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**Research Report**

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# KDI FOCUS

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Applying the current regulatory framework for abuse of superior bargaining position to abusive conduct (*gapjil* in Korean) by digital platforms presents two key challenges: identifying harmed parties (victims) and incorporating efficiency considerations. Requiring the identification of each harmed party imposes significant procedural burdens in handling platform abuse cases and may be inadequate to remedy actual harm. In addition, given the intermediary nature of platform services, unfair trading practices may yield direct benefits for other user groups besides victims. Therefore, it is necessary to improve the relevant systems to reduce the burden of identifying victims and to examine possibilities for efficiency gains.



Video Report

## Improving Regulations on Abuse of Superior Bargaining Position by Digital Platforms

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## I. Introduction

Concern over platform abuse runs high, yet regulatory frameworks premised on the superior bargaining position of traditional firms fail to capture the inherent nature of platform businesses, which generate both economic harm and efficiency gains.

Discussions on platform regulation have increasingly focused on ex-ante solutions. However, given the complementarity between new and

Public concern over abusive practices by digital platforms—often referred to as *gapjil* in Korean—has been rising. In recent years, news reports have repeatedly covered food delivery apps imposing excessive commissions on partner restaurants or introducing new fee schemes to bypass controversy about commissions. Similar news has highlighted content platforms forcing unfavorable terms on creators, ride-hailing apps discriminating against taxi drivers depending on the degree of business relevance, and e-commerce platforms mobilizing business users for promotional campaigns and passing costs onto them. The steady stream of reports about digital platforms abusing their superior bargaining position has prompted calls for a new regulatory framework tailored to platform markets.

The call for a new regulatory approach stems from the recognition that unfair practices in digital platforms differ fundamentally from those in traditional firms, both in manner and impact. As will be explained in detail in the following sections, platform businesses have unique characteristics that distinguish online platforms from traditional firms. The issue is that these very characteristics function both as forces that enable platforms to exploit their business users more easily and as sources that drastically enhance user benefits. Considering the potential for exploitation, more comprehensive and stringent regulation is needed; however, once efficiency effects are taken into account, such regulation may not always be the optimal solution.

Because platform business strategies create both economic harm and benefits, identifying the appropriate regulatory level and approach proves challenging. Some argue for stronger regulation to rein in platforms' considerable capacity to exploit business users, and others caution that excessive intervention could undermine their positive contributions. Still others advocate industry self-regulation over direct government oversight as a means of fostering an efficient regulatory environment.

Recent legislative trends in Korea appear to lean toward stronger regulation, particularly in the form of ex-ante oversight and commission caps. Although none have been enacted, 41 bills on digital platform regulation have been introduced since 2021,<sup>1)</sup> many of which include ex-ante provisions. Opponents of the tougher stance generally favor adapting existing frameworks—principally the Monopoly Regulation and Fair Trade Act (the Fair Trade Act) and the Act on Fair

\* Summarized and adapted from Cho, Sung Ick, *A Study on the Superior Bargaining Position of Digital Platforms*, Policy Study 2024-05, Korea Development Institute, 2024 (in Korean).

existing frameworks, strengthening ex-post enforcement against abuse of superior bargaining positions remains crucial to reflect the distinctive characteristics of digital platforms.

Transactions in Large Retail Business (the Large Retail Business Act)—to platform markets. Some have also proposed incorporating industry self-regulation.<sup>1)</sup>

Whether through ex-ante rules or self-regulation, strengthening the effectiveness of existing ex-post enforcement mechanisms, especially under the Fair Trade Act, remains essential. Neither approach can anticipate or codify all possible forms of unfair conduct in advance. Ex-post remedies are thus indispensable for detecting and sanctioning practices outside predefined regulatory boundaries. Moreover, the prospect of robust ex-post enforcement provides a key incentive for making self-regulation effective.

However, even the ex-post regulatory regime is not fully suited to the way digital platforms operate. Focusing on the Fair Trade Act, a key ex-post regulation addressing abusive and exploitative conduct, this study examines the issues that arise when applying it to digital platform transactions and explores possible directions for improvement. Strengthening the effectiveness of existing ex-post regulation is necessary not only as a complementary mechanism when introducing a new governing system but also as a safeguard against regulatory gaps while the introduction of a new regulatory framework is delayed.

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## **II. Regulating Abuse of Superior Bargaining Position: Distinctive Characteristics of the Position of Platforms**

Abuse of superior bargaining position occurs when a business entity with transactional leverage (Party A) coerces its counterparty (Party B) into unfair trading terms and exploits its gains. To determine whether such abuse has occurred, the Korea Fair Trade Commission (KFTC) first ① identifies whether Party A holds a superior bargaining position over Party B (existence of superior bargaining position) and then ② assesses whether Party A's conduct has forced unfair trading terms on Party B (unfairness). This section examines the concept of superior bargaining position in detail and considers how the superior bargaining position of digital platforms differs from that of traditional firms.

1) Recent debates on digital platform regulation have largely centered on three areas: ① anticompetitive conduct by platforms against rival platforms or complementary service providers; ② exploitative conduct against their own business users, such as vendors; and ③ deceptive conduct toward consumers. This study focuses on improving regulatory effectiveness in addressing business user exploitation. There have been discussions on addressing these shortcomings via amendments to the Monopoly Regulation and Fair Trade Act for anticompetitive conduct, enactment of the Online Platform Fairness Act for exploitation against business users, and amendments to the Act on Consumer Protection in Electronic Commerce for deception against consumers. The discussion here pertains most directly to the Online Platform Fairness Act. However, regulatory refinement need not rely solely on new legislation. Meaningful improvements can also be achieved through amendments to existing laws, enforcement decrees, implementation rules, and review guidelines.

In assessing superior bargaining position, key factors are the extent of dependence by the counterparty (Party B) on the superior firm (Party A) and disparities in their scale or capacity.

The superior data capabilities of digital platforms increase the potential for abuse of superior bargaining position.

Despite the absence of a clear definition of superior bargaining position,<sup>2)</sup> a degree of consensus has emerged on the factors to determine whether it exists. The Supreme Court of Korea has held that superior bargaining position should be assessed by “comprehensively considering market conditions the parties are facing, disparity in overall business capacity between them, and the characteristics of the goods or services involved” (Supreme Court Decision, 97Nu19427, June 9, 2000). The existing literature categorizes these factors into two: (i) the binding force within trading relationships and (ii) differences in overall economic capacity (Shin, 2015). Put simply, bargaining position concerns (i) transactional dependence and (ii) disparities in scale or capabilities.<sup>3)</sup>

The literature finds that information asymmetry and transactional dependence are the sources of bargaining power. Information asymmetry arises not only when Party A possesses more information than Party B but also when Party A learns about what was exclusively known to Party B. For example, when Party A does not know about Party B’s production costs or methods, Party B may receive fairly adequate compensation, but once Party A becomes privy to these details, it can propose more exploitative terms.<sup>4)</sup>

It is well established that digital platforms collect and use data at a scale and quality greatly surpassing the capabilities of traditional firms. They can track consumer data that is difficult for traditional firms to obtain, such as search patterns, product comparisons, and final purchase decisions. This sharply contrasts with conventional firms, which can only check their sales volumes. The ability to combine information about consumers and business users gives platforms far stronger bargaining leverage than traditional firms.

The second source, transactional dependence, can be divided into

- 2) Supreme Court of Korea defined superior bargaining position as “a relatively superior position or a position capable of exerting substantial influence on transactional activities with counterparties” (Supreme Court Decision 2009Du24108, May 13, 2011). While this definition remains abstract and difficult to apply in practice, it clearly establishes that the bargaining position is inherently relative and depends on the counterparty.
- 3) The continuity of transactional relationships is another important consideration. In one-time or initial transactions, Party B may not suffer harm if the transaction does not proceed. In ongoing relationships, however, when securing alternative partners is difficult, Party B may have little choice but to accept new and unfavorable terms imposed by Party A under the pretext of changed circumstances. The KFTC explicitly lists “continuous transactional relationships” as a factor in determining abuse of superior bargaining position in its Guidelines on the Review of Unfair Trade Practices. However, whether unfair initial or one-time transactions should fall outside the scope of regulation remains debated. Japan, for instance, places greater emphasis on the availability of effective alternative trading partners than on the continuity of transactions.
- 4) From a purely economic standpoint, if Parties A and B merely divide profits without generating additional gains or losses through trading terms, one might question whether regulatory intervention is warranted. However, inefficiencies can arise in two ways. In the short term, Party B, anticipating unfair profit distribution, may reduce effort or avoid transactions. Over the long term, such conduct can erode innovation incentives for Party B—and potentially for Party A as well. In practice, the regulation of abuse of superior bargaining position operates less from efficiency considerations than from concerns of economic fairness.

The rapid pace of market change amplifies the risk of abuse through expanding monopsony power.

Conversely, the smaller scale of platform-specific investment mitigates the risk of abusing bargaining position.

monopsony power and hold-up from relationship-specific investment. Monopsony (or buyer) power arises when a supplier has few or no alternative buyers. The hold-up occurs when a supplier has invested in assets of little or no value to other trading partners and must continue dealing with that particular buyer to recoup its investment.

In traditional markets, monopsony power changes slowly, and it is uncommon for Party A to suddenly expand its buying power and revise trading terms.<sup>5)</sup> In contrast, digital platform markets evolve rapidly, allowing the degree of monopsony power to change just as fast. Moreover, because a counterparty's transactional dependence rests on access to users that the platform secures on the opposite side (per the cross-side network effects), monopsony power may be significant even when the platform's market share is low, once it secures a sufficiently large and loyal user base. As a result, platforms would have more opportunities than traditional firms to modify trading terms by taking advantage of the increase in buying power.

Concerns over hold-up from relationship-specific investment are less pronounced for platforms. For business users, platform-specific investments typically amount to little more than the cost of developing algorithms or adapting to the platform's transaction system.

#### **[Box 1] Superior Bargaining Position and Market-Dominant Position**

The Fair Trade Act defines a market-dominant firm as “a business entity that is a supplier or consumer in a particular business area, in a market position to determine, maintain, or change the price, quantity, quality, or other terms and conditions of transactions of goods or services, either alone or together with other business entities.” The operative elements of this definition are two phrases: “in a particular business area” and “to determine, maintain, or change the price, quantity, quality, or other terms and conditions of transactions.” The first generally refers to a market—an aggregation of competing products or services, such as the apple market or the beauty services market. Determining whether a firm holds a market-dominant position first requires defining the relevant market. Once defined, the next step is to assess the firm's ability to “determine, maintain, or change the terms and conditions of transactions” within

5) The fact that monopsony power remains static does not diminish its importance in the exercise of a superior bargaining position. When information asymmetries shift in Party A's favor or Party B undertakes new relationship-specific investments, preexisting monopsony power can serve as a foundation for more severe abuse.

Whereas market-dominant position is absolute, allowing firms to change trading terms regardless of counterparties, bargaining position is relative, varying with counterparties.

that market. A market-dominant firm can unilaterally set prices or trading methods, regardless of whether dealing with large partners or individual consumers. In essence, while limited to a specific market, a market-dominant position represents an absolute position within that market.<sup>6)</sup>

In contrast, a superior bargaining position is a relative position, determined by the degree of dependence between trading partners. Even if Party A purchases all parts produced by Party B, Party A cannot necessarily be said to hold a superior bargaining position if it has no alternative source of sufficient supply. However, it may hold a superior bargaining position over other parts suppliers (Party B). In this sense, bargaining position is relative, varying according to the counterparty. Moreover, even without market dominance, Party A may possess a superior bargaining position if Party B exclusively depends on it.

### [Box 2] Superior Bargaining Position under the Large Retail Business Act

The Act on Fair Transactions in Large Retail Business (the Large Retail Business Act) adopts the concept of “superior bargaining position.” Based on the language of the Act, this concept serves to exclude business entities without that position from being subject to the Act. Alternatively, it is understood as a concept established to identify entities subject to ex-ante regulatory measures under the Act.

It is noteworthy that Korean courts have taken the view that, in cases involving a superior bargaining position under the Large Retail Business Act, it is unnecessary to identify every counterparty. By contrast, the position under the Fair Trade Act is a relative concept that varies with the transactional standing of Party B, requiring identification of counterparties and specification of harm in each case. In cases concerning superior bargaining position under the Large Retail Business Act, however, courts have recognized Party B’s position

6) As it is often difficult to determine whether a firm has the ability to alter trading terms in practice, a presumption based on market share is commonly used. Under Article 6 of the Fair Trade Act, market dominant position is presumed when a single firm holds 50% or more of the market, or when two or three firms collectively hold 75% or more (excluding firms with less than 10%). Once presumed, the burden of proving the absence of market dominance, i.e., the inability to alter trading terms, rests with the presumed firms. The problem is that excessive reliance on the presumption rule makes it considerably difficult to establish market dominance when the thresholds are not met.

Earlier rulings under the Large Retail Business Act imposed a lighter burden in identifying counterparties (Party B) when establishing a superior bargaining position, but the Seoul High Court has recently required individual specification of harm for each victim.

more broadly as vendors in general, citing circumstances commonly shared among suppliers rather than specifying each individually (Seowon Distribution case,<sup>7</sup> Shinsegae case,<sup>8</sup> Hi-Mart case<sup>9</sup>).

In February 2024, the Seoul High Court held that there was no basis to distinguish the superior bargaining position under the Large Retail Business Act from the position under the Fair Trade Act. The court further ruled that the KTFC erred by failing to specify the individual harm suffered by each Party B.<sup>10</sup> Although this case is pending before the Supreme Court without a final ruling, it signals a shift in the understanding of the superior bargaining position that has prevailed since the Seowon Distribution case. Because the identification of Party B carries significant implications for this study, the Supreme Court's forthcoming decision warrants attention.

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### III. Challenges in Applying Current Regulations on Abuse of Superior Bargaining Position to Platforms

Current regulatory practices concerning the abuse of a superior bargaining position generally follow two steps: ① assessing whether a superior bargaining position exists and ② determining whether Party A's conduct constitutes a sufficiently improper abuse. To establish whether the suspected firm qualifies as Party A (with a superior bargaining position), the affected counterpart, Party B, must first be identified. Because a superior bargaining position is inherently relative, it can only be confirmed by comparing the circumstances and capacities of the two parties. Demonstrating unfairness further requires specific and concrete identification of the harm suffered by Party B, as both the nature and extent of the harm should be examined. Existing regulations, however, contain no procedure for weighing the positive effects that a transaction may generate for other stakeholders, since the harmed Party B is evident, and no third party beyond Parties A and B is typically treated as a direct stakeholder.

However, platforms that set general trading rules within the digital ecosystems they create may cause broader harm to business users rather than to a limited number of specific counterparties. For intermediary platforms, direct stakeholders include both business

7) Seoul High Court Decision, 2017Nu86226, February 13, 2019.

8) Supreme Court Decision, 2018Du42573, August 30, 2018.

9) Supreme Court Decision, 2023Du49339, November 16, 2023.

10) Seoul High Court Decision, 2022Nu36102, February 1, 2024.

For platforms, the authority to set and revise transactional rules substantially amplifies the potential for abusing their bargaining position through changing trading terms, but their role as general rule-setters limits their ability

users and consumers, and business users themselves may be segmented into multiple groups facing different circumstances. In such settings, even when certain business users (Party B) are harmed, consumers or other business users may experience positive economic effects.

These characteristics highlight two main challenges in applying existing regulations on the abuse of superior bargaining position to digital platforms: ① the difficulty of specifying harmed parties (Party B) and ② the potential efficiency gains accompanying exploitative conduct. The current framework may fail to capture the full range of economic effects arising from conduct by platforms, limiting the precision and effectiveness of regulatory responses.

### 1. Challenges in Identifying Harmed Party B

Existing rules on abuse of bargaining position require identifying the harmed Party B and the specific harm suffered. The Large Retail Business Act exceptionally recognized a superior bargaining position for vendors collectively; however, the recent Coupang case (see Box 2) left the issue of identifying harmed parties unresolved. In contrast, the power of platforms functions less as authority over individual counterparties than as collective influence over business users as a whole. A platform's rule-setting authority binds business users at large as absolute power rather than relative capacity. Accordingly, when abuse occurs, harm is not confined to a few identifiable firms but may affect many unspecified users. When harm is widespread among vendors, requiring the identification of individual Party Bs creates significant enforcement hurdles in practice. More fundamentally, when harm is widespread, it is questionable whether such individual identification is an appropriate regulatory approach.

These challenges call for closer examination of the rule-setting authority of digital platforms. Platforms provide transaction venues but do not select individual participants. Rules are established when users and service duration cannot be specified. Yet abuse of bargaining position always stems from changing trading terms, and for platforms, this authority is intrinsic and fundamental.

For traditional dominant firms (Party A), changing trading terms is not always unconstrained. Each contract requires negotiation with Party B, and its alternative trading partners exert indirect competitive pressure. Platforms, by contrast, face competition from rival platforms but retain fundamental authority to establish or revise transaction

to exploit counterparties individually.

Mandating the specification of Party B in cases involving abuse of a superior bargaining position by platforms is misaligned with the economic realities of platforms with general rule-setting authority.

The intermediary role of platforms broadens the scope of direct stakeholders in platform

rules without consulting individual vendors. In terms of their capacity to change trading terms, platforms thus possess greater potential to abuse bargaining position than traditional firms.

Because this rule-setting authority operates uniformly and without discrimination, it constrains individualized abuse toward specific Party Bs. Traditional Party As have exercised transactional leverage through individual contracts with counterparties such as suppliers, modifying terms over time. However, platforms that govern transactions through general rules cannot easily tailor terms to individual business users.<sup>11)12)</sup> The main reason lies in the large number of counterparties and their inability to determine who participates and for how long. Another stems from their standing and responsibility as rule-setters: excessive or self-serving use of this authority against individual users risks eroding credibility as platform operators and weakening their competitive position. Such misuse also invites political and public pressure. As abuses by platforms reach a broader range of stakeholders than those by traditional dominant firms, public scrutiny tends to be much stronger.

Given these characteristics, the requirement to specify Party Bs does not reflect the realities of platform transactions. The power of digital platforms to abuse their superior bargaining position comes from their general rule-setting authority, rather than individual contractual relationships. Yet platforms' incentives to restrain abuse also come from that same authority. Because the platform's power to abuse and its incentive to exercise restraint both arise from the rule-setting authority that is not directed at specific trading partners, requiring identification of an individual harmed party is somewhat inconsistent with economic reality.

## 2. Overlooking Potential Efficiency Gains

Existing regulations have not assessed potential efficiency effects that superior bargaining position abuses may produce, regardless of whether Party A intended them. For traditional firms, such abuse is essentially exploitative, as it rarely affects markets or other economic

11) Discrimination against business users through algorithmic manipulation may occur because platforms cannot tailor contracts to individual business users. Unable to differentiate among business users and offer different terms, platforms may instead discriminate against or exploit them by covertly changing trading conditions.

12) The relatively low risk of individualized exploitation also helps mitigate problems with hold-up and deterred relationship-specific investments. When business users make platform-specific investments, they can recover their costs only through transactions on that platform. However, as general rule-setters, platforms have limited ability to impose tailored exploitative terms considering each user's circumstances. As a result, some users undertaking such investments may avoid exploitation altogether or experience it to a lesser degree.

transactions, creating the possibility that conduct seemingly exploitative toward certain users may instead yield direct and substantial benefits for users on the opposite side or in related positions.

actors beyond the unjust gains extracted from Party B. However, digital platforms fundamentally function as intermediaries, and their business users exhibit consumer-like characteristics. These properties suggest the possibility that abusive conduct by platforms toward business users may produce direct and immediate benefits for users on the opposite side of the platform or on the same side.<sup>13)</sup> When abuse involves the use of data, such user benefits may be even clearer. In these circumstances, applying traditional rules against power abuse without modifications to platforms could unintentionally reduce efficiency and diminish overall economic welfare.

Conduct by platforms that appears abusive can enhance efficiency due to their distinctive features. First, platforms serve as highly integrated intermediaries in multi-sided markets. Whereas traditional firms in the position of Party A typically act as exclusive or dominant counterparties to Party B, platforms function as powerful hubs connecting one group of users (vendors) with another (consumers). In conventional transactions, the key contracting parties are Party A and Party B. In platform transactions, they are business users and consumers, with the platform acting as an intermediary rather than a direct party. Nevertheless, because the ability of business users to consumers would decline sharply without platforms, platforms remain principal transactional actors, though in a different place.<sup>14)</sup>

Considering the platform's intermediary function and relationship with vendors, its business strategies that outwardly resemble traditional abuses of superior bargaining position can produce unintended

13) The potential efficiency gains in platforms differ from those found in the abuse of superior bargaining position by traditional firms in that such gains materialize “directly to the direct stakeholders.” For instance, when finished goods manufacturers force exploitative terms on parts suppliers and may subsequently lower final product prices, it may be interpreted as consumers benefiting from such conduct. However, these benefits are better understood as incidental and fortuitous outcomes of profit-maximizing behavior by manufacturers, and end consumers are hardly direct stakeholders in transactions between manufacturers and suppliers. In short, they are ancillary benefits accruing to indirect stakeholders. In contrast, in platform transactions, the direct parties are business users and consumers, while the platform serves as an intermediary that coordinates their exchange. Moreover, a platform's adjustment of trading terms is not a unilateral act following one-sided transactions but rather part of a simultaneous determination of terms on both sides from the outset. In other words, unlike consumers in traditional cases of abuse of superior bargaining position, platform consumers are direct stakeholders who are themselves taken into account when such conduct occurs.

14) Roughly speaking, platforms can be understood as intermediaries positioned at bottlenecks where business users meet final consumers, effectively selling access to them. From this perspective, business users also exhibit consumer-like attributes as users of platform services. They act both as suppliers providing goods or content displayed to consumers on the platform and as consumers purchasing the space through which their products reach final consumers. This contrasts with traditional firms, where Party A functions solely as a buyer of Party B's products. Because business users share these consumer-like characteristics, changes in trading terms by platforms may at times benefit business users (or some of them). For example, when traditional firms engage in price discrimination, efficiency gains may arise as some consumers benefit from lower prices or gain access to products previously inaccessible, even as others face higher prices. Similarly, when a delivery app raises commission rates for large restaurants but lowers them for smaller ones, this may appear to constitute an abuse of superior bargaining position toward the large restaurants, but it can benefit smaller establishments.

outcomes. When platforms revise trading terms for business users, the changes directly affect consumers, even if the new terms are only somewhat unfavorable to the users. In certain circumstances, consumer welfare may even improve. Suppose a food delivery app passes on delivery fees previously shared with consumers entirely to restaurants, but restaurants cannot find a way to pass those costs onto consumers. While these changes are clearly disadvantageous to restaurants, they can benefit consumers. If the app transfers part of its costs to restaurants and uses all the resulting savings to issue discount coupons to customers, the outcome is vastly unfavorable for restaurants. While the platform gains little, consumers alone enjoy significant benefits. Moreover, platform ecosystems often encompass closely linked adjacent service areas. When the delivery app collects additional fees from restaurants and disburses them to delivery drivers or agencies, the resulting adjustment constitutes a change in trading terms that harms restaurants and benefits drivers.

Second, platforms can capitalize on the data generated through their intermediary activities. By facilitating transactions, they collect extensive information on both business users and consumers. These data can be used to improve transactional convenience, enable more satisfactory matches, and support the development of products and services that are more appealing to consumers and business users alike. These efficiency gains have already been widely observed in practice.

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## **IV. Policy Recommendations**

**Because abuse of superior bargaining position by platforms can cause widespread harm across many parties, the burden of identifying harmed parties should be eased when common**

### **1. Regulatory Adjustments for Abuse of Superior Bargaining Position**

To address the two challenges identified earlier and enhance the effectiveness of regulation on the abuse of superior bargaining position by platforms, this study proposes three regulatory adjustments. First, ① the requirement to identify harmed parties should be eased. The interpretation of superior bargaining position under the Large Retail Business Act, as applied before the Seoul High Court's Coupang decision, offers a reference (see Box 2). If common circumstances among harmed parties can be established and specified conditions are met, the superior bargaining position of platforms could be recognized and regulated without requiring the individual identification of Party Bs or proving specific harm, provided

circumstances among them are sufficiently established.

When harm among users becomes widespread, regulation should consider the impact on the trade practice to ensure that it reflects real economic conditions.

Given the possibility for directly affected third parties to benefit from abusive practices by platforms, efficiency-enhancing effects should be examined during case review.

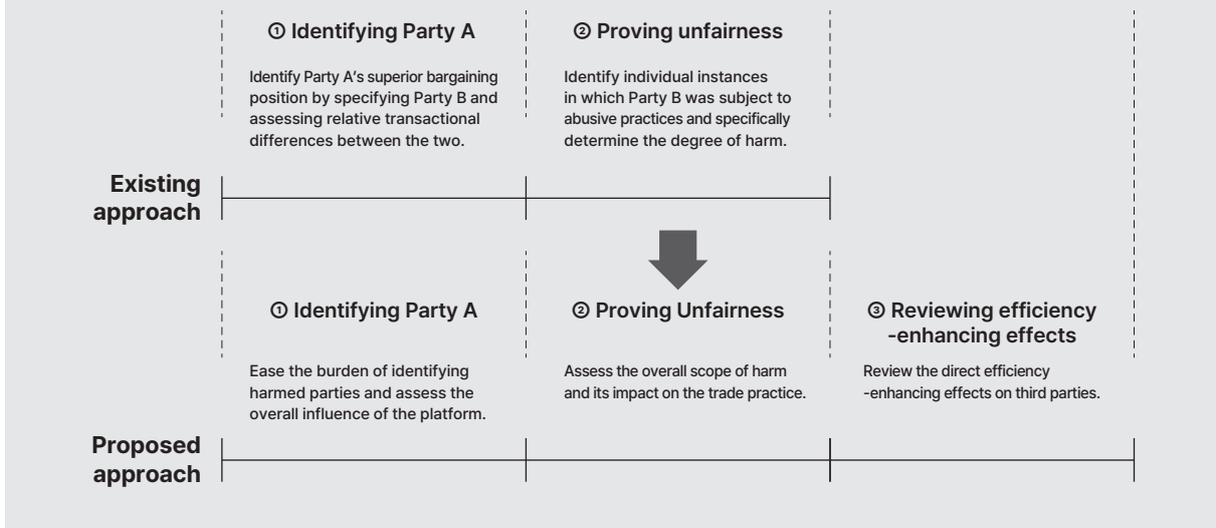
that a convincing basis or rationale for establishing such commonality is presented. Regarding the identification of victims and the facts of harm, a change in the court's approach is necessary, and some level of institutional reform may be required. A more principle-based approach, while practical challenges may arise, would be to amend the review guidelines first and then convince courts by presenting rational and logical arguments, case by case, to encourage a shift in their attitudes. However, easing the identification requirement risks blurring legal boundaries between abuses of superior bargaining position and abuses of market dominance, allowing the rules on abuse of superior bargaining position to be used as a workaround for regulating abuse of market-dominant position. To prevent arbitrary enforcement, the rationale and conditions for regulatory relaxation should be clearly defined.

Second, the regulatory refinement must incorporate ② an assessment of the impact on the trade practice.<sup>15)</sup> Even when each harm to individual parties is not large, widespread instances can materially distort fair trade practices. Accordingly, the adverse effects of platform business strategies should be evaluated with appropriate scope and rigor. One possible approach is to add anti-competitiveness to the criteria for unfair trading practices. However, requiring the same level of proof as in the market-dominant position would weaken regulatory effectiveness. It is necessary to design the institution by appropriately calibrating the evidentiary standard according to the overall impact on the market practice, and in the future operation of the institution, careful handling—particularly by the courts—will be required.

Lastly, ③ efficiency-enhancing effects should be taken into consideration. Platform business strategies involve multiple direct stakeholders beyond the harmed counterparties, and the economic impacts on them are both immediate and substantial. When platform strategies generate positive outcomes for stakeholders, ignoring them could inadvertently undermine efficiency across markets and the overall economy. One approach is to allow firms to invoke efficiency defenses, as in cases involving abuse of market-dominant position.

15) The requirement to assess effects on the trade practice is closely connected with the Supreme Court's *Geumbo Development* decision (Supreme Court Decision 2012Du18325, September 10, 2015). In that case, consumers in general were designated as Party B, but it was special in that they could be individually identified. The Court held that when multiple victims are similarly situated, it is necessary to examine the impact on the trade practice. This suggests a link between the identifiability of affected parties and the need to evaluate effects on the trade practice. Moreover, since platform business users also function as consumers of platform services, this link warrants careful consideration in the platform context.

**Figure 1. Improving Regulation of Abuse of Superior Bargaining Position by Platforms**



## 2. Shift to Applying Abuse of Market-Dominant Position

Because the authority of platforms to set and revise general rules endows the absolute dominant position, it will be necessary to shift toward regulating abuses of market-dominant positions in the long term.

The position that allows platforms to exploit business users is closer to an absolute one exercised within the trading ecosystems they create than to relative leverage over specific counterparties. This conduct aligns more closely with abuse of market-dominant position than with abuse of superior bargaining position (see Box 1).

To transition from the abuse of superior bargaining position by platforms to the abuse of market-dominant position, two issues must first be addressed. First, the regulatory framework needs to be refined to determine the market-dominant position based on a platform's ability to alter trading terms rather than market share. For traditional firms, a 50% market share has long served as the benchmark for market dominance. However, for platforms, defining the relevant market is difficult, and a 50% threshold may not be proper to capture market power. As the rule maker, platforms can often exert substantial influence even without large market shares. Once a platform secures a sufficient base of single-homing users on one side, competitive pressure from rival platforms weakens, making it easy to change trading terms. KFTC's recent attempt to include user numbers and mediated transaction volumes, alongside market share, as presumptive indicators of market power can be viewed as a step in this direction. For the concrete policy suggestions, soft institutional adjustments that modify the application of the existing system can also be considered, in addition to institutional reform through new legislation.

Second, steps should be taken to include exploitative abuse in the enforcement of regulations on the abuse of market-dominant position. Abuse of market dominance generally takes two forms: exclusionary abuse, which pushes out competitors or prevents new entry, and exploitative abuse, which imposes unfair prices or conditions on counterparties. Globally, enforcement against exploitative abuse has been withheld. Although there are occasional cases where the exploitation of business users by platforms results in the exclusion of competitors, in principle, this involves using one's own business capabilities to extract benefits from the trading partner. As such, regulating exploitative conduct within the market dominance abuse rules would be difficult. Nevertheless, recent developments in the European Union and several European countries show a growing tendency to examine exploitative abuse while regulating abuse of market dominance by platforms.<sup>16)</sup> Korea, too, should begin exploring ways to address such abuse under the market dominance regime. ■

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## References

- Shin, Youngsu**, "A Study on the Jurisprudence on Abuse of Superior Bargaining Position Formed by Judicial Cases," *Commercial Case Law Review*, 28(1), pp.152–186, 2015 (in Korean).
- Cho, Sung Ick**, *A Study on the Superior Bargaining Position of Digital Platforms*, Policy Study 2024-05, Korea Development Institute, 2024 (in Korean).
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16) Germany examined user exploitation related to personal data protection in its Facebook case. The EU and Italy reviewed discriminatory treatment among vendors in the Amazon cases, which can be viewed as examining exploitative conduct toward business users.

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