Competere Foundation

Questions for the Record from Congressman Ben Cline for Shanker Singham for the December 16, 2025 House Judiciary Committee Hearing Titled:

"Anti-American Antitrust: How Foreign Governments Target U.S. Businesses"

1. You write about what happens when competition enforcers like the KFTC punish behavior that's good for consumers and the economy. You cite research showing these mistakes are incredibly costly because they chill the conduct which the antitrust laws are supposed to protect. When Korea conducts dawn raids and threatens criminal charges against successful American companies and when Korea fines American companies for business practices globally accepted as pro-competitive, what does that do to U.S. innovation?

Korean enforcement practices, including aggressive investigative tactics, raids, and use of or threat of criminal referrals, impose substantial compliance and litigation burdens on targeted firms. They raise the enforcement risk around innovation-driven business conduct, particularly in fast-moving digital markets where efficiency-enhancing integration, ranking, and product design choices are central to competition. When regulators apply a low threshold for opening investigations, limit transparency on theories of harm, and threaten criminal referrals, the result is a chilling effect on investment and on the forms of rivalry that competition policy is supposed to protect. This chilling effect matters for U.S. innovation in three concrete ways. This is particularly true when companies perceive that regulatory interventions are fishing expeditions.

First, companies may pull back from innovation and investment in favor of risk avoidance. Our written testimony explains that mistaken intervention in dynamic markets can be especially costly because Type I errors chill conduct antitrust is intended to protect, with downstream losses in innovation and dynamism. In our assessment, enforcement that targets globally accepted pro-competitive conduct increases the risk of Type I error, and firms rationally respond by reducing the scope or speed of innovation, limiting feature deployment, or declining to roll out new business models in the market.

Second, these dynamics can affect smaller firms and ecosystem partners that rely on U.S. digital platforms. Our testimony explains that these platforms function as essential market infrastructure for SMEs, and that interventions which fragment platform operations, raise compliance costs, or introduce discretionary enforcement impose disproportionate burdens on smaller firms that lack the resources to adapt. If enforcement practices in Korea force U.S. firms to alter platform operations, restrict integration, or slow deployment,

Korean SMEs and cross-border ecosystem partners lose access to scale-based functionality and market reach. This is a direct channel through which enforcement practices in one jurisdiction weaken innovation spillovers for U.S. technology firms.

Third, these actions operate as de facto barriers to trade in digital services. Our testimony, and frankly our entire ACMD theory, is explicit in that domestic regulatory measures, including selective or precautionary competition enforcement, can function as non-tariff barriers that impede participation in global digital value chains and reduce long-run productivity. In our Korea case study, the modelling treats these policies as ACMDs with macroeconomic consequences, including an estimated long-run cost to the U.S. economy on the order of half a trillion dollars over a decade. This heightened enforcement risk reduces expected returns to innovation, reduces investment, and constrains output and expansion.

a. Follow-Up: Is Korea essentially punishing American companies for being successful and able to compete with Korean and Chinese competitors?

We have to distinguish between intent and effect. Whatever the intent of Korean authorities, the effect is to single US firms out for punishment. Korean authorities are seeking to limit the success and operationality of U.S. firms to give domestic companies an artificial advantage. In doing this, Korean enforcement is penalizing competitive success rather than protecting the competitive process. Our Korea study and testimony describe a drift away from consumer-welfare, effects-based analysis toward fairness or competitor-protection rationales, which increases the likelihood that enforcement targets large firms because they are large and effective rather than because they have caused demonstrable consumer harm.

The differential treatment between US and Chinese firms is particularly damaging. China firms and their close relationship with Chaebol have been protected from enforcement in ways that can only be intentional.

How the Korean Digital Regulatory Approach is Designed to Favor Chinese Companies

Background

As South Korea aggressively expands its digital regulations, a troubling pattern has emerged where measures are specifically designed to penalize U.S. companies while subsidizing Chinese expansion. While ostensibly designed to curb market dominance, both the Online Platform Monopoly Act (PMA) and the "Fairness Act" reveal this strategy. By utilizing arbitrary financial thresholds and subjective focus on sectors where U.S. companies are most active Korean regulators have effectively targeted large U.S.

technology firms for aggressive oversight. Conversely, Chinese entities—bolstered by state-supported pricing and strategic partnerships with local Korean companies — frequently enjoy "soft-law" exemptions, voluntary safety agreements, and lenient enforcement.

Discriminatory Design of Korean Regulations

The PMA, inspired by the EU's Digital Markets Act (DMA), focuses on pre-designating "dominant platform operators" based on arbitrary market share and financial thresholds designed to exclude non-U.S. entities. The proposed law establishes thresholds—set at an annual turnover of KRW 4 trillion (~$3 billion)— specifically tailored to capture large U.S. technology companies while consciously exempting powerful Chinese digital giants. This is despite them rapidly growing their market share in Korea, while remaining below reporting caps.

To grow their market share, Chinese companies use a combination of aggressive marketing, ultra-low pricing and zero-commission models for local sellers, most of which would be prohibited for US companies as "gatekeepers." These efforts are bolstered by direct and indirect state support including tax breaks, subsidies for research and development, and state-backed logistics infrastructure. This allows Chinese companies to compete aggressively in Korea, including:

- **Ultra-Low-Price Offensive:** These platforms utilize a "Consumer-To-Manufacturer" (C2M) model and reverse auctions to force suppliers into rock-bottom pricing, sometimes reaching as low as 1% to 10% of the original factory or retail prices for comparable goods in Korea.
- **Logistics Dominance:** By leveraging state-backed logistics and pooling shipping, platforms like Temu and AliExpress offer free shipping and returns across South Korea, a feat that domestic and U.S. competitors struggle to match without similar subsidies. This is a classic anti-competitive market distortion (ACMD).
- **Zero-Commissions:** Chinese firms offer zero-commission models to local sellers, allowing them to aggressively acquire market share.
- **Tax Advantage:** By often having little footprint in the country, Chinese platforms take advantage of their foreign business status to frequently bypass local consumption and corporate taxes that U.S. and Korean companies must shoulder, further widening the price gap.

As a result of these efforts, the combined transaction volume for AliExpress and Temu reached an estimated 4.28 trillion won (about $2.7 billion) in 2024. This is an 85% increase from their combined transaction volume of 2.3 trillion won in 2023. Moving forward with discriminatory platform regulation that only targets U.S. companies will only help accelerate Chinese takeover of the Korean e-commerce market.

In fact, the impact of these "ultra-cheap" Chinese goods is already causing a collapse in the domestic distribution ecosystem. China surpassed the U.S. as Korea's largest source of cross-border e-commerce in 2023, with Chinese imports growing by 121.2% year-on-year.

Meanwhile, approximately 96.7% of Korean SMEs have reported damage from the Chinese e-commerce offensive, with many effectively giving up on competing in core sectors like fashion, K-beauty, and household goods.

The Fairness Act Continues This Trend

Recently, the Korean Government has promoted the Fairness Act as a supposed compromise given U.S. concerns over the PMA. However, this legislation continues to disadvantage U.S. companies while ignoring the rapid entrenchment of Chinese tech. Though the Fairness Act lowers monetary thresholds for inclusion to theoretically capture a wider range of companies, it adopts a narrow platform-only scope and is set up in ways that would allow Chinese companies to continue to exploit loopholes.

- **Focus on a Single Sector**: This approach ignores other sectors where Korean conglomerates and Chinese-integrated firms cooperate extensively, such as logistics and retail, allowing Chinese companies to expand unencumbered in these areas.
- **Chinese Lack of Transparent Sales Reporting:** Unlike U.S. and domestic companies that maintain clear financial records within South Korea, Chinese platforms have historically faced criticism for a lack of transparency in reporting their true transaction volumes to the KFTC. Many Chinese exporters utilize complex offshore structures, often registering hundreds of individual companies to route shipments through Hong Kong-based entities, effectively fragmenting their revenue to appear below statutory reporting caps. This practice allows these platforms to functionally operate as massive, unified entities while potentially remaining under even lower defined thresholds.
- **Offshore Settlement Systems**: The latest version of the bill introduces financial restrictions such as fixed statutory payout deadlines, cash-only remittance, and partial segregation of seller funds requirements that are normally reserved for the financial services industry and go well beyond standard competition law. These prescriptive rules increase operational burdens for established U.S. platforms while Chinese competitors often lack a physical presence or manage their payment settlements from offshore, raising questions about the ability of Korea to enforce these measures against them.

Preferential Treatment for Chinese Entities

Evidence shows that even when Chinese companies fall within the legal scope of Korean regulations, they receive markedly more lenient treatment than their U.S. counterparts. Moving forward with additional regulations would only widen this divide.

- **Privacy Violation Disparity:** In 2024 and 2025, the South Korean privacy watchdog (PIPC) issued relatively minor fines to Chinese firms—$1.4 million for AliExpress and $978,000 for Temu—for illegal transfers of South Korean user data to China. In contrast, in September 2022 PIPC fined Google and Meta a combined $72 million for collecting user behavioral data without clear consent, marking the country's largest-ever data privacy penalty. It is noteworthy that Korean authorities have mounted in all out assault on Coupang for a non-intentional data leak while not significantly disciplining Chinese companies involved in intentional data transfers to China.
- **Competition Enforcement Disparity**: In 2021, the KFTC levied a punitive fine of $175 million on Google for abusing its dominant market position by blocking customized versions of the Android operating system, despite Google having less than 30% of the search market in Korea. The KFTC fined Coupang nearly $100 million in 2024 for common retail practices like algorithm-based product placement. In 2016, the KFTC imposed a monumental fine of approximately $853 million on Qualcomm for unfair business practices related to patent licensing and modem chip sales. In contrast, when AliExpress and Temu were found to have dozens of "unfair terms and conditions" in late 2024, the KFTC merely issued corrective orders that allowed them to fix the problems while continuing to grow their market share.
- **Voluntary Agreements for Chinese Companies**: In response to findings of high levels of carcinogens and other toxic chemicals in products from AliExpress and Temu, the KFTC allowed both companies to sign a Voluntary Product Safety Agreement where the companies pledged to cooperate, but which came with no fines or corrective measures.

Without a more equitable approach, the gap between U.S. and Chinese companies in Korea will continue to grow. This in not only a trade issue – though it would disproportionately impact U.S. firms. It is also a national security issue as allowing Chinese firms to grow unfettered while deepening their relationships with Korean conglomerates would give China even more influence in Korea at a time when the Lee administration has shown a willingness to prioritize the China relationship over the long-standing alliance with the United States.

2. Korean President Lee Jae-myung's nominee to head the Fair Trade Commission, the agency conducting these dawn raids and threatening American executives with prison, is an economist named Joo Byeong-ki. Last year, he wrote an op-ed where he said, "Trump's tariff war is nothing more than a shallow ploy to mask the deep-seated ills of

American society and to solve internal problems by emptying the pockets of other countries and foreign corporations." Does this give you any insight into Korean motivations here?

Chairman Joo Byeong-ki's statement ignores the broader issue of ACMDs that the administration's tariff policy seeks to address. The administration has made it clear that its goals are to reduce the economic harm caused to the U.S. by destructive behind-the-border barriers. The Chairman's words indicate that Korean authorities are pursuing the same erroneous and harmful logic patterns as the EU. This is even more troubling because of the much more lenient treatment which Chinese firms receive. Since the major cause of the trade realignment initiated by the Trump administration was the failure to deal with these ACMDs, Korea's regulatory practice will only increase the impact of China's ACMDs on the Korean, U.S. and global economies.

Much of the rhetoric attacking U.S. tariff policy relies on the strawman argument that the U.S. is unfairly attacking its partners' economies for nothing more than its own economic benefit. The reality is that anti-competitive behavior has massive deleterious effects to both economies. While Korean authorities may cry foul at the use of tariffs, they willfully ignore the losses their own economies incur just to give Korean firms an artificial advantage by reducing the overall competitive environment.

b. Follow-Up: Are we looking at economic policy, or are we looking at ideologically driven targeting of American companies?

The impact which this behavior collectively is having on U.S. firms is significant. The failure of economic policy and the misapplication of what is good practice in competition policy is so outside the zone where reasonable professionals can disagree as to suggest that it is being used as a tool to deliberately achieve certain market outcomes (damaging U.S. firms being one such outcome). Both of the points made in the question can be true, and that does appear to be the case in Korea. We are certainly seeing a closer alignment between Korea and China, and since the Chinese firms are protected by Korean Chaebol and political forces, they are protected from the results of significant "type one" error (disciplining behavior that is actually pro-competitive and innovation enhancing such that the innovation effects are permanently lost). It is the US firms that suffer the impact, but the consequent decline in innovation damages the Korean economy, as well as the U.S. and global economy.