

# Comments on Search Neutrality and Platform Neutrality

Nov. 10, 2005

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Mr. Ammori's presentation was helpful to understand the difference between various so-called neutrality issues. While there have been some discussions regarding search neutrality and platform neutrality in Korea, their concepts are still unclear. People often regard them quite similar to net neutrality issue. Given the situation, Mr. Ammori's distinction between them is a timely discussion.

The Telecommunications Business Act (TBA) regulates unfair competition of telecommunication companies, or infringement of consumer's rights. Article 3 of the TBA states that "a telecommunications carrier shall not refuse to provide any telecommunications service, without any justifiable reason."<sup>1</sup> In regard to licensing common carriers, Article 6 allows to "attach the conditions necessary for the promotion of fair competition, protection of users, improvement of service quality, and efficient use of information and communications resources."<sup>2</sup> The articles imply that the Korean domestic legislative system has adopted the principle of net neutrality to some extent.

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- <sup>1</sup> **제 3 조(역무의 제공 의무 등)** ① 전기통신사업자는 정당한 사유 없이 전기통신역무의 제공을 거부하여서는 아니 된다.
- ② 전기통신사업자는 그 업무를 처리할 때 공평하고 신속하며 정확하게 하여야 한다.
- ③ 전기통신역무의 요금은 전기통신사업이 원활하게 발전할 수 있고 이용자가 편리하고 다양한 전기통신역무를 공평하고 저렴하게 제공받을 수 있도록 합리적으로 결정되어야 한다.
- <sup>2</sup> **제 6 조(기간통신사업의 허가 등)** ⑥ 미래창조과학부장관은 제 1 항에 따라 기간통신사업을 허가하는 경우에는 공정경쟁 촉진, 이용자 보호, 서비스 품질 개선, 정보통신자원의 효율적 활용 등에 필요한 조건을 붙일 수 있다. 이 경우 그 조건을 관보와 인터넷 홈페이지에 공고하여야 한다. <개정 2013.3.23., 2014.10.15.>

Unlike net neutrality, no legal provisions are found in the area of search neutrality and platform neutrality. However, some scholars have been asking for the government to adopt the principle of search neutrality and platform neutrality.

The Naver case, which I would like to introduce today, is one of the cases affected by such movement. I want to share its implication with regard to search neutrality in the area of online search. The Naver case is well-known as the first consent decree case in Korea but the case is basically about the obligation of a market dominant search company.

On March 12, 2014, the Korea Fair Trade Commission ("KFTC") approved a consent decree with Korea's major Internet portal companies, Naver and Daum. With this consent decree, the KFTC's investigation of Naver and Daum for their alleged abuse of market dominance ended without any finding of liability.

Since 1997 when services for search and email through portal sites began, the domestic search market in Korea was led by Naver, Yahoo Korea, Daum, Nate, Google, etc. in 2000s. In 2003, Naver's share in the domestic search market began to exceed 50%, and in August 2013, Naver's market share of approximately 75% was ranked at the first place, and Daum's market share of approximately 20% at the second place.

Naver started to provide its internet search services to Internet portal users by employing a unified search method in August 2000, and thereafter has provided special services, such as knowledge shopping, real estate, movies, books, music, etc. to its users by unifying them together with the outcomes of information search without distinction. The unified search method is a method that extracts from various fields the information that matches the search terms entered by the user and classifies them into each area by type, such as news, dictionary, shopping, images, animation, music, blogs, cafes, knowledge and maps.

The Naver case dealt with issues such as whether the Internet portal companies displayed their own premium services together with search results making it unclear the distinction between search results and keyword advertisements. While making key-word based advertisements appear on the top of search outcomes, Naver did not clearly indicate on its portal screen that the rankings of listing depends on its correlation with the search word and the bid price of the advertiser.

The KFTC and Naver agreed to eliminate the risk of confusion to users and to abolish or delete systems or contracts that have the potential to cause any problems. In addition to the self-corrective measures, Naver agreed to contribute 20 billion KRW (17.2 million USD) over the next three years to establish a public corporation to monitor advertisements disguised as news articles and run a help center for consumers who suffered financial damage as a result of those advertisements. Another 50 billion KRW (43.1 million USD) from Naver are supposed to be used for helping small and midsize enterprises that are selling their products and services over the Internet, while 30 billion KRW (25.8 million USD) would be spent for consumer welfare such as consumer education.

It is still unclear whether the KFTC adopted search neutrality principle in the Naver case. The Naver case can be viewed as a mere false representation case. But the KFTC approached the case as an abuse of market dominance. From the KFTC examiner's viewpoint, Naver acquired the market power in online search and impeded the competition in downstream markets including online advertisement. The KFTC's attitude might implicitly accept search neutrality theory in mind.

Search neutrality and platform neutrality concepts are politically attractive but their substance is still vague and their economic outcome is unclear. Before accepting these concepts, we may need more empirical studies on the platform business.