京都大学
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Japan and Korea’s Competition Law

– Digital Platform Cases –

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Kyushu University, June 2025

Overview: Similarities and Differences

Korea's competition law, MRFTA (1986), and Japan's competition law, AMA (1947).

- "Monopoly Regulation and Fair Trade Act"
- "Act on Prohibition of Private Monopolization and Maintenance of Fair Trade"
- Abbreviated as "**公正去來** 法" (KR) and "**独占禁止** 法" (JP) (Question: Why?)

Similarities (illustrative, and roughly listing)

- Similar "purpose" provision (Note: strong emphasis on '**fairness**')
- Unfair trading practices (UTPs) prohibition (in addition to conventional tools)
- Administrative agencies (adopting an integrated model): "Fair Trade Commission" (investigation, adjudication)
- Administrative sanctions: remedial order, administrative fine, commitment procedure, leniency, …
- Civil remedies, such as injunctions (for UTPs) and damages
- Criminal sanctions as well (at least, on statutes)

Differences (between **KR** and **JP)** (illustrative, not exhaustive)

- Abuse of dominance (incl. direct exploitation) ≠ Monopolization
- Aggregate dominance control: Unfair support (tunneling) prohibition ≠ (No equivalent)
- Administrative fines: Almost all practices ≠ Limited scope
- Enforcement: Aggressive (incl. criminal ones) ≠ Prudent (seemingly, becoming tougher)
- Judicial review: Two-tier system ≠ Three-tier system
- Breaking-up remedy: No ≠ Yes (Art 2(7) and Art 8-4)

Overview Substantive Rules

	Japan AMA; General Designation (GD)	Korea MRFTA; Enforcement Decree, Art 52, T2 (ED)
Horizontal Restraints - Group boycott (UTPs) - Decision of Associations	Art. 3 with Art. 2(6) Art. 19 with Art. 2(9)(i), and with GD 1 Art. 8(i)	**Art. 40(1)*** Art. 45(1)(1) → ED 1(a) **Art. 51(1)(1)***
Unilateral Conduct - 'Market Power'-related - ASBP (aka. AED)	Art. 3 with Art. 2(5) (monopolization) Art. 19 with Art. 2(9)(v), and with GD 13	Art. 5(1) (abuse of dominance) Art. 45(1)(6) → ED 6
UTPs - Refusal (lessening compet, "l.c.") - Predatory pricing (l.c.) - RPM (l.c.) - Discrimination (l.c.) - Sales restrictions (l.c.) - Tying (l.c. or unfair) - Unfair inducement (unfair) - Unfair interference (l.c. or unfair)	(Art. 19 with …) GD 2 Art. 2(9)(iii), and GD 6 (low), 7 (high) Art. 2(9)(iv) Art. 2(9)(ii), and GD 3, 4 GD 11 (exclusive), 12 (restrictive) GD 10 GD 8 (deceptive), 9 (benefits) GD 14, 15 (unfair or lessening compet)	Art. 45(1)(1) → ED 1(b) Art. 45(1)(3) → ED 3(a) (low), (b) (high) Art. **46** Art. 45(1)(2) → ED 2(a), (b) Art. 45(1)(7) → ED 7(1)(a) (exclusive), (b) (region or customer) Art. 45(1)(5) → ED 5(a) Art. 45(1)(4) → ED 4(a) (benefits), (b) (deceptive) Art. 45(1)(8) → ED 8 (unfair)
Ex ante Merger Control	Arts. 10 (acquisition) and 15 (merger)	Arts 9 (M&A)

GD: No admin. fines (*i.e.*, surcharges)

Art. 89(1) + Art.95(1) (dual liability)
- imprisonment: ≤ 5 yrs or
- criminal fine: ≤ ¥5M

Arts. **124**, 125 + Art. 128 (dual liability)
- imprisonment: **≤ 3 yrs** or 2 yrs, or
- criminal fine: **≤ ₩200M** or ≤ ₩150M

Art. 109(2) (Punitive civil damages ≤ x3 (*))

Statutory Goal(s)

	Japan AMA	Korea MRFTA
Article 1 Purpose	The purpose of this Act is to promote fair and free competition, stimulate the creative initiative of enterprise, encourage business activity, heighten the level of employment and actual national income, and thereby promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, preventing excessive concentration of economic power and eliminating unreasonable restraints on production, sale, price, technology, etc., and all other unjust restrictions on business activity through combinations, agreements, etc.	The purpose of this Act is to prevent the abuse of market dominance by business entities and excessive concentration of economic power and to promote fair and free competition by regulating illegal cartel conduct and unfair trade practices, thereby encouraging creative business activities, protecting consumers, and promoting the balanced development of the national economy. (Constitution, Art. 119(2): "The State may regulate and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power and to democratize the economy through harmony among the economic agents.")
Commonalities	- Fair and free competition - Encouraging creative business activities - Democratic economy	- Consumers - Wholesome/balanced development (* Employment and national income considerations in Japan's law)

Horizontal Restraints

	Japan AMA	Korea MRFTA
Articles	Art. 3 An enterprise must not effect … unreasonable restraint of trade. Art. 2(6) The term "unreasonable restraint of trade" as used in this Act means such business activities, by which any enterprise, by contract, agreement or any other means irrespective of its name, in concert with other enterprises, mutually restrict or conduct their business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade. * Concerted refusal is also prohibited as a UTP Art. 19 with Art. 2(9)(i), and with GD 1	Art. 40(1) No business entity shall agree to engage in any of the following conduct that [unjustly] restricts competition jointly with other business entities (hereinafter referred to as "illegal cartel conduct") by contract, agreement, resolution, or any other method or causes other business entities to do so: (agreements on) 1. prices, 2. non-price trading conditions, 3. restricting output, 4. market/customer allocation, 5. capacity suppression, 6. products' features, 7. joint operations, 8. bid-rigging, and 9. information exchange. * Before the Feb 5, 1999 amendments, "in any particular business area" was included. It is still required by interpretation (*Toyota et al.* (2012) - 2010Du11757; Also, Art. 2(4) "particular business area") * Concerted refusal is also prohibited as a UTP Art. 45(1)(1) → ED 1(a)
Comparative Notes	- "in concert with" "jointly with" → meeting of the minds is required - "with other" businesses → *mainly* in horizontal relations - "any other means" ≠ "agree" (info-exchange?)	- Implementation is not required - Market definition is required (as a rule) - Anti-competitive effect is required (no *per se*) - "Public interest" "unjustly" → room for teleological assessment

Albamon / Alba Heaven case (2023)

Decision No. 2023-112 (delivered on Aug 8, 2023)

Relevant Market:

- Part-time job platform connecting part-time job seekers with employers
- full-time recruitment platforms X occupation-specific platforms X local job platforms, boards X

Services:

- free services, with relatively limited visibility
- paid services, with enhanced promotional exposure.
- Costs are typically charged to employers.

Market Structure:

- Albamon 64%, Alba Heaven 36%

Conduct and its anti-competitive effects:

- In 2018, expecting a contraction in the part-time job market due to the sharp increase in the mandated minimum wage (7-8% → 16.4%),
- they agreed, through various means, to reduce the quality of free services (to prompt the shift to paid services) and to raise the prices,
- *via* using direct meetings, phone calls, and messages.
- They staged the implementation to avoid backlash.
- Prices were increased (The decision does not state whether more users subscribed to the paid service → In fact, not needed)

Unilateral Conduct 1: Monopolization / Abuse

	Japan AMA	Korea MRFTA
Articles	Art. 3 An enterprise must not effect private monopolization …. Art. 2(5) The term "private monopolization" as used in this Act means such business activities, by which any enterprise, individually or by combination, in conspiracy with other enterprises, or by any other manner, excludes or controls the business activities of other enterprises, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade. * 'a substantial restraint of competition' is interpreted as meaning 'establishing, maintaining or strengthening market dominant power (市場支配力)' (*NTT East* (2010)); the power is understood as 'a state in which competition itself has significantly decreased and a situation has been created in which a specific business operator or a group of business operators can control the market by determining price, quality, volume, and various other terms with some latitude at its or their own volition.' (*Toho-Shintoho* (1953))' * JFTC's prioritizes the case where a firm's market share exceeds 50% (2009 Guidelines (revised 2020), p.3) * Intent: the JFTC considers it "not essential" but "a subjective element" that "can be an important fact leading the presumption" of exclusionary conduct (2009 Guidelines (revised 2020), pp.4-5)	Art. 2(3) The term "market-dominant business entity" means 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; …(considerations)... Art. 5(1) No market-dominant business entity shall engage in any of the following practices: "unjustly" [exploitation] 1. determining prices; 2. limiting output; 5. … harming consumer interests [exclusion] 3. interfering with business activities, or 4. new entry, 5. excluding competitors Article 6 A business entity … whose market share amounts to any of the following … shall be presumed to be a market-dominant business entity: 1. CR1 ≥ 50%, 2. CR3 ≥ 75% (with MS_i < 10% excluded) * (for exclusion type) "[unjustness] should be recognized only where a [practice] can be deemed perpetrated with an intent or objective of maintaining or reinforcing monopolistic status in the market, e.g., artificially influencing market order by restricting free competition in the market, and with an determination that the [practice] is likely to have anti-competition effects from an objective point of view." (*Posco* (2007) - 2002Du8626)

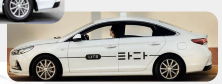
Unilateral Conduct 1: Monopolization / Abuse

	Similarities	Differences
Japan AMA & Korea MRFTA Comparative Notes	- Covering individual, collective situation - Exclusion-centered framework; - Market (dominant) power requirement; Similar understanding of market power (ability to behave independently of its competitors, customers, etc.) - Market definition is required 50% market share as a benchmark - Mere possession of power - It's OK - Abuse → Effect-based approach Effects are objectively assessed while subjective intent plays a role - Justifications → unlikely	- Japan "monopolization" v. Korea "Abuse" * Question: Conceptually, real differences? - Direct exploitation: Korea only - Control-type violation: Japan only - 50% market share role: Japan - enforcement prioritization Korea - legal presumption - Subjective intent Japan – not required, but considered Korea – required, but can be presumed

Kakao Mobility I, II (2023, 2024)

I : Decision No 2023-093, delivered on Jun 13, 2023
(Seoul High Court's decision was out on May 22, 2025)
II: Decision No. 2024-359, delivered on Dec 12, 2024






Relevant Markets:

- Taxi ride-hailing app market
- Franchise taxi service market

Market Structure:

- *Kakao T*'s market share: > 90%
- *Kakao T Blue*'s market share: 70-80%

Conduct :

- *Kakao Mobility I* → It allocate ride requests (including more beneficial long-distance calls) **preferentially** to its affiliated drivers (by prioritizing them based on the request acceptance rates – as Kakao-affiliated taxis showed higher acceptance rates).
- *Kakao Mobility II* → It required competing franchise taxi operators to either pay fees or share real-time operational data, *e.g.*, ride information; if the operators refused, Kakao blocked access to its taxi ride-hailing app for drivers affiliated with those competitors.

Effects (inferring intent):

- *Kakao Mobility I* → Spillover effects on the taxi ride-hailing market (increased revenue for affiliated drivers → more drivers join the affiliation → network effects arise (and positive feedback loop); cementing dominance in the app market; and exploitation against non-affiliated taxi drivers → Overturned by the Seoul High Court (2023Nu50891)
- *Kakao Mobility II* → Foreclosure effects in the entire taxi franchise service market (and the reduced service provision, raised rivals' costs, limited product/service diversity, and stifled innovation); and exploitation against other franchise-affiliated taxi drivers.

Applied provisions:

- *Kakao Mobility I* → **Discrimination**: Art 5(1)(3) and Art 45(1)(2); **ASBP**: Article 45(1)(6)
- *Kakao Mobility II* → **Interference**: Art. 5(1)(3); **ASBP**: Art.45(1)(5)

Unilateral Conduct 2: ASBP

<table>
<tr><th></th><th>Japan AMA</th><th>Korea MRFTA</th></tr>
<tr><td>Articles</td><td>Art 19 An enterprise must not employ unfair trade practices.

Art. 2(9)(v)
(v) engaging in any act specified in one of the following by making use of one's superior bargaining position over the counterparty unjustly, in light of normal business practices:

(a) causing the counterparty in continuous transactions (including a party with whom one newly intends to engage in continuous transactions; the same applies in (b) below) to purchase goods or services other than those to which the relevant transactions pertain

(b) causing the counterparty in continuous transactions to provide money, services or other economic benefits

(c) refusing to receive …, [returning], delaying payment … or reducing the amount of payment, or otherwise [trading] in a way disadvantageous to the counterparty

Art 2(9)(vi)(e) → GD 13 (Unjust Interference with appointment of officer in one's transacting party)
Causing a corporation which is one's transacting party to follow one's instruction in advance, or to get one's approval, regarding the appointment of officers of the said corporation (meaning those as defined by Article 2, paragraph (3) of the Act (The same shall apply hereinafter)) , unjustly in light of the normal business practices by making use of one's dominant bargaining position over the party.</td><td>Art. 45(1) No business entity shall perform … unfair trade practices … or cause … other business entity to perform such acts: 6. Making transactions with the other party to the transaction by unfairly taking advantage of the bargaining position of the business entity itself;

* No continuity required (by interpretation in LH (2022) 2021Nu60719)

ED 6 Abuse of the Position
A. Forced Purchase: conduct in which an undertaking forces its trading counterparty to purchase goods or services against the will of the counterparty

B. Forced Provision of Benefit: conducts in which an undertaking forces its trading counterparty to provide money, goods, and services or other financial benefits for the welfare of the undertaking in question

C. Imposing Sales Target: conducts in which an undertaking sets a sales target on the goods or services it supplies and forces its trading counterparty to meet the target

D. Imposed Disadvantages: conducts in which an undertaking imposes disadvantage to its trading counterparty by setting or a changing terms of trade or in the execution of the trade, through means other than forced purchase, forced provision of benefits or imposed sales target

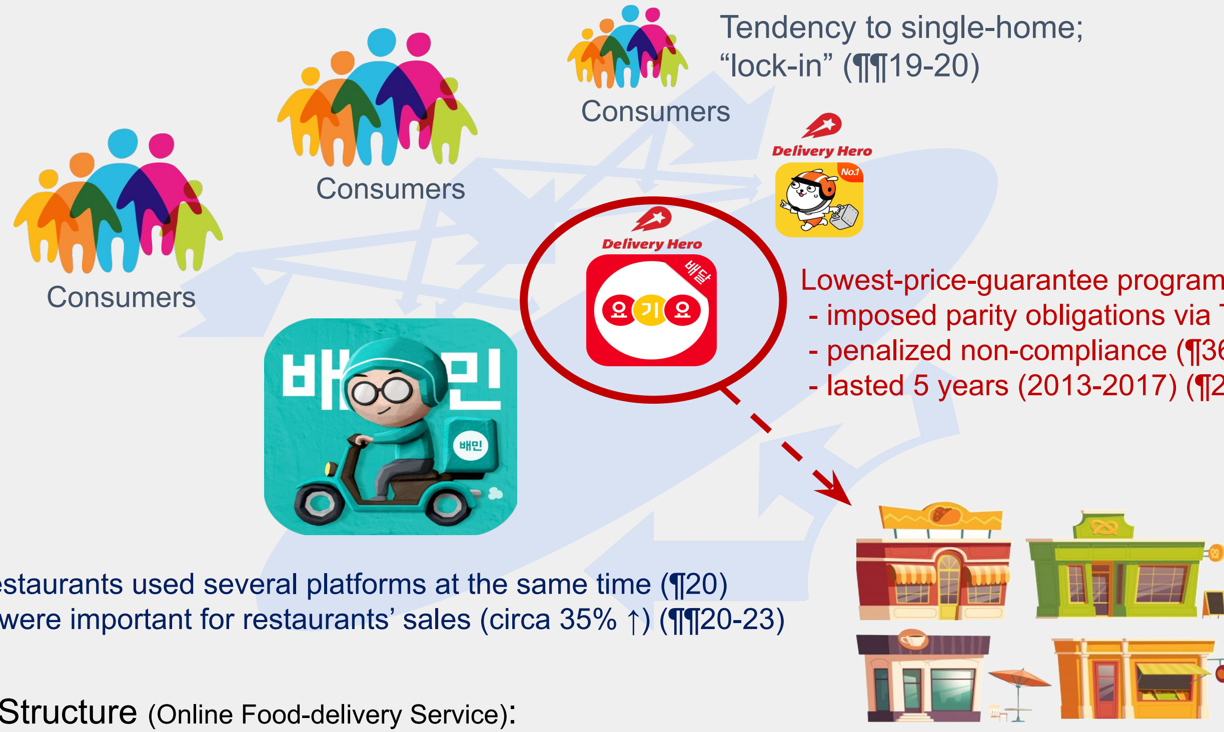
E. Interference with Business Management and Operations: conducts in which an undertaking interferes with management and operations of its trading counterparty by imposing restriction on items manufactured, scale of facilities and equipment, quantity of manufacture, and terms of trade, or by giving order or approval for appointment or dismissal of staff and executives</td></tr>
</table>

Unilateral Conduct 2: ASBP

	Commonalities	Comparative Notes
JP AMA & KR MRFTA Comparative Notes	- Power-over-based approach - On-going continued relationship is not a precondition - Fairness-focused framework (UTP) - Targeting similar conduct: *e.g.*, forcing purchases, requiring benefits, imposing disadvantages, interfering (except imposed sales target) - Direct exploitation concerns Japan: 'undermining foundations of free compet' Korea: 'undermining foundations of fair trade'	- Asymmetry of bargaining power? Structural asymmetry in the market? - Market-wide impacts – required? **Japan**: "a disadvantage on a large number of transacting parties" or "a disadvantage only on a specific transacting party, but the degree of disadvantage is high or such act, if left unaddressed, is likely to be carried out to other transacting parties."(2010 Guidelines, p.3) **Korea**: "… in cases [of ASBP against] a general consumer … from a [wider] perspective (i.e., impact on trade order), acts that may likely damage unspecified number of consumers stemming from a business operator taking advantage of one's position and/or acts that [may] undermine fair trade order stemming from continuous and repetitive acts of unfair trade practice." (*Geumbo Development* (2015) - 2012Du18325)

Delivery Hero case (2020)

Decision No. 2020-251 (delivered on Aug 24, 2020)



Tendency to single-home;
"lock-in" (¶¶19-20)

Lowest-price-guarantee program (¶26)
- imposed parity obligations via T&C (¶38)
- penalized non-compliance (¶36)
- lasted 5 years (2013-2017) (¶27)

Asymmetry
- Bottleneck: Restaurants used several platforms at the same time (¶20)
- Delivery apps were important for restaurants' sales (circa 35% ↑) (¶¶20-23)

Market Structure (Online Food-delivery Service):
- Yogiyo 26% (by volume of sales in 2015-2017)

Conduct and Unjustness:
- Imposing MFNs, against wills (freedom to set prices) and the beneficiary pays principle (foisting costs)
- No justifications

Violation of Art. 45(1) MRFTA (ED 6, (E)) → Referred for criminal prosecution, but ultimately dismissed by the Supreme Court (2024Do11863, Feb 20, 2025).

UTPs: Refusal, Predation

<table>
<tr><th></th><th>Japan AMA</th><th>Korea MRFTA</th></tr>
<tr><td></td><td>Art 19 An enterprise must not employ unfair trade practices.</td><td>Art. 45(1) No business entity shall perform … unfair trade practices … or cause …</td></tr>
<tr><td rowspan="2">(Unilateral) Refusal</td><td>GD 2 Unjustly refusing to trade, or … causing …</td><td>Art. 45(1)(1) → ED 1(b) Unjustly refusing to trade …

* If the effect is significant → Art. 5(1)(3) or (4) MRFTA</td></tr>
<tr><td colspan="2">Comparison:
- Not much difference. Neither is often used unless the perpetrator holds market (dominant) power.
- In Korea, the KFTC may impose administrative fines (Art. 50), in addition to correction orders (Art. 49).</td></tr>
<tr><td rowspan="2">Predatory Pricing</td><td>Art. 2(9)(iii) without justifiable grounds, continuously supplying goods or services at a price far below the cost incurred to supply them, thereby tending to cause difficulties to the business activities of other enterprises
GD 6 In addition to [Art. 2(9)(iii)] unjustly …for a low consideration
GD 7 (same, but on high pricing)</td><td>Art. 45(1)(3) → ED 3(a) In the case of supplying goods or services, without unjustifiable reason, supplying them at a price grossly lower than the cost of supply or unjustly supplying them at a low price, thereby likely to exclude competitors of oneself or one's affiliates.
ED 3(b) (same, but on high pricing)

* If the effect is significant → Art. 5(1)(5) MRFTA</td></tr>
<tr><td colspan="2">Comparison:
- Both adopt a two-layered approach: 'without unjustifiable reasons' → for continuous pricing;
'unjustly' → for others, incl one-off pricing
* 'without justifications' and 'unjustness': a matter of burden of proof.
- Harm to competitors alone isn't enough—harm to competition is required.</td></tr>
</table>

UTPs: RPM

	Japan AMA	Korea MRFTA
	Art 19 An enterprise must not employ unfair trade practices.	(It's stipulated in the same Chapter but in different provision)
RPM	Art. 2(9)(iv) supplying goods to another party who purchases the relevant goods from oneself while imposing, without justifiable grounds, one of the restrictive terms listed below: (a) causing the party to maintain the selling price of the goods that one has determined, or otherwise restricting the party's free decision on selling price of the goods (b) having the party cause an enterprise that purchases the goods from the party maintain the selling price of the goods that one has determined, or otherwise causing the party to restrict the relevant enterprise's free decision on the selling price of the goods. Art. 23(4) (exemption for copyrighted works)	Art. 2(20) The term "practice of resale price maintenance" means an act in a transaction of goods or services whereby a business entity forces another business entity which is the other party to the transaction, or any other business entity in each subsequent transaction stage, to sell goods or to provide services at a price determined by the first-mentioned business entity, or an act of making a transaction under other binding terms and conditions thereon to sell goods or to provide services at the determined price. (since Dec 29, 2020) (Also, *Callaway Golf* (2011) - 2010두9976) Art. 46 No business entity shall engage in practices of resale price maintenance: *Provided*, That this shall not apply in any of the following cases: 1. Where there [are justifiable reasons] for practices of resale price maintenance, such as when the effect of increasing consumer welfare due to the increase in efficiency is greater than the negative effect of restricting competition; 2. [copyrighted works].
	Comparison: - Restriction is required (Q. excluding vertical agreements?) - Structure: anti-competitive first, pro-competitive later (In practice, Japan's approach is more rigid than Korea's)	

UTPs: Discrimination

<table>
<tr><td></td><td>Japan AMA</td><td>Korea MRFTA</td></tr>
<tr><td></td><td>Art 19 An enterprise must not employ unfair trade practices.</td><td>Art. 45(1) No business entity shall perform … unfair trade practices … or cause …</td></tr>
<tr><td rowspan="2">Discriminatory Pricing / Terms</td><td>Art. 2(9)(ii) unjustly and continually supplying goods or services at a price applied differentially between regions or between parties, thereby tending to cause difficulties to the business activities of other enterprise

GD 3 In addition to [Art. 2(9)(ii)] unjustly supplying or accepting … for a consideration which discriminates between regions or between parties

GD 4 (same, but on terms or contents)</td><td>ARt. 45(1)(2) → ED 2(a) Unjustly engaging in transactions at grossly favorable or unfavorable prices depending on the trading regions or parties

ED 2(b) (same, but on terms)

* Unjustness → Court considers the degree of (price) disparity, the impact on the business activities of competitors or trading partners, the extent to which the conduct restricts competition in the market, and managerial justification and context (KEB (2006) - 2004Du4703)

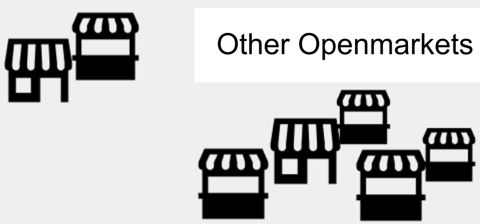
* If the effect is significant → Art. 5(1)(3) MRFTA</td></tr>
<tr><td colspan="2">Comparison:
- Neither requires market (dominant) power.
- In Japan, continuity is required for the statutory violation (not for the GD violation).
In Korea, it’s considered, not required (KFTC Guidelines V. 2. A. (2))
- ‘Unjustness is assessed based on anti-competitive effects (under a relaxed threshold)</td></tr>
</table>

NAVER Shopping case (2022)

Decision No. 2021-027 (delivered on 27 January 2021)

(Price Comparison)

SmartStore



Relevant Markets:

(General search service market)

- 1. Comparison-shopping service market
- 2. E-commerce (openmarket) service market

Market Structure:

(In the general search service market → 75% market share)

- In the comparison shopping service market → 70% market share

Conduct and its anti-competitive effects:

- Leveraging the dominance in the RM1, in the RM2 by giving registered stores better ranks in the search results → discrimination between the registered stores and others
- Thereby attempting to dominate the RM2 as well (spillover effect)

Applied provisions:

- Rules on unjust discrimination
  (1) Abuse of dominance (then Art.3-2) and
  (2) Unfair trading practice (then Art. 23(1)(1), MRFTA → ED 2(b))

KFTC won at Seoul High Court (2021Nu36129) in 2022

- Case now pending before Supreme Court…

UTPs: Restrictive dealings

	Japan AMA	Korea MRFTA
	Art 19 An enterprise must not employ unfair trade practices.	Art. 45(1) No business entity shall perform … unfair trade practices … or cause …
Exclusive Dealings Restrictive Dealings	GD 11 Unjustly trading with another party on condition that the said party shall not trade with a competitor, thereby tending to reduce trading opportunities for the said competitor.	Art. 45(1)(7) → ED 7(1)(a) Unjustly trading with a counterparty on the condition that the said party does not trade with one's own competitor(s) or those of one's affiliates * Unjustness → Court considers not only exclusionary effects but also restrictions on counterparty's autonomous choice (*S-Oil* (2013) - 2010Du25909) * If the effect is significant → Art. 5(1)(5) MRFTA
	GD 12 In addition to [RPM and exclusive dealing], trading with another party on conditions which unjustly restrict any trade between the said party and its other transacting party or other business activities of the said party.	Art. 45(1)(7) → ED 7(1)(b) When trading goods or services, doing so with a counterparty on the condition that unjustly restricts the trading regions or partners of the said party
	Comparison: - Exclusive dealing: Not much difference (although comparing lessening of competition with restrictions on choice requires a more nuanced analysis.) - Restrictive dealing: Japan's law covers various (anti-competitive) restrictions broadly (*e.g.*, MFN). Korea's law only covers regional or customer restrictions.	

Google case (2025)

Cease and Desist Order No. 5 of 2025, Apr 15, 2025 (Reiwa 7 (So) No. 5)

Conduct:

- MADAs: (In a situation where the Play Store is necessary) G required makers to pre-install Google Search and Chrome, and to give them better positions on smartphones, as conditions for licencing the store app
- RSAs: In exchange for sharing search ad revenue, G required makers and mobile carriers to exclusively use its search and browser services

Consequences (effects):

- 80% of Android smartphones have been subject to MADAs
- 50% of licensed Android smartphones have been subject to RSAs

Violation of Art. 19, AMA, and GD 12 (pursuant to Art. 2(9)(vi), AMA)

(Potentantial) Relevant Markets:

- Licensable smartphone market?
- Search engine service market (mobile-only or including PC)?
- (Mobile) browser market?

UTPs: Tying

<table>
<tr><td></td><td>Japan AMA</td><td>Korea MRFTA</td></tr>
<tr><td></td><td>Art 19 An enterprise must not employ unfair trade practices.</td><td>Art. 45(1) No business entity shall perform … unfair trade practices … or cause …</td></tr>
<tr><td rowspan="2">Tie-in Sales (without dominance)</td><td>GD 10 Unjustly causing another party to purchase goods or services from oneself or from an entrepreneur designated by oneself by tying it to the supply of other goods or services, or otherwise coercing the said party to trade with oneself or with an entrepreneur designated by oneself.</td><td>* Art. 45(1)(5) [Unjustly] force a competitor's customer to make transactions with the business entity itself
→ ED 5(a) When supplying goods or services, unjustly in light of normal business practices, causing the counterparty to purchase other goods or services from oneself or a business entity designated by oneself.

* “unjustly in light of normal business practices” → if a tying restricts freedom of choice and poses a risk of undermining the fair trading order that is centered on price and quality – *LH* (2006) - 2004Du3014

* If the effect is significant → Art. 5(1)(3)</td></tr>
<tr><td colspan="2">Comparison:
- Commonalities: separate products (“other”); coercion (“causing”); lessening competition and/or unfairness (choice)
- Differences: Recently, the KFTC has been relying on the abuse of dominance tool (Art. 5(1)(3))</td></tr>
</table>

Unfair Inducement

	Japan AMA	Korea MRFTA
	Art 19 An enterprise must not employ unfair trade practices.	Art. 45(1) No business entity shall perform … unfair trade practices … or cause …
Unfair Inducement: By Deception; By Benefits	GD 8 Unjustly inducing customers of a competitor to trade with oneself by causing them to misunderstand that the substance of goods or services supplied by oneself, or its trade terms, or other matters relevant to such trade are much better or much more favorable than the actual ones or than those pertaining to the competitor. GD 9 Inducing customers of a competitor to trade with oneself by offering unjust benefits in light of normal business practices.	Art. 45(1)(4) ("Unjustly enticing …") → ED 4(b) (through means other than the ones defined under Art. 3 of the Fair Labeling and Advertising Act) Inducing a competitor's customers to trade with oneself by causing them to misunderstand that the substance of goods or services supplied by oneself, or its trade terms, or other matters relevant to such trade are grossly superior to or much more favorable than the actual ones or than those pertaining to the competitor or that the competitor's ones are grossly inferior or unfavorable to the actual ones or those pertaining to oneself * Unjustness → considers 'its impact on the industry-wide fair competition or trade order' (and coverage, size, common practices, contexts, intent, normal practices, good faith, continuity and repetitiveness etc.) - *SKT's subsidy* (2019) - 2014Du15047 Art. 45(1)(4) → ED 4(a) Inducing a competitor's customers to trade with oneself by offering or proposing to offer benefits that are unjust or excessive in light of normal business practices. * Unjustness → 'if it distorts consumers' rational choice and impacts industry-wide fair competition or trade order' - *KNN Life* (2018) - 2017Du51365
	Comparison: - Seemingly, not much difference in wordings. - In practice, however, the relevance of the provisions differs due to institutional/organizational differences. (Consumer protection → JP: Consumer Affairs Agency (since 2009); KR: KFTC (since 2007))	

Coupang case (2024)

Decision No. 2024-294 (delivered on Aug 5, 2024)

- Deceptive self-preferencing by e-commerce platform
- (i) manipulating search algorithms and
  (ii) posting fake reviews (i.e., reviews written by its employees but not disclosed as such) to favour its directly purchased goods and private-label (PB) products over other competing products offered by other businesses
- Correction order, administrative fine, and criminal referral
  * On May 1st, the Prosecution indicted Coupang (without detention)

THE CHOSUN Daily

S. Korean prosecutors charge Coupang over algorithm rigging

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Published 2025.05.25. 16:41

South Korean prosecutors have indicted e-commerce giant Coupang on charges of algorithm manipulation, alleging the company rigged search rankings to give unfair advantage to its own products over third-party listings. /News1

Prosecutors in South Korea have indicted e-commerce giant Coupang without detention, accusing the company of manipulating its search algorithm to unfairly prioritize its own inventory and private-label (PB) products over those of third-party sellers.

On June 1, the Criminal Division 6 of the Seoul Eastern District Prosecutors' Office, led by Chief Prosecutor Lee Sang-hyuk, announced that Coupang and its affiliate CPLB had been charged with violating the Monopoly Regulation and Fair Trade Act. CPLB, a subsidiary of Coupang, oversees the development of PB products.

The indictment follows an 11-month investigation launched after the Korea Fair Trade Commission referred the case to prosecutors in June 2023. At the time, the commission also imposed a fine of 162.8 billion won—approximately $119 million—marking the largest penalty ever levied in S. Korea's retail sector.

Unfair Interference

<table>
<tr><td></td><td>Japan AMA</td><td>Korea MRFTA</td></tr>
<tr><td></td><td>Art 19 An enterprise must not employ unfair trade practices.</td><td>Art. 45(1) No business entity shall perform … unfair trade practices … or cause …</td></tr>
<tr><td rowspan="2">Unfair Interference</td><td>GD 14 Unjustly interfering with a transaction between another entrepreneur who is in a domestic competitive relationship with oneself or with the corporation of which one is a stockholder or an officer, and its transacting party, by preventing the effecting of a contract, or by inducing the breach of a contract, or by any other means whatsoever.

GD 15 Unjustly inducing, abetting, or coercing a stockholder or an officer of a corporation which is in a domestic competitive relationship with oneself or with a corporation of which one is a stockholder or an officer, to take an act disadvantageous to such corporation by the exercise of voting rights, transfer of stock, divulgence of secrets, or any other means whatsoever. (→ dormant)</td><td>Art. 45(1)(8) → ED 8
(a) Unjust use of technology - Unjustly using another business entity’s technology and thereby interfering with the business entity’s business activities to such an extent that it substantially hampers its business activities.

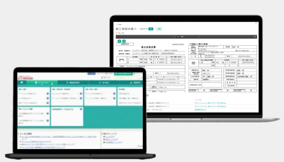
(b) Unjust solicitation or hiring of personnel - Unjustly soliciting or hiring another business entity's employees and thereby interfering ...

(c) Interference of customer relocation - Unjustly interfering with another business entity's customer relocation and thereby interfering ... seriously hampers

(d) Others - Engaging in other unjust means, other than the methods specified above, that interfere with ... seriously hampers ...</td></tr>
<tr><td colspan="2">Comparison:
- JP: Applies only to competitor-related situations; KR: No such requirement of a competitor relationship
- JP: Functions as a general, gap-filling clause; KR: focuses on unfairness and harm to others’ business activities,</td></tr>
</table>

MC Data Plus case (2024)

Cease and Desist Order No. 20, Dec 24, 2024 (Reiwa 6 (So) No. 20)



Conduct (Restricting Data Portability):

- In this case, a cloud service provider (i.e., MC Data Plus, which operates a construction-focused cloud service) allegedly prevented users (i.e., construction companies) from exporting their workers' data for use in other services besides its own platform (i.e., Green Site).
  - (i) MC denied users' requests to access their registered worker information in an exportable format (citing personal data protection concerns without reasonable justification);
  - (ii) MC amended its terms to prohibit users from sharing exported documents with competing services. It later added clauses restricting the processing, copying, or reproduction of registered worker information beyond the agreed-upon scope of joint use.
  - (iii) MC also reinforced these restrictions by pressuring rivals not to use data from its platform.

Violation of Art. 19, AMA, and GD 15 (pursuant to Art. 2(9)(vi), AMA)

- Cease-and-desist order, instructing MC Data Plus to not deny to respond to users' requests for access to their registered worker information in exportable formats (without justifiable reasons).