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ARTICLE

The New AI Regulation in Korea: Problems of Jurisdictional Overlaps

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The Network Law Review is pleased to present a special issue entitled "The Law & Technology & Economics of AI." This issue brings together multiple disciplines around a central question: What kind of governance does AI demand? A workshop with all the contributors took place on May 22–23, 2025, in Hong Kong, hosted by Adrian Kuenzler (HKU Law School), Thibault Schrepel (Vrije Universiteit Amsterdam), and Volker Stocker (Weizenbaum Institute). They also serve as the editors.

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Abstract: Each country has distinct governmental and political systems, which reflect its unique approaches to digital regulation. Korea stands out for its proactive regulatory policies in the digital markets, including the field of artificial intelligence. Several enforcement agencies are responsible for digital regulation in Korea. Historically, these agencies have demonstrated both coordination and conflict in the enforcement of their respective laws, highlighting a significant issue of jurisdictional overlap. Notably, Korea has recently adopted legislation on artificial intelligence, which is expected to prompt further discussions on effective cooperation among these agencies. It is therefore timely to examine the costs and benefits of both coordination and competition among regulatory authorities in the context of AI legislation. This article also discusses recent developments in the Korean government's efforts to enhance coordination among enforcement agencies, aiming to reduce inter-agency conflicts.

1. Introduction

Each country has distinct governmental and political systems, which reflect its unique approaches to digital regulation. Korea stands out for its proactive regulatory policies in the digital markets, including the field of artificial intelligence. Several enforcement agencies are responsible for digital regulation in Korea. Historically, these agencies have demonstrated both coordination and conflict in the enforcement of their respective laws, highlighting a significant issue of jurisdictional overlap. Notably, Korea has recently adopted legislation on artificial intelligence, which is expected to prompt further discussions on effective cooperation among these agencies. It is therefore timely to examine the costs and benefits of both coordination and competition among regulatory authorities in the context of AI legislation. This article also discusses recent developments in the Korean government's efforts to enhance coordination among enforcement agencies, aiming to reduce inter-agency conflicts.

2. The Korean regulatory regimes for the digital economy

Well-defined law and policy on digital markets is one of the most important topics in our modern society. Given the importance of digital regulatory policies, some countries, like Korea, are directing their policy towards encouraging innovation and regulating harmful business conduct. Over the last decade, Korea has adopted two major pieces of digital legislation: the Personal Information Protection Act (PIPA)[1] and the Artificial Intelligence (AI) Basic Act.[2] These acts are, respectively, somewhat analogous to the EU's General Data Protection Regulation (GDPR)[3] and the EU's AI Act,[4] although the Korean legal measure on AI focuses more on the promotion of the AI sector. The Korean data protection agency, the Personal Information Protection Commission (PIPC), has been established and has jurisdiction over data privacy,[5] and the Ministry of Science and ICT (MSIT) has become the regulator of AI in Korea.[6] When considering the active enforcement of

[1] Korean Act No. 19234 (amended March 14, 2023).

[2] Act on the Development of Artificial Intelligence and Establishment of Trust (AI Basic Act), Korean Act No. 20676 (effective January 21, 2026).

[3] Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119.

[4] Regulation (EU) 2024/1689 of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, OJ L 2024/1689.

[5] PIPC website <https://www.pipc.go.kr/eng/index.do> accessed February 20, 2025.

[6] MSIT, 'Press Release: A New Chapter in the Age of AI: Basic Act on AI Passed at the National Assembly's Plenary Session' <https://www.msit.go.kr/eng/bbs/view.do?sCode=eng&mId=4&mPid=2&pageIndex=&bbsSeqNo=42&nttSeqNo=1071&searchOpt=ALL&searchTxt=> accessed February 20, 2025.

legal measures in the digital markets, the competition authority, the Korea Fair Trade Commission (KFTC), should be regarded as one of the main government bodies. The KFTC has recently shown an enthusiasm to impose sanctions on big tech companies for abusive conduct.[7]

While Korea has other agencies, such as the Korea Communications Commission (KCC), which have power to enforce certain sector-specific regulations related to the digital economy, there is no doubt that the PIPC, the KFTC and the MSIT can be considered as the most important authorities dealing with issues in the area of AI. The ministries of the Korean government have revealed harmonized views on policy directions for the digital market and AI. By contrast, we have seen that they have differing views on innovation and regulation in this sector. As digital platform businesses have expanded, various enforcement agencies have declared that they have regulatory jurisdiction over the AI sector. One example in Korea has been the KFTC's proposal for a new digital regulation and its later proposal for an amendment to competition law. The KFTC announced its plan for an *ex ante* regulation that would be parallel to the European Digital Markets Act (DMA),[8] but this proposal was eventually withdrawn.[9] Instead, the KFTC seems to be focusing merely on an amendment to the existing competition rules to strengthen the presumption of digital dominance and to categorize certain types of prohibited conduct, including tying, most-favored nation clauses, self-preferencing and restrictions on multi-homing.[10] Recently, the KFTC published its competition policy on the AI sector in which it indicated its concerns about possible harms to competition in business models in the AI sector.[11] In February 2025, the KCC also announced the guidelines for protecting users of generative AI,[12] and the PIPC has shown a vigorous approach

[7] See Yo Sop Choi, 'Korean Competition Rules on Algorithmic Discrimination' in Alden Abbott and Thibault Schrepel (eds), Artificial Intelligence and Competition Policy (Concurrences 2024) 201.

[8] Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, OJ L 265.

[9] See Lee & Ko, 'Korea Fair Trade Commission's new roadmap for online platform regulation' (September 23, 2024) <https://www.lexology.com/library/detail.aspx?g=29bece23-ca49-4af5-89ea-0117da989984&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2024-09-24&utm_term=> accessed March 14, 2025.

[10] KFTC, 'Press Release: Legislative directions for promoting fair platform competition and preventing possible cases similar to those of Timon & Wemakeaprice' (September 9, 2024) (in Korean) <https://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10797> accessed September 25, 2024. See also Yo Sop Choi and Kazuhiko Fuchikawa, 'Self-preferencing in Korea and Japan' (2024) 47(4) World Competition 495, 498–499.

[11] KFTC, 'Press Release: KFTC Published Policy Report on Generative AI and Competition' (January 24, 2025) <https://www.ftc.go.kr/eng/selectBbsNttView.do?key=563&bordCd=821&nttSn=13578> accessed March 1, 2025.

[12] KCC, Guidelines on the Protection of Users of Generative AI Service (February 28, 2025) <https://kcc.go.kr/user.do?mode=view&page=A02030700&dc=30700&dc=&boardId=1099&boardSeq=65689> accessed March 14, 2025.

to the protection of personal information by examining various types of conduct involving AI.[13]

Overlapping jurisdictions over AI among the Korean regulatory agencies has created some critical issues, with potential benefits and shortcomings in establishing a policy direction, designing substantive provisions and implementing regulations. One can find some degree of competition between the new and the existing regulatory agencies because of their overlapping jurisdictions in the area of AI, which may stem from differences in the ultimate objectives of their laws or from the multiple layers of regulatory governance. In Korea, the issue of overlapping jurisdictions across different subject areas is more significant than the issue of multiple layers of governance. Therefore, this article aims to discuss the costs and benefits of the competition between the new and the existing regulatory authorities in relation to legislative policy on AI in Korea. It also reviews recent developments in the Korean government's efforts to enhance coordination among the enforcement agencies, thereby to reduce conflicts between them.

3. Costs of jurisdictional overlaps in the digital market: A chilling effect on innovation

Over the last decade, the Korean digital market has developed to a notable extent. In particular, Korean platforms, such as Naver–a Korean search engine– have survived (the market share of Naver is approximately 60 percent while that of Google is about 30 percent in May 2025),[14] and this reveals that there is a robust digital market.[15] However, some emerging harms or market failures related to competition, data privacy, and consumer protection have been discussed in Korea.[16] Moreover, some agencies like the KFTC and the KCC have often claimed jurisdiction to regulate big tech companies in relation to digital platforms. One example here is the problem of the concentrated market for app distributions. The rise of commission fees in the app store market initiated a discussion about regulation and led to an amendment to the Telecommunications Business Act,[17] which now prohibits the unfair conduct of anti-steering.[18] In theory, it is possible that the KFTC could have applied the competition rules on this type of unilateral conduct, but the KCC declared its

[13] PIPC, 'Press Release: DeepSeek Temporarily Suspends Its Application Service in Korea' (February 18, 2025) <https://www.pipc.go.kr/eng/user/ltn/new/noticeDetail.do> accessed February 20, 2025.
[14] See Internet Trend <https://www.internettrend.co.kr/trendForward.tsp> accessed May 11, 2025.
[15] Dae-Sik Hong, 'The Proposal for the Platform Competition Promotion Act: Is the End of Competition Law or a New Chapter of Competition Law?' (2024) Journal of Competition 2 (in Korean); Hyunkyung Kim, 'A Study on Criticisms of South Korea's Push to Regulate Digital Platforms and Suggestions for Alternatives' (2024) 73(1) Bobjo 248, 270–271 (in Korean).
[16] The KFTC recently revised the Act on the Consumer Protection in Electronic Commerce to prohibit dark patterns.
[17] Korean Act No. 20677 (effective January 21, 2025).
[18] Article 50 of the Telecommunications Business Act.

jurisdiction to regulate anti-steering conduct in the app store market, and imposed surcharges on Google and Apple for their infringement of the relevant provision.[19]

The case of regulating conduct in the app store market is one example of overlapping jurisdictions in the digital market, but it is not the only one. Undertakings and platforms have faced multiple layers of economic regulation. We have seen several cartel cases in Korea that involve guidance from regulatory agencies, in the areas of shipping lines and telecommunications.[20] The KFTC has stringently applied competition rules against cartels that have been in some way expanded on by the public officers of other ministries. Moreover, the KFTC has quite a number of regulatory instruments through which it can regulate unfair conduct by undertakings. This often triggers a problem that innovation, especially in cutting-edge industries like the AI sector, suffers a chilling effect,[21] especially when the unfair regulations raise substantial compliance costs for tech companies.[22] Additionally, the AI Basic Act, together with other regulations, may dampen innovation incentives in Korea.[23] In other words, if there is not close coordination between agencies, whether they are new or existing, jurisdictional overlaps can generate typical Type I error problems with overenforcement and a straitjacket effect. Some critics argue that to achieve a balance between regulation and innovation in the AI sector, it is essential either to establish a new independent agency with jurisdiction over all aspects of AI or to design a coordination system among existing agencies, in order to avoid potential issues related to overlapping or redundant regulations.[24] Moreover, overlapping jurisdiction incurs substantial enforcement and coordination costs as it requires time and effort for consultation among neighbouring agencies.[25]

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[19] KCC, 'News & Notice: KCC Contemplating up to 68 Billion Won Penalty Surcharge and Corrective Measures for Google and Apple' (October 6, 2023) <https://www.kcc.go.kr/user.do?mode=view&page=E04010000&dc=E04010000&boardId=1058&cp=1&searchKey=ALL&searchVal=app+market&boardSeq=57618> accessed March 1, 2025.

[20] Kim Min-jeong, 'Fair Trade Commission Accuses Telecoms of Collusion While Korea Communications Commission Defends Regulations' (ChosunBiz, March 12, 2025) <https://biz.chosun.com/en/en-policy/2025/03/12/4W5IFJJ75NCHHITPYWPZKYJAEQ/> accessed March 14, 2025. The KFTC imposed sanctions for coordination among telecommunications companies while the KCC supported them. This reveals notable tensions between regulations and enforcers in Korea.

[21] Kyung-Sun Lee, 'Policy Tasks for the Changes by Generative AI' in Seong-Yeob Lee (ed), Generative AI & Law (Parkyoungsa 2024) 59, 79–81 (in Korean). In a survey of Korean legal experts on AI, most of them opined that such regulations could impede technological innovation in the AI sector.

[22] See e.g., Jody Freeman and Jim Rossi, 'Agency Coordination in Shared Regulatory Space' (2012) Harv.L.Rev. 1131, 1169–1170.

[23] For further discussions, see John Yun, in 'The Folly of AI Regulation' in Alden Abbott and Thibault Schrepel (eds), Artificial Intelligence and Competition Policy (Concurrences 2024) 247, 252–255.

[24] Seungmin Lee, 'Trends of Global AI Regulations and Suggestions for Designing Korean AI Regulation' in Seong-Yeob Lee (ed), Generative AI & Law (Parkyoungsa 2024) 119, 132–133 (in Korean)

[25] Jame C. Cooper, 'The Costs of Regulatory Redundancy: Consumer Protection Oversight of Online Travel Agents and the Advantages of Sole FTC Jurisdiction' (2015) N.C.J.L. & Tech. 179, 194; Freeman and Rossi (n. 23) 1182.

4. Benefits of jurisdictional overlaps in the digital market: A guardian of public interests

There have been discussions in some countries on the potential benefits of jurisdictional overlaps. When the regime and the public highlight the importance of certain values of broad public interest, the legislature often has an incentive to develop a distinctive regulatory structure to satisfy the public demand. One example of the overlapping and intersection of different areas of law lies in the Korean economic regulations. Since the 1980s, the Korean regime has adopted quite a number of regulations that focus on fair competition in the market. On the basis of the fair competition rule within the Monopoly Regulation and Fair Trade Act (MRFTA),[26] Korean policymakers have developed stringent legal instruments that regulate the misuse or abuse of a superior (bargaining) position. Following the principle of economic democratization under the Constitution of Korea, the regulations on fair trade have been rigorously implemented in certain sectors, including franchises, subcontracts and large-scale distribution.[27] Importantly, the KFTC has had sole jurisdiction over this type of fair competition regulation, which means that the enforcement agency has various antitrust weapons to safeguard values and goals in the public interest.[28]

In effect, the expansion of the scope of the fair trade regulations that are within the jurisdiction of the KFTC has created a potential overlap with other regulations that fall within the jurisdictions of other regulatory agencies. One of the areas in which there is rigorous competition among the regulatory agencies is the AI sector. As discussed earlier, the KFTC has already published a report on a study of the generative AI market in which it signals the direction of its upcoming policy for regulating various types of conduct related to AI.[29] In addition, the PIPC has declared that it is concerned about harm from certain AI technologies. It recently announced a conclusion of its investigation into the Chinese generative AI service provider, DeepSeek, for a possible infringement of the Korean data protection rules and decided to issue recommendations for correction to enhance transparency in providing AI services in Korea.[30] In addition, the MSIT has been concerned about

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[26] Korean Act No. 20711 (amended January 21, 2025).

[27] See e.g., Yo Sop Choi and Kazuhiko Fuchikawa, 'Comparative Analysis of Competition Laws on Buyer Power in Korea and Japan' (2010) 33(3) World Competition 499.

[28] However, this may generate a straitjacket effect and chill innovation. See Yo Sop Choi, 'The Legal Issues involving the Implementations of the Act on Fair Transactions in Large Retailers: The Provisions on the Sales Incentive' (2023) 48 Journal of Korean Competition Law 84, 94 (in Korean).

[29] KFTC, 'Generative AI and Competition' (December 2024) (in Korean) <https://www.ftc.go.kr/www/selectBbsNttView.do?pageUnit=10&pageIndex=1&searchCnd=all&searchKrwd=%EC%9D%B8%EA%B3%B5%EC%A7%80%EB%8A%A5&key=12&bordCd=3&searchCtgry=01,02&nttSn=43730> accessed May 11, 2025.

[30] PIPC, 'Press Release: The PIPC Announces Status Examination Results of DeepSeek Service' (April 30, 2025) <https://www.pipc.go.kr/eng/user/ltn/new/noticeDetail.do> accessed May 2, 2025.

various harms from the misuse of AI, on the grounds of issues related to algorithmic transparency and discrimination. Accordingly, there have been several publications of policy and guidance for regulating and promoting AI industries.[31]

Discussions and debates on the effects on the digital market and the AI economy of new digital regulations and revised competition rules have been taking place in Korea over the last few years. Most of these debates have been based on the legislative discussions in the EU, including on the Digital Services Act (DSA),[32] the DMA and the AI Act, and they have initiated fragmented approaches among the Korean regulatory agencies and also the political parties at the National Assembly. Unlike the digital single market in the EU, there are relatively strong local platforms in the Korean market: the combined market share of Korean platforms in the online shopping market is approximately 75 percent.[33] An appropriate balance between regulation and promotion to attract investment into AI technologies is crucial for the Korean digital economy. Of course, Korea's distinctive goals and values, based on economic democracy, are important, and the diverse attitudes of the regulatory bodies that have been trying to design their own laws and policies on AI has resulted in various suggestions for the regulation and promotion of the digital market. Competition between the regulatory authorities, who have been pursuing their own jurisdictional powers in the area of AI, has generated an in-depth study and a proposal for a regulation that can fit within the Korean system.

5. *The Digital Bill of Rights*: Consistent and coherent policy directions in Korea

There were enthusiastic discussions in 2022 and 2023 about the proper methods for regulating and improving the digital and AI sectors. These finally led the Korean ministries to agree on a common goal for the digital economy, and provided a foundation for the Digital Bill of Rights (hereinafter the Digital Bill) in September 2023,[34] although the Digital Bill is not legally binding. The MSIT has declared that the Digital Bill contains certain values and principles for a digital society of "mutual prosperity that global citizens should collectively embrace." The Digital Bill is founded on the concept of a new digital order, and the MSIT actively participated in drafting the Digital Bill. This ministry organized a group of experts and representatives from diverse areas to provide a draft for a future digital society,

[31] MSIT, 'Press Release: MSIT announced "Strategy to realize trustworthy artificial intelligence"' (May 13, 2021) <https://www.msit.go.kr/search/en/searchEn.do?qt=transparency> accessed May 11, 2025.
[32] Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) OJ L 277.
[33] Kim (n 16) 270–271.
[34] MSIT, 'Press Release: South Korea presents a new digital order to the world' (September 25, 2023) <https://www.msit.go.kr/eng/bbs/view.do?sCode=eng&mId=4&mPid=2&pageIndex=&bbsSeqNo=42&nttSeqNo=878&searchOpt=ALL&searchTxt=> accessed March 3, 2025.

advice on legal and theoretical matters, comparative studies related to digital charters, and analyses of issues with digital currencies. The MSIT invited a broad spectrum of stakeholders, including academics and business people, to participate in the preparation of the draft of the Digital Bill.

One of the important aspects of the Digital Bill is that it will harmonize different policies on the digital economy and markets. The MSIT announced that the Digital Bill is "a charter codifying nation-level standards and principles" to harmonize various issues, and it further explained that the Bill reflects globally shared values while also emphasizing distinctive goals by incorporating experiences and ideas involving digital innovation that are specific to Korea. The Digital Bill covers a wide range of rules relating to fairness in the digital economy, including literacy and disparities. In effect, the Digital Bill deals with the discussions on ethics, norms, and innovation by emphasizing certain principles and rights by means of international solidarity and cooperation. This implies that the Bill was designed not only to incorporate various approaches to digital activities but also to provide a foundation for international coordination with other countries, which may lead to the achievement of a common goal with other countries. Concerned about various issues associated with AI technologies and markets, the MSIT laid down five principles that covered its aims to protect the values and goals of society and to ensure dynamic innovation for the market.

To ensure that the policy directions of the Korean ministries reflect common values and goals, Chapter 1 of the Bill articulates the major five principles to be followed to achieve a "Digital Society of Mutual Prosperity"; these are (i) freedoms and rights in the digital environment, (ii) fair access to digital technology, (iii) a safe and trustworthy digital society, (iv) digital innovation and (v) the welfare of all people. The rest of the Bill clarifies these five principles. Chapter 2 explains the meaning of a "guarantee of freedoms and rights in the digital environment," by reference to guarantees of "digital accessibility," "access and control over personal information," and "digital workers' rights." This underlines the importance of different policies such as the protection of the weak among digital consumers, data protection, and digital labor in the gig economy, which can be tied to law and policy on fair competition. Chapter 3 then elaborates on the meaning of "fair access to and equitable opportunities", explaining that it refers to "protection of digital properties," such as data and digital content. Chapter 4 explains that "a safe and trustworthy digital society" is one that provides a "responsive system to digital threats" and the "ethical development and utilization of digital technologies," which appears to lead to the Korean Basic AI Act. Chapter 5 describes "digital innovation" as the "revision of regulatory work" to transform old-fashioned legal measures that do not fit within the digital society and "support for digital innovation" to improve the digital sector and attract digital investment. Lastly, Chapter 6 expresses the value of

the well-being of all humankind through enhancing the international connectivity and immediacy of digital technologies, including the establishment of international digital norms and the "resolution of digital disparities between countries."[35] These policy directions for the new and existing regulatory authorities show that an effort is being made to provide a consistent and coherent approach to the digital economy in Korea.[36]

6. Concluding remarks

Korea is a fast adopter of new technologies and also regulatory frameworks. Under the influence of the Brussels effect, Korea has shown an interest in adopting distinctive legal measures on data protection, AI and market competition.[37] Because digital activities affect various different areas, several regulatory agencies in Korea have declared that they have enforcement jurisdiction beyond their traditional subjects, which has triggered conflicts among them. In particular, the use of AI has raised various policy issues, such as data protection, social and economic discrimination, labor, and innovation, and this has generated two distinct streams of work: regulation and promotion of innovation. There is the traditional struggle between the agencies that aim to regulate platforms' activities and the agencies that pursue innovation, while we have also seen a clash between regulatory agencies. A conflict between a new agency like the PIPC and an existing agency like the KFTC may arise as a result of the effects of AI technologies on market competition and data protection. The different AI policymakers in Korea could cause notable costs in the implementation of their laws; these are the costs from typical duplication and conflicts of regulations.[38] Therefore, it is necessary to assess the costs and benefits when deciding when and how to regulate AI or to support AI.

Because of the increasing intersection of digital activities across several sectors, the jurisdictional claim of one regulatory agency may spill over to an adjacent sector. In particular, new policy initiatives in Korea have highlighted the mixed feelings about AI, with reference to "innovation" and "harms." Algorithms have challenged the traditional principle that the application of laws has a narrow scope, and this has inevitably resulted in conflicts between law enforcers. Korea chose to appoint the MSIT to resolve the conflicts between the agencies by establishing new principles in the Digital Bill of Rights. Of course, the current approach to AI of adopting the Bill

[35] For further development in 2025, see Korea.net, 'Press Release: The Digital Bill of Rights Gains Traction in the UK' (March 7, 2025) <https://www.korea.net/Government/Briefing-Room/Press-Releases/view?articleId=7890&type=O&insttCode=A110439> accessed May 2, 2025.

[36] See also Lee (n. 22) 84.

[37] The Brussels effect has become a trend in several countries. See e.g., Yo Sop Choi and Ploykaew Porananond, 'Competition law and policy of the ASEAN member states for the digital economy: a proposal for greater harmonization' (2023) 31(2) Asia Pacific Law Review 358, 376.

[38] See e.g., Cooper (n. 26) 179.

and the AI Basic Act cannot be the final step. Moreover, it is not easy to conclude whether there are benefits or costs of this competition, especially between the new and the existing regulatory agencies, arising from the overlapping jurisdictions across different subject areas and multiple layers of governance. The Korean debates on fairness by design in the AI sector have engendered new approaches to reduce costs and improve benefits, with converging views among the regulatory agencies, while the agencies' primary missions may continue to generate costs in the future. It will not be an easy task for the Korean government to solve the problem of the regulatory redundancy in the area of AI at the moment. A regulatory policy on the AI sector will be further clarified after the appointment of new government ministers following the presidential election in June 2025.

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