decline while digital advertising through the Internet and mobile devices is growing at a rapid pace in the Korean advertising market.¹ As the share of digital advertising led by large online platform operators is growing, new issues are emerging in the field of competition and consumer policy and law enforcement as follows.
3. First, there have been discussions on effective countermeasures against abuse of market dominance by online platform operators that generate revenue from digital advertising. In the digital economy, incumbents can enjoy a significant competitive advantage over new entrants thanks to market tipping resulting from extreme returns to scale and strong network externalities. In particular, in a market with low data portability and interoperability, it is highly likely that incumbents will maintain their competitive advantage by utilizing user data that new entrants cannot access. As a result, there is a growing need for vigorous competition law enforcement and a new regulatory framework to address abuse of dominance by large platform operators.
4. In this regard, this report introduces enforcement cases regarding dominant platform operators' prevention of multi-homing and self-preferencing in the digital advertising market in Korea, and shares the KFTC's recent efforts to improve its legal system.
5. Second, if an online platform operator collects too much personal information from users and uses the collected data exclusively for enhancing its competitiveness and expanding into adjacent markets, the monopolistic structure of the relevant markets may be solidified and consumer harm may occur. Therefore, it is important to redress consumer harm caused by excessive collection of personal information by online platform operators while promoting competition by enhancing portability and interoperability of the collected data. In this regard, this report introduces enforcement cases in which the KFTC corrected excessive collection of personal information by large online platforms through its Adhesion Contract and Unfair Terms Review at the consumer policy level, and explains other major issues related to personal information in Korea.
6. Third, regarding consumer policy in the digital advertising market, advertising through influencers on YouTube and Instagram has recently emerged as a key issue in Korea. In traditional advertising, a small number of public figures introduce and recommend products through TV and newspaper media whereas in digital advertising, individuals advertise products through online platforms that are accessible to everyone, and get paid from

¹ The Korea's advertising market size is expected to be KRW 12.6 trillion (about USD 11.2 billion) in 2020, of which digital advertising will account for 44.5%, amounting to KRW 5.6 trillion (about USD 5 billion). This is an increase of 11% compared to the digital advertising market size in 2019. (Source: Korea's leading advertising agency Cheil Worldwide)

companies. As many individuals are acting as an advertising endorser, concerns are growing that false, exaggerated, and deceptive advertising may cause consumer harm.

7. In this regard, the KFTC is pushing ahead with various policies to prevent consumer harm caused by deceptive advertising in which influencers on platforms like YouTube and Instagram disguise paid advertising as authentic reviews. In the following, the report explores the KFTC's efforts to protect consumers in the digital advertising market, including vigorous enforcement of the Fair Labeling and Advertising Act, improvement of relevant laws, and promotion of voluntary compliance by companies.

2. Competition issues in the digital advertising market

2.1. Enforcement cases regarding digital advertising

8. In the Korean online search market, Naver, Korea's No.1 platform², is operating a variety of businesses such as shopping information platform, real estate information platform, and contents services through its web portal. Most of Naver's operating revenue comes from advertising sales including search and display ads, and search advertising using keywords and shopping searches makes up the largest portion in its advertising sales.³ In other words, Naver is one of the most influential online platforms in Korea, and is a key operator generating significant sales in the Korean digital advertising market.
9. The KFTC recently imposed corrective measures on Naver for abusing its dominant position and restricting competition in the real estate information platform market and online marketplace market. The KFTC concluded that Naver's act constitutes a violation of the Monopoly Regulation and Fair Trade Act (the "MRFTA"), considering that Naver, the dominant operator with a large number of users, enjoyed a strong competitive advantage over new entrants thanks to indirect network effects, and that it was able to easily expand its dominance into adjacent markets by leveraging its platform monopoly.

2.1.1. Act of preventing multi-homing on real estate information platform

10. On September, 2020, the KFTC took action against Naver, the dominant operator in the real estate information platform market,⁴ for abusing market dominance by requiring its contracted contents providers (CPs) to offer information on properties for sale only to its own real estate platform while banning them from providing such information to its rival platform. Naver's prevention of multi-homing virtually drove the rival platform out of business, and enhanced its platform monopoly, restricting consumer choice.

² 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)

³ Of Naver's total operating revenue of KRW 5.6 trillion (about USD 5 billion) in 2018, KRW 2.5 trillion (about USD 2 billion), or 44.3%, came from Business Platform, such as search advertising, and KRW 573 billion (about 509 million), or 10.3%, from display advertising. (Source: Operating revenues by service types, 2018 Naver Annual Report)

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 realtor through Naver real estate platform.

2.1.2. Act of self-preferencing on shopping information platform

11. On October 2020, the KFTC took corrective measures on Naver, the dominant operator in the shopping-comparison service market⁵, for manipulating its shopping search algorithms to favor products sold on its online stores over others sold by competitors. Naver's conduct increased the exposure rate of its own products while decreasing that of competitors' products in Naver's shopping search results. As a consequence, Naver's market share in the online marketplace industry surged. This is a typical case of self-preferencing in which a platform favors its own products and services over competitors by leveraging its dual position as a platform operator and a competitor of online stores using its platform. This case demonstrates the KFTC's strong commitment to address anti-competitive practices by platform operators.

2.2. KFTC's efforts to improve laws regarding online platform operators

12. The KFTC has strengthened investigations and monitoring on infringements by online platform operators, while pushing ahead with institutional improvement including revision of laws and regulations to promote competition and establish order for fair trade in the field. First of all, with the aim of improving transparency and fairness in online platform transactions, the KFTC made a pre-announcement of legislation, proposing a law that governs transactions between platform operators and online stores. It is also working on an overhaul of the Act on Consumer Protection in Electronic Commerce, etc. (the “E-Commerce Act”) to effectively respond to issues between platform operators and consumers. In addition, considering unique features of the digital economy, the KFTC is drafting new guidelines that are based on the current MRFTA so as to specify the criteria for determining illegality of anti-competitive practices by online platform operators.

2.2.1. Drafting a law to enhance transparency and fairness in transactions on online platforms

13. On September 28, 2020, the KFTC proposed the “Act on Fair Intermediate transactions on Online Platforms” and made a pre-announcement of legislation. Platforms that facilitate transactions between online stores and consumers and meet the size thresholds are subject to the proposed Act.
14. To prevent disputes in advance by disclosing terms and conditions of a contract in a transparent manner, the proposed Act requires a platform operator to draw up and deliver a written contract to an online store. To be more specific, a contract must contain the follows: (1) how information is exposed, and how the exposure ranking is determined; (2) whether an online store is restricted to use other online platforms; (3) whether products of an online store and those of its own or affiliates are treated differently; and (4) whether an online store can access information generated by consumers in the process of using the online platform, and the scope of accessible information. By requiring online platform operators to disclose their internal policies regarding multi-homing, self-preferencing, and data monopoly, the proposed Act is expected to enhance transparency, and prevent infringements in the relevant markets.
15. In addition, the proposed Act prohibits online platform operators from abusing market dominance against online stores by leveraging their superior position in transactions, and categorizes unfair practices, such as coercion to purchase, coercion to provide economic

⁵ Naver offers a service that allows consumers 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 at the top of Naver Shopping search results.

benefits, unfair transfer of losses, imposing disadvantages, etc. It also provides legal grounds to promote voluntary efforts for mutual growth by setting up provisions that encourage platform operators and online stores to make an agreement for mutual growth and dispute resolutions. The bill is currently in the pre-announcement period for legislation, and the KFTC will submit it to the National Assembly after completing required procedures.

2.2.2. Revising the E-Commerce Act to make online platforms more responsible for protecting consumers

16. Regarding the enforcement of consumer policy in the digital economy, the KFTC will push forward a comprehensive revision of the E-Commerce Act. If the Act would be revised, it will provide specific definitions for operators of e-commerce platforms, subjects of the Act and classification framework to ensure systematic law enforcement on major online platform operators. Particularly, the Act will define obligations with respect to providing consumers with clear information to enhance transparency of search results on online platforms.

2.2.3. Introducing the guidelines for competition law enforcement reflecting on the features of the digital economy

17. Online platforms, a prime example of two-sided markets, attract users by providing services to consumers for free while earning revenue from advertising. Therefore, the traditional guidelines for defining the relevant markets pursuant to competition law where the markets are defined based on substitutability of consumers due to price increase are insufficient to present the review guidelines for practices in the online platform industry. In addition, concerns have been raised continuously about the possibility of market-dominant online platforms solidifying the monopolistic structure in the markets or monopolizing adjacent markets based on their economies of scale, indirect network effects and exclusive access to users' data. To address this issue, the KFTC will enact the review guidelines for unilateral practices in online platforms, thereby providing specific standards for defining markets, determining market dominance and enforcing law against recurring abusive practices while reflecting on the unique features of the digital economy.

3. Challenges regarding collection and utilization of personal data in the online advertising market

18. Unlike traditional advertisements that usually targeted an unspecified large group of people, online advertisements have enjoyed maximum advertising effects by providing personalized ads tailored to the specific fields of interest, preferences and consumption behaviors of consumers. However, consumers may suffer damages as their key personal information, such as search or purchase history, can become an important source of production in the online advertising market, which provides an incentive for online platform operators to collect various kinds of personal information and utilize it for the provision of related services such as advertising.

3.1. Consumer damage in the process of collecting personal data

19. In Korea, the Personal Information Protection Commission (the "PIPC") under the Office of the Prime Minister is primarily in charge of handling issues related to personal data. With the revision of the Personal Information Protection Act (the "PIPA") in August 2020, the work related to personal data protection that had previously been dispersed among

various regulatory bodies depending on the industries they are in charge of, has been centralized to the PIPC. Also, it has been upgraded to an administrative body under the authority of the Office of the Prime Minister, strengthening its position as a control tower for the protection of personal data. The PIPA mandates those who process personal data to clarify the purpose when processing personal data and to collect only a minimum amount of such data to the extent necessary for the purpose in a legitimate and just manner. The PIPA also protects the rights of subjects of information to receive information concerning the processing of their personal data, choose and decide whether to consent or not as well as the scope of consent and demand the suspension, correction and deletion of their personal data.

20. Meanwhile, the KFTC has enforced competition and consumer protection policy to respond to the issue of online platform operators restricting competition in markets and causing consumer harm in collecting or utilizing users' personal data. For instance, in March 2019, the KFTC examined the service clauses of major online platform operators including Google, Facebook and Naver. The Commission identified and corrected the unfair adhesion contract clauses regarding the presumption of comprehensive consent for the collection of personal data, excessive collection of personal data as well as the clauses that allow possession and utilization of users' content even after users have deleted it and legal fiction of permission for extensive use of content uploaded by users. In particular, the KFTC identified that Google required both consent to the terms of service and consent to collection of personal information from users signing up for a Google account, which involves a risk to give an uninformed consent without understanding the context of consent. To solve this issue, the KFTC issued a recommendation for correction. Google, in response, accepted the recommendation and revised the related clauses to get a separate consent from users registering for its account.
21. As such, unfair adhesion contracts posing disadvantages to users in collection and utilization of personal data can be subject to the KFTC's recommendation for correction under consumer protection policy. In addition, there are on-going discussions among the academia on whether it's possible to regulate excessive collection of personal data undermining consumer interest as exploitative abuse under competition law. So far, there has been no precedent where the KFTC enforced competition law to regulate online platforms for collecting excessive amount of personal data. Hence, it is expected that further discussions on the necessity of regulating such practice through competition law and specific regulatory measures will be needed.

3.2. Promoting competition by improving portability and interoperability of data

22. Recently, improving portability and interoperability of data as a way of promoting competition in the digital market has emerged as an important issue. The issue centers on how to minimize leakage of users' personal data while, at the same time, reducing entry barriers and facilitating development of new products and services by enabling various operators to access users' data.
23. The Korean government recently amended the Credit Information Use and Protection Act (the "Credit Information Act"), which allowed a vast amount of data stored by financial institutions such as banks, credit card and insurance companies to be used for the purpose of developing new financial products and services. The amended Act introduced the concept of "pseudonymised Information" and the legal basis for pseudonymizing personal data for analysis and utilization of big data. In fact, improvements in the quality of financial products and developments of new asset management services have been made in the financial market following the amendment of the Credit Information Act.

24. These examples reaffirm the importance of opening access to users' data to facilitate new entries and promote innovation and competition in the relevant markets. In this regard, competition authorities should strive to strengthen their competition advocacy role by improving the policies for related industries, which will enhance portability and compatibility of data.
25. Furthermore, when it comes to correcting the abuse of market dominant position by online platform operators, competition authorities should design a corrective order in a way it reinforces interoperability of the data owned by operators or encourage voluntary corrective actions through consent resolutions. However, any consumer damage resulting from leakage of personal data during the utilization of the data should be avoided by, for instance, ensuring pseudonymization of data.

4. Challenges regarding misleading advertising in the online advertising market

26. Unlike traditional advertising through mass media such as television or newspapers that were only accessible for a few public figures, online platforms such as YouTube or Instagram provide open access to anyone and an opportunity to share content with the public. Under these circumstances, consumers no longer just rely on traditional advertising mediums but heavily on social media reviews when making a purchase decision. In particular, with the rise of social media influencers who wield a strong influence over consumers by sharing their everyday lives, a growing number of companies are paying influencers in return for posting positive reviews about their products on social media. Such trend presents a need for consumer protection authorities to take into account not only misleading advertising in traditional media but also paid advertisements shared by individuals on social media in enforcing labeling and advertising policy.
27. Recently, there have been cases in Korea where influencers disguised the paid reviews as an authentic endorsement for the products by hiding the fact they have received compensation. In November 2019, the KFTC imposed sanctions on seven companies selling cosmetics, weight loss products and small home appliances for failing to disclose the fact they had paid influencers to advertise their products on social media, which constitutes misleading advertising under the Fair Labeling and Advertising Act.
28. The survey on consumer awareness demonstrates that a majority of consumers who read the reviews of influencers with no disclosure of compensation made a purchasing decision based on those reviews without recognizing their commercial nature. Given the rising power of social media influencers and impact they have on consumers' purchasing decisions, the KFTC determined that the practice of misleading advertising can substantially hamper rational purchasing decisions of consumers.
29. However, taking corrective measures on each violation is insufficient to tackle false advertising since paid advertisements disguised as consumer reviews can be written and shared by anyone on social media. In this sense, the KFTC amended the Review Guidelines for Labeling and Advertising of Recommendations, Guarantees, etc. in June 2020 and proposed specific methods for clarifying compensation, reflecting on the features of different social media platforms such as YouTube and Instagram. In addition, the KFTC has monitored the cases of false advertising and urged voluntary correction through the Online Advertising Association. The KFTC also made efforts to promote self-compliance within the industry by, for instance, launching the "Clean Content Campaign" involving voluntary participation of major influencers.
30. Due to the efforts to improve law enforcement, policy and self-compliance, the issue of paid advertising by influencers has gained a lot of traction in Korea.

31. In the process, influencers who posted paid ads disguised as genuine reviews without disclosing the compensation they received experienced great pressures from society. It implies that influencers who mislead consumers with their disguised reviews have to risk losing trust and being shunned by followers at a time when they're fiercely competing against each other to draw users' attention with their content. In fact, there have been continuous reports on major influencers who disguised paid ads as genuine reviews, which led many people to lose trust in their content and unfollow them. This, in turn, encouraged a growing number of influencers to disclose financial compensation they received, which confirms that the voluntary corrective measures have borne fruit.
32. These examples indicate that consumer protection authorities need to implement a flexible policy while taking into account the circumstances of the online advertising market. In particular, they need to understand the difficulty of regulating each individual advertiser for the scrutiny of influencer marketing on social media. Therefore, the authorities should focus not only on investigating and correcting violations of law, but also on encouraging the self-compliance efforts of the industry. The previous cases mentioned show that a consumer protection authority can induce self-correction by increasing social pressure and strengthening monitoring role of consumers through efforts to draw public attention on the issue of disclosure in paid influencer marketing and issuance of clear guidelines.