

온라인플랫폼 규제 동향 국제세미나(II)

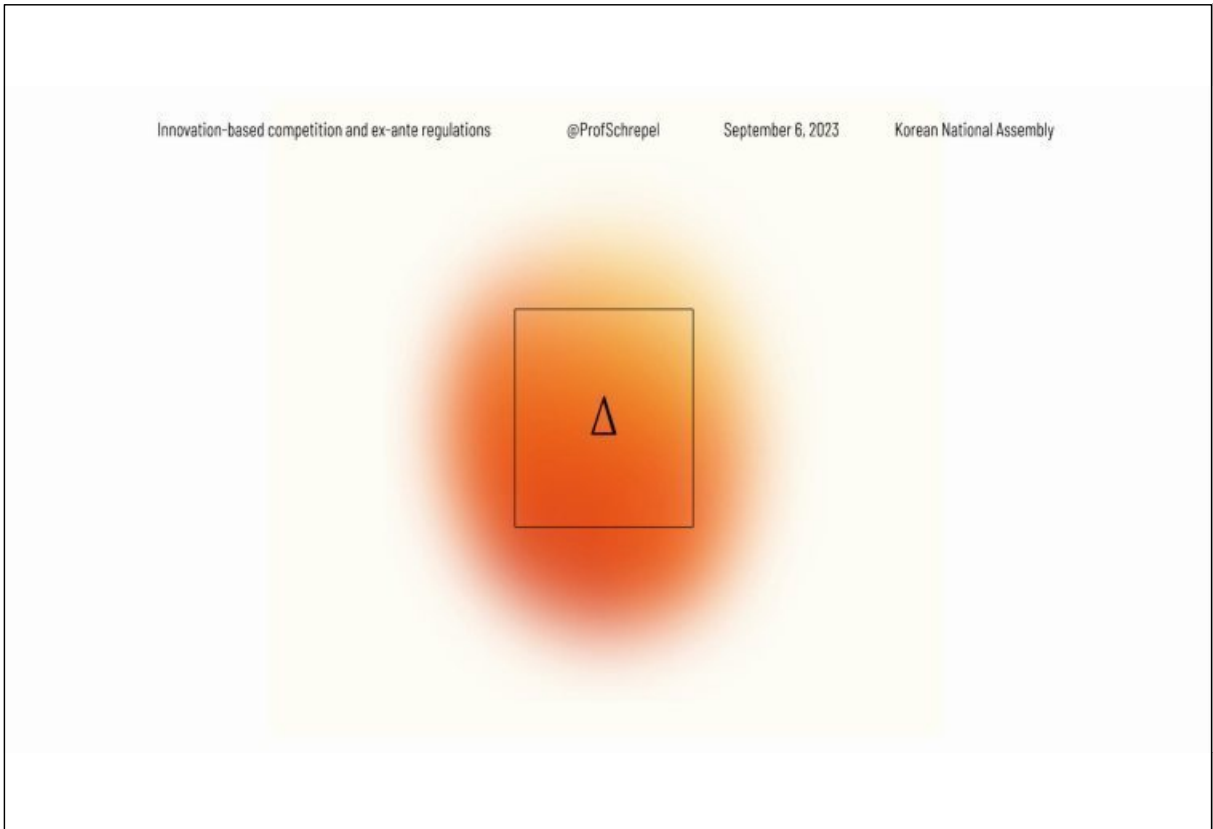
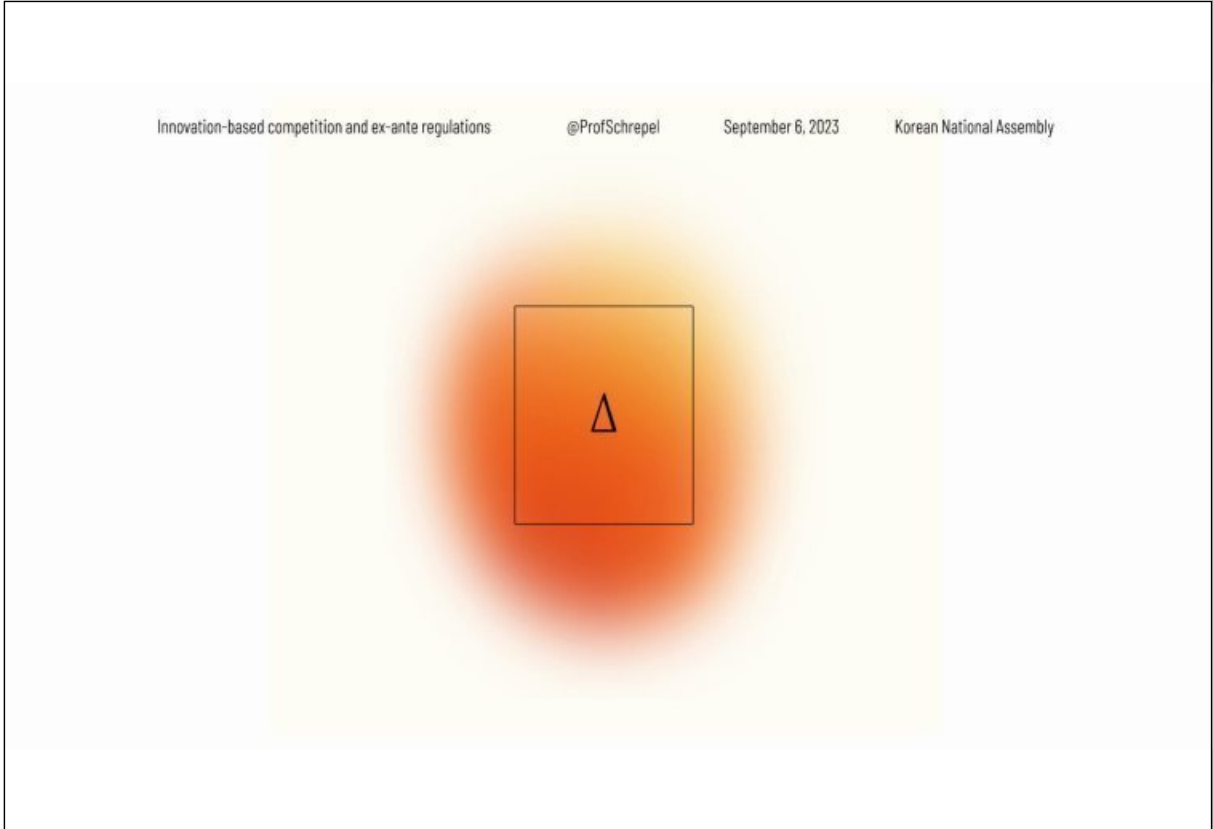
# 발표 1

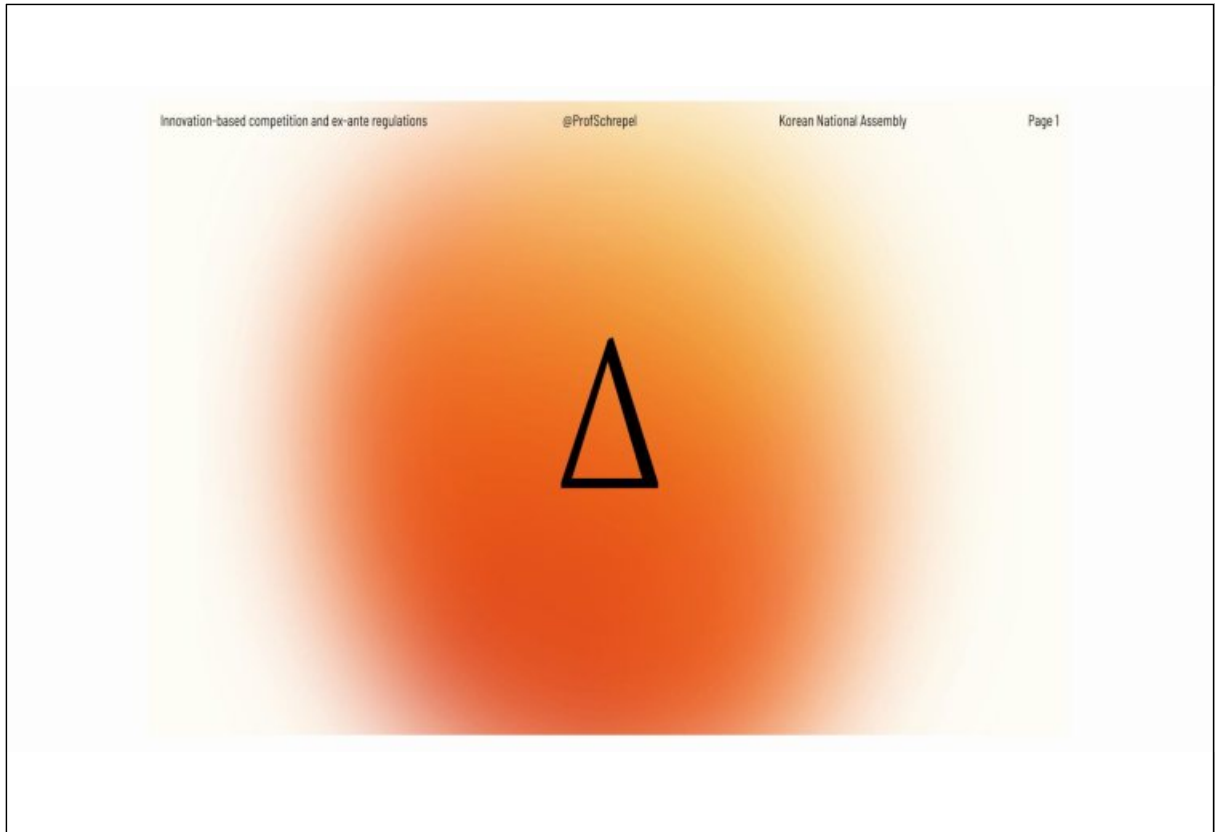
## Innovation-based competition and ex-ante regulations

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# 1. OBSERVATIONS

# 1. 현상 (現狀)

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**Competition stimulates innovation.**

But equally, **innovation stimulates competition.** In digital markets, innovation is the main competitive driver.

Schrepel, Thibault. "A Systematic Content Analysis of Innovation in European Competition Law." forthcoming (2023)

Demaree, "Organizational Innovation: A Meta-Analysis of Effects of Determinants and Moderators", Academy of Management Journal, Vol. 29, No. 3(1986), 551-580; Innovation is positively related to firm performance (Darg, J.J. and Li, "The Effects of Innovation and Standardization on Pricing Competition: Implications for the Digital Economy", Journal of Business Economics and Management, Vol. 25, No. 1 (2021), 9-22); The level of innovation and standardization of a company affects its competitiveness (Kernan, "Innovation as an Aspect of Competition", in Pfeiffer, Karl and Weigand H.J. Competition, Economics and Welfare (Springer, 2002), pp. 17-20; Jacobs and Tenebe, "Market Policy and Innovation: Taking Account of Performance Contracting and Competition Cooperation", Journal of Institutional and Theoretical Economics, Vol. 161, No. 1(2004), pp. 118-166; Organization for Economic Co-operation and Development (OECD), The Innovation Imperative: Contributing to Productivity, Growth and Well-Being (Paris: OECD, 2019); Innovation as a Key Driver of Economic Growth and Development (F. Pohl and Jacobs, Innovation, Big Tech, Data and Competition Policy: Learning Dynamics from a Digital Competition, Industrial and Corporate Change, Vol. 31, No. 1(2022), pp. 188-208)

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경쟁이 혁신을 촉진시키는 만큼,  
혁신 또한 경쟁을 촉진시키므로,  
디지털 시장에서의 경쟁력은 혁신에서  
부터 비롯된다고 할 수 있습니다.

Schrepel, Thibault. "A Systematic Content Analysis of Innovation in European Competition Law." 출간 예정 논문 (2023)

Demaree, "Organizational Innovation: A Meta-Analysis of Effects of Determinants and Moderators", Academy of Management Journal, Vol. 29, No. 3(1986), 551-580; Innovation is positively related to firm performance (Darg, J.J. and Li, "The Effects of Innovation and Standardization on Pricing Competition: Implications for the Digital Economy", Journal of Business Economics and Management, Vol. 25, No. 1 (2021), 9-22); The level of innovation and standardization of a company affects its competitiveness (Kernan, "Innovation as an Aspect of Competition", in Pfeiffer, Karl and Weigand H.J. Competition, Economics and Welfare (Springer, 2002), pp. 17-20; Jacobs and Tenebe, "Market Policy and Innovation: Taking Account of Performance Contracting and Competition Cooperation", Journal of Institutional and Theoretical Economics, Vol. 161, No. 1(2004), pp. 118-166; Organization for Economic Co-operation and Development (OECD), The Innovation Imperative: Contributing to Productivity, Growth and Well-Being (Paris: OECD, 2019); Innovation as a Key Driver of Economic Growth and Development (F. Pohl and Jacobs, Innovation, Big Tech, Data and Competition Policy: Learning Dynamics from a Digital Competition, Industrial and Corporate Change, Vol. 31, No. 1(2022), pp. 188-208)

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A dynamic competition approach should seek to **bring innovation faster**

More innovation = more competition -> innovation "accounts for at least 50% of economic growth" from 1995 to 2013  
(OECD, The Innovation Imperative, OECD Publishing Paris, 2015, p. 19)

This should be the main objective of competition policy in all countries

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보다 적극적인 경쟁환경 수립이  
**보다 빠른 혁신으로 귀결.**

혁신과 경쟁은 비례관계 ->  
 1995 ~ 2013년의 기간 중 경제성장분  
 50%는 혁신으로부터 기인  
(OECD, The Innovation Imperative, OECD Publishing Paris, 2015, p. 19)

즉, 각 국가별 경쟁 환경 정책 수립의  
 일차적 목표는 혁신이 되어야 함.






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**Ex ante:** latin for "before the event"

**Ex ante rules:** outline what behaviors are prohibited or mandated before they are undertaken



**Examples:** the EU Digital Markets Act, the EU Digital Services Act, the EU Artificial Intelligence Act...


**The DMA:**

- > 10 sectors (art 2)
- > gatekeepers (art 3)
- > practices (art 5 + 6)

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**Ex ante:** 事前의 라틴어 표현.

**Ex ante rules:** 사전(事前)적으로 금지 또는 의무되어야 하는 행위의 정의



**예시:** EU 디지털 시장법, EU 디지털 서비스법, EU 인공지능법 등

**DMA의 경우:**

- > 10개 섹터 (제2조)
- > Gatekeeper (제3조)
- > 실행안 (제5, 6조)

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**Fact: ex-ante rules are static, by definition**

→ **Cannot be adapted even if harmful to innovation:** one may fear the DMA will freeze markets (self-preferencing + combining data)

→ **Cannot be adjusted, even if ineffective:** I doubt we can detect all infringements = leads to ex-post analysis of whether ex-ante rules were infringed (+ if what was detected is exactly what the rule covers)

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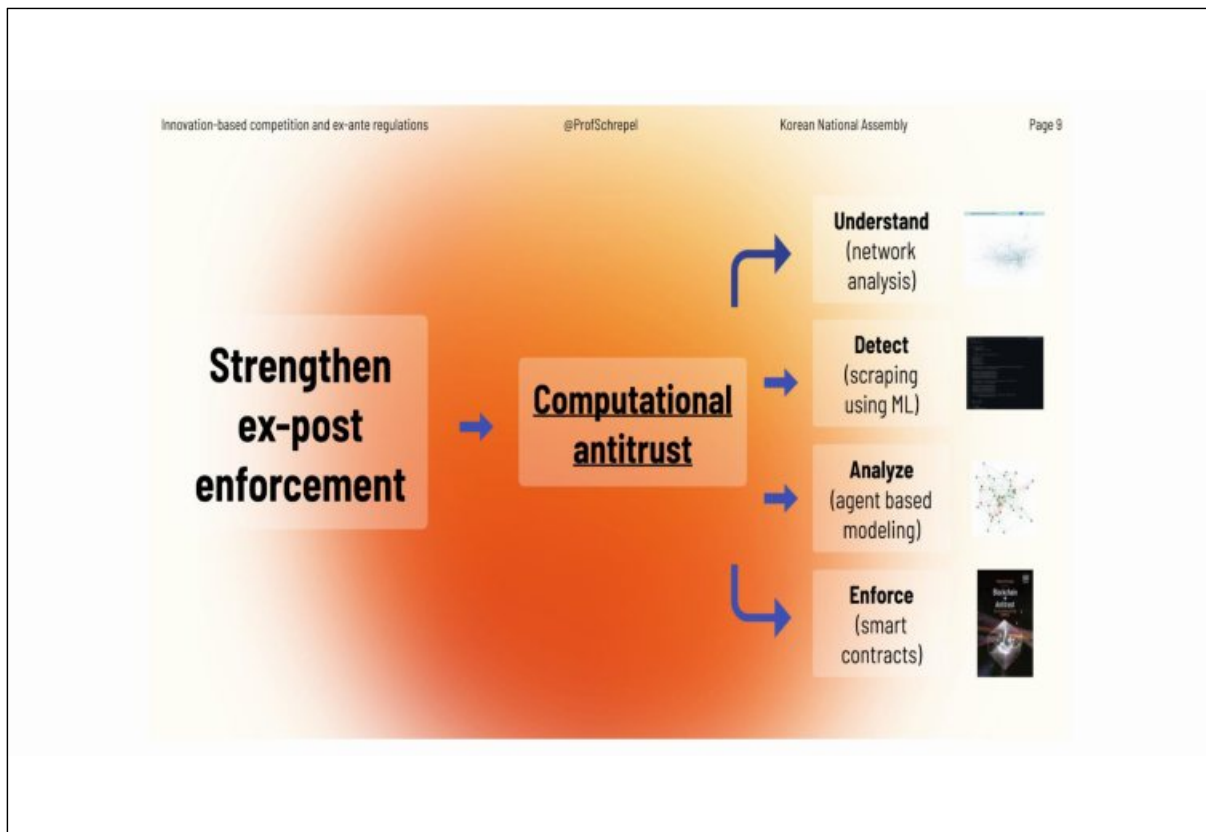
**한계: ex-ante rule은 정적인 규정에 불과**

→ 반 혁신적 조항이 있다 하더라도, 적의조치 불가: DMA로 인한 시장 검색 우려 실재 (자기우대 문제 + 데이터 조합 문제)


→ 비 효율적 조항이 있다 하더라도, 수정 불가: 모든 침해 요소를 완전히 검출해 낼 수 없는 환경에서는, 침해되지 않았는지 여부를 확인하기 위한 사후 분석이 불가피 (이 또한, ex-ante rule이 규제하는 범주 내에서만 가능)

# 3. SUGGESTIONS

# 3. 제언 SUGGESTIONS




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<https://bit.ly/antitrust2>

- **Abuse of dominance:**
  - detection of abusive contract clauses (e.g. Poland)
  - monitoring terms and conditions of platforms (e.g. Luxembourg)
  - identifying potential harms through analyzing online choice architectures (Poland, UK)
- **Cartels:**
  - real-time price monitoring (e.g. Armenia, Colombia, Greece)
  - analysis of data from instant messaging platforms (e.g. Taiwan, Türkiye)
  - identifying collusion risks based on market structures (e.g. Chile, Spain)
- **Mergers:**
  - Fully digitized merger notifications (e.g. Mexico)
  - Document generation tools for redacting merger documents (e.g. Singapore)
  - Regression analysis to identify potential effects of mergers (e.g. Taiwan)
  - Tracking mergers through screening news articles (e.g. UK)

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<https://bit.ly/antitrust2>

- **우월적 지위 남용**
  - 우월적 지위 남용의 소지가 있는 계약 조항 검증 (폴란드)
  - 플랫폼 계약 조항 모니터링 (독일, 튀르키예)
  - 온라인 기반 On-line Choice Architecture 분석을 통한 위해요소 식별 (폴란드, 영국)
- **카르텔**
  - 실시간 가격 모니터링 (아르메니아, 콜롬비아, 그리스)
  - 메신저 플랫폼 유래 데이터 분석 (대만, 튀르키예)
  - 시장 구조에 기초한 담합 위험 식별 (칠레, 스페인)
- **합병**
  - 합병 공지 전수 디지털화 (멕시코)
  - 합병 관련 문서의 신원정보 삭제용 자동화 문서생성 툴 (싱가포르)
  - 합병의 잠재 영향 식별을 위한 회귀분석 (대만)
  - 뉴스 기사 스크리닝을 통한 합병권 추적 (영국)



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If ex-post is not an option, then go for **"adaptive ex-ante rules"**

➔ **Adaptive to their effects:** document the effect (implement sensor), set targets, and conduct regular+public assessments

➔ **Adaptive to litigation:** allow possible justifications by companies, learn from them and adapt (not like the DMA)

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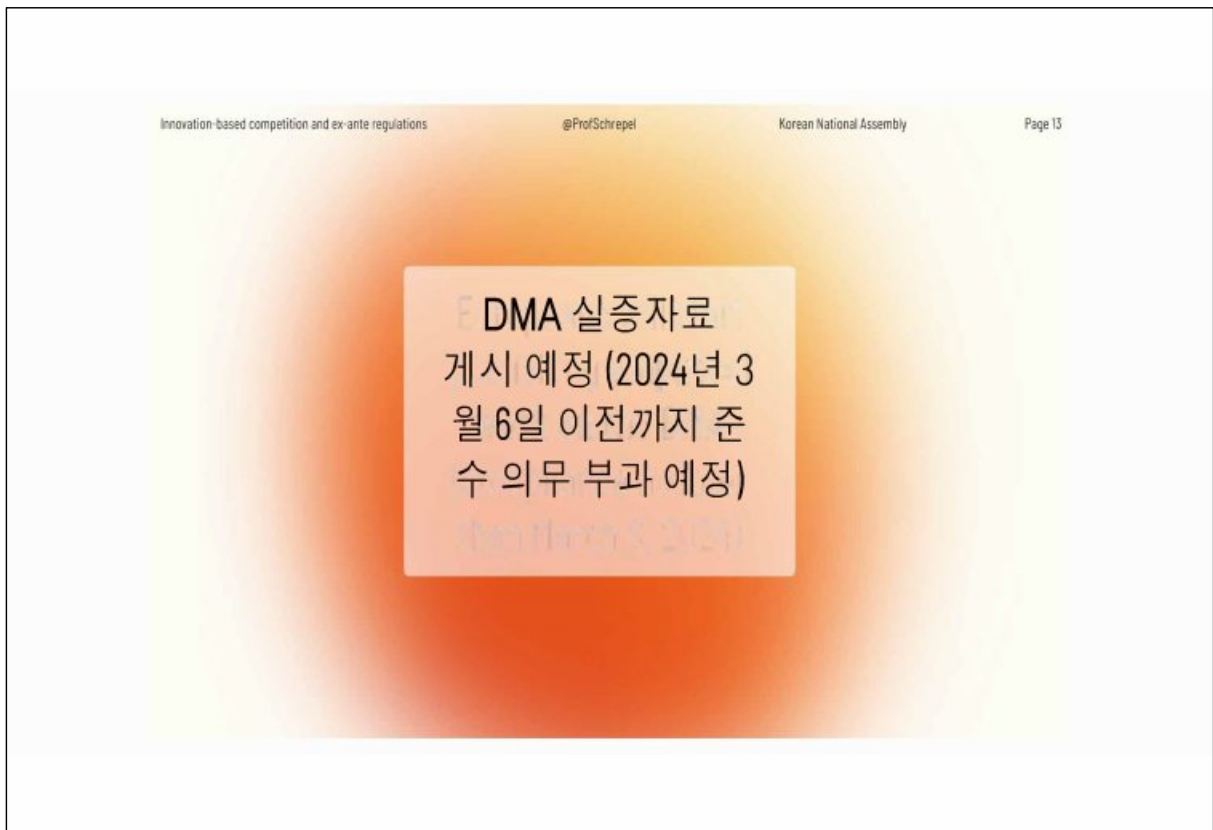
사후 (事後) 규제가 불가한 경우: 적응적 사전 규제 (**adaptive ex-ante rules**) 고려

➔ **예상되는 영향에 대한 적응:** 예상되는 영향을 문서화하고 목표를 정한 후 일상평가와 공개평가 시행

➔ **사법적 적응:** 기업에 정당성을 부여하고 이를 통하여 습득한 사항을 법제에 반영 (DMA와 같은 획일화된 방식 지양)

# 4. MEANWHILE

# 4. 침언 MEANWHILE





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**GDPR and the Lost Generation of Innovative Apps**

Rebecca Jarßen, Reinhold Koster, Michael E. Kummer & Joel Waldfogel

**GDPR induced the exit of about a third of available apps; and in the quarters following implementation, entry of new apps fell by half**

SOURCE

Firms are geared toward efficiency **or** innovation = ex ante rules can at most bring efficiency (cost reduction measures and optimization of existing processes), but hardly innovation (focus on development of new products and services)

Burns & Staker, The Management of Innovation (Ipswich, 1981) showing that firms are designed alternately to increase efficiency or to innovate; Abernethy & Utterback, "Patterns of Industrial Innovation," Technology Review, Vol. 82 (1979); Schumpeter, The Theory of Economic Development (Harvard University Press, 1934); Holland, Adaptation in Natural and Artificial Systems (University of Michigan Press, 1975); Kuran, "The Inevitable Fall: Theories of Personal and Collective Conservatism," Journal of Economic Behavior and Organization, Vol. 32 (1988), pp. 162-177; March, "Exploration and Exploitation in Organizational Learning," Organization Science, Vol. 2, No. 1 (1991), pp. 71-87; Sarbanes & Holland, "Innovation and Efficiency: It is Possible to Have It All," Business Horizons, Vol. 52, No. 1 (2008), pp. 45-55 ("relatively few firms" are able to "simultaneously engage in a high degree of both innovation and efficiency")

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third of apps fell by half

GDPR로 인해 기존 앱 서비스의 1/3 가량이 중단 되었으며, 도입 동분기 신규 앱 출시는 예상치 대비 1/2 저감

출처

효율이나, 혁신이냐의 기로에 서 있는 기업의 입장에서 볼 때, ex ante rule을 기반으로 하는 혁신이 불가 (신제품, 신서비스를 통하여서만 혁신이 가능할 것임)하며, 다소간의 효율성 개선 목표 (비용 절감 조치, 기존 프로세스의 효율화)를 달성한다면 족할 것임

Burns & Staker, The Management of Innovation (Ipswich, 1981) showing that firms are designed alternately to increase efficiency or to innovate; Abernethy & Utterback, "Patterns of Industrial Innovation," Technology Review, Vol. 82 (1979); Schumpeter, The Theory of Economic Development (Harvard University Press, 1934); Holland, Adaptation in Natural and Artificial Systems (University of Michigan Press, 1975); Kuran, "The Inevitable Fall: Theories of Personal and Collective Conservatism," Journal of Economic Behavior and Organization, Vol. 32 (1988), pp. 162-177; March, "Exploration and Exploitation in Organizational Learning," Organization Science, Vol. 2, No. 1 (1991), pp. 71-87; Sarbanes & Holland, "Innovation and Efficiency: It is Possible to Have It All," Business Horizons, Vol. 52, No. 1 (2008), pp. 45-55 ("relatively few firms" are able to "simultaneously engage in a high degree of both innovation and efficiency")

