

Antitrust Cases and Economic Analyses: Recent Korean Experiences



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1. Some Background on Antitrust Enforcement in Korea

- Two Tiers of Merger Control in Korea
 - Conditions for belonging to the *safe harbor* in a *notification* (“Guidelines for M&A Review”)
 - HHI less than 1,200
 - Or HHI between 1,200 and 2,500 and the increase less than 250
 - Or HHI more than 2,500 and the increase less than 150
 - Conditions for *presuming* anti-competitiveness of a merger in the *law* (“Monopoly Regulation and Fair Trade Act”)
 - (i) the combined market share is 50% or more, or it is the largest and CR-3 is 75% or more. (ii) And the difference between the combined market share and the next largest is 25% or more.
 - Even though the presumption is rebuttable in principle, it is not so easy to rebut it in practice since the conditions are specified in the law level.
 - However, as economic analyses are gaining more importance, KFTC recently tends to allow some mergers, which are presumed to be anti-competitive according to the law, with behavioral remedies attached(e.g. eBay-G market case in 2009).

1. Some Background on Antitrust Enforcement in Korea

- Prohibition of the Abuse of Dominance in Korea
 - Conditions for *presuming* the market dominance position in the *law* (“Monopoly Regulation and Fair Trade Act”)
 - (i) the market share is 50% or more, or
 - (ii) CR-3 is 75% or more (excluding the company with market share less than 10%)
 - Even without ‘market’ dominance position, companies with the superior position in ‘transactional’ relationships are prohibited from committing “unfair trade practices” according to the law.
 - Supreme Court Decision in Posco Case (2007.11.22)
 - Sets the standard of making judgment on the abuse of market dominance cases: requires proving that abusive conducts raise concerns of causing adverse competitive effects such as price increase, output decrease, retarding innovation, decrease in the number of competitors and decrease in variety, etc. and that there exist such intent and purpose

1. Some Background on Antitrust Enforcement in Korea

- Objective proof: can presume the existence of such concerns, intent and purpose in case of finding actual adverse competitive effects
- Subjective proof: otherwise should make judgment based on overall circumstances

- Recent Developments
 - Emphasis of Economic Analyses
 - Exercising rational discretion based on economic analyses rather than implementing simple rules
 - Employing more economic tools in defining relevant markets and assessing adverse competitive effects, such as critical loss, diversion ratio, merger simulation, effective price test etc.

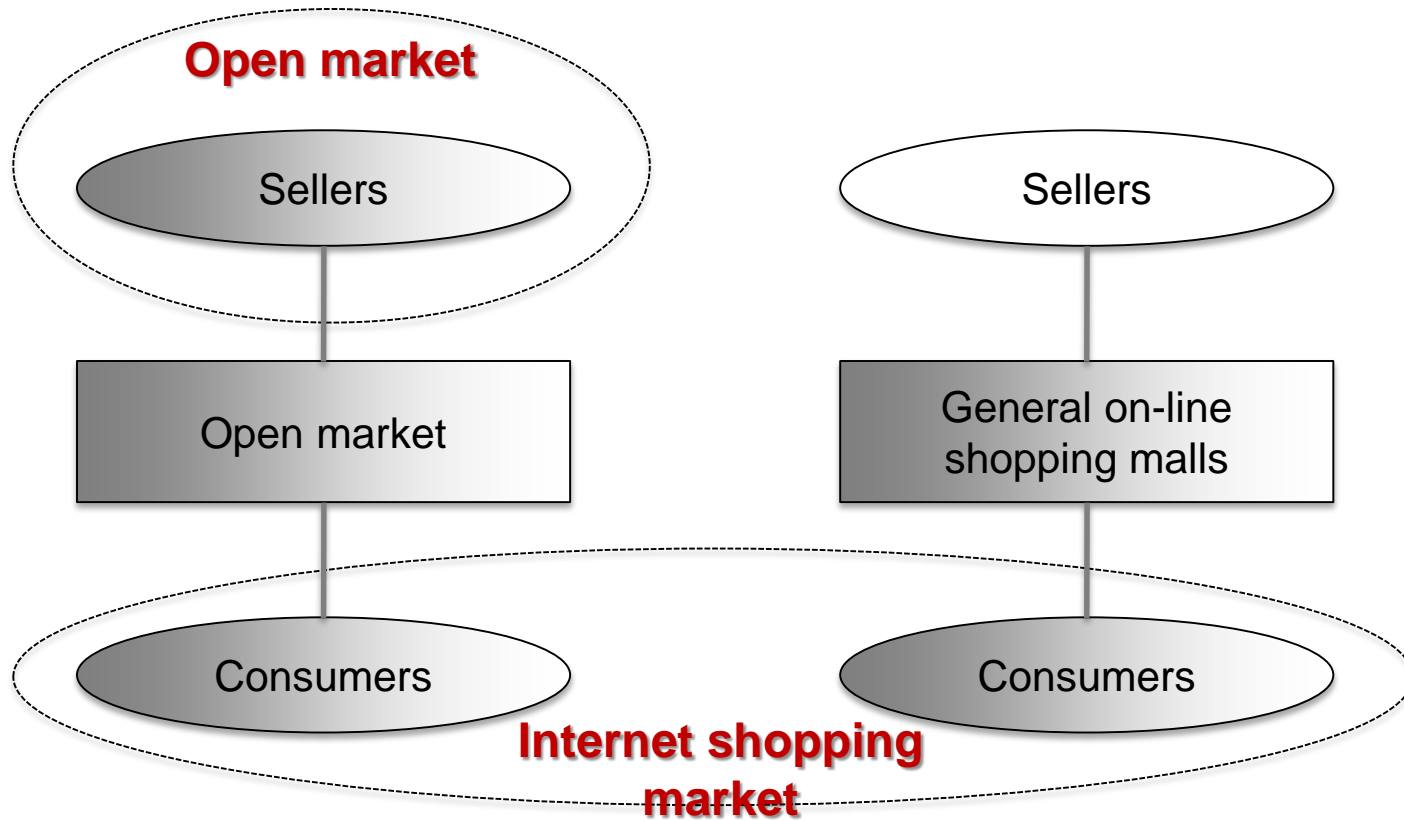
 - Consent Settlement
 - Introduced in 2011.12.2
 - Applicable in all cases except those involving cartels and criminal reports
 - The first case was Internet Portals(Naver/Daum)'s alleged abuse of dominance in 2013.11

2. eBay-G market merger in 2009

- Market Environments
 - eBay which owns “Auction” tried to combine “G market” by stock purchase.
 - G market and Auction are two leading “open market” operators in Korea.
 - Open market operators provide on-line market place where sellers directly sell their products to consumers, and play a minimum role of platform such as site managements, transaction settlements, etc.
 - On the other hand, general on-line shopping malls buy products from suppliers, having them in stock, and sell to consumers through Internet sites under their own responsibilities.

2. eBay-G market merger in 2009

- KFTC's decision (2009.6.25)



2. eBay-G market merger in 2009

- Consumers' side evaluation of competitive effects
 - KFTC defined it broadly as Internet shopping market.
 - Consumers are very price-sensitive and can easily search low price sellers and buy from them.
 - Auction and G market have a combined market share of 37% in terms of transaction volume in 2008.

- Sellers' side evaluation of competitive effects
 - KFTC defined it narrowly as open market.
 - Auction and G market have a combined market share of 87.5% in terms of transaction volume in 2008.
 - There exist anti-competitive concerns in short run, but the prospective dynamic competition from new entry and repositioning in contiguous markets would relieve the concerns in intermediate or longer run.
 - The merger was allowed with some temporary behavioral remedies in the seller-side market such as prohibition of raising transaction fees for 3 years.

2. eBay-G market merger in 2009

- Economic Analyses by Jeon-Ahn-Nam-Shin(2008.7.9) on behalf of eBay
 - Market Definition
 - Defined the relevant market as Internet shopping market on both sides
 - Implemented Critical Loss Analyses on both sides with survey data on substitution behavior
 - Taking interactions between two sides into account, the results would be strengthened because actual losses would be larger and critical losses would be smaller.
 - Merger Simulation
 - Implemented merger simulation on the sellers' side in order to evaluate the plausibility that the combined company would raise transaction fees collected from sellers

2. eBay-G market merger in 2009

- In front-end estimation stage, using survey data, we estimated sellers' supply elasticities as well as sellers' pass-through rates and buyers' demand elasticities to consider two-sided interactions, and inferred open market operators' margins.
 - In back-end calibration stage, we plugged the obtained parameter values into the combined company's new profit maximization conditions, and predicted merger outcomes.
- Dynamic Competition
- active entries and exits
 - repositioning of incumbent firms
 - convergence of business models in Internet shopping industry

3. Internet Portals' Consent Settlement in 2014

- Market Environments
 - Naver and Daum are dominant internet portals in Korea, providing comprehensive internet services, so-called 1S-4C (Search, Contents, Communication, Community, and Commerce)
 - Internet search and on-line advertising markets: Naver(>70%), Daum(~20%)

- Case development
 - KFTC investigation (2013.5.13)
 - Defendants' application for consent settlement (2013.11.20)
 - KFTC consent settlement decision (2014.5.8)

- Alleged Abuse of Dominance (Naver and Naver Business Platform)
 - (a) displaying their own specialized search services in web search results without distinction
 - (b) displaying keyword advertising and organic search results without "clear" distinction
 - (c) vertical restraint on keyword advertising agencies' soliciting "incumbent" advertisers out of other agencies ***within*** one ad platform

3. Internet Portals' Consent Settlement in 2014

- (d) demanding prior bargaining right in providing keyword advertising from publishers
- (e) subsidizing manpower to affiliated companies

- Consent Settlement

- remediating conducts in question
- establishing public funds for protecting consumers and SMEs: Naver (50 bil. in KRW ⇒ about 50 mil. in USD), Daum (4 bil. in KRW ⇒ about 4 mil. in USD)

- Related Google's case in U.S. and EU

- U.S.

- (a) specialized services and “search bias”: closing investigation
- (c') hampering advertisers multi-homing **across** competing ad platforms: remediating with consent order

- EU: remediating following practices with commitment decision

- (a) specialized services and “search bias”
- (c') hampering advertisers' multi-homing **across** competing ad platforms
- (d) demanding exclusive provision of keyword advertising from publishers

3. Internet Portals' Consent Settlement in 2014

- Economic Analyses by Jeon-Kim-Nam (2013.11.20) on behalf of Naver
 - address two issues on
 - (a) specialized services
 - (c) vertical restraint on keyword advertising agencies from soliciting “incumbent” advertisers out of other agencies within an ad platform.

- Efficiency Effects of Vertical Restraint (c)
 - It is more costly for ad agencies to find out and serve “new” advertisers than “incumbent” ones.
 - Ad agencies are tempted to free-ride on other agencies’ efforts by taking out “incumbent” advertisers rather than digging out “new” ones.
 - This is a well-known problem of externalities and free-riding in vertical relationships.
 - The vertical restraint on transporting “incumbent” advertisers within one ad platform is to resolve this problem.
 - Notice the difference between (c) in Naver/Daum and (c’) in Google: the former is the restraint on transporting advertisers **within** an ad platform, while the latter is that **across** competing ad platforms.

4. Concluding Remarks

- eBay-G market merger in 2009
 - Discretionary Decision
 - Not applying the simple conditions for presuming anti-competitiveness, KFTC exercises rational discretion based on economic analyses
 - Economic Analyses
 - The first merger simulation in Korea
 - Besides, critical losses and dynamic competition in two-sided market

- Internet Portals' alleged abuse of dominance in 2014
 - Consent Settlement
 - The first case since the introduction into the law in 2011
 - Good 'compromise' between the agency and defendants in rapid evolving industries
 - Economic Analyses
 - However, it might be more desirable if in the settlement process, more attentions had been paid to the efficiency-enhancing economic effects of the vertical restraint in question.