



Korea Communications
Commission

NEWS RELEASE

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Telecommunications Market Investigation Division (02-2110-1533)

Consumer Policy Coordination Division (02-2110-1514)

Consumer Protection Division (02-2110-1548)

KCC DRAFTS AMENDMENTS TO TELECOMMUNICATIONS BUSINESS ACT ENFORCEMENT DECREE AND ENACTS NOTICE PROHIBITING FORCING CERTAIN IN-APP PAYMENTS

- ▶ *Amend the enforcement decree to include detailed types of prohibited acts which force certain payment methods, and establish draft notice regarding standards to determine illegality in order to improve the clarity and predictability of regulation*
- ▶ *Draw up provisions for terms and conditions in order to prevent user harm from payments relating to mobile content, procedure to handle complaints, and rules to protect users during in-app payments*
- ▶ *In order to protect app developers, draw up standards to determine the subject and content of fact-finding investigations; and in order to improve the effectiveness of examination of fact, establish a system to impose charges compelling compliance in the case of failure to fulfill an order to resubmit materials*

On Wednesday, November 17, 2021, the Korea Communications Commission (KCC, Chairman Han Sang-hyuk) drafted amendments to the Enforcement Decree of the Telecommunications Business Act which specify detailed types and standards for newly established prohibited acts, such as app market operators forcing certain payment methods, obligations to protect consumer

rights, the subject and methods for fact-finding investigations, and the charges for compelling compliance in the case of operators failing to fulfill an order to resubmit materials.

Additionally, in order to improve the regulatory clarity and predictability of prohibited acts by app market operators, the KCC has established and amended a notice which includes standards for determining illegality of new prohibited acts and the upper limits for imposing penalty surcharges.

The enactment and amendments of the enforcement decree and notice are follow-up measures to the amendments to the Telecommunications Business Act (announced Sep. 14 and Oct. 19, 2021) which prohibit forcing certain in-app payment methods and establishes the system on charges for compelling compliance. The key points are as follows.

First, in order to improve the clarity of the new regulations on prohibited acts, such as prohibiting forcing certain payment methods, the KCC specified the types of prohibited acts that can occur during the operation and provision of service by app markets, and established a new notice for the standards to determine the illegality of prohibited acts. (Draft Enforcement Decree, Article 42 Paragraph 1, attached table 4 amended)

The detailed types of forcing certain payment methods were specified and regulated, taking into account each stage of app market use and service, any direct or indirect restrictions on the use of other payment methods, and taking care to prevent any circumvention of regulation or blind spots.

<Key points of the Draft Enforcement Decree >

▲ (Restrictions on app market use, service)

- A. Acts which refuse, delay, restrict, delete or block registration or renewal of mobile content, etc.
- B. Acts which refuse, delay, suspend, or restrict the use of the app market

▲ (In/direct restriction of other payment methods)

- C. Acts which restrict through technical means

- D. Acts in which procedures are difficult or inconvenient
- E. Acts which restrict setting use conditions differently in a manner within a reasonable scope according to payment method

▲ **(Prevention of regulation bypass, etc.)** As an additional provision,

- F. Acts which impose unreasonable or discriminatory conditions or restrictions through fees, exposure, search, advertisements or other economic benefits

Additionally, in order to reflect the characteristics of the app market, the KCC enacted a draft notice on ‘Standards to Determine Illegality of Prohibited Acts by App Market Operators’ (draft notice enactment) which regulates specific factors such transaction standing, forcedness, unfairness, etc.

<Key Points of the Draft Notice Enactment>

▲ **(Subparagraph 8 Determination standards)** The determination standards regarding transaction standing, forcedness, unfairness are as follows.

- **(Transaction standing)** Operators which have over a certain amount of sales or users (sales at least 100 billion KRW and at least 1 million users) are considered to have transaction standing.
 - The situation of the app market, the gap in business capacity between the app market operator and the mobile content provider, dependence on the app market operator (presence of an alternative sales route, data dependence, etc.) will be comprehensively considered during determination.
- **(Forcedness)** Determine based on whether mobile content providers can freely choose another payment method.
 - However, it will be determined that there is ‘forcedness’ if there are disadvantages present when choosing another payment method, thus being forced to use a certain payment method.
- **(Unfairness)** Determine based on whether there is any impediment to consumer benefit, including to mobile content providers, and any impediment to fair competition.

- Minimize exceptions so they are not abused, and comprehensively consider maximizing consumer benefit including security.

▲ (Subparagraph 9, Subparagraph 10 Standards for Unfairness) Determine considering the presence of standards, pre-notification, and procedure for handling complaints regarding delay/deletion (procedural fairness) based on the standard of the presence of a reasonable reason for delay/deletion (actual fairness)

Furthermore, in consideration of the fact that forcing certain payment methods are a serious illegal act, the KCC drafted a draft enforcement decree to impose penalty surcharges, imposing a penalty surcharge of 2% of sales for the former act, and 1% for acts which delay or delete review. (Draft of Enforcement Decree Article 46 Paragraph 1, Attached Table 6, and amendment of “Specified Standards on Imposing Penalty Surcharges for Violations of Prohibited Acts”).

Following the application of the penalty clauses (Articles 95 and 99) for the new prohibited acts, the law was amended to include the application subject for “Accusation Standards for Violation of Prohibited Acts.”

Second, in order to protect users from harm relating to payments and refunds of mobile content, the KCC imposed obligations on app market operators to prevent user harm and protect user interest, such as specific conditions and methods of change for the app market operator’s terms and conditions, procedures to handle complaints, and user protection during in-app payments. (Draft Enforcement Decree Article 30-9 newly inserted)

Third, in accordance with the intent of the amendment to protect mobile content providers, the regulations to evaluate user protection duties apply mutatis mutandis to select the subject and content of investigation. And in accordance with the methods and procedures for existing fact-finding investigations for value-added telecommunications, created a draft for fact-

finding investigations for the operation of app markets. (Draft Enforcement Decree Article 30-10 newly inserted)

Fourth, in order to ensure the effectiveness of examining the fact of prohibited acts, if parties fail to fulfill an order to resubmit related materials, a system to impose charge for compelling compliance will be implemented. The administrative fine for conglomerates or conglomerate-affiliate telecommunications service providers was raised from a fine not exceeding 10 million KRW to one not exceeding 50 million KRW. (Draft Article 43-2, attached table 7-2 newly inserted, attached table 11 amended)

KCC Chairman Han Sang-hyuk commented, “in order to realize the intent of the amended Telecommunications Business Act, immediately after the law was passed (Aug. 31, 2021) we operated a research group with experts to sufficiently collect opinions from relevant stakeholders such as app developers and app market operators, after which we drafted the enforcement decree and notice enactment.”

He went on to emphasize, “considering that this issue is receiving attention both at home and abroad, we will proceed swiftly with follow-up measures so that the law is enacted smoothly in order to create a fair and sound app market ecosystem.”

The draft enforcement decree and notice enactment and amendment will go through advanced publication of legislation, including consultation with relevant ministries and review by the Ministry of Government Legislation.

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The Korea Communications Commission