



OTT & Platform Regulatory Issues in Korea

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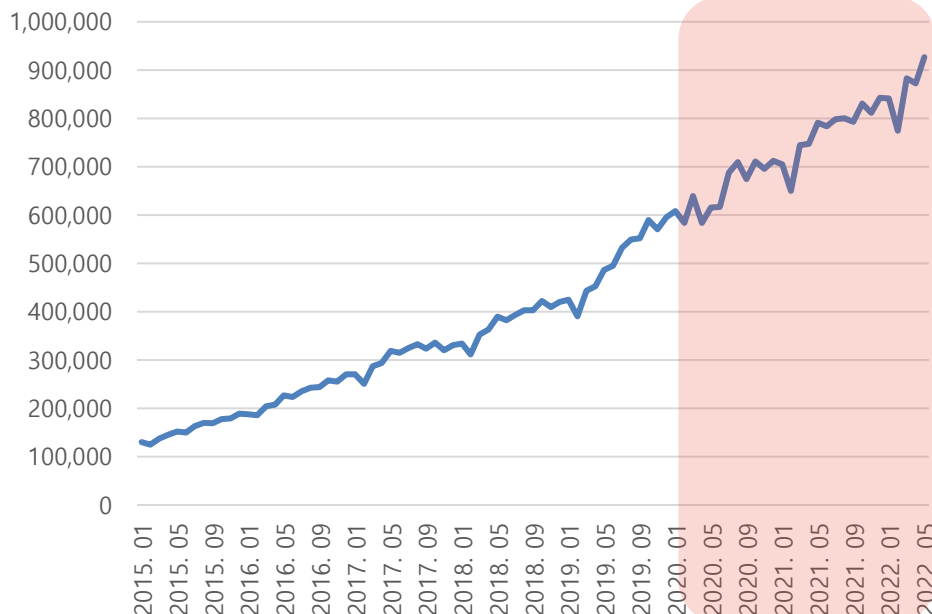
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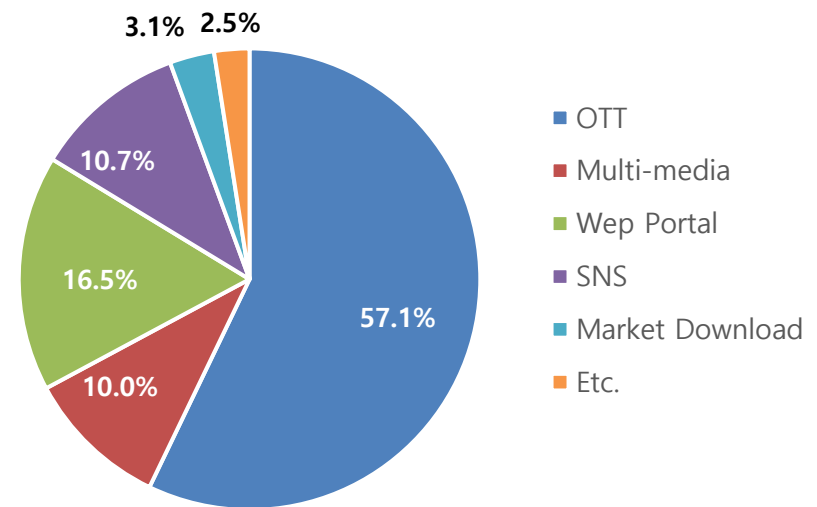
A Picture of Data Traffic and Internet Use

- At the end of March 2022, OTT data traffic consists of 57.1% of the total Internet traffic
- Mobile data traffic keeps increasing with more variation after COVID-19
- 93.9% of the Internet users has used OTTs and the average time of its use is 6.3 hours per week
 - ※ 81.7% of the users watch OTTs at least once in a day (YouTube 90.3%)
 - ※ SNS 68.9%, Internet shopping 73.7%, Banking 77.9%, Delivery 53.3%

Mobile Data Traffic (TB)



Traffic shares by contents types ('22. 1st Qtr.)



Classification of OTTs & Online Platforms

- OTTs and Some of mobile apps running over smartphones become more “Necessary” in everyday life
- Thus, most major issues in ICT sector are much related to them, esp. to giant online ‘platforms’
 - ※ A rapid surge of Internet traffic causes a new issue about a network usage fee and investment
 - ※ Giant online platforms creates new issues about anti-competitive behavior and protection of users
- They have been lightly regulated compared to the other telecommunications services
- In Korea, Internet-based services including online platforms have been classified as value-added telecommunications services and been regulated as a telecommunications service

		Business license	Regulation strength	Examples
Telecommunications Services	Basic	Registration or Notification	Strong	Most Telcos
	Value-added	Notification or exempted	Weak	Google, Naver, Kakao, etc.

Regulatory trends in other countries

EU

- EC proposed Digital Service Act(DSA) and Digital Market Act(DMA) in December 2020
 - European Parliament approved the both on 5th July 2022
- DSA defines “very large online platforms” to be online platforms which provide their services to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million (Article 25(1))
 - ※ VLOPs are obligated to identify, analyze, and assess any significant systematic risks stemming from the functioning and use made of their services in the Union. Also, their recommender systems need to be clearly set out in terms & conditions with the option that their users may modify main parameters of the recommender
- DMA defines “gatekeepers” to be a provider of core platform services satisfying specific conditions:
 - strong economic position, significant impact on the internal market and active at least 3 countries
 - strong intermediation position meaning it links large user base to large number of businesses
 - has entrenched and durable position in the market (two criteria is met in each of last three years)
 - ※ Gatekeepers have obligations not to practice unfair behavior which includes prohibition to discriminate in favor of own services, to share data generated by users etc.

	Intermediary services	Hosting Services	Online Platforms	VLOPs
Transparency reporting	●	●	●	●
Requirements on terms of service due account of fundamental rights	●	●	●	●
Cooperation with national authorities following orders	●	●	●	●
Points of contact and, where necessary, legal representative	●	●	●	●
Notice and action and obligation to provide information to users		●	●	●
Reporting criminal offences		●	●	●
Complaint and redress mechanism and out of court dispute settlement			●	●
Trusted flaggers			●	●
Measures against abusive notices and counter-notices			●	●
Special obligations for marketplaces, e.g. vetting credentials of third party suppliers ("KYBC"), compliance by design, random checks			●	●
Bans on targeted adverts to children and those based on special characteristics of users			●	●
Transparency of recommender systems			●	●
User-facing transparency of online advertising			●	●
Risk management obligations and crisis response				●
External & independent auditing, internal compliance function and public accountability				●
User choice not to have recommendations based on profiling				●
Data sharing with authorities and researchers				●
Codes of conduct				●
Crisis response cooperation				●

Regulations in other countries

USA

- In June 2021, the House of Representatives introduced five bills regulating monopolies of digital platforms
 - Ending Platform Monopolies Act
 - Platform Competition and Opportunity Act of 2021
 - American Innovation and Choice Online Act
 - Augmenting Compatibility and Competition by Enabling Service Switching Act
 - Merger Filing Fee Modernization Act
- Fair Contribution Act requires FCC to study the feasibility of funding the USF through contributions supplied by Edge Providers
 - ✧ Edge Provider is a provider of online content or services, such as a search engine, a social media platform, a streaming service, an app store, a cloud computing service, or an e-commerce platform

Two Issues in Korea

In-App Purchase(IAP)

- IAP refers to additional purchase made within an app
 - Purchasing emojis within SNS app
 - Usually small amount of transactions and used for upselling strategy for developers
- Purchase can be categorized by three different types:
 - In-App Purchase using app-market operator's billing system
 - In-App Purchase using third party's billing system
 - Purchase made by outside link using third party's billing system
- In 2020, Korea made an amendment on Telecommunications Business Act prohibiting app-market operator force a specific purchase mechanism to their app-contents providers (app developers)
 - it aimed to prevent blocking out-link purchase option by app-market operators
 - However, app-market operators bypassed the regulation by allowing the second type of IAP

Two Issues in Korea

SKB vs. Netflix

- Netflix is a giant global streaming platform in Korea (and SK Broadband an ISP)
 - Paid users increased from approx. 80,000 in 2016 to approx. 5,000,000 in 2022
 - Hours of watching Netflix has been increased more than 6 times over the last two years
 - Netflix data streaming traffic occupied about 4.8 percent of Korea's total Internet traffic at 4Q.2020
- Two approaches to reduce bandwidth burden
 - Netflix often provides cache servers (Netflix Open Connect) or
 - Bilateral contract based on monetary compensation about Network usage fee

Two Issues in Korea

SKB vs. Netflix

- SKB, an ISP in Korea claimed that Netflix has to pay extra burden caused by increased Netflix traffic
 - Data traffic of Netflix had increased about 15 times over the past three years (2018-2020)
 - SKB had to invest for the rapidly increased traffic by Netflix without any contribution from Netflix
 - Thus SKB claims that Netflix has to share the extra burden
- Netflix claims that the maintenance of Network is not responsibility of CPs
 - The burden that SKB claimed can be solved by own CDN (Netflix Open Connect)
 - Network usage fee is about a connection not the transmission
 - Thus Netflix does not have an obligation to pay the burden SKB claims
- First decision was made on June 2021 in favor of SKB
- This raised a regulatory question: what should be requirements to ISPs and CPs to maintain stable network condition to prevent any harm to end-users

Thank you