

**On the Reform of the Digital Platform Regulation in German Competition Law
and Its Enlightenment for the FTC’s White Paper on Competition Policy
in the Digital Economy**

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Abstract

Whether it is in Taiwan or in other countries, the economic activities driven by digital platforms are significant, having become part of citizens’ daily lives. Nevertheless, due to the nature of the digital platforms as the “gatekeeper” and the “rule maker,” ample incentives to engage in various types of restrictive competitive conduct have been provided. In view of these developments, many countries have begun to consider whether the existing rules regarding their competition norms are adequate to address the threats of insufficient competition protection posed by the growth of digital platforms. Regarding this point, this paper seeks to analyze the German competition law reform, which came into being as a response to the digital economy. With this in mind, this paper discusses the German “GWB-Digitalisierungsgesetz,” which involves a series of legislative amendments, including changes to the definitions of market power caused by a monopolistic or dominant position of an enterprise, and the introduction of a special regulatory regime for digital platforms. On the other hand, in regard to this bill there are three points that deserve special mention. To start with, the bill has added the concept of intermediary power to clarify the understanding of market power in relation to digital platforms. Second, the legislators have significantly revised the rules that prohibit relative market power in particular by adding “market tipping” as a type of prohibited conduct. Finally, the legislators have added a new regime for an “ex-nunc” regulation to go against the digital platforms, which are recognized as having intermediary power. This special institution differs from the ex-post monitoring model of the previous competition law. Overall, the purpose of these amendments is two-fold. First of all, it is to make the judgment of market power clearer, and secondly it is to enable the regulatory agency (Bundeskartellamt) to intervene earlier to avoid the serious harm caused by the abuse of market power. By analyzing the results of the “GWB-Digitalisierungsgesetz,” this paper is

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likely to provide relevant opinions for the “White Paper on Competition Policy in the Digital Economy” issued by the Fair Trade Commission. This paper thus argues that the White Paper’s failure to clearly state the key points of amendments to the Fair Trade Act may be overly negative. The outcome of the German amendment can therefore be used as an appropriate legislative reference.

Keywords: Digital Economy, Digital Platform, Gatekeeper, Two-sided Market, Multihoming, Data, Network Effects.