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Policy Transfer in Times of Techno Bureaucracy: South Korea's Regulatory Response to the Online Intermediation Services

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최근 온라인 중개 거래 서비스 시장의 급격한 성장과 더불어 불공정거래 행위를 사전에 예방하고 산업의 혁신 발전을 도모하고자 '온라인플랫폼 통신판매중개거래의 공정화에 관한 법률안'이 공정거래위원회의 주도 하에 지난 2020년 9월 입법예고된 바 있다. 이 법안은 이후 국무회의 의결을 거쳐 지난 2021년 1월에 정부안으로 발의되었다. 이 정부안은 테크산업 규제에 가장 앞장서고 있는 것으로 알려진 EU의 규제 체제(Regulatory Framework)에서 착안하여 만들어진 것으로 알려졌다.

본고는 한국 규제기관들이 규제를 어떻게 만들고, 왜 그러한 의사결정을 하는지에 대해 '국가간 정책 이전(Cross-National Policy Transfer)의 관점'에서 검토하였다. 이를 분석하기 위하여 EU와 한국의 규제 체제가 구별되는 요소를 알아보고, EU와 한국의 비즈니스 환경을 함께 살펴보았다. 분석을 통해 '정책 이전'이 표면적으로는 편리한 도구로 보이나 현실에서는 매우 복잡하게 가동된다는 점을 도출하였다. 다른 국가에서 도입된 정책을 '국가간 정책 이전'을 통해, 다른 국가에 도입될 때 복잡할 수 밖에 없는 이

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유는 국가마다 규제 환경도 다르지만 각자가 처한 비즈니스 환경과 그에 따른 이슈나 문제점이 맥락이 상이하기 때문이다. 따라서 새로운 정책이나 규제의 도입을 필요로 하는 맥락이나, 도입후 나타나는 효과나 결과 또한 다를 수 밖에 없다.

공정위 법안은 유관 이해관계자들의 각자 다른 입장을 충분히 검토하였거나 본 법안이 시행될 경우 발생할 수 있는 산업내 다양한 영향에 대해 충분히 예측하거나 평가되었다기보다는 정부가 신속하게 입법을 추진한 측면이 있다. 그러나, 해당 법안이 EU의 현 규제 체제를 참고하였음에도 한국 환경과 실정을 충분히 고려하고 숙고하였는지는 의문이 드는 내용과 구조를 갖추고 있다. 한국의 환경과 비즈니스 환경의 현실을 충분히 고려하지 않았기에 드러나는 법안의 모호성, 그리고 본 법안이 시행될 경우 산업적인 측면에서 야기될 불확실성과 예측불가능성은, 당초 '산업의 혁신성을 도모'하고자 했던 해당 법안의 발의 취지와는 정확히 반대의 역할을 할 공산이 크다고 할 수 밖에 없다.

그럼에도 불구하고 해당 사례는 '정책 이전'에 대한 중요한 교훈을 남기는데 그것은 바로 정책 이전을 적극적으로 활용하는 규제관계자가 해당 국가의 비즈니스 환경과 규제 환경 모두를 철저하게, 그리고 종합적으로 검토하여 '정책 이전'을 활용한다면, 매우 효과적이면서 편리한 도구가 될 수 있다는 점이다.

핵심용어 : 국가간 정책이전, 정책 이전, Policy Transfer, Cross-National Country Transfer, 온라인플랫폼 통신판매중개거래의 공정화에 관한 법률안, 온플법

I. INTRODUCTION

Big Tech companies are fated to face the biggest challenges in being regulated in the next couple of years. Over the past decade the EU has been diligently building its regulatory framework to tackle issues in the tech sector, now on its track with legislation of the Digital Service Act and the Digital Markets Act. For the US who had been less proactive in regulating, significant milestones are set to evolve now; this was markedly foreshadowed by the Biden administration's lawsuits against Google and Facebook in 2020 and also by the appointment of aggressive tech critics to the key roles in the administration. The EU and the US, who had had different paths and positions on policing the sector, are now expected to have some level of cooperation on this matter. Whatever the outcome is, their regulatory choices are expected have significant impacts on other jurisdictions across the globe.

South Korea is a high tech country for state-of-the-art consumer electronics and advanced infrastructure in ICT. But as much as it enjoyed the rapid growth in the sector, new issues also rose simultaneously, triggering debates and contestations as to what should be policed to what extent by the regulating authority. Though some issues were very country-specific which sprung from the Korea-specific landscape, many

were common issues which most countries were commonly faced with.

Like many other countries including Japan and China, the South Korean regulators adopted a new set of regulations with a close reference to the EU regulation[1]. The EU has been a forefront leader in regulating tech for many years and its influence has been significant, as firms abiding by European regulations usually abide by it globally for operational reasons. Moreover, Europe's adoption of General Data Protection Regulation (GDPR) in 2018 influenced not just its 27-member countries but also outside its bloc such as Australia or Brazil – and eventually many more countries. Developments by the EU regime is expected to spur further debates and influence with its Digital Services Act and Digital Markets Act in the years to come, particularly with the changing regulatory positions by the US and Chinese governments from the past.

Likewise, many jurisdictions are adopting their rules from the European rules or establishing their own rules based on the EU regime and this includes South Korea. However, less attention has been paid to scrutinizing whether such adoption or reference of the European regulation is appropriate in rulemaking of the Korean law in a more in-depth view. More importantly, questions as to why and how the regulatory choices that were made were 'chosen' by the Korean regulators have never been properly addressed or dismantled for review. We do not exactly know why particular regulations are reflected in the new laws and the others are not.

In this context, this paper studies how the Korean regulators adopt new regulations of the online platform sector through 'policy transfer' of the EU regulations. The paper specifically concentrates on online platforms

1) Chung, H. R. (2020). Tendency in regulating online platform and legal review on competition policy, Korean National Police University, South Korea.

that provide intermediary services, which is one of the fastest growing tech areas today both in Korea and around the world. This study first underlines some of the literature on policy transfer with focus on cross-national transfers and research why countries are prone to adopt rules from other jurisdictions. Then the study showcases the sectoral and regulatory landscapes of the online platform environments of South Korea and the EU respectively. The paper then studies how the South Korean regulators adopted new regulations with reference to the EU regulation and analyzes how policy transfer was executed in the process. In doing so this paper uses comparative analysis of the two jurisdictions and observes whether policy transfer was rightly implemented for the right purpose and effect by the Korean authority. The paper then draws conclusion through implication of the study and analysis of policy transfer.

II. LITERATURE REVIEW

The concept of 'policy diffusion' is varied by numerous definitions in empirical studies. Among the many, Strang's definition puts it in a sociology term that it is "any process where prior adoption of a trait or practice in a population alters the probability of adoption for the remaining non-adopters (Strang, 1991, p. 325)." Being rather a broad definition, it can also be applied to different jurisdictions and institutions. More generally, policy diffusion is defined to be the process where policy choices in one unit or jurisdiction are influenced by those in other units or jurisdictions (Gilardi, 2012; Graham, Shipan, & Volden, 2013). Other theorists observe distinctiveness of the wide geographic reach and the rapidity of policy diffusion in the late twentieth century and further

recognize a tendency of policymakers learning to pursue effective policies from other countries (Dobbin, Simmons, & Garrett 2007). To summarize, policy diffusion can be defined as a process of emulating or benchmarking other jurisdictions' implemented rulemaking.

Rationales which explain why policy transfer or adopting policy from other jurisdictions take place are explained in somewhat aligned perspectives in the literature. Black (2005) and Walker (1969) observe that a policy that had already been adopted elsewhere is more likely to be adopted by other jurisdictions. Black (Black, 2005; Berry & Berry, 1999) identifies three classes as to why states emulate each other's policies: reasoning by analogy, competition, and public pressure. Dominant decision rule for officials is to reason by analogy, meaning that taking reference to what happened elsewhere plays a crucial role in the decision making process. Though Black takes instances of the US, this can be applicable to any countries or jurisdictions; it is also observed in most jurisdictions today that when lawmakers draft legislation or governments adopt a new policy, they refer to other countries' cases and benchmark the case studies.

Elkins and Simmons (2005) propose theories more microscopically on the idea of how policy diffusion is made. Elkins and Simmons apply the concept of 'policy clustering' and categorizes three ways that policy clustering occurs. Countries either: 1) respond similarly but independently to similar domestic conditions, or 2) respond through coordinating in a group of nations or in an international organization level, or 3) make decisions combining the first two, making it an 'uncoordinated and independent' response. In the third response, Elkins and Simmons posit, governments make their own decisions without cooperation but with factoring in the choice of other governments; and identify that this is

when diffusion occurs.

Elkins and Simmons then classify diffusion into two types: 1) adaptation to altered conditions, and 2) learning. In the former, policy decisions of a government 'alter' the conditions under which other governments base their decisions; in the latter, instead of 'altering' the conditions of adopting, the government provides information about such conditions such as pros and cons of adopting. Social learning then is operated by the policymakers attempting to recognize a problem in the institution, then to develop a solution to solve a problem through review and assessment. Again, this is applicable to not just state-based jurisdictions but generally across any jurisdictions globally.

The most pivotal observation on how this social learning is deployed is about how wrongly it can go so many ways. According to Elkins and Simmons, the issue with social learning is that national policymakers often have difficulty assessing the consequences of the various policies. Even if the actors were faced with the exact same problem, implementing the same solution to different jurisdictions is viably expected to produce different outcomes – as the domestic environment should be different, as with cultural background, reactions from people, how detailed procedures are rolled out and so forth. In this sense, applying the same policy taken from another country's leading case sounds rather risk taking.

Teubner and Snyder (2000) explicitly deny that when 'legal transplants' are attempted, they really are not 'transplants'; and highlight that they are closer to 'legal irritants'. Though Teubner and Snyder focus specifically on legal realm policy can be said to be implied underneath the legal ground. From their perspective, the notion of what is conventionally recognized as 'transplant' is negated from the start; Teubner and Snyder claim that legal institutions cannot be easily moved from one context to

the other, like the "'transfer' of a part from one machine into the other (Teubner & Snyder, 2000, p.12)." Their theory focuses that after what is known as the transplant process, rather than a matter of repulsion or integration, a fundamental 'irritation' is triggered; then this shakes the internal context to be reconstructed, for a fundamental change.

Irrespective of various theories on whether transplant/transfer can solely be made from one jurisdiction to another, or its 'unexpected trigger' of bringing organic changes to the institution, policy diffusion/transfer is commonly used and seen in almost all jurisdictions. This has accelerated significantly over the years thanks to the rapid development of technology which enabled wider accessibility and sharing of information easier than ever across the borders. Despite abundant empirical studies on policy diffusion and policy transfer, less studies are focused on today's practical cases of a jurisdiction making a policy diffusion or transfer from another. Specific case studies which follow footsteps of how one country adopts policy of a particular area from another country, and how the actor's 'localization' work is made throughout the process to tailor to the domestic circumstances, are less explored. As per Elkins and Simmons' observation, we could expect a 'bumpy road' not just in the process of adopting a policy to the domestic actor, but also in that of how the consequence of the transfer turns out – particularly in comparison to the benchmarked country.

Ⅲ. THE STUDY SETTING: SOUTH KOREA

1. Sectoral background

South Korea has been a tech savvy country over the years and has been enjoying the world's fastest growth in internet, social media and e-commerce: it has one of the highest internet penetration rates of 96%[2] as well as the fastest internet connection speed in the world, tripling the global average speed [3]; its 87% penetration rate in social media is ranked at third highest in the world[4]. It is also the sixth largest market for e-commerce with a revenue of USD 74 billion[5] in 2020. In May 2021, e-commerce in Korea hit its record high number with value standing KRW 16 trillion[6] which is a 26% increase from the previous year[7].

E-commerce business, also known as online intermediation service, is growing at a rapid pace but not just in the domestic Korean market. Coupang, a Korean e-commerce giant went public on the New York Stock Exchange with a market value of USD 69 billion (GBP 50 billion) as of March 2021[8]. It has already become a big threat to the conventional offline shopping giants like Shinsegae or Lotte in the domestic market[9];

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2) Statista. (2021). *Internet usage rate in South Korea from 2000 to 2020.* https://www.statista.com/statistics/226712/internet-penetration-in-south-korea-since-2000/
3) Statista. (2021). *Countries with the fastest average mobile internet speeds as of May 2021.* https://www.statista.com/statistics/896768/countries-fastest-average-mobile-internet-speeds/
4) Jobst, N. (2021). *Social media usage in South Korea - Statistics & facts.* https://www.statista.com/topics/5274/social-media-usage-in-south-korea/
5) Equivalent to GBP 53 billion
6) Equivalent to GBP 10 billion
7) Korea Statistics Office. (2021, July 5). Trend data on internet shopping in May 2021 [Press release]. Retrieved from https://kostat.go.kr/portal/korea/kor_nw/1/1/index.board?bmode=read&aSeq=390458
8) Yoon, F. & Yang, J. (2021, July 7). Big Tech startups spring up in South Korea. *The Wall Street Journal.* Retrieved from https://www.wsj.com/articles/big-tech-startups-spring-up-in-south-korea-11625645201
9) Lee M. (2021, March 25). Coupang becomes a giant. The Chosun Ilbo. Retrieved from

Coupang recorded sales of KRW 13.5 trillion[10] last year, closing gaps with Lotte's KRW 16.2 trillion[11] and Shinsegae KRW 15.6 trillion[12]. While Coupang hired additional 29,000 employees in 2020 alone and plans to further create 9,500 jobs this year, the two companies had to cut 3,000 jobs altogether in 2020 with the shutdown of their offline stores. On the other hand, Coupang had entered its first international expansion in Japan this year followed by Taiwan, and further plans to expand its business in Singapore and Malaysia.

The rapid growth of e-commerce sector was already growing rapidly in the domestic market even before the pandemic hit, particularly those in the age between 20 and 50 who have busy lifestyles. Many consumers already found themselves accustomed to the 'same day delivery' or 'overnight arrival service' before use of e-commerce saw a steep increase triggered by the pandemic, for its super convenience and fast speed of the delivery. For example, a busy working mother would put an order for groceries before midnight and would be able to receive her fresh food overnight on her doorstep before she prepares food for her children in the morning, even before 7am, enabling her to omit grocery shopping offline after work and to save time before leaving for work the morning after. Growth of e-commerce is expected to accelerate even further with the ongoing COVID-19 pandemic.

https://www.chosun.com/economy/2021/03/25/GWIGWSLCCZA5XGWOYGKYC2TS4E/

10) Equivalent to GBP 8.6 billion
11) Equivalent to GBP 10.3 billion
12) Equivalent to GBP 10 billion

2. Regulatory background

(1) Trans-governmental drive in relaxing regulation

This section is to provide a context of the regulatory environment of South Korea in general, as well as of the e-commerce sector. The section aims to better magnify why the regulators chose to adopt the regulatory responses they did as opposed to the administration's directional drive in 'deregulating' business sectors, which will be further discussed in the later part of this paper.

One of the top priorities which the Moon Jae-in administration set to drive was to create a 'more business-friendly environment.' As part of its drive, 'Regulatory Sandbox' was launched in 2019[13], aiming to allow relaxation of regulations to accommodate innovative products and services by corporations. Corporations who ran businesses in Korea identified the country as 'a heavily regulated environment' disregarding the industry; business corporations and associations across industries had long been engaging the government for permission for loosened regulations, which impeded business from innovation, or were 'impractical'.

In 2019 before the Regulatory Sandbox was launched, the Federation of Korean Industries (KFI), a non-governmental organization which consists of the country's major conglomerates, had strongly requested for relaxation of 'unnecessary regulations'. Its rationale was that despite having one of the highest qualities in infrastructure and resources in the

13) The Moon administration kicked off its term in May 2017. The bills to introduce the Regulatory Sandbox were implemented effective from January 2019 after the legislative bills were first proposed in March 2018.

global IT sector, the Korean government's excessive regulation was impeding innovation and making foreign businesses more difficult to invest in the Korean corporations. Around the same time the Korea Economic Research Institute (KERI) demanded a similar request, backing up with a data that the number of new legislative bills that mandated the business corporations to strengthen the current regulations by the Fair Trade Commissions surged 2.5 times higher for six consecutive years from 2014 to 2019, versus the number of bills which relaxed regulations[14].

The key idea of the Regulatory Sandbox was that the process of the regulating authority's approval is speeded up for launch of new services or products; 'reasonable' regulations would later be applied, or could be exempted with provisions after the government's review. For cases where regulations were ambiguous or were assessed to be 'too excessive,' the government was to give a temporary permission to the corporation, and give an official approval by revising the law afterwards. In these ways, businesses would be less delayed in launching their innovative services or products in the market.

Though the Regulatory Sandbox received some positive feedback from the business side, start-ups and venture companies still felt too many local regulations were discouraging them from innovating, or even from operating their business-as-usual. According to a survey conducted by the KFI to 500 Korean companies operating in Korea, approximately 49% responded that they felt regulation was still excessive, and that 'innovation in regulation' was needed in shaping more business-friendly environment[15]. Some economists and critics also underline that in order

14) Korea Economic Research Institute. (2019, October 17). *Number of FTC-driven bills reinforcing regulation increase by 2.5 times during last six years* [Press release].

15) Federation of Korean Industries. (2021, August 17). *Survey on the regulatory innovation in 2020* [Press release].

to swiftly overcome social and economic aftermaths of the COVID-19 pandemic, more relaxation in regulation must be implemented to accelerate innovation and to follow the 'global business environment[16].' They also point out that 'impractical' regulations, such as mandatory shutdown of large-scale retail companies on weekends, are deteriorating the competitive power of local companies[17].

(2) Regulatory landscape of online intermediation services

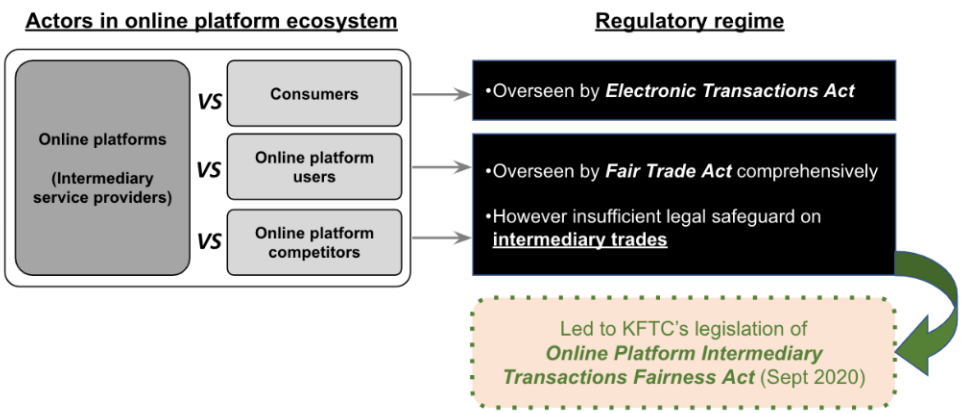
This section aims to study regulatory response choices made by the regulating authority of the South Korean government on legislating the Online Platform Intermediary Transactions Fairness Act (OPITFA) which began in 2020 and is still ongoing in 2021. The paper first highlights the regulatory landscape of the sector before the legislative bill was first proposed.

The Electronic Transactions Act, the Fair Transactions in Large Retail Business and the Fair Trade Act were the competent rules of law which are relevant in regulating the e-commerce marketplace. However with a significant surge in online intermediation trades, the sector evolved with more diverse issues and cases of harms. Regulators were faced with limitations in regulating e-commerce companies as the pre-existing laws only covered scope of the trading companies or consumers, which did not cover scope of the intermediary services. The 'intermediary service' was

16) Kim, Y.K. (2021, July 21). Number of legislative bills to regulate businesses surge three times in the Moon administration. *Financial News*. Retrieved from https://www.fnnews.com/news/202107211834153668.

17) Large supermarket chains must halt their operation at least twice on weekends every month by the Korean law. This law was adopted and came into force from 2012, aiming to promote 'livelihood of small and medium-size merchants and traditional markets.'

an unprecedented idea concept to the regulatory environment. (See below *Figure 1: 'Regulatory regime before legislation of the Online Platform Intermediary Transactions Fairness Act'*)



Accordingly, to address this issue and to prevent unfair trade practices by the new medium, lawmakers began to propose new bills on e-commerce marketplace and eventually led the Korea Fair Trade Commission (KFTC) to announce a 'comprehensive counter-measuring plan to enhance fairness in the digital ecosystem' and to legislate the Online Platform Intermediary Transactions Fairness Act in September 2020.

Though it was crystal clear that the pre-existing laws were not sufficient to regulate the new form of e-commerce trades by the intermediary service companies, questions remain as to whether bills proposed by the lawmakers or the government correctly address the new problems emerging from the new business trades, or let alone understand the issue at all. This could be related to the old-fashioned traditions in the Korean Parliament that most MPs intentionally propose new bills to be later credited for their 'performance ratings'[18]. This is more apparent

in new emerging sectors like ICT; according to a research, of the ICT-related bills proposed in the 20th term of the Korean National Assembly between 2015 and 2019, 73% was legislated aiming to put more stringent regulations, of which 97% were MP-proposed bill[19]. Legal experts and researchers specializing in ICT also criticize the lack of in-depth knowledge and expertise in these bills. Most of the bills lack substantial data or back-up evidence in addressing the key issue, and often MPs simply overlook, before proposing the bills, in engaging interest groups or stakeholders which greatly play a role in grasping the core of the problem.

Ⅳ. CASE STUDY

The Online Platform Intermediary Transactions Fairness Bill was proposed by the KFTC which was approved at the Cabinet meeting in January 2021 after pre-legislation by the KFTC in September 2020. The Bill is further to be discussed and approved at the Parliament at its competent Standing Committee, which is the Committee of National Policy.

The Bill reportedly developed its draft pre-legislation bill with close reference to the EU's Platform to Business Regulation 2019/1150 (also

18) For a bill to be proposed at the Parliament, it is required to have signatures from ten or more MPs; this also means MPs are prone to sign other MPs' bills even when they are in full support of the bill, or sometimes without having a full understanding of the bill. Furthermore it is rather quite 'common' for MPs to propose a bill to have it as their 'performance,' as in theory, they can propose as many bills as they wish to without 'taking it seriously.'

19) Korea Internet Corporations Association. (2021, February 15). *New deal for ICT regulation in Korea: Research report on legislations in the 20th Assembly term* [Press release]. Retrieved from http://www.kinternet.org/news/press/view/233.

widely known as “P2B Regulation”). To analyze and assess the adoption process and content, I address the background context of the regulation, and scrutinize how the respective jurisdictions developed the law-making in relation to the context.

1. South Korea

(1) Background of the regulation

After announcing its robust policy plan to 'eradicate unfair trade practices and realize fair digital economy' in June 2020[20], the KFTC, the governing ministry that oversees fair trade practices of e-commerce, pre-legislated[21] its amendment bill to the Online Platform Intermediary Transactions Fairness Act later that year, as part of its three-pillar plan announced earlier. The pre-legislation also came after the EU's Platform to Business Regulation 2019/1150 (widely known as “P2B Regulation”) came into force in July of the same year.

The pre-legislated bill went through a process of deliberation amongst relevant stakeholders including business groups who would be directly impacted. The bill was approved by the Cabinet Meeting most recently. Often times many proposed bills in the Korean Parliament are

20) The plan consisted of three pillars: 1) enactment of the Online Platform Intermediary Transactions Fairness Act, 2) amendment to the Consumer Protection in E-commerce Act, etc, and 3) enactment of inspection guide to unilateral actions by online platforms.

21) There are two ways to legislate a new bill or revise a bill in the Korean parliament. A government ministry can propose a new bill, or an amendment bill to the existing law; or a MP can do the same. Ministries often imply its ministerial priorities through proposing and driving its own bill. The chance of bills being passed at the legislative process and ultimately being promulgated is two times higher in government-proposed bills than in MP-proposed bills.

benchmarked or have reference to the EU or the US jurisdictions, or the Japanese law. Likewise, the original bill proposed by the KFTC is known to have been referred with the EU regulation. IT-related legislation is more extensively influenced by the EU as the EU regime is enriched in its regulatory substance prior to that of South Korea.

(2) Essence of the regulation

The legislated bill addresses harmful effects caused by dynamics in the triangle structure and thus aims to tackle issues in such ecosystem. The KFTC identifies issues evolve from three-party relation: *P2B (platform-to-business)* where online platforms (or intermediation services) misuse their position to provide disadvantage to the business firm; *P2C (platform-to-consumer)* where online platforms are being exempted from consumer damage; and lastly, *P2P (platform-to-platform)* where dominant online platform misuses its dominance to eliminate competitor companies.

Primarily, the bill can be summarized as below:

〈Summary of the proposed *Online Platform Intermediary Transactions Fairness Act*〉

1) Objective of the regulation

- To ensure transparency and to create fair trading environment between businesses and consumers in the online platform ecosystem; and to encourage 'mutually beneficial' cooperation and swift resolution in case of disputes

2) Subject to the regulation

- To be applicable of this law, the subject must be 1) a business company who intermediates services or goods through online

platforms, 2) either its intermediary trade size or its sales volume is in accordance with the level that the law designates, and 3) who intermediates trades through online platforms irrespective of the business location at the time of founding.

3) Scope & regulatory approach

- To enhance transparency and fairness between business operators and users, the following institutional framework will be applied to all actors by mandate:
  - Provision of a written contract on intermediary trade immediately after a contract is made between the platform and the business, covering all requirements by the new law[22]; furthermore, in case of any changes in the contract or limit in service, it must give a notice in advance[23]
  - The Dispute Mediation Council who has expertise in online platform trades will be established to handle any issues or disputes between businesses
  - KFTC will be given the authority to conduct written survey in order to identify business conduct or hardship when needed

4) Sanctions for non-compliance

- Penalty was made to be minimized and fine were strengthened from the previous law in order to prevent impediment of innovation in platform business

22) This is indicated in detail in twelve separate clauses in the law.

23) Notice must be made before fifteen days at minimum prior to the effective date in case of change in its change in the contract; in case of putting a limit or a halt in its service, it must let its user know before 30 days at minimum; failing to notify in advance will nullify the effect.

2. EU

(1) Background of the regulation

Similar to the South Korea case, the EU had earlier noticed that businesses that provided their services or goods to consumers in the EU through online intermediary services were showing dependency on businesses that provided platforms. Online platforms' gateway position entailed the risk of harmful trading practices despite offering convenience of cross-border markets accessibility to their users. The European Commission addressed that these P2B problematic trading practices limit national and cross-border sales and innovation and cause detriment of consumers. According to the European Commission, 46% of business users experienced problems with online intermediation services throughout their business relationship.[24)]

The EU adopted the P2B Regulation in June 2019 which was applied from July of the following year. In line with the Digital Single Market strategy which was adopted in 2015, the Commission's proposal of the P2B Regulation was recognized as the first step to create a fair and transparent business environment for smaller businesses and traders on online platforms.

The European Commission created the Observatory on the online platform economy along with the new regulation to monitor the latest trends in the sector. The Observatory is made up of a group of Commission officials and an expert group of prominent independent experts. The final reports by the first group of experts were made public

24) EUR-Lex. 11 July 2019. Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1150

in early 2021 following stakeholder feedback and reactions on the progress reports in 2020. The Regulation itself was accompanied by an impact assessment which includes evidence and stakeholders' views consolidated during a two-year fact-finding exercise.

Member States also began to act at national level to address the issues especially as the issues involved cross-border nature of online intermediation services.

(2) Essence of the regulation

P2B Regulation imposes more transparency obligations to platforms in relation to the access that business users may have to data from business users or consumers using their platform services. Among other things, the Regulation establishes that platforms shall inform on whether they provide data to third parties where such provision is not necessary for the proper development of the platform services, specifying the purpose of such data sharing and possibilities for business users to opt out from the data sharing.

Summary of the EU's P2B Regulation can be recapped as below:

〈Summary of EU's Platform to Business Regulation 2019/1150〉

1) Objective of the regulation

- The regulation aims to ensure the fair and transparent treatment of business users by online platforms by giving them more effective options for redress when they face problems, creating a predictable and innovation-friendly regulatory environment for online platforms within the EU.

2) Subject to the regulation

- The regulation applies to (i) online platforms (intermediate services) and (ii) online search engines provided to business users and corporate website users established in the EU, where those

business users and corporate website users offer goods or services to consumers located in the EU through those online platforms.

3) Scope & regulatory approach

- Online platforms and online search engines were now mandated to follow new requirements:
  - Online platforms are required to provide:
    · Clear and transparent terms and conditions
    · Restriction, suspension and termination of services
    · Internal complaints system
  - Online search engines are required to:
    · outline their terms and conditions the main parameters determining ranking of business users
    · provide a description of any differentiated treatment afforded in relation to goods offered to consumers through them

4) Sanctions for non-compliance

- The provisions of the terms and conditions that do not comply with certain requirements of the P2B Regulation are null and void.
- If online platforms fail to comply with the P2B Regulation, the online platforms' internal complaints process should allow business users to raise complaints. If a complaint about non-compliance cannot be resolved, business users should be able to refer the complaint to mediation or may also choose to pursue legal action directly.
- Organizations and associations representing business users, corporate website users or public bodies are able to pursue legal action against online platforms that fail to comply with their obligations under the P2B Regulation.

3. Comparison

Below chart provides an apple-to-apple comparison snapshot of the regulatory regimes of South Korea and the EU on the online intermediation service. In summary, both jurisdictions share a common objective with aims to enhance fair and transparent ground for online platform trades. However, significant differences in certain aspects are

observed as below. These differences will be discussed more in-depth in the later part of this paper.

	EU	South Korea
Regulation	Platform to Business Regulation 2019/1150 ("P2B regulation")	Online Platform Intermediary Transactions Fairness Act
Background / Issues	Risk of harmful trading practices being 'adhesive' and a certain platform reaching a 'tipping point[25],'which can enable exploitation to its business operator or the consumers	
Objectives of the legislation	To ensure transparency & fairness; appropriate measures when needed	To ensure transparency & to create fair trading environment
Regulatory approach chosen	• Applying the pre-existing e-commerce regulatory principle to the platform business(instead of technically 'barring anticompetitive trade practices') • Ex post[26]	• Adopting and applying a new set of legislation specifically on online platform intermediation service • Ex ante *and* ex post
Concomitant or other relevant regulations / rules overseeing online intermediary services	• Other pre-existing or work-in-progress acts or rules take complementary role to P2B: • Digital Services Act (DSA): DSA updates the obligations of digital service providers, which are currently based on the EU's 20-year old e-commerce directive; DSA will be complementary to the P2B Regulation • New Competition Tool (NCT): Enforcement tool allowing for early intervention by the Commission to address structural market issues and failures in the absence of a finding of infringement of competition law rules • European Law Institute's Model Rules on Online Platforms • Digital Markets Act (DMA): DMA builds upon the P2B Regulation and aims to restrain the power of large digital platforms that serve as an important gateway for business users to reach their customers (gatekeepers).	• There are pre-existing laws that which are applicable in addressing issues from the online platform trades; but they do not cover all issues, only in part: • Fair Transactions in Franchise Business Act • Fair Agency Transactions Act • Fair Transactions in Subcontracting Act • Electronic Transactions Act • Fair Transactions in Large Retail Business • Fair Trade Act
Sanctions	• No direct sanction by this regulation • However, the Member States must develop necessary measures in case of violation	• Corrective order • Penalty • Punitive measures

V. ANALYSIS

The South Korean and EU jurisdictions share common objectives, which is to ensure a transparent and fair trading environment for the newly online platform ecosystem. The first question should be asked whether the new regulation by the Korean regulators correctly addresses the emerging problems of the new marketplace and aims to tackle the harmful risks caused by such problems using their 'policy transfer' from the EU regime. To answer that question, I first review the process of how the policy transfer was made, as it is closely connected to the justification and suitability of the new regulatory framework.

1. Policy transfer: Evaluating the policy transfer *process*

During legislation process, there has been a number of observations that is worth being addressed in relation to the policy transfer:

- *Though the new legislation seems to have emulated the EU's P2B Regulation, there are significantly distinguished differences in its substance.*

The EU regulation aims to induce fair business practices by the firms themselves voluntarily as it does not provide normative judgement.[27]

25) When network effects of a certain platform are sufficiently strong, users are drawn towards the network with the highest number of other users, making it more attractive - until the market eventually tips in its favour.

26) However, the European Commission is reportedly exploring options to adopt ex ante regulatory framework for large platforms with 'significant network effects acting as gatekeepers.'

27) This is expected to be ruled by the Digital Market Act, which is not expected to be implemented until 2023, as it aims to regulate online intermediaries and platforms and sets

Conversely, the South Korean law uses both ex ante and ex post approaches, making the regulation more stringent than it already is with the new legislation. As such, the Korean legal experts highlight that the new legislation puts unnecessary business burden to the current landscape, and such stringency is not justified as it cannot be found in other jurisdictions such as in the EU, Japan or China[28]. Questions remain whether this legislation was in absolute need in the first place, as the existing laws (Electronic Transactions Act, Fair Transactions in Large Retail Business and Fair Trade Act) were in place. Proponents with these questions emphasize that if a new law is to be introduced, it should have been crafted with a more deliberate and cautious manner.

It should also be noted that as opposed to the EU Regulation where it does not have direct sanctions in case of violating the regulation (it only mandates to set out applicable measures in lieu)[29], the Korean regulation requires sanctions including the government authority's right to put administrative sanction.

- *Some of the very basic but very important bits that needed delicate deliberation were missed or insufficiently addressed in developing the regulatory clauses.*

In contrast to the EU Regulation where it defines terms 'business user' or 'online intermediation services'[30], the Korean legislation attempts to

narrowly defined objective criteria for qualifying gatekeeper.

28) Chung, H. R. (2020). Tendency in regulating online platform and legal review on competition policy, Korean National Police University, South Korea.

29) Article 15 "Enforcement", The European Parliament and the Council of the European Union. 11 July 2019. Regulation (EU) 2019/1150 of the European Parliament and of the Council. Office Journal of the European Union.

30) Article 2 "Definitions", The European Parliament and the Council of the European Union. 11

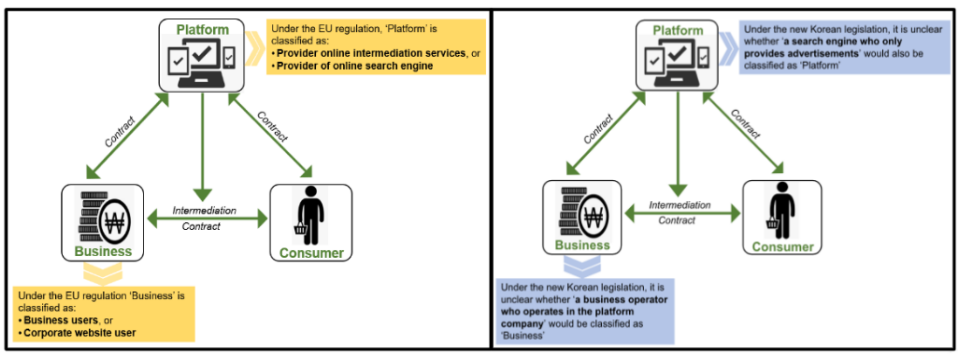
define actors who are to be regulated but somewhat ambiguously. For example, by the current version of the legislation, whether this new law is applicable to an intermediation service provider who runs its business within a legal entity unit is unclear. This unclarity, or negligence that fails to define regulatee of the regulation, puts a high risk to the businesses who may be impacted but remain uncertain whether they are to be regulated or not. (See Figure 2 and Figure 3 on the p18.)

The online platform universe has become much more complex than it was before, and the system around the new ecosystem at times cannot be clear cut when it comes to defining roles or identities of the business operators. For example, Google may be a search engine, but it also provides a Google Shopping service where it plays as a gatekeeper to other retail websites. If the intent of the legislation was to provide predictability and a fair environment for the business operators, the level of certainty is still insufficient as it fails to clearly define the regulatees.

The KFTC defines 'online platform intermediary service provider' as a business operator who intermediates services such as providing information on services or goods or applying subscription for consumers, via online platform user businesses. By this definition, the boundary of the regulatee is not clearly defined. The KFTC exemplifies 'search engine service' and 'advertising service' as applicable to the new legislation; on the contrary, the industry questions whether the act of 'providing advertisement' alone can be considered as 'intermediating' act. New business environment can arise never-before-thought ambiguities, but it must be discussed and resolved – even within the regulators themselves – before becoming a new law; intentional or not, igniting new ambiguity

July 2019. Regulation (EU) 2019/1150 of the European Parliament and of the Council. Office Journal of the European Union.

through a new legislation seems to be exactly the opposite of what a new regulation should be about.



(Figure 2 (left): EU regulation sets clear definition and classification of each actor. Figure 3 (right): Unlike the EU regulation, the new Korean law is unclear in defining and classifying 'Platform' and 'Business.')

- *During its short deliberation period[31], the Korean regulators did revise the law reflecting after hearing positions from interest groups and stakeholders, making some major changes in its original clauses; nevertheless, the law itself remains stringent – both in its content and approach in comparison to the EU benchmark, without substantial reasoning as to why it should be.*

Clauses specifying required information in term and contracts underwent significant changes as about half the clauses from the government-proposed provision were removed. Nevertheless, legal and policy experts are still in doubt whether the clause itself was needed in the first place, nor whether the government-required information will

31) It took less than six months for the KFTC to pre-legislate its initial proposal to go through revisions to be approved by the Cabinet, which is expected to go through its next deliberation process at the Parliament.

play as an impeding factor amongst service providers for sound competition, nor whether it will be a meaningless yet excessive regulation which just puts administrative cost for the regulatees. The fact that new requirements or mandates by the new legislation were missing substantial evidence or proof why it needs the new information were also addressed as a concern amongst the legal experts who identified it as a 'excessively stringent' regulation.

2. Policy transfer: Does the legislation serve its 'righteousness'?

From the pre-legislative stage, interest groups and legal experts expressed concerns of the new law being 'too stringent' compared to that in the EU, Japan or China, and that if the legislation was promulgated as it is, it could impede innovation of the sector. Though some revisions were eventually made after strong claims by the interest groups, legal and policy experts still criticize the 'mismatched' and 'mis-adopted' parts of the policy transfer.

Firstly, unlike the EU regime, the fact that the pre-existing laws (the Electronic Transactions Act, Fair Transactions in Large Retail Business Fair Trade Act and the Fair Trade Act) were already in place overseeing many issues (although not all issues), were overlooked by the regulators. Every jurisdiction is shaped with its own legal system and structure; even if a country intends to benchmark a well-constructed law from another jurisdiction, it should be done in a very well-tailored manner that the benchmarked material makes sense to its own legal structure and contents.

For example, some interest groups proposed adopting the 'Code of Conduct' approach, which can be an alternative replacing the Korean

government's 'standard of contract', as it invades less autonomy of business. Code of Conduct is also widely used by the EU and US competition regulatory authorities. Though some legal experts in Korea have endorsed this ex post approach as more appropriate option than the government proposal[32], as the sector aims to prioritize innovation with speed and expertise, the KFTC's response was that such approach was just 'not valid', without giving any solid reasoning or evidence that supported the argument. Such 'mismatch' could hold significant risks as it may not fundamentally address the issue but rather just puts more burden to the regulatees, or slows down the business side from innovating.

Secondly, the legislation process thus far was 'shortened' with insufficient dialogue between the legislative body and the interest groups or stakeholders. Potential impact of new regulations can be significant to the businesses that are directly influenced; yet the deliberation process was insufficiently managed as the interest groups were unsatisfied with the frequency and depth of the dialogues held with the KFTC. In comparison, the EU's pre-assessment took two years alone involving diverse stakeholders in its Observatory publication, a comprehensive report that covered assessment and implication prior to the implementation. For South Korea, it took less than half a year for the proposed bill to pass the Cabinet meeting since its draft bill proposed by the KFTC in September 2020. If the deliberation process had gone more thoroughly with more robust angles, many of the 'mismatched' issues may have been prevented or reflected in additional revision process. Again, the very first initial discussion around regulation intermediary service began in 2015 for the EU regime. It took five years to deliberate

32) Chung, H. R. (2020). Tendency in regulating online platform and legal review on competition policy, Korean National Police University, South Korea.

throughout extensive research until the proposal was first drafted in 2019. The EU also conceptualized its principle and direction through the rules first, and took a gradual approach before finalizing the new regulatory framework.

Thirdly, the regulators lacked substantial data or evidence that backs up its proposal. Unlike conventional trade practices, the online platform universe is much more complicated to have a full understanding of how it works; unlike those from the industrial ages, definitions of 'platform' varies, unfair trade practices are difficult to grasp, and dynamics or changes are sometimes not explained based on 'normative theories.' Still, the Korean regulators fail to present the accurate analysis of the current marketplace as a starting point, along with any evidence which proved that the status quo, or the absence of a new law, was weakening innovation or incentive of the businesses.

Of Dobbin, Simmons and Garett's three different ways how a policy approach is socially accepted, the first way of 'leading countries serve as exemplars ('follow-the-leader')' is seen from many countries who follow or refer to the EU regulation in regulating online platform or ICT sector in general (Dobbin, Simmons, & Garrett, 2007, p.457). Dobbin et al observe that policymakers mimic the countries that 'appear to be doing best', but underline that they do without fully comprehending the roots of the success by the 'leader country.' This seems to be the case for South Korea, as it had embedded stringent regulations following the EU regulation. However, whether it rightfully adopted the regulatory response in accordance with the Korea-specific business environment and legal framework seems to hold a big question mark. It should not have overlooked the EU-specific factors in historical and political viewpoints with its formed regulatory framework in the sector. Of many reasons why

the EU chose to shape its regulations the way it did, the fact that major tech firms dominating the tech world was from the US whereas the EU was behind fostering the business should not be forgotten. When emulating a similar law or regulation from another jurisdiction, such context must be essentially read and assessed; and if needed, it should go through its own 'localized' context by the transferring actor, because domestic markets have their own respective political contexts.

As Teubner and Snyder put it, when a 'foreign rule' is imposed on a 'domestic culture', something else is happening; and that it does not operate as a transplantation into another organism, but rather as a 'fundamental irritation which triggers a whole series of new and unexpected events (Teubner, 1998, p.12).' If we put the EU regime as A and the previous regulation in South Korea as B, when the Korean regulators emulate A into B, it does not become A+B; it rather becomes a C – something wholly different.

To further understand the dimension of this policy transfer, we can take theories from Evans and Davies and attempt to answer how the structural factor and the agency played respective roles for the South Korean authority in emulating the new measures (Evans & Davis, 1999, p. 370). However, both rather raise unclarity.

Firstly, it is valid to ask why a new legislation was drafted in the first place even though corresponding laws were already in place that could have been replenished instead of a new law. Numerous legal experts and professors have already voiced concerns on this matter, as a new legislation could have been taken as a 'last resort' option, and that introducing a new regulation would result in clashes between multiple ministries in dealing with governing issues in the future.

Secondly, we are aware that the KFTC had pronounced that its

intention was to take a proactive action in handling a rapidly changing sector. Yet policy experts' speculation that the KFTC's move was to take dominant position in regulating the sector against other regulatory agencies such as the Korea Communications Commission cannot be easily neglected[33]. After all, ICT had been competitively fought over between government ministries over a 'power game', and bureaucracy had been observed in such a popular business sector conventionally. Ironically often with such bureaucratic tendency, excessive regulation was enforced by the regulators; as such, innovation is rather at the risk of being annihilated.

VI. DISCUSSION

1. Policy transfer in a techno bureaucratic world

It is not easy to predict what the KFTC really aimed to achieve from this legislation, as the content itself is deemed as 'excessive regulation' by many; even more difficult to guess because the current administration had been focusing on deregulation, campaigning its achievement through its implementation of the Regulatory Sandbox, while continuing to drive its roadmap to 'foster the innovative industries.' Some speculate that the KFTC's move was for the authority to become the main governing body in both ex ante and ex post regulations, planning to bring 'hybrid' form onboard eventually. For the time being, we can only speculate.

Nevertheless, the analysis of this study demonstrates that the clearer

33) After the KFTC's legislation of the law, the Korea Communications Commission (KCC) also had its own separate hearing and argued that overseeing online platform trade practices is part of the KCC's responsibility as per its ruling of the Electronic Transactions Act.

agenda is (pre-)set by the government and the regulators, the easier it could be for adopting policy from another jurisdiction. In other words, the current regulatory framework which the KFTC intends to build, does not stand solidly nor is clear what it aims to represent; either with the KFTC's own rationales, or with any political justifications surrounding the KFTC's stance. Should the Korean regulators have been determined to go evidently pro-business, they could have adopted a 'soft approach' option which the EU chose to do; or not legislate the bill at all for the time being, and go for the ex post approach.

The KFTC explicitly cites authority bodies of the US, Japan and the EU for their policy development in counteracting against the new emerging issues from the online platform environment[34] and stresses imminence of the legislation. As often is the case with most government ministries, internal and political reasons around the KFTC could have triggered the swift proceeding of the legislation. Presenting a roadmap for what seems like a promising sector for the people, government, and the industry, and legislating a new law would give any ministry a superior power in overseeing the industry in the ministerial universe. This could have been a more important factor than it seems from the outside, particularly because there were already multiple laws in place that rule the online platform sector at least partially.

If that assumption is true, it could have played as rather a positive driving force by the regulators and lawmakers of the KFTC – only if the

34) KFTC specifically cites in its press release explaining the pre-legislation: the US FTC's Hearings on Competition and Consumer Protection in the 21st Century in 2018 and 2019; the European Commissions' Competition Policy for the Digital Era in 2019; and the EU and Japan's development in regulating platform-to-business relations in 2019 (Korea Fair Trade Commission. (2021, January 26). Amended Online Platform Intermediary Transactions Fairness Act gets approval at Cabinet meeting [Press release].)

policy transfer was effectively and strategically executed. What is less achieved is how suitably the benchmarked EU material was transferred into crafting the Korean law; apparently less effort was put into tailoring the law in consideration of the Korea-specific environment. As highlighted earlier, whether the legislation process underwent a sufficient deliberation procedure is questionable and remains important. This includes but not limited to listening to all (potential) regulatees' positions and their impact assessment, scrutinizing if any of the legislation overlaps with the current law and other ministries' agenda, and undergoing risk assessment in accordance with various stakeholder groups. After all, the EU regulation which the Korean regulators emulated had been established based on its years of deliberation process based on the EU-specific environment and online platform specialities, not on a global landscape. Ideas from the EU regulation could be scrutinized for policy transfer, but such ideas must be essentially re-developed from a viewpoint from the Korean landscape robustly.

Literature on policy transfer should also be sought from the context of unpredictable and fluid traits of e-commerce or other new industries. Like the industrial era, boundary is often difficult to be defined, operation is executed at a regime that is not regulated, new forms of business fall into grey zones where it is unregulated, imposing tax is unintentionally impossible due to ambiguity of legality. Marketplace no longer takes 'static and standardized' form. This can mean, consequently, policy transfer or benchmarking policy from other jurisdictions must also be done with more caution, and/or with fluidity. It could be that the precedent conventional regulatory techniques or approaches must be explored and break its old 'grammar' in regulating private sectors as they used to in the past.

This study also illustrates a case where a level of discord or clash between 'a trans-governmental strategy at a national level' and a differed position of 'a government agency at a ministerial-level' is observed. The KFTC's interest seems to be quite clear in a sense – that it aims to proactively protect business operators from unfair trade practices via online platform intermediation and take preventive measures – but at the same time, it is unclear whether in doing so, the authority is assured that such preventive measures do not obstruct business from operating business-as-usual or innovating. From the impacted businesses' standpoint, obstruction seems more obvious.

The comparative list of 'required information' for online platforms between South Korea, EU and Japan backs up this argument partially; the Korean government requires more information in comparison, but the mandate is not sufficiently explained as to why. At the same time, KFTC seems to have failed (or neglected) to make impact assessment on the business side; the authority had presented expected benefits from the new legislation but does not mention risks or impact analysis in practical or figurative manner. This seems less convincing as it would be more difficult for a regulatory authority to enforce stringent regulation first, then to relax it after a while, than to go with vice versa. Considering this is one of the most innovative and rapidly growing industries globally – where putting more regulation seems contradictory to the current administration's innovation-oriented 'deregulation' drive – policy transfer from the EU jurisdiction may have (at least partially) done exactly the opposite of what it should have done.

What is even trickier, is that more regulation was put on top of pre-existing regulation; yet where there was 'legislative voidness' – which demanded clarity from the businesses – was only partially addressed

through the legislation. The former part needed more evidence as to why additional regulation would be needed, because otherwise it would be deemed as excessive regulation; the latter missed more in-depth scrutiny by the lawmakers and lacked more practical perspective.

Assessment as to whether this regulation was needed, and whether the regulators took the right contents and approach in promoting fairness and transparency are yet to be assessed further – after the law is fully enforced. Suitability of policy transfer should be further scrutinized then. However, we can still take interim lessons from the process and the outcome of this legislation – in the context of how policy transfer was first initiated by the KFTC and how the legislative process was driven by the authority.

From this case study, learning seems to be more essential than executing policy transfer, in order to avoid legal and policy 'irritants.' But learning must also be executed with a broader, and more proactive approach; ideas can be emulated over similar issues across jurisdictions, but contexts must be closely scrutinized amongst different regulatory and business landscapes – of the adopter and the adoptee – and this must be imperatively reviewed in the transferring process. In the case of adopting EU's regulation, why the EU came to become world's top tech regulators and first mover in regulating tech firms must be the first puzzle that must be answered before adopting its regulation. One must not miss the fact that the EU was lacking European platforms as opposed to the US whereby the most Big Tech companies were taking dominance globally. For years the EU has been well addressing impact of platforms on society and competition, but such path is also seen as 'an expression of European's geopolitical power in a world that it wants to maintain some influence'[35]. Without fully acknowledging this history and context,

emulating the EU regulation may not make much sense to another domestic regime. If the South Korean government puts its priority on fostering the tech industry (versus the priority of protecting consumers by taking preventive measures), it needs to be even more careful when adopting policies from the EU. (Or, it can choose to take the 'old' US approach and grant more room for growth of the firms.) Perhaps the unclear standpoint of the KFTC hints that it is the time for the Korean government and the regulators to determine which path it will take between the two options.

2. Limitations

This study has several limitations as the research is based on the current regulatory status of the South Korean and the European regimes. Although the current version of the new law can be deemed as the regulator's intent in regulating the sector, there are still a number of legislative steps left to be completed. This leaves a possibility of the bill going through further revisions, or a scrap if it does not get approved by the MPs. The latter would be due to the fact that deliberation is expected to spur up further debates amongst the ministries, as they would have impact by the new law (i.e. the Ministry of SMEs and Start-ups and the Korea Communications Commission). Had this study been based on the promulgated law in force, it could have provided a more robust understanding which explains how effective (or ineffective) the new

35) Quote from Jeremy Ghez, an associate professor of economics at H.E.C. Paris. (Amaro, S. (2021, March 25). Big tech's new rules: How Europe became the world's top tech regulator. CNBC. Retrieved from https://www.cnbc.com/2021/03/25/big-tech-how-europe-became-the-worlds-top-regulator.html)

regulation through policy transfer was implemented.

Ⅶ. CONCLUSION

This study analyzed how policy transfer was made in the case of the South Korean regulators in adopting new regulation on the newly emerging sector of intermediation services through online platforms by making primary reference from the EU regulation.

The first and foremost issue with the KFTC's proposed law was that the bill did not fully 'sync' with the country-specific environment in addressing the issues, nor did it provide sufficient clarity as to who is applicable to the new law. Its effort in defining the regulatee was insufficient and required more attention-to-detail construction; the current shape is expected to trigger a significant level of unpredictability and uncertainty to the business operators and the marketplace itself. Same goes with some overlapping of the new rules clashing with the pre-existing laws that are already in place.

Looking through these 'defects' – of which some are rather technical and thus could have been prevented at some point – perhaps the KFTC was 'chasing after' or 'imitating' the regulatory trend of the EU on the newly emerging sector. But even if that were true, the lawmakers could have used the policy transfer approach with more effectiveness and efficiency; the missing piece should have been at scrutinizing and assessing the Korea-specific environment and addressing the domestic issues in more practical terms. No regulatory solution is at use if it is addressing the wrong issue from the start, even if it offered a perfect solution.

Policy transfer should probably never operate as a function of a 'cheat sheet for an exam.' From this study we can learn of an implication that in order for policy transfer to be made thoroughly and robustly, essentially policymakers have to go through a process of 'policy irritants' themselves before producing any new rules; rather a complex work process as it would require a comprehensive understanding of two (or more) jurisdictions. This includes identifying the *distinguished* issues and problems, structural environment, and options in regulating. Emulating per se should not be the primary keyword in the adopting process; but *learning* or *selective learning* may be.

It must also be noticed that policy is shaped by policymakers, not lawyers or lawmakers. Policy decisions are determined by multiple factors, including diplomatic and political background. Regulatory and legal framework of one regime should be read with multi-faceted contexts, not just in its written contents. It would be dangerous and risk taking – particularly from the stances of regulated business and consumers – to 'implant' regulation without understanding such contexts.

The idea of policy transfer can come 'handy' and useful, especially in times when new sectors emerge at a rapid pace. Today, a country would probably never have to adopt a policy or regulation from an absolute zero-base, because it is more likely that some other countries would have had a benchmark already. But through this study, we saw multiple 'contradictory clashes': the EU approach to loosely regulate the intermediation service platform is transformed as a 'stringent new regulation' in South Korea; in doing so, the Korean regulators adopts a new set of laws which overlaps with pre-existing laws with less effort to sort them; and finally, the regulation itself is somewhat headed to the opposite direction from the 'innovative regulation' or 'deregulation'

approach which was set as a trans-governmental agenda.

Policy transfer can reach a tipping point and often speeds up, and policies spread to 'polities for which they were not originally designed (Dobbin, Simmons, & Garret, 2007).' Through this study we have seen a case where policy transfer from one jurisdiction to another was attempted but was not 'fittingly' adopted. But the case also gives a multiple of lessons as to what prerequisite must be sought out in advance to make the policy transfer an effective and efficient tool.

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Policy Transfer in Times of Techno Bureaucracy: South Korea's Regulatory Response to the Online Intermediation Services

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With the recent rapid growth in online intermediation services, the South Korean Fair Trade Commission (KFTC) proposed a bill in 2020 aiming to prevent unfair trade practices and promote innovation. Legislation of the bill has been proactively driven by the KFTC and is scheduled to be deliberated at the Parliament after being approved at the Cabinet meeting. The key ideas of the bill have been adopted from regulatory framework of the EU, who had long been a world leader in regulating the tech sector. This study explores how the Korean regulators made their regulatory choices and why they made such decision, from the perspective of cross-national policy transfer. In doing so, this paper analyzes the distinguished regulatory frameworks of the South Korean and EU regimes, as well as the different business landscapes of the two jurisdictions. Through the analysis, this study finds that policy transfer is seemingly an 'easy' tool but how it operates is much more complex, because every jurisdiction has a distinguishably unique environment –

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both in business and regulatory terms. The South Korean government's attempt to adopt a new regulation from the EU framework misses numerous points as it decided to accelerate the legislation process instead of tailoring the law to the Korea-specific situation with more delicacy. The unclarity of the legislation also leaves burden to the business sector, but a significant learning is learned of policy transfer - that policy transfer can be used as an effective and convenient tool only if the 'adopter' takes a thorough and robust approach in preparing a policy strategy that is delicately tailored to the domestic business and regulatory environment.

Keywords: Policy Transfer, Cross-National Policy Transfer, Online Platform Intermediary Transactions Fairness Act (OPITF), Korea Online Platform Regulation