

IN-DEPTH

# Dominance And Monopolies

SOUTH KOREA



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# Dominance and Monopolies

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In-Depth: Dominance and Monopolies (formerly The Dominance and Monopolies Review) provides an accessible and easily understandable summary of global abuse of dominance rules. Each jurisdiction-specific chapter – authored by specialist local experts – highlights the most consequential legal and regulatory provisions; provides a review of the regime's enforcement activity in the past year; and sets out a prediction for future developments.

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# South Korea

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## Introduction

The primary statutory provision under Korean law that regulates abuse of market dominance is Article 5 of the Monopoly Regulation and Fair Trade Act (MRFTA). Details on the types of conduct and standard used to determine abuse of market dominance are provided in Article 9 of the Enforcement Decree of the MRFTA and the Korea Fair Trade Commission (KFTC)'s Standard of Review of Abuse of Market Dominance (the Standard of Review). The MRFTA has undergone its first full amendment in 40 years since its enactment, and the amended MRFTA came into effect on 30 December 2021. The provisions on abuse of market dominance have not undergone much change in the past<sup>[1]</sup> relative to other provisions, and there were no material changes to these provisions when the MRFTA was fully amended.

The focus on regulating large dominant platform operators is evident, with 20 bills introduced in the previous National Assembly, including some proposing a pre-designation procedure akin to the EU's Digital Markets Act (DMA). However, none of these bills were passed, and they were discarded when the previous National Assembly concluded at the end of May 2024. There is still a chance that similar bills might resurface in the new National Assembly, potentially introducing ex ante regulation measures, including pre-designation procedures, for large platform operators. Meanwhile, in December 2023, the KFTC announced its plan to introduce a 'Platform Competition Promotion Act (Provisional)' to effectively address anticompetitive practices of monopolistic platforms.-<sup>[2]</sup> According to the KFTC's press release in December 2023, the proposed Act will designate a select group of key platforms with significant market influence as dominant platform operators, and will include provisions prohibiting anticompetitive practices such as self-preferencing and multi-homing restrictions. However, the specific details of the KFTC's proposed bill have not yet been finalised. After the KFTC's announcement, various stakeholders have voiced diverse opinions, and discussions regarding the proposed Act are still ongoing.

Meanwhile, the KFTC enacted the Guidelines on the Review of Abuse of Market Dominance of Online Platform Companies to improve the effectiveness of enforcement of laws on the dominance of online platforms by taking into account the key characteristics of online platforms (e.g., network effect and tipping effect as a result of data concentration).-<sup>[3]</sup> Online platform operators engaged in business activities in the Korean market are advised to attend to these Guidelines because they apply to overseas activities of foreign companies that have an effect on the Korean market. The Guidelines provide the following acts as major acts that take place in the online platform field that raise anticompetitive concerns:

1. multi-homing restrictions;
2. most favoured nation status;
3. self-preferencing; and
4. tying.

## Year in review

### KFTC investigations and sanctions

The KFTC is an agency with authority to enforce the MRFTA. The KFTC has shown interest in the abuse of market dominance of online platform operators.

In June 2023, the KFTC imposed a remedial order and administrative fine in the amount of around 27 billion won on Kakao Mobility, a Korean taxi service provider, for abusing its dominance in the standard taxi hailing service market.<sup>[4]</sup> Kakao Mobility was found to have engaged in self-preferencing by manipulating the taxi hailing algorithm to prioritise the dispatch of calls to 'franchise taxis' that executed an agreement with its affiliate when a consumer hailed a taxi through the taxi hailing app. The KFTC ruled that this conduct by Kakao Mobility unreasonably interfered with the business activities of standard taxi service providers that did not execute a franchise agreement with Kakao Mobility's affiliate.

In another case, the KFTC had imposed an administrative fine on Google finding that Google abused its market dominance. Google had already been sanctioned by the KFTC in 2021. In July 2023, the KFTC imposed an administrative fine in the amount of around 42 billion won on Google for excluding its competitor by providing various benefits to game companies on the condition that they do not deal with One Store, an app store that competes with Google.<sup>[5]</sup> In addition, the KFTC's investigation on Google's suspected abuse of market dominance by tying YouTube Music with its YouTube Premium subscription, and thereby raising its market share, is currently ongoing.<sup>[6]</sup>

In February 2024, the KFTC announced several policy objectives concerning abuse of dominance in its Work Plan for 2024, including promoting the enactment of the Platform Competition Promotion Act to address the issue of platform monopolies and intensively monitoring conduct that blocks competitors' market entry and interferes with business activities to prevent abuse of dominance by platform operators.<sup>[7]</sup> Hence, platform operators are advised to keep a close watch on the KFTC's future regulatory trends in relation to online platforms.

### Major court decisions

If the KFTC imposes remedial orders and a surcharge on a company suspected to have abused its dominance, the violator may file an administrative lawsuit against the KFTC by submitting a complaint to the Seoul High Court. The decision of the Seoul High Court may be appealed at the Supreme Court.

The Supreme Court of Korea issued a decision on the abuse of dominance by a company that holds standard essential patents (SEPs). In April 2023, the Supreme Court issued a decision upholding the Seoul High Court's finding that the KFTC's disposition of imposing an administrative fine in the amount of 1 trillion won on Qualcomm was lawful.<sup>[8]</sup> The Supreme Court held that Qualcomm used its dominance in the SEP licence market and modem chipset market for each standard to mutually and organically link Conduct 1 (refusing to execute and limiting patent licence agreements with competing modem chipmakers) and Conduct 2 (executing patent licence agreements with

handset manufacturers by linking modem chipset supply agreements with patent licence agreements) and found that there was anticompetitive intent and effect. However, the Supreme Court rejected the KFTC's finding of disadvantageous contract terms, including royalty terms, offered to handset manufacturers.

In April 2023, the Supreme Court issued its decision upholding the KFTC's finding that Gaztransport & Technigaz SA (GTT)'s tying of engineering services with a licence for its liquid natural gas (LNG) storage technology offered to shipbuilders that build LNG carriers was unlawful. The Supreme Court held that the KFTC's disposition, which included an administrative fine in the amount of 12.5 billion won on GTT, was lawful.<sup>[9]</sup>

The Seoul High Court also issued decisions on abuse of dominance. In December 2022, the Seoul High Court upheld the KFTC's finding that Naver, a company with dominance in the online comparison shopping service market, restrained competition in the open market by artificially adjusting its search algorithm to expose products sold at its own open market at the top of the search results.<sup>[10]</sup> This decision is meaningful in that it shows that abuse of dominance may be established even when the market where one is found to hold dominance and the market where the anticompetitive effect occurs are not the same.<sup>[11]</sup> Naver filed an appeal with the Supreme Court.

In January 2024, the Seoul High Court upheld a fine of approximately 200 billion won imposed on Google by the KFTC.<sup>[12]</sup> The fine was levied for Google's actions in interfering with the business activities of competitors by executing a mobile service licence agreement and OS early access agreement with handset manufacturers, including Samsung, and preventing them from manufacturing devices installed with a modified version of Android. The court, as in the Naver case, held that sanctions could be imposed even if the markets where dominant position and anticompetitive effects are of concern are different. Google filed an appeal with the Supreme Court.

Other abuse of dominance cases that are currently pending at court are listed below.

#### Pending abuse of dominance cases

Plaintiff	Defendant	Sector	Courts	Conduct	Date lawsuit/appeal filed	Status of the proceedings
1. Korea Vaccine Co, Ltd 2. Korea Vaccinesales Co, Ltd 3. Korea Vaccine Corp	KFTC	Pharmaceutical	Seoul High Court	Restriction of output	October 2019	Pending
	KFTC	Software	Supreme Court	Interference with	April 2018	Pending

1. Siemens Ltd Seoul				business activities		
2. Siemens Healthcare Ltd						
3. Siemens Healthineer- rs						
Korean Reinsuranc- e Company	KFTC	Insurance	Supreme Court	Exclusion of competitor- s	April 2019	Pending
Naver Corp.	KFTC	Online Platform	Supreme Court	Exclusion of competitor- s	February 2021	Pending
Kakao Mobility Corp.	KFTC	Online Platform	Seoul High Court	Interferen- ce with Business Activities	July 2023	Pending
Korea Music Copyright Associatio- n	KFTC	Culture & Art	Seoul High Court	Interferen- ce with Business Activities	November 2023	Pending

## Market definition and market power

### Market dominance

A market dominant business entity is defined as a supplier or consumer in a certain business area with market position to determine, maintain or change the price, quantity, quality or other trade terms of goods or services either alone or together with other business entities (Article 2(3) of the MRFTA). When determining whether a company falls under a market dominant business entity, factors such as market share, existence and

height of entry barriers, relative size of competitors, possibility of joint conduct among competitors, existence of similar products or adjacent market, power to foreclose the market and financial ability are considered comprehensively.<sup>[13]</sup>

The definition of market dominant business entity provided above includes 'other business entities' that can determine, maintain or change trade terms together with the market dominant business entity. This provision raised questions whether market dominant position may be found based on collective dominance. In relation to this issue, the Seoul High Court found that even when independent companies formed an alliance or a group to make similar or the same decisions in various business-related matters, the companies could not be viewed as a single company and held that the multiple credit card companies could not be deemed a market dominant company.<sup>[14]</sup> This decision was upheld by the Supreme Court. Thus, the courts in South Korea do not recognise the concept of collective dominance.

### Definition of the relevant market

To determine whether a certain entity has market dominant position, the particular trade area where the competitive relationship may become an issue (i.e., the relevant market) must first be defined. The 'particular trade area' here is defined as an area where a competitive relationship exists or may be established by the subject, stage or geographic area of transaction (Article 2(4) of the MRFTA). If the customers for the product in question can readily switch to a similar product or geographic area in response to a meaningful price increase or decrease, or suppliers can readily switch production to the relevant products and sell them on the relevant market, this relevant product or geographic market will be the relevant market.

The relevant market combines both the product market and the geographic market. According to the Standard of Review, the following factors are considered when defining the scope of the relevant product market:

1. similarities in function and utility of the product or service;
2. consumer awareness of substitutability and related purchasing behaviour;
3. seller awareness of substitutability and related managerial decision-making behaviour; and
4. Korean Standard Industrial Classification announced by the Commissioner of Statistics Korea.<sup>[15]</sup>

In addition, the Standard of Review provides the following as factors to be considered when defining the scope of the relevant geographic market:

1. characteristics of the product or service (perishability, fragility, etc.) and seller's business ability (production capacity, scope of sales network, etc.);
2. transportation cost;
3. purchaser awareness of shiftability of purchasing area and related purchase area shifting behaviour;
- 4.



seller awareness of shiftability of purchasing area and related managerial decision-making behaviour; and

5. ease of switching purchasing area from a temporal, economic and legal perspective.<sup>[16]</sup>

The Supreme Court further specified the standard by holding that the speed of technical development and the situation of the market of other products that are needed to produce the product and other products produced based on the product must also be considered when defining the relevant market.<sup>[17]</sup>

## Presumption of a market dominant company

A business entity is presumed to have market dominance when the requirements under Article 6 of the MRFTA are satisfied.

Market dominance is presumed when: (1) a single entity's market share is 50 per cent or more; or (2) the total market share of not more than three entities is 75 per cent or more in a certain trade area (excluding entities with less than 10 per cent market share). However, an entity with annual revenue or purchase amount of less than 4 billion won in a certain trade area is not presumed to have market dominance.

A market dominant entity that succeeds in rebutting a presumption of market dominance will not be subject to regulation under the provision of the MRFTA on abuse of market dominance.

## Abuse

### Overview

Market dominance itself is not prohibited under the MRFTA. Rather, the MRFTA prohibits the abuse of market dominance. The types of abuse of market dominance are provided in Article 5(1) of the MRFTA. Below is an exhaustive list of conduct types, meaning that only the conduct types below are sanctionable:

1. unreasonably deciding, maintaining or changing the price of goods or services;
2. unreasonably restricting the sale of goods or provision of services;
3. unreasonably interfering with the business activities of other entities;
4. unreasonably interfering with the participation of new competitors; and
5. engaging in a transaction to unreasonably exclude competitors or in conduct that creates concern of substantial harm to consumer benefits.

The unreasonableness requirement must be established to find an abuse of market dominance. Proof that a certain company suffered disadvantages because of the conducts above is insufficient to establish unreasonableness. Instead, unreasonableness

may be found when the conduct was engaged in with intent or purpose to artificially exert influence on market order with intent or purpose to maintain or strengthen monopoly in the market (i.e., restricting free competition), and the conduct objectively raises concern of anticompetitive effect.<sup>[18]</sup>

Among the platform-related bills introduced in the previous National Assembly, some included a pre-designation procedure for large dominant platform operators and imposed certain obligations or prohibited specific actions for the designated dominant platform operators. Under these bills, the pre-designation threshold for dominant platform operators generally consisted of market capitalisation, annual revenue and number of users (business users and end users), similar to how the DMA determines gatekeepers. As previously mentioned, none of these bills were enacted in the last National Assembly, and they were discarded when the previous National Assembly concluded. There is a possibility that a platform regulation bill with an ex ante regulation nature, including a pre-designation procedure, will be introduced again in the new National Assembly. Additionally, discussions are ongoing regarding the platform-related bill that the KFTC is considering.

## Exclusionary abuses

### Interference with business activities

Article 5(1)(iii) of the MRFTA prohibits the conduct of unreasonably interfering with the business activities of others. Specific examples of acts that directly or indirectly interfere with the business activities of others that are provided in Article 9(3) of the Enforcement Decree of the MRFTA are as follows:

1. interference with another company's purchase of raw materials that are needed for its manufacturing activities, without justifiable cause;
2. hiring personnel of another company that is essential to its business activities by providing or promising to provide economic benefits that are excessive in light of normal trade practices;
3. refusing, suspending or restricting use of or access to an element that is essential to another company's manufacture, supply or sale of products or services, without justifiable cause; and
4. other acts notified by the KFTC that make the business activities of others difficult using unreasonable means.

Interference with business activities is a type of abuse of market dominance that is often regulated by the KFTC. The KFTC provides specific regulations on acts that make the business activities of others difficult in its review standard. The conduct of providing discriminatory prices or trade terms falls under a type of interference with business activities of others.<sup>[19]</sup> The 'others' mentioned above that are subject to the interference are not necessarily limited to competitors and generally include transaction partners.<sup>[20]</sup> This is also the view upheld by the Supreme Court.<sup>[21]</sup>

The KFTC has regulated and imposed significant sanctions on a few foreign businesses for interfering with the business activities of other companies. In 2021, Google was

imposed an administrative fine of approximately 200 billion won for interfering with the business activities of competitors by executing a mobile service licence agreement and OS early access agreement with handset manufacturers including Samsung and preventing them from manufacturing devices installed with modified versions of Android.<sup>[22]</sup> Google appealed the KFTC's decision, but the Seoul High Court dismissed Google's claim in January 2024. The court determined that Google's actions were intended to exclude competitors from the market by imposing unfavourable terms on device manufacturers, thereby restricting competition in the market for smart mobile OS and application marketplace.<sup>[23]</sup>

### Restriction of entry

The MRFTA prohibits unreasonable interference with a new entrant's participation in competition.<sup>[24]</sup> The Enforcement Decree of the MRFTA provides the following specific examples of conduct of restricting entry of new competitors:

1. executing an agreement on exclusive dealing with a distributor without justifiable cause;
2. purchasing rights, etc. necessary for an existing business entity to continue its business activities, without justifiable cause;
3. refusing or limiting the use of or access to elements indispensable for a new competitor to produce, supply or sell its goods or services, without justifiable cause; and
4. other acts notified by the KFTC that unreasonably make entry of new competitors difficult.<sup>[25]</sup>

In May 2024, the KFTC announced that it had imposed a remedial order and a fine of 400 million won on Sampyo Railway for obstructing a competitor's market entry and interfering with other businesses' activities in the railroad switch market. The KFTC noted that this case marked the first time a remedial order was issued for actions hindering new competitors' participation, recognising it as a form of abuse of dominance.<sup>[26]</sup>

### Exclusion of competitors

Engaging in a transaction to unreasonably exclude a competitor is prohibited under Article 5(1)(v) of the MRFTA. Specific types of conduct include:

1. unreasonably supplying at a price lower than that normally traded price or purchasing at a price higher than the normally traded price, which raises concern of excluding a competitor (predatory pricing, etc.); and
2. unreasonably trading on the condition that the transaction partner does not deal with a competitor (exclusive dealing).<sup>[27]</sup>

Exclusive dealing often becomes an issue together with interference with business activities. For conduct to become caught under the provision prohibiting exclusive dealing, the unilateral conduct of the market dominant business entity that is at issue must have

an impact on the transaction partner's decisions and be binding.<sup>[28]</sup> Courts have also made clear that the relevant provisions can apply only when the transaction partner is bound or coerced through use of means such as sanctions.<sup>[29]</sup> A representative example of exclusive dealing is when an agreement including a term that prohibits a party from dealing with a competitor is executed between the parties.

The role of economics and in particular the as-efficient competitor test

Economic analysis based on the as-efficient competitor test is important in exclusionary abuse cases. For example, in the 2008 KFTC/Intel case, both sides of the examiner and the defendant were keenly confrontational on whether conditional rebates at issue might be capable of excluding the competitor equally well as the dominant undertaking from the market. Both sides adopted 'as efficient competitor' effective price-cost comparison test, which was introduced by European Commission in 2005, as the basic method.<sup>[30]</sup>

## Exploitative abuses

### Price abuse

The MRFTA prohibits the conduct of unreasonably determining, maintaining or changing the price of products or services.<sup>[31]</sup> Examples of such conduct include substantially increasing or minimally reducing the price of products or services in comparison with fluctuations in demand or the cost of supply (of the level normally incurred by the same or similar type of businesses) without justifiable cause.<sup>[32]</sup>

To determine whether an act falls under price abuse, the price that would have been formed in a competitive market and the price level set by the market dominant company must be compared and whether the difference between the two prices exceeds the level permitted by the MRFTA must be determined. Calculating the price that would have been formed in a competitive market and determining the amount of difference that would be deemed illegal are both difficult tasks. Hence, instead of providing an absolute standard to determine the unlawfulness, the Enforcement Decree of the MRFTA requires that the determination be made by comparing the price set by the market dominant company with the fluctuations in demand and the supply costs.

In addition, a substantial price increase is required to find price abuse. The KFTC has the burden of proof to show that the change in price is substantial. As for the unreasonableness requirement, there must be a showing of intent or purpose to excessively fulfil a monopolistic benefit and potential effect of hindering the benefits of the transaction partner or consumers in the market.

### Restriction on output

Restriction on output refers to the conduct of unreasonably controlling the provision of goods or services.<sup>[33]</sup> It includes (1) substantially reducing the supply volume of goods or services in light of recent trends without justifiable cause and (2) reducing the supply volume of goods or services despite a supply shortage in the distribution stage without justifiable cause.<sup>[34]</sup>

Output is closely related to the price level of the product. Thus, output control is fundamentally similar to price abuse. While the provision prohibiting price abuse is a direct regulation related to pricing, the provision prohibiting output control is an indirect regulation related to pricing.<sup>[35]</sup>

#### Hindrance to consumer benefit

The MRFTA prohibits conducts that create concern of substantially hindering consumer benefits.<sup>[36]</sup> The purpose of such regulation is to catch exploitative abuse other than abusive pricing and output control.<sup>[37]</sup>

Hindrance to consumer benefit must be substantial to be deemed unlawful. The Supreme Court ruled that substantiality must be determined specifically and individually by comparing trade terms that changed because of the conduct at issue with the trade terms of other companies in a similar market or comparing the effect of price increase because of the conduct at issue with the degree of cost fluctuation of the market dominant company before and after the conduct at issue, by examining factors such as the characteristics of the relevant product or service, the period, frequency and timing of the relevant conduct and the scope of consumers whose benefits have been hindered.<sup>[38]</sup>

## Remedies and sanctions

### Sanctions

In principle, an administrative fine is imposed in cases of abuse of market dominance except in cases where it is found reasonable not to impose a fine considering specific circumstances such as the motive and effect of the violation and the market situation.<sup>[39]</sup>

The KFTC may impose an administrative fine that does not exceed 6 per cent of the relevant revenue.<sup>[40]</sup> Relevant revenue is the revenue that the violator generated from the sale of the relevant product or service in a certain trade area during the violation period.<sup>[41]</sup> Prior to the full amendment of the MRFTA, which took effect in 2021, the administrative fine could not exceed 3 per cent of the revenue; however, the rate was increased twofold with the amendment. Hence, depending on the seriousness of the abusive conduct, the imposition rate can range between 0.3 and 6 per cent. The KFTC's notification on administrative fines provides in detail the factors that must be considered to assess the seriousness of abusive conduct. When revenue data is not available or cannot be calculated, a fixed amount of administrative fine not exceeding 2 billion won may be imposed.<sup>[42]</sup>

The MRFTA also has a provision on criminal punishment for abuse of market dominance. An entity that has engaged in abusive conduct may be subject to a fine of up to 200 million won. If the entity is a corporation, its representative and employees may also be subject to criminal punishment of up to three years.

As a behavioural remedy, the KFTC may impose a remedial order.<sup>[43]</sup> Remedial orders include an order to reduce price, an order to cease conduct and an order to publicly announce the fact that a remedial order was imposed. A failure to perform the KFTC's

remedial order may be punishable by imprisonment of not more than two years or a penalty of not more than 150 million won.<sup>[44]</sup> Unlike the EU laws, the MRFTA does not have interim measures in place.

The MRFTA provides divestiture as a structural remedy for anticompetitive mergers.<sup>[45]</sup> However, an order to divest is not a type of measure that can be imposed for abuse of market dominance. Whether the KFTC may order divestiture on entities for abusing market dominance is unclear and the KFTC has not done so in the past.

## Procedure

The KFTC's investigation procedure for MRFTA violations is provided in detail in the Rules on the KFTC's Investigation Procedure.

The KFTC may launch an investigation upon receipt of a third-party complaint or by initiating an investigation on its own. The KFTC may collect information necessary for its investigation by conducting dawn raids on entities suspected of abusing dominance, interviews of the parties, interested parties, or references, and requesting for information.

The investigation may close if the entity is cleared of suspicion. If, on the other hand, the KFTC suspects a violation, it may present the case before the commissioners. The respondent may dispute the findings of the KFTC by submitting its opinion to the commissioners, and if the KFTC finds that the respondent violated the law after deliberation, sanctions such as a remedial order and administrative fine may be imposed on the respondent. The KFTC decision may be appealed by filing an objection with the KFTC or filing an administrative lawsuit with the Seoul High Court, within 30 days from the date of receipt of the KFTC decision.<sup>[46]</sup>

Some of the online platform bills introduced in the previous National Assembly provided that the KFTC may conduct market surveys to designate the platform companies subject to regulation and investigate violations of the law. As previously mentioned, none of these bills were enacted in the last National Assembly, and the bills were discarded once the previous National Assembly concluded. However, there is a possibility that a new platform regulation bill containing such provisions will be introduced again in the new National Assembly.

## Private enforcement

In the event of a violation of the MRFTA by abusing market dominance, the victim may bring a claim for damages against the violator based on the MRFTA or the Korean Civil Code.<sup>[47]</sup> In a claim for damages for violation of the MRFTA, the burden of proof shifts to the defendant, and therefore, the defendant must prove that the conduct was not wilful or that it was not negligent.

The amount of damages awarded to the victim is, in principle, determined based on the actual amount of damages suffered by the victim. In addition, the claimant must prove the causation between the unlawful conduct and the damages. Sometimes, the

claimant submits results of analysis conducted by an economic expert or industry expert as evidence. If the causation between the unlawful conduct and damages is shown but showing the amount of damages is difficult because of the nature of the relevant facts, the court may determine the damage amount based on its examination of the overall arguments presented and the evidence.<sup>[48]</sup>

Class actions have not been introduced in claims for damages over violations of the MRFTA. In addition, while treble damages may be awarded and injunctions may be granted for some violations of the MRFTA, neither are recognised in abuse of market dominance cases.

Courts can hear the case and determine whether there has been a violation, separately from the KFTC's decision. Therefore, the fact that the KFTC found abuse of market dominance itself does not naturally lead the court to find liability for damages. However, courts that hear claims for damages lawsuits tend to respect a court decision in an administrative lawsuit upholding the KFTC's decision.

Some of the online platform bills introduced in the previous National Assembly contained provisions on a violator's liability for damages and treble damages. As previously mentioned, none of these bills were enacted in the last National Assembly, and the bills were discarded once the previous National Assembly concluded. However, there is a possibility that a new platform regulation bill containing these provisions will be introduced again in the new National Assembly.

## Special considerations

As previously mentioned, the focus on regulating large dominant platform operators is evident, with 20 bills introduced in the previous National Assembly, including some proposing a pre-designation procedure akin to the EU's DMA. However, none of these bills were passed, and they were discarded when the previous National Assembly concluded at the end of May 2024. There is still a chance that similar bills might resurface in the new National Assembly, potentially introducing ex ante regulation measures, including pre-designation procedures, for large platform operators. Additionally, the KFTC announced its plan to introduce a bill to effectively address anticompetitive practices of monopolistic platforms. Discussions are ongoing regarding this bill.

## Outlook and conclusions

In February 2024, the KFTC announced several policy goals concerning the abuse of dominance in its Work Plan for 2024.<sup>[49]</sup> First, the KFTC mentioned that it would promote the legislation of the Platform Competition Promotion Act as a measure to quickly resolve the monopoly issues of platforms. The KFTC noted that the monopoly of platforms is causing harm to startups, SMEs and consumers, and stated that it would pursue measures to address issues such as self-preferencing, tying, multi-homing restrictions and demands for most-favoured nation treatment. According to the February 2024 work plan, the KFTC will engage in a comprehensive process of gathering feedback and communicating with

both domestic and international industries and stakeholders and will review various alternatives, including designation, with academics and experts. Additionally, the KFTC plans to intensify its monitoring of platform operators to prevent abuses of market dominance, focusing specifically on practices that obstruct market entry and disrupt the business activities of competitors in sectors like music streaming and video advertising. Furthermore, the KFTC revealed plans to publish a policy report to identify and review issues caused by competition restrictions in emerging technology sectors, such as AI, where monopolisation can occur rapidly.

The KFTC is investigating and regulating abuses of market dominance of global big tech companies from various angles. Therefore, global companies are advised to exercise caution over the changes in competition and antitrust in Korea and in particular the trend in regulation of big techs and platforms.

## Endnotes

- 1 Bong Eui Lee (2015) Critical Approach to the Guidelines on the Abuse of Market-Dominant Undertakings. *Yeungnam Law Journal*, 40, 95. [^ Back to section](#)
- 2 KFTC Press Release dated 19 December 2023. [^ Back to section](#)
- 3 KFTC Press Release dated 12 January 2023. [^ Back to section](#)
- 4 KFTC Decision No. 2023-093 dated 13 June 2023. [^ Back to section](#)
- 5 KFTC Decision No. 2023-103 dated 20 July 2023. [^ Back to section](#)
- 6 <https://www.hani.co.kr/arti/economy/it/1081146.html>. [^ Back to section](#)
- 7 KFTC Press Release dated 7 February 2024. [^ Back to section](#)
- 8 Supreme Court Decision No. 2020Du31897. [^ Back to section](#)
- 9 Supreme Court Decision No. 2023Du30147. [^ Back to section](#)
- 10 Seoul High Court Decision No. 2021Nu36129. [^ Back to section](#)
- 11 2022 Summary of Fair Trade Cases at 19. [^ Back to section](#)
- 12 Seoul High Court Decision No. 2022Nu32995. [^ Back to section](#)
- 13 Guidelines III. [^ Back to section](#)
- 14 Seoul High Court Decision No. 2001Nu15193. [^ Back to section](#)
- 15 Guidelines II. 1. B. [^ Back to section](#)



- 16 Guidelines II. 2. B. [^ Back to section](#)
- 17 Supreme Court Decision No. 2002Du8626. [^ Back to section](#)
- 18 Supreme Court Decision No. 2002Du8626. [^ Back to section](#)
- 19 Guidelines IV. 3. D (3). [^ Back to section](#)
- 20 Young-chul Lim (2021). Monopoly Regulation and Fair Trade Act, Beobmunsa, 51; Oh-seung Kwon. (2008). Economic Law, Beobmunsa, 153. [^ Back to section](#)
- 21 Supreme Court Decision No. 2008Du7465. [^ Back to section](#)
- 22 KFTC Decision No. 2021-329 dated 30 December 2021. [^ Back to section](#)
- 23 Seoul High Court Decision No. 2022Nu32995. [^ Back to section](#)
- 24 Article 5(4) of the MRFTA. [^ Back to section](#)
- 25 Article 9(4) of the Enforcement Decree of the MRFTA. [^ Back to section](#)
- 26 KFTC Press Release dated 21 May 2024. [^ Back to section](#)
- 27 Article 9(5) of the Enforcement Decree of the MRFTA. [^ Back to section](#)
- 28 Dae Sik Hong (2011). Exclusive Dealing, Competition-restrictiveness Standard or Coercion Standard?; BUP JO, 60(10), 170–172. [^ Back to section](#)
- 29 Seoul High Court Decision No. 2009Nu19269. [^ Back to section](#)
- 30 Seonghoon Jeon (2019). 'As Efficient Competitor' Effective Price-Cost Test on Intel Rebates. Korean Journal of Law and Economics, 16(2), 237–260. [^ Back to section](#)
- 31 Article 5(1)(i) of the MRFTA. [^ Back to section](#)
- 32 Article 9(1) of the Enforcement Decree of the MRFTA. [^ Back to section](#)
- 33 Article 5(1)(ii) of the MRFTA. [^ Back to section](#)
- 34 Article 9(2) of the Enforcement Decree of the MRFTA. [^ Back to section](#)
- 35 Yeong-chul Lim and Sung-guk Cho (2021) Monopoly Regulation and Fair Trade Act, Bakyounsa, 50–51; Bong Eui Lee (2010) Control of Exploitative Abuse in Korea. Journal of Korean Competition Law, 22, 124; Dae Sik Hong (2010) Improvement Scheme of Standard for Determining Abuse of Market-dominant Position. Journal of Korean Competition Law, 21, 417. [^ Back to section](#)

- 36** Article 5(1)(v) of the MRFTA. ^ [Back to section](#)
  
- 37** Bong Eui Lee & Jong Ik Chon (2008) Constitutionality of the Prohibition of 'act that may considerably harm the interest of consumers' in Monopoly Regulation and Fair Trade Act Art. 3-2 I (v). Seoul Law Journal, 49(3), 274; Jeong-Joong Kim (2010) 'Standard for Determination of Substantiality and Unreasonableness Requirements for Hindrance to Consumer Benefits', Commentary on Supreme Court Precedents no. 84, 18; Dae Sik Hong (2010) Improvement Scheme of Standard for Determining Abuse of Market-dominant Position. Journal of Korean Competition Law, 21, 421. ^ [Back to section](#)
  
- 38** Supreme Court Decision No. 2009Du1983. ^ [Back to section](#)
  
- 39** Section III. 2. A. of Notification on Detailed Criteria for Imposition of Administrative Fine. ^ [Back to section](#)
  
- 40** Article 8 of the MRFTA. ^ [Back to section](#)
  
- 41** Article 13(1) of the Enforcement Decree of the MRFTA. ^ [Back to section](#)
  
- 42** Article 8 of the MRFTA. ^ [Back to section](#)
  
- 43** Article 7(1) of the MRFTA. ^ [Back to section](#)
  
- 44** Article 125(i) of the MRFTA. ^ [Back to section](#)
  
- 45** Article 14(1) of the MRFTA. ^ [Back to section](#)
  
- 46** Article 99 of the MRFTA. ^ [Back to section](#)
  
- 47** Article 109(1) of the MRFTA; Article 750 of the Civil Code. ^ [Back to section](#)
  
- 48** Article 115 of the MRFTA. ^ [Back to section](#)
  
- 49** KFTC Press Release dated 7 February 2024. ^ [Back to section](#)

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