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Indecent Act by Compulsion in South Korea

Seyeon Cha*

Abstract

In 2022, the number of arrests for sexual assault in South Korea was reported as approximately 212,000.[1] Among the four types of sex crime under the Korean legal principle, arrests for indecent act by compulsion, stipulated in Article 298 of the Korean Criminal Act, took up 66% of the total number. Figures for each year from 2011 to 2021 all show an apparent preponderance of instances of indecent act compared to other sexual assaults. In accordance with the voice that has steadily called for the alleviation of requirement of the crime, on September 21, 2023, the Korean Supreme Court made a ruling that overturned a forty-year-old precedent. The Court ruled that violence or intimidation used by the perpetrator does not have to be enough to make the victim unable to resist at the time of the indecent act. If there was a form of unlawful physical contact on the body of the victim or a threat that is likely to arouse fear in one, the indecent act that follows can be punished by Article 298. In comparison to the principle established by the 83Do399 ruling which required the level of violence or threat high enough to have made the victim's resistance difficult, the change in precedent enlarged the scope of acts that can be regarded an indecent act from legal perspective. Meanwhile, disputes on the introduction of a law that penalizes non-consensual sex are ongoing. Legislation of

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such law must be preceded by thorough inspection of foreign cases of similar laws and means to minimize possible side effects

Keywords *South Korean Criminal Act, indecent act by compulsion, sex crime, physical force, intimidation*

I. Introduction

In South Korean Criminal Act, sex crime is primarily classified into four categories: i) rape, ii) indecent act by compulsion, iii) sexual harassment, and iv) others such as trafficking for sexual exploitation. Among them, the elements of indecent act by compulsion (Article 298) have been particularly controversial as "indecent act" and "by compulsion" are both subject to varied interpretations due to their linguistic ambiguity.

In the case of Korean Supreme Court Decision 2018Do13877 (decided on September 21, 2023), the Court redefined the scope of force or intimidation of Article 298. From what originally had to be a force big enough to make the victim difficult to resist in case it precedes the indecent act, now it could be any unlawful infliction of physical force upon the victim or announcement of threat that is likely to cause fear in the subject. The change in precedent alleviates the requirements stipulated in the Article and thus extends the range of punishment by it.

This paper first discusses the physical elements of indecent act by compulsion required by statute and other deriving crimes in the special act on sexual crimes, and then proceeds to elaborate on the Supreme Court Decision 2018Do13877. Finally the paper touches on the ongoing debate surrounding the legislation of a law that punishes non-consensual sex.

II. Indecent Act by Compulsion (Article 298) and Other Deriving Crimes

1. Indecent Act by Compulsion

Indecent Act by Compulsion (Article 298)

A person who, through violence or intimidation, commits an indecent act on another shall be punished by imprisonment with labor for not more than ten years or by a fine not exceeding 15 million won. <Amended on Dec. 29, 1995>

The above provision in the Korean Criminal Act punishes the act of touching someone in a sexual manner without consent. The Korean Supreme Court provides a very comprehensive definition of "indecent act": An act against the public sexual morals, objectively incurring sexual humiliation or disgust to normal people, infringing the sexual self-determination of the victim, and that shall be judged based on the followings: willingness, sex, and age of the victim, the relationship between the assailant and the victim, details of the accident, objective circumstances, and contemporary social sexual morals"(97Do2506, decided on January 23, 1998).[2] As much as its abstractedness, the Court has made it clear that judgment on the indecency of a touch shall be done taking account of multiple factors.

Another important principle is that the Supreme Court does not require an intention of sexual satisfaction for the crime to be completed. In the case of 2013Do5856, the assailant bit the victim's lips, nipples, and breasts as a revenge to the victim who had initially attacked the head of the assailant and pulled his hair. Although the lower court only convicted him of the crime of Inflicting Bodily Injury (Article 257) for he had no sexual intention, the Supreme Court ruled differently and claimed him also guilty of indecent act after looking into objective circumstances such as the nature of the act from the perspective of social norms.

The second element of Article 298 is "through violence or intimidation."

In the case of the 2001Do2417 ruling, the Supreme Court elaborates that "the indecent act not only shall be completed by making it difficult to resist by force or intimidation and then touching a body but also by an assault that could be regarded as an indecent touching. In this instance, the assault does not have to be enough to nullify the free will of the victim."(83Do399, decided on June 28, 1983). Accordingly an indecent act carried out in a sudden manner is deemed an act by force.

2. Indecent Acts through Abuse of Occupation Authority

> Indecent Acts through Abuse of Occupational Authority (Article 10 of Act On Special Cases Concerning The Punishment Of Sexual Crimes)
>
> A person who, through fraudulent means or by a threat of force, commits an indecent act on another person who is under his/her guardianship or supervision by reason of his/her business, employment, or other relationship shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 15 million won. <Amended on Oct. 16, 2018>

This Article is to punish indecent acts that are committed using one's status such as when a supervisor at work touches his or her juniors. In the 2003Do7107 ruling, the Supreme Court judged the doctor guilty of the crime for touching his patients' genital area; the fact that he insisted on waking the patients up at 2 a.m. despite their minor injuries and the genital area being irrelevant to the cause for hospitalization backed up his indecent intention.

3. Indecent Acts in Crowded Public Places

> Indecent Acts in Crowded Public Places (Article 11 of Act On Special Cases Concerning The Punishment Of Sexual Crimes)
>
> A person who commits an indecent act on another person in any public transportation vehicle, place of public performance or assembly, or other

> crowded public place shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won. <Amended on May 19, 2020>

This Article was viewed necessary considering that a perpetrator could use crowded public places to nullify the victim's resistance. The Court's principle that "crowded public place" does not have to be a place that was crowded at the time of the crime but can be any place that is constantly open to the public such as a bus or a subway, a store, or a jjimjilbang(Korean style bathhouse) (2009Do5704, decided on October 29, 2009).

III. Change in Standards for Indecent Act by Compulsion

On September 21, 2023, the Supreme Court, led by Chief Justice Noh Jeong-hee, issued a ruling that changed the standards for the second element of indecent act by compulsion, "through violence or intimidation" (2018Do13877).

The case is on defendant A and plaintiff B who were relatives to each other. On August 15, 2014, A was helping B with schoolwork at home. A then asked B to touch his(A's) genital and when B demanded that A repeat what he said A instead took B's hand and pulled it toward his genital. B expressed feelings of displeasure and her willingness to go home only to be met by A wrapping his arms around her. B backed away and fell on the bed on whom A fell. A asked B if he could touch her breasts but when B stayed silent in panic, A went on to touch B's breasts for about 30 seconds. B tried to get A off her as she was saying "You can't do this to me. This shouldn't happen." and managed to get back up and walk toward the door. Nevertheless, A got up and followed B to hug her close to him for another 30 seconds.

A was charged on the basis of Article 5.2 of Act On Special Cases Concerning The Punishment Of Sexual Crimes: A person who, through violence or intimida-

tion, commits an indecent act on another person in a consanguineous or marital relationship shall be punished by imprisonment with labor for a limited term of at least five years. At the first trial the court ruled that A had committed an indecent act by compulsion upon B, and sentenced A to three years' imprisonment. However, the second trial claimed A not guilty, explaining that the act of asking someone if they could hug her or to touch their body part does not arouse the level of panic high enough to make the victim difficult to resist. The fact that B stayed still on bed without resisting while A touched her breasts was suggested as another proof that the extent of physical force used by A was not enough to meet the requirement of Article 298.

The Supreme Court overturned the judgment at the second trial, imposing a fine of ten million won or around 7,500 U.S. dollars and remanding the case to the Seoul High Court. The judgement reads that the existent precedent which required the level of violence or intimidation to be severe enough to make the victim unable to resist is contradictory to the rights to sexual self-determination the law aims to protect. Therefore, the judiciary ruled that as long as there was a form of unlawful physical contact on the body of the victim or a threat that suffices to arouse fear in them, the indecent act that follows is punishable by Article 298. With its ruling, the Court abolished the existing jurisprudence of precedents that had been effective for forty years.

IV. Debate on the Criminalization of Non-consensual Sex

Meanwhile, active discussion on expanding the definition of rape by including non-consensual sex is ongoing. Korean Criminal Act currently defines rape as sexual activity against one's will involving "violence or intimidation" (Article 297). Triggered by the #MeToo movement in 2018, bills that address a revision of the definition of rape to "having sexual relations with others without consent" have been proposed by both conservative and liberal legislators.[3] They point out the

fact that in many past instances of rape where the victim had shown unequivocal signs of non-consent, the perpetrators were released without charge due to absence of evidence that they used a form of violence or intimidation. Passage of such bill means that victims will no longer be asked to provide evidence of violence or threat against the perpetrators. As of January, 2024, the bills have not passed the National Assembly. Opposition is mainly grounded in intrinsic difficulty to prove that there was consent between the individuals. For example, Rep. Kwon Seong-dong of the ruling People Power Party wrote on Facebook that the revision in turn could lead to possible false rape allegations.[4]

Similar controversies have already taken place and resulted in revised rape laws to include all non-consensual sex in countries such as Japan, the United Kingdom, Germany, Sweden, and Portugal.[5] It is noteworthy that the Penal Code of Japan does not only criminalize non-consensual sex but also indecent acts without consent; it stipulates that a person who commits an indecent act upon another person without consent shall be punished by imprisonment with work for not less than 6 months but not more than 10 years in Article 176. The Article had originally punished only forcible indecent acts as its Korean counterpart. However, prior to the change in Korea's precedent formerly introduced in III, Article 176 was amended in Japan in July, 2023, to punish any nonconsensual indecency and not only that done forcibly.[6]

V. Conclusion

Amid the Korean population there have long been concerns that Korean courts are too lenient with sex criminals. In a 2023 research that surveyed 1,000 males and females aged 18 and above, 84% of the respondents thought Korea in general should give harsher punishments to criminals and among them 69% answered sex crime is the type of crime such enforcement is the most called for.[7] As much as imposing tougher sentences, the alleviation of requirements

for the completion of a crime and burden of proof on the part of the victim as demonstrated in 2018Do13877 are indicative of gradual changes in Korea's conventional legal principles.

At the same time, careful deliberation on the consequences of any legal decision is crucial, especially if it pertains to highly contentious subjects such as the criminalization of non-consensual sex. Thorough studies on the legislation of other countries and the side effects they have experienced would be just one prerequisite before any action.

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Restriction on Working Hours for Youth Popular Culture Artists in South Korea

Harim Choi*

Abstract

This paper examines the recent amendment to South Korea's Popular Culture and Arts Industry Development Act, which introduced stronger restrictions on working hours for youth popular culture artists than the current law. Passed in April 2023, the amendment aimed to bolster the rights and interests of youth entertainers but faced significant backlash from industry organizations claiming it could impede the industry's development. This paper scrutinizes both positive and negative views on the amendment, highlighting the need for improved protection and the concerns of hindering industry growth. Examining overseas cases from the United States, the United Kingdom, and Japan reveals varying approaches to regulating the working hours of child and youth entertainers. In conclusion, this paper emphasizes the shared objective of both advocates and critics of the amendment, fostering Korean pop culture and ensuring the welfare of underage entertainers. However, the marginalized voices of young entertainers highlight the need for active consideration of their perspectives. On the process of the revision of regulations on the working hours of youth entertainers, it is crucial to find a balance that fosters industry growth while simultaneously protecting the interests of all stakeholders.

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Keywords *restriction on working hours, youth poupular culture artists, Popular Culture and Arts Industry Development Act*

I. Introduction

Working in the pop culture industry is both mentally and physically highly demanding, yet minors play a huge role in the field. Particularly in South Korea, where K-POP idols are preferred to debut when they are underage, it has been a challenge to balance the needs of the industry and the protection of the minors. In the past, the latter has lagged behind, so efforts to improve it have been made.

As part of this, an amendment to the Popular Culture and Arts Industry Development Act, passed in April 2023, included stricter limits on working hours for underage entertainers. South Korea's Culture, Sports and Tourism Minister claimed that it will be a steppingstone to eliminate unfair practices in the industry and help youth pop culture artists fulfill their dreams while protecting their human rights.[1] However, it was met with a huge backlash from the industry. Popular music organizations claimed that it is out of touch with reality and could even hinder the development of popular culture.[2]

This paper takes a closer look at the specifics of the amendment and the arguments for and against it. Furthermore, it examines international cases regarding the working hours of underage entertainers. Finally, the paper concludes with a discussion on how the debate should proceed for the true development of pop culture.

II. Recent Amendment to the Popular Culture and Arts Industry Development Act

On April 21, 2023, the Culture, Sports and Tourism Committee of the

National Assembly of the Republic of Korea voted to amend the Popular Culture and Arts Industry Development Act.[3] It included provisions to strengthen the protection of the rights and interests of youth entertainers, such as prohibiting infringement on their right to learn, prohibiting acts that pose health and safety risks or prohibiting excessive pressure on external beauty, and prohibiting assault, verbal abuse, and sexual harassment, etc. Among them, the most controversial provision was the one that limited the working hours of youth entertainers according to their age: no more than 25 hours a week for those under 12 years old, no more than 30 hours a week for those between 12 and 15 years old, and no more than 35 hours a week for those over 15 years old.[4]

Current law also limits the hours of work for youth performers. Popular Culture and Arts Industry Development Act stipulates that the working hours of youth popular culture artists shall not exceed 35 hours per week for those under the age of 15[5] and 40 hours per week for those over the age of 15.[6] In addition, youth popular culture artists are not allowed to work from 10 p.m. to 6 a.m., except for those aged 15 or older with the consent of the individual and his/her parent or guardian.[7] By comparing the current law with the amendment, we can see that the amendment tightens the regulation of working hours for young pop culture artists by further refining the age limit and reducing the upper limit of working hours.

III. Opposing Views on the Restriction on Working Hours for Youth Popular Culture Artists

1. Positive Views on the Amendment

The protection of work, especially the work of children and adolescents, is stipulated by various laws in the Republic of Korea. Article 32.3.3 of the Constitution of the Republic of Korea states that "standards of working conditions shall be determined by Act in such a way as to guarantee human dignity,"[8] and Article 5 of

the same Act states that "special protection shall be accorded to working children."[9] Article 69 of the Labor Standards Act also stipulates that "the work hours of a person aged between 15 and less than 18 shall not exceed seven hours per day and 35 hours per week."[10]

Particularly in the popular culture industry, due to the long hours and high labor intensity required, it is essential to limit the hours of work or service provision to ensure the rights to health, learning, sleep, and rest of children and young people working in the industry.[11] Accordingly, Popular Culture and Arts Industry Development Act, enacted on January 28, 2014, provides protection for young popular culture artists, including limits on working hours.[12]

Nevertheless, the protection of youth pop culture artists is still not sufficient. The above regulation stipulates that adolescents between the ages of 15 and 18 can provide services for longer than the working hours stipulated by the Labor Standards Act. Furthermore, according to a survey by the Nation Human Rights Commission of Korea in 2020, out of 78 children and youths in the popular culture industry, 57.7% reported that they averaged 4-6 hours of sleep per day during the filming period, 16.7% reported that they felt like dropping out of school, and 14.1% reported that they were physically sick or injured during the filming period.[13]

The National Human Rights Commission of Korea points out that in order to improve this situation, it is necessary to subdivide the working hours regulations.[14] The current Popular Culture and Arts Industry Development Act simply divides the hours of labor without taking into account the fact that the hours of work, physical strength, and concentration vary depending on the developmental stage, age, and schooling status.

2. Negative Views on the Amendment

Five entertainment industry organizations have issued a statement opposing the amendment to the Popular Culture and Arts Industry Development Act, calling

for the removal of regulations limiting working hours for youth entertainers. They claimed that the amendment, which arbitrarily categorizes ages and limits their work hours, is a "hindrance to the development of the popular culture industry" that ignores reality.[15] Their arguments are as follows.

First, it makes normal idol activities impossible. In the case of K-pop idols, even within a group, there are members of various ages, and the amendment would make it impossible for them to work together. There are times when intensive promotion and activities are required, such as album releases and concerts, and it will hinder these activities as well. Therefore, while the organizations have not directly stated this, it could lead to a decrease in revenue for the industry.

Second, it could lead to discrimination and inequality against young pop culture artists. Unlike other young people who are trying to pursue their dreams, such as studying, they will not be able to do what they want to do. Tighter working hours restrictions may also cause broadcasters and production companies to shun performers in the regulated age group, making it even harder for them to fulfill their dreams at a young age.

Finally, the current law's regulation of working hours and the industry's self-regulatory efforts are sufficient to protect the rights and interests of youth entertainers. As a result, the average number of hours worked by youth entertainers has decreased and is significantly less than the number of hours the proposed amendments would limit.[16] Therefore, introducing additional regulations would be unnecessary, demoralize the industry and weaken the competitiveness of the Korean pop culture industry, considering the importance of youth entertainers in the industry.

Ⅳ. Overseas Cases

Developed countries abroad have been protecting child and youth entertainment industry workers since the 1930s, much earlier than Korea.[17] This paper

examines the cases of the US, UK, and Japan.

1. The United States

In the United States, the number of hours a minor can work depends on their age, the type of work, and whether they are in school. New York State, California, and various other states regulates hours by highly subdivided age groups: 15 days to 6 months, 6 months to 2 years, 2 years to 6 years, 6 years to 9 years, 9 years to 16 years, and 16 years to 18 years.[18] For example, infant child performers at least fifteen days but not yet six months of age may be permitted to remain at the place of employment for a maximum of two hours per workday, but the day's work shall not exceed twenty minutes.[19] A child performer aged nine to sixteen may be permitted at the place of employment for a maximum of nine hours per workday, with variations based on school sessions, while for those aged sixteen to eighteen, the maximum is ten hours per workday; in the case of New York, this regulation specifically applies to outside of live performances.[20]

2. The United Kingdom

In the United Kingdom, although the details may vary depending on local bylaws, regulations govern the allowable working hours for children based on their age, school sessions, and days of the week. Specifically, during term time, children can work a maximum of 12 hours per week, with specific limits on school days and weekends. For 13 to 14-year-olds during school holidays, the weekly limit is 25 hours, while 15 to 16-year-olds can work up to 35 hours per week.[21] These limits include restrictions on weekdays, Saturdays, and Sundays during school holidays.[22]

3. Japan

According to the Labor Standards Act of Japan, youth under the age of 15

may work up to 40 hours in a week during school hours and up to 7 hours per day during school hours.[23] In addition, employers may not employ youth under the age of 18 during the hours of 10 p.m. to 5 a.m., except for males over the age of 16 who are used on a shift system.[24]

V. Conclusion

The recent amendment to South Korea's Popular Culture and Arts Industry Development Act, including the restriction of working hours for youth popular culture artists, has sparked significant controversy. The positive views on the amendment emphasize the need for enhanced protection of children's and adolescents' rights in the popular culture industry. On the other hand, the negative views, as expressed by entertainment industry organizations, highlight concerns about hindering industry development.

Based on overseas cases and the statistics on the labor status of youth entertainers, it seems that more detailed working hours restrictions are needed for their well-being. However, the critical issue lies in the insufficient consultation with the industry during the drafting process of the amendment, as the organizations have criticized.

Both the proponents and opponents of the amendment share a common goal of developing Korean pop culture and protecting the human rights of underage entertainers. However, the voices of young entertainers have been marginalized not only in the amendment's review process, but also in the debate. Their perspectives should be actively considered and incorporated into the ongoing discussion.

In conclusion, while recognizing the importance of protecting the rights and well-being of youth entertainers, it is essential to strike a balance that promotes industry growth and safeguards the interests of all involved parties. To achieve this, it is imperative to revise the regulations on working hours of youth entertainers by actively involving various stakeholders and experts, including entertainment

organizations, agencies, production companies, and, most importantly, youth entertainers.

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Financial Platforms and Regulatory Policies

Jisoo Hong*

Abstract

The form of self-regulation varies greatly, from voluntary self-regulation completely led by the private sector to forms where the government intervenes in its framework or content. Given that the financial industry has a significant impact on the lives of citizens, it is necessary to protect consumers from harm due to monopolies through strict regulations. Nevertheless, given the nature of the platform industry, which demands innovation and specialized skills, government intervention should not become coercive. Therefore, in the platform sector, especially financial platforms, it is evident that self-regulation has its limits, necessitating the coexistence of strict law enforcement and self-regulation.

To enhance the effectiveness of platform regulation, proactive involvement by the regulatory authority, the Fair Trade Commission, is required. While there are limitations to pursuing the enactment of an Online Platform Law or the amendment of the E-Commerce Law in the current situation, legislative efforts must continue to resolve issues that cannot be addressed by self-regulation alone. It is crucial to execute the law flexibly and swiftly within the framework of the current antitrust regulatory system, relaxing the stringency of market definition and reflecting the characteristics of the platform market. The establishment of

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various self-regulatory guidelines that can enhance transparency and fairness in the platform market is also necessary. The government should also actively support the provision of clear incentives for companies participating in self-regulation to ensure sufficient implementation.

Keywords *financial platforms, regulatory policy, DSA (Digital Services Act), Antitrust Law*

I. Introduction

A platform is a cyberspace where providers and users of specific services converge to offer and utilize these services. Today, many companies operate as platforms or are established and function as platform enterprises, enabling a myriad of producers and consumers to undertake consumption and production activities within these platforms. Rather than producing products or services themselves, platform enterprises derive value from facilitating connections between suppliers and users. The widespread integration of platforms into daily life and the expansion of the platform economy, based on the rapid advancement of IT technology, are inducing extensive socio-economic changes across everyday life and various industrial sectors.

A defining characteristic of platforms is their nature as multi-sided markets. That is, within platforms, transactions among various groups occur in multiple layers until completion. The vast amount of data held by platforms also warrants significant attention.[1] Platforms possess an abundance of data related to consumers' preferences and producers' production capabilities and strategies, and as the scale of the platform increases, the amount of data grows exponentially due to direct and indirect network effects. Importantly, as data quantitatively increase and qualitatively improve, the predictions and performance of platforms' artificial intelligence and algorithms enhance. This advancement in artificial intelligence and algorithms

is one of the major factors influencing success in platform competition, bringing qualitative improvements in customized services for producers and consumers and attracting more users to the platform.

The multi-sided nature of platforms makes identifying their characteristics and defining the market and market dominance of platform companies challenging. Moreover, network effects inherent in platform businesses inevitably lead to monopolies, which can result in negative economic consequences. Consequently, regions such as the United States and the European Union are legislating regulatory bills in the digital platform sector. In South Korea, discussions are centered on issues like unfair practices and infringement of traditional market spaces by platform companies.

Recognizing platforms as products of innovation with potential positive socio-economic impacts, the introduction of appropriate regulations is necessary. These regulations should aim to minimize negative effects while not hindering innovation. In this regard, this paper focuses on the monopoly issue within the platform economy, analyzing leading cases and the current status in Korea, and discussing the direction of regulations needed to establish a fair and innovative platform economy.

II. The Monopoly Problem in Platform Economy

1. Network Effects

The types of network effects are broadly classified into five categories. First, the direct network effect is where the value of a good increases with the number of users. The positive feedback effect amplifies the value of goods and services from the perspective of potential users based on membership in the social network circle, i.e., simply the number of users or ratings. Indirect network effects occur when popular products and services create abundant complementary and supplementary

services, thereby enhancing the value of the goods and services that produced them. The two-sided effect concerns intermediary platforms (two-sided or multi-sided markets) that combine two or more complementary and interdependent agents. The value of the platform for agents increases with their number. The lock-in or vendor lock-in effect occurs when technology transition costs are too high, preventing users from changing goods/services.

The development of digital platforms and big data triggers network effects. As the number of users in the same group increases, utility increases due to direct network effects, and as the number of users in different groups increases, utility increases due to indirect network effects. This leads to phenomena such as the lock-in effect, where switching to other platforms becomes difficult once platform user numbers exceed a certain level, and the tipping effect, where users overwhelmingly prefer a particular platform, strengthening monopoly power.[2] Therefore, in digital platforms where network effects are central, economies of scale are realized, and the number of users becomes more critical than the quality of the products themselves.

Especially, big data, by inducing network effects and raising entry barriers, contributes to solidifying the market position of large corporations or companies that have already entered the platform business. It is not difficult for the initial dominants to grow their size based on network effects, and winner-takes-all situations are likely to occur in society. Additionally, if the path for network effects to operate is expanded through the use of innovative technologies such as big data and AI, economies of scale will strongly act, making it even more difficult for new companies to enter.

2. Algorithms and Tacit Collusion

The various instances of price-fixing by digital companies in the United States and the European Union, along with actual regulatory cases by competition authorities and courts, represent responses to algorithmic collusion in the digital

economy. Algorithms facilitate the flow of information and reduce transaction costs, enhancing efficient resource allocation and consumer benefits. Paradoxically, however, algorithms also create an environment conducive to collusion. When companies extract data from individuals and promote certain behaviors through asymmetric information flows, competing for consumer surplus, anti-competitive risks may arise.

Algorithms can accurately detect and quickly respond to market price changes, but they can also promote a new type of tacit collusion in the digitalized environment. Thus, scrutiny of whether algorithms are used for collusion is important, and the use of algorithms does not always lead to negative outcomes, making risk assessment of algorithm use crucial. For this reason, the enforcement of competition policies related to algorithms is significant. For instance, the SSNIP (Small but significant and non-transitory increase in price) test for markets influenced by algorithmic cartels needs to be improved, especially when price-setting decisions are made in real-time through self-learning.[3]

However, there may be cases where algorithms designed by artificial intelligence engage in price-fixing beyond the designer's intent, raising issues of accountability. Holding designers responsible for unforeseen circumstances is not straightforward. Therefore, it is necessary to regulate the design aspect of algorithms in advance. Moreover, methods like shifting the burden of proof should be enforced so that when weighing the risks of collusion through algorithms against the efficiencies achieved by their use, the latter must be proven to be greater.

III. Regulatory Case Studies Related to Financial Platforms

1. United States

The United States has traditionally enforced a policy of separation between finance and industry. Therefore, financial stability has not been a primary concern

in regulating Big Tech, with more emphasis on preserving market competitiveness.

Initially, the U.S. was perceived as lenient in regulating global competitive online platforms. However, in June 2021, a package of antitrust bills targeting giant platforms was introduced, comprising five proposed laws, demonstrating a strong regulatory intent towards Big Tech platforms. This legislative package moved swiftly through the process. The U.S. anti-monopoly laws include the Ending Platform Monopolies Act, Platform Competition and Opportunity Act, American Innovation and Choice Online Act, Augmenting Compatibility and Competition by Enabling Service Switching Act, and Merger Filing Fee Modernizing Act.

Among these antitrust bills, the Platform Competition and Opportunity Act and the Merger Filing Fee Modernizing Act include measures to prevent the predatory expansion of Big Tech companies. The Platform Competition and Opportunity Act prohibits large online platform companies, designated as regulatory targets, from directly or indirectly acquiring stakes/assets of potential or relatively new competitors, and places the burden of proof on the acquiring companies. The Merger Filing Fee Modernizing Act, on the other hand, proposes an increase in merger review fees for transactions over $1 billion. While intensifying Big Tech regulation, the U.S. also continues to promote the growth of these tech giants.

Despite these efforts, recent developments in the U.S. have seen a shift in the overall regulatory stance towards more stringent measures. The Federal Trade Commission (FTC) has initiated antitrust lawsuits against Big Tech platforms, marking a significant change in the regulatory approach towards the market dominance of major Big Tech online platforms such as GAFA (Google, Amazon, Facebook, Apple).

2. Europe

Europe has been characterized as focusing on policies to control the risks associated with Big Tech while ensuring benefits for consumers and businesses in its

large market. In this regard, the European Parliament established rules on June 20, 2019, to enhance the fairness and transparency of platforms. The regulation by the European Parliament aims to overcome the limitations of existing short-term price effect-focused competition law regulations by prioritizing fairness in transactions over competition and emphasizing business opportunities over performance.[4] It targets practices where platform operators select in favor of their interests and has strengthened the disclosure and explanation obligations of platform policies.

Throughout the exponential growth of the global online platform intermediary services and search engine services market, various competition law issues have emerged. However, the European Parliament's regulation of online platforms, governing transactions between platform operators and merchants, is the first of its kind globally. Recently, the EU has been intensifying its regulation of online platforms, especially those performing gatekeeper functions, through initiatives such as proposing a digital tax bill on the European sales of global platform companies and unveiling a draft of the Digital Services Act package.

Based on the findings of the investigation into the online platform market since 2016, the draft Digital Services Act (DSA) and Digital Market Act (DMA) were published in December 2020. The DSA primarily regulates the liability and obligations of intermediary service providers related to the distribution of illegal content. The DMA focuses on the pre-regulation of 'gatekeepers' – companies that hold or are anticipated to hold market dominance in the digital sector of the EU single market. A gatekeeper refers to a company with a significant influence in the digital market, and the Digital Market Act establishes objective criteria for identifying gatekeepers, imposing duties and prohibitions on them. The EU aims to improve fairness and competitiveness in the digital sector through such legislation.

Concerning gatekeeper designation, the EU has set criteria such as achieving a specified annual revenue in the European Economic Area and having a certain number of monthly active users over three years. This allows for the interoperability of data generated by gatekeepers' services and platforms in specific circumstances. Conversely, gatekeepers should not prioritize their own similar services over

third-party services and should not block consumers from connecting to businesses outside the platform.

The DMA designates large online platforms as gatekeepers, setting obligations and prohibitions to prevent unfair competition. The DMA outlines robust pre-regulatory measures that surpass the existing competition law framework. The scope of the Core Platform Services (CPS) concept is broad, and the obligations set for gatekeepers in the DMA could directly impact the business models of Big Tech. The EU's Digital Market Act came into effect on November 1, 2022, and officially applied from May 2, 2023, with the designated gatekeepers to be discussed by the Commission in the future.

3. South Korea

(1) Electronic Financial Transactions Act

With the growth of digital finance, various innovations and changes have emerged in the electronic financial transactions sector. However, the Electronic Financial Transactions Act, established in April 2006 and implemented in 2007, had not undergone significant revisions for some time, failing to adequately embrace the Fourth Industrial Revolution, changes in the finance industry, and the shift towards non-face-to-face services. In response, the Financial Services Commission announced a comprehensive reform plan in July 2020, aimed at achieving a balanced development of digital finance innovation and stability.

As part of the reform, regulations were reviewed and improved to ensure fair competition among domestic financial companies, digital firms, and global Big Tech entering the financial sector, preventing regulatory arbitrage between traditional financial companies, FinTech, and Big Tech. A follow-up measure included the proposal of a partial amendment to the Electronic Financial Transactions Act in November 2020. However, it has remained pending in the National Assembly due to intensifying conflicts among stakeholders in the related industry.

The main contents of the amendment bill include permitting comprehensive payment service providers, introducing payment instruction transfer businesses (MyPayment), and allowing the settlement of electronic payment transactions.

(2) Financial Consumer Protection Act

The Financial Consumer Protection Act, implemented on March 25, 2021, serves as the basic law for financial consumer protection and regulates the business practices of financial product sellers. Based on the principle of "same activity, same regulation," the Act applies financial product sales regulations uniformly across all financial sectors, thereby offering more robust protection to financial consumers during the process of purchasing financial products.

The establishment of financial product sales agency and brokerage businesses has expanded opportunities for financial consumers to more easily select financial products suitable for them. Additionally, the entry regulations under the Financial Consumer Protection Act unify the entry requirements for financial product sales intermediaries, advisors, and other non-regulated areas or areas previously governed by guidelines and administrative guidance.

In September 2021, the Financial Services Commission and the Financial Supervisory Service mandated online financial platform companies to comply with the Financial Consumer Protection Act and requested rectification. The nature of customized advertising for financial products, intended to induce contract conclusion, makes it difficult to distinguish clearly between advertising and intermediation in the digital environment. This has necessitated the need for coordination and verification to determine the regulatory status of specific advertising or intermediation activities.

Thus, the initial interpretation and operation of the regulations related to sales intermediation under the Financial Consumer Protection Act, aimed at preventing unfair trade and mis-selling by Big Tech, also significantly restricted non-face-to-face services of many FinTech companies focused on innovation. The

differences in viewpoints between the traditional financial sector and Big Tech regarding the principle of "same function, same regulation" necessitate regulatory adjustments considering the characteristics of innovative financial services and the principle of financial consumer protection. To effectively protect the rights of financial consumers, the regulations on the sale of financial products must evolve to suit the changing financial market. A regulatory foundation must be established to minimize conflicts of interest and unfair competition that can infringe upon the rights of financial consumers, ensuring convenient access to services like non-face-to-face channels for comparing and inquiring about financial products.

IV. Regulatory Issues Related to Financial Platforms

1. Responsibility for Financial Consumer Protection

In the context of online, non-face-to-face channels for the sale of financial products, the diversification of financial service delivery methods, such as advertising, information provision, and intermediation, can lead to consumer confusion regarding the identity of the seller of financial products. When comparing and subscribing to financial products via online financial platforms, it is easy to confuse whether the financial platform or the financial institution is the actual seller, unlike in face-to-face channels. Therefore, it is necessary to establish an institutional framework that minimizes consumer misunderstanding by reflecting the characteristics of financial platforms.

Regulatory authorities have recently considered consumer cost reduction and convenience enhancement by granting licenses to non-financial companies to directly engage in financial business or allowing them to handle financial operations indirectly in association with existing financial institutions. Initially, Big Tech mostly dealt with financial-related operations indirectly in association with existing financial institutions, allowing them to operate without a license. However,

recently, tech companies have started to incorporate financial companies as subsidiaries or obtain financial business licenses to directly conduct financial operations. With the proliferation of financial platforms, there is also a potential for various disputes, such as the mis-selling of financial products through platforms. There is a concern that financial platforms may focus solely on intermediary roles for commission earnings without fulfilling their responsibilities to consumers.

To address these concerns, it is necessary to institutionalize the provision of essential information that platforms must disclose to consumers, ensuring proactive responses to major dispute issues like financial consumer protection and personal information protection. When Big Tech companies, operating as financial platform operators, act as intermediaries in the sale of financial products, they should disclose in advance that they are not parties to the sale of financial products, so customers can easily understand this. Moreover, if this disclosure is not made, the platform operator should be jointly liable with the financial product seller for any damages caused to users due to the seller's intent or negligence. Additionally, when the platform operator appears to have a dominant influence over the financial product seller, assigning related responsibilities is necessary. Furthermore, as the scope of financial products and services provided through financial platforms expands, the establishment of a dispute resolution system considering the characteristics of online transactions is required to ensure effective dispute resolution for users. The notification of dispute resolution procedures to financial consumers should be mandatory to enhance user engagement.

To strengthen the positive functions of platforms that contribute to enhancing consumer choice, it is essential to establish a more rigorous institutional and procedural foundation, rather than opting for a self-regulatory approach, to achieve the fundamental policy goal of consumer protection. Especially as platforms grow larger, continuous monitoring is necessary to ensure services are provided appropriately from a financial consumer protection perspective. As seen in the domestic regulatory cases, the establishment of a user protection system and special provisions regarding user damage compensation discussed in the Electronic

Financial Transactions Act amendment should be promptly organized, ensuring that financial platform services are provided in a more stable environment.

2. Monopoly and Unfair Trade Regulation Issues

Despite the positive functions of platforms in enhancing consumer convenience and market efficiency, the influence of Big Tech, especially those with non-financial platforms, has highlighted issues of monopoly and unfair trade. Big Tech plays a role in increasing the efficiency of financial services and lowering the barriers to financial service provision. However, this can also lead to new risks and costs associated with market dominance. A dependent ecosystem on giant platforms leaves little room for potential competitors to establish competing platforms, enabling dominant platforms to solidify their position by raising entry barriers. Thus, Big Tech can use market dominance and network effects as barriers to entry for potential competitors. The expansion of Big Tech into the banking industry, intensifying market competition, raises concerns about the degradation of traditional banks' management soundness and the market monopoly of Big Tech.

Another emerging risk is the monopolistic use of data by Big Tech, collecting vast amounts of data at almost zero cost based on their business scale and technological prowess. Using data as a weapon, Big Tech can secure a competitive advantage in various non-financial and financial services and establish significant networks. Such use of data by Big Tech can lead to "digital monopoly" or "data monopoly," enabling them to exercise price discrimination once they establish a dominant position in the market.

Additionally, Big Tech companies are expanding loan services to mid- and low-credit consumers compared to traditional financial companies. This approach, due to insufficient credit history and an incomplete credit evaluation system, may increase credit risk. Most risks associated with Big Tech, particularly the use of common infrastructure like massive customer data, can threaten the financial stability of the market.

To address anti-competitive practices arising from Big Tech's business model, which leads to excessive market concentration due to market dominance, the EU has established a regulatory framework for Big Tech groups by designating gatekeepers through the Digital Market Act. Big Tech, typically characterized by large scale, complex subsidiary structures, and intricate relationships between non-financial and financial companies, can have a more significant impact on financial stability than traditional financial institutions. Particularly, the financial subsidiaries of Big Tech, being interconnected with non-financial subsidiaries within the group, can increase financial instability due to mutual coupling risks. Therefore, it is crucial to consider designating large-scale Big Tech as complex financial groups under the Financial Group Supervision Act and establishing a proactive management system to prevent risk transfer between financial and non-financial sectors.

V. Conclusion - The Significance and Limitations of Self-Regulation

The platform industry, characterized by rapid changes and a diverse array of stakeholders, may be better suited for self-regulation, which allows the private sector to determine the scope and targets, rather than uniform government regulations. However, self-regulation cannot be entrusted with all aspects of regulation, especially not with anti-competitive behaviors such as unfair market monopolization by large platforms or collusion between competitors that are typically regulated post-hoc in the platform and digital economy.

The enforcement of antitrust law is not a substitute for self-regulation. Thus, suitable areas for self-regulation in platform characteristics might include improving the hierarchical relationships between platforms and workers, preventing unfair practices, and facilitating autonomous dispute resolution, as well as preventing or mitigating damage to consumers. The Fair Trade Commission has expressed its stance to effectively respond to conflicts of interests or consumer-related social disputes through platform self-regulation, while maintaining strict legal enforce-

ment against anti-competitive behaviors that exacerbate monopolistic structures in the platform sector.

The form of self-regulation varies greatly, from voluntary self-regulation completely led by the private sector to forms where the government intervenes in its framework or content. Given that the financial industry has a significant impact on the lives of citizens, it is necessary to protect consumers from harm due to monopolies through strict regulations. Nevertheless, given the nature of the platform industry, which demands innovation and specialized skills, government intervention should not become coercive. Therefore, in the platform sector, especially financial platforms, it is evident that self-regulation has its limits, necessitating the coexistence of strict law enforcement and self-regulation.

To enhance the effectiveness of platform regulation, proactive involvement by the regulatory authority, the Fair Trade Commission, is required. While there are limitations to pursuing the enactment of an Online Platform Law or the amendment of the E-Commerce Law in the current situation, legislative efforts must continue to resolve issues that cannot be addressed by self-regulation alone. It is crucial to execute the law flexibly and swiftly within the framework of the current antitrust regulatory system, relaxing the stringency of market definition and reflecting the characteristics of the platform market. The establishment of various self-regulatory guidelines that can enhance transparency and fairness in the platform market is also necessary. The government should also actively support the provision of clear incentives for companies participating in self-regulation to ensure sufficient implementation.

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