

Competition Law Perspective on Personal Data Protection Regulation in the Big Data Era

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Table of Contents

- 1. Overview of Personal Data Protection Regulation in Korea**
- 2. Competition Law Perspective on Personal Data Protection Regulation**

1. Overview of Personal Data Protection Regulation

- **Basic Approach to Personal Data**
 - Personal Data as Personal Rights
 - Premise of Data Subject holding the Right of Self Decision-making of Personal Data
 - Personal Data include Personal Identified Data and Personal Identifiable Data with Identifiability as an indicator (Personal Data Protection Act 2(i))
 - Personal Identified Data
 - Personal Identifiable Data: availability and combinability (potential combinability or reasonable combinability?)
 - Requires Prior Consent when Collecting Personal Data (with Strict Opt-In methods) and Limiting Usages of such Data within Purpose of Collection (the Act 17(1)(i))
 - Requires separate Prior Consent on Using Personal Data for Other Purposes or Providing to Others (with Strict Opt-In methods) (the Act 18(2)(i))
 - Personal Data as Public Goods
 - Personal Data as Social Overhead Capital (SOC)
 - Regarding Personal Data Distribution System as Normative Order and Emphasizing Government's Role as a Guardian

1. Overview of Personal Data Protection Regulation

- **Limits of Legal Systems in the Big Data Era**
 - Difficult to address Extension of Scope of Personal Data due to the Big Data and the Improvement of its analysis technology
 - Big Data has 4Vs - meaning Volume, Velocity, Variety and Value
 - As analysis technology improves, Data collected without Personal Identifiability may become Identifiable – Is Prior Consent still required in this case?
 - Profiling as form of automated processing of Personal Data as defined in the GDPR in the EU and the right to object of data subject
 - Necessity of Legal Systems and Principles –Such Information become valuable sources for customized service, target marketing or improvements of goods and services

1. Overview of Personal Data Protection Regulation

- **Attempt to Improve Systems and Principles under Current Legal System**
 - Guideline on Preventive Measure of Unidentifiable Personal Data
 - 2016. 6. 30. Office for Government Policy Coordination, Ministry of Government Administration and Home Affairs, Korea Communications Commission, Financial Services Commission, Ministry of Science, ICT & Future, Ministry of Health and Welfare Jointly Enacted Guideline
 - Exception of separate Prior Consent for Other Purposes or Providing to Others – ‘Provision of Personal Data for the use of Statistics and Studies while Providing such Information with Unidentifiable Forms’ (Personal Data Protection Act 18(2)(iv))
 - Including Big Data Analysis for Commercial Uses within the scope of ‘for the use of Statistics and Studies’
 - Providing Guidelines of concept and standard of ‘Unidentifiable Forms’
 - Giving a Safety Valve to Big Data Analysis despite the concern of re-identification – However, Limits remain as Big Data Analysis for Target Marketing (Identifying and Tracing Users) which may generate Personal Data still requires Prior Consent

1. Overview of Personal Data Protection Regulation

- **Attempt to Improve Systems and Principles under Current Legal System**
 - Collection and Uses of Disclosed Information
 - Supreme Court gives Guidelines on Determination Standard for Illegality of using Disclosed Information without Consent of Data Object for Commercial Purposes and Giving Information to Others (Supreme Court 2016. 8. 17., 2014da235080)
 - A Legal Information Service Provider sold the Information of a Professor (Including Picture, Name, Gender, Birth, Job, Level of Education and Work Experience) after Collecting such Data from Websites, without his Prior Consent
 - Supreme Court set a Standard for Balancing Conflicting Interests among data object, data processor, and data recipient to determine Illegality and suggested Comprehensive Ground for using Personal Data which is not illustrated in Personal Data Protection Act

2. Competition Law Perspective on Personal Data Protection Regulation

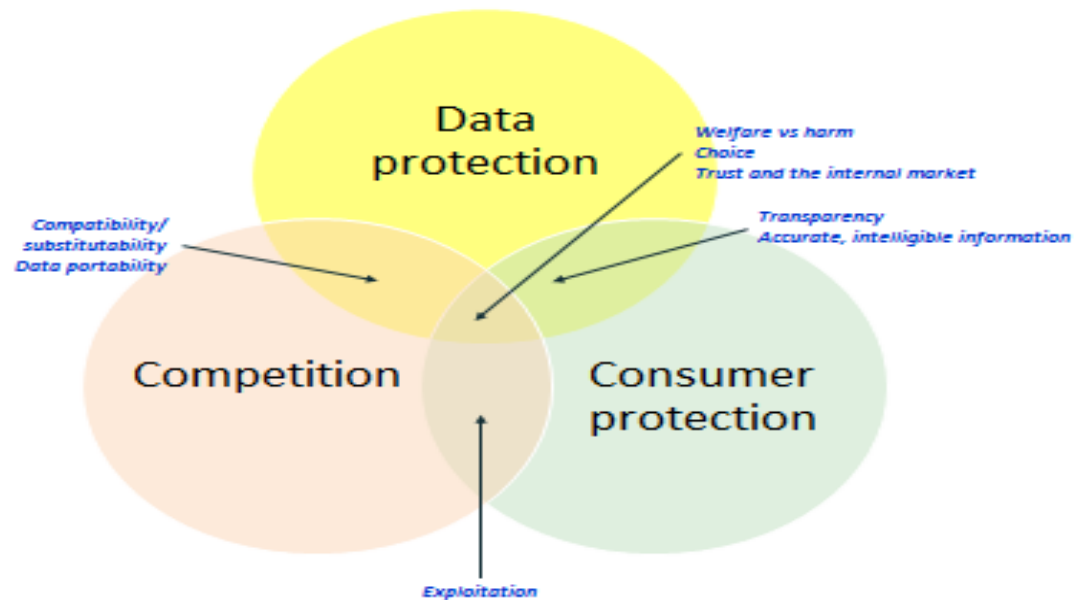
- **Competition Law Perspective on Personal Data and its Protection**
 - Personal Data as Important Inputs of Goods and Services
 - Competition for the acquisition of Competitive 'Data-advantage' over Rivals ('Data-driven Competition')
 - Interaction of Big Data, Machine Learning and Data-driven Network Effect is Important in Multi-Platform Business Models as Competitive Advantages
 - Personal Information itself can be Non-rivalrous but it may not be Non-excludable, which makes difference between Personal Information and public goods
 - Data with same Function may have different competitive sense for Who Approaches and Uses such Data
 - Personal Data Protection as Competition Parameter
 - Competition between Enterprises occur in Price Competition and Non-price Competition
 - Major Factor of Non-price Competition is Quality, and Personal Data Protection & Technical Innovation consist Quality in Data-driven Business Models

2. Competition Law Perspective on Personal Data Protection Regulation

- **Competition Law Perspective on Personal Data Protection Regulation**
 - Current Regulations assume Single-Platform Business Models with merely collecting or processing Personal Data, while Multi-Platform Business Models Use such Data in Various ways – Characterized as Competition-restrictive Regulation or Regulatory Entry Barrier Hindering Quality Competition with superiority of Personal Data Protection
 - In terms of betterment of such Competition-restrictive Regulation, Prior Consent rule with Opt-in Methods should be eased and Post Objection rule with Opt-out methods should be introduced to at least Personal Identifiable Data (as opposed to Personal Identified Data) used for Big Data Analysis
 - Government should set Minimum Standards, giving Enterprises Incentives to strive to get Customers' Choices by providing service with a higher level of Personal Data Protection
 - Necessary to Check standards for Product Safety situation of which is similar to Personal data
 - Customers are Sensitive about Personal Data Protections and it can be the Selection Criteria when purchasing goods and services
 - Case of switching to Telegram from Kakao Talk due to the concern of monitoring of Investigative Agency
 - Improvement of Personal Data Protection Systems contributes to Diversification of Choices of Customers (leading to Improvement of Quality)

2. Competition Law Perspective on Personal Data Protection Regulation

- Interplay between Personal Data Protection, Competition Law, and Consumer Protection



<Source> European Data Protection Supervisor (2014)

Thank You!