Twenty-Second Intergovernmental Group of Experts on Competition Law and Policy
Room XIX, Palais des Nations, Geneva
3-5 July 2024

Korea’s Recent Merger Control Development

Presentation

Mr. Seokwoo Ahn
Senior Deputy Director of
Korean Fair Trade Commission

South Korea

Fair Trade Commission

Korea's Recent Merger Control Development

5th, July, 2024

Seokwoo AHN, Senior Deputy Director of
Korea Fair Trade Commission

Contents table

01

Revising
Merger Guidelines

Revising Merger Guidelines

01 Overview

- The Korea Fair Trade Commission('KFTC') revised the Merger Guidelines to better incorporate the characteristics of the digital economy into the merger review process, and the revised standards is being enforced from May 1st, 2024.

- The previous Guidelines were based on traditional industries, which resulted in insufficient consideration of unique characteristics of the digital economy such as free service offerings and network effects

Revising Merger Guidelines

02 Market Definition

① Multi-sided market

- In cases ▲where there are strong indirect network effects between different sides, ▲ and where users on each side perceive similar substitutability of demand, it allows for the definition of a multi-sided market encompassing all sides together as one market.

② Alternative of SSNIP Test

- When services are provided for free, making it difficult to apply the SSNIP test, market definition can be based on the demand substitution due to decreasing in service quality(SSNDQ).

Revising Merger Guidelines

03 Assessing anti-competitve effect

① Consideration of network effect

- When assessing mergers involving online platforms, it has been specified that consideration should be given to the potential for such mergers to increase users or data, thereby triggering network effects.

② Conglomerate effect

- It was stated that conglomerate mergers can lead to practices such as tying and bundling, etc., which can exclude competitors.
- Platforms tend to create ecosystems through conglomerate mergers, and it was stated that this tendency can lead to strengthen of entry barriers

Revising Merger Guidelines

04 Efficiency

- The revised Guidelines include examples of efficiency effect that is unique to the digital economy as follows;

① An increase in the number of service users as a result of a merger may improve the welfare of existing users.

② Additional data secured through a merger may lead to innovative services or reduced production or distribution costs.

③ Consumers can enjoy a broader scope of services.

④ In cases where startups that develop innovative digital technologies are merged, the recovery of invested capital may lead to new startups and market entrants, thereby strengthening the startup ecosystem.

02

Introducing Remedy Proposal System

Introducing Remedy Proposal System

01 Background

- The KFTC by itself has designed and imposed remedies on anticompetitive mergers.

- However, as the economic structure shifts towards a digital focus and becomes more complex, it has become increasingly difficult for The KFTC to design remedies with the limited information it possesses.

- It did not align with the global standard of competition authorities receiving proposed remedies from companies

02 How the system works

- The Competition Act of South Korea has been amended to introduce 'Remedy Proposal System', as described below, and is set to take effect on 7TH, August, 2024.

① The KFTC will provide preliminary notifications regarding concerns about anticompetitive effects in advance to the parties.

② The parties submit a remedy proposal to address those concerns .

③ If necessary, the KFTC may request modifications to the remedy, and the parties revise and resubmit the remedy accordingly

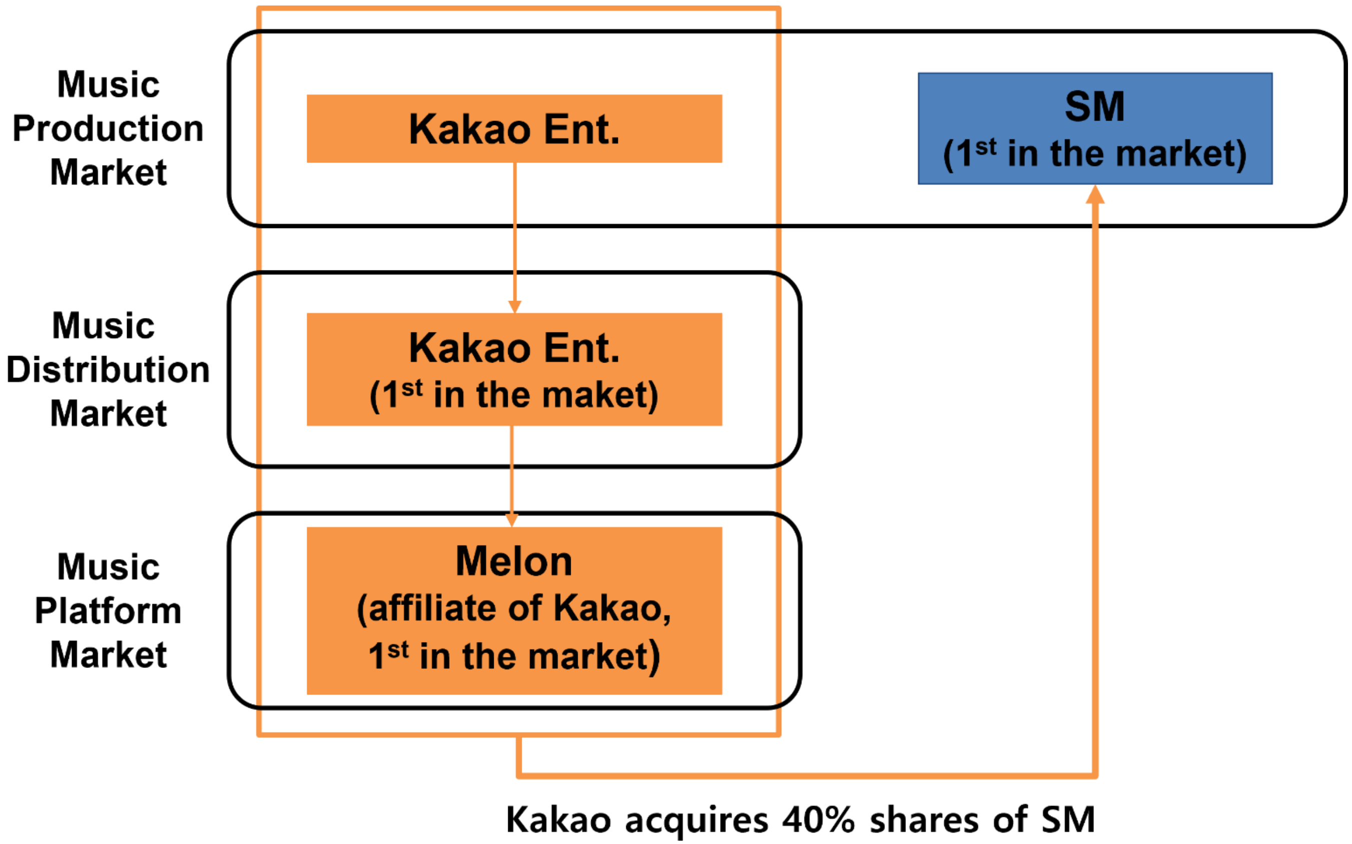
④ Upon considering the submitted the proposal, the KFTC imposes final remedy.

03

Recent Digital Merger Case

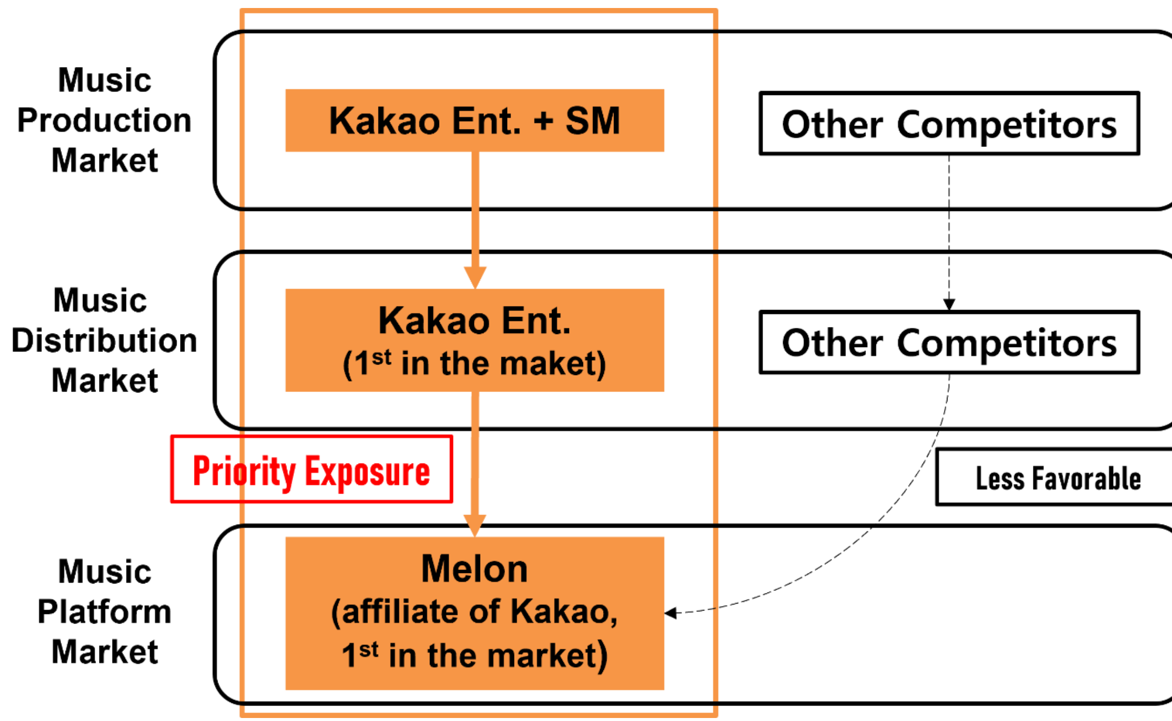
Kakao Ent.-SM Case

01 Overview



02 Theory of Harm 1 - Self preference

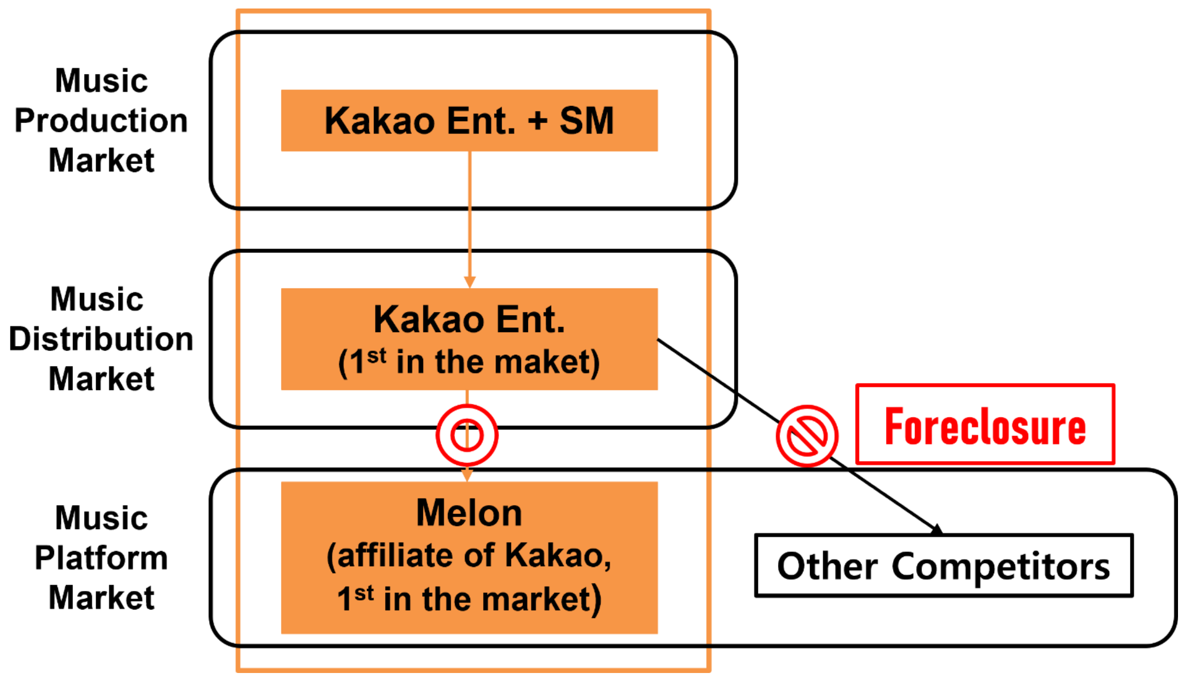
- The KFTC was concerned that Melon's self preference practice, which means prioritizing Kakao or SM music, could lead to the foreclosure of competitors' sales channels.



03

Theory of Harm 2 - Input foreclosure

- The KFTC was concerned that Kakao's refusal to supply SM's music, the market leader, to competing platforms could lead to the foreclosure of competitors' supply channels.



Kakao Ent.-SM Case

04

Remedy (imposed 30, May, 2024)

- **(Self preference)** An independent committee will be formed to monitor Kakao's preferential treatment practices.

- **(Input foreclosure)** Prohibiting unfair rejection of music supply requests by competitive platforms.

Thank you for your kind attention.