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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN KOREA

-- 2005 --

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Executive Summary

1. The year 2005 is the first year for Korea Fair Trade Commission enforced the amended Monopoly Regulation and Fair Trade Act reflecting the Three Year Roadmap for Market Reform. Pursuant to the amendment, the Commission has faithfully carried out its duty to establish free and fair competition in the market.
2. Leniency Program was overhauled to allow leniency applicants to have a clear understanding of whether qualify for leniency and, if yes, how much leniency they would get. Under the new program, protection of applicants' personal information was reinforced.
3. To increase the effectiveness of corrective measures, a guideline was drawn on allowing KFTC to resort to not only cease & desist orders but also specific performance orders and other complementary measures. *Deliberation Preparation Process* was adopted to allow case handlers and respondents to exchange and refute each other's evidence and arguments in writing sufficiently before officially going to the KFTC's court. This guarantees that the defence right of the respondents is fully respected and that KFTC's Commissioners can thoroughly examine most controversial issues at its court.
4. In 2005, KFTC issued a couple of landmark decisions in its competition law enforcement history to punish cartels in major markets including the telecommunications industry and to correct abuse of market dominance by tie-in sales of Microsoft Corporation and Microsoft Korea. Aside from these, anti-competitive M&As including a Korean beer company's acquisition of a Korean soju company's shares were corrected. KFTC has encouraged large business groups to graduate from the ceiling on the total amount of shareholding in other domestic companies by satisfying one of the four requirements. Many of them have positively responded to the encouragement and as a result, many large business groups are currently exempt from the ceiling. This clearly shows that Korean companies have been successfully adapting themselves to voluntary regulation by market forces.
5. Following 2004, in 2005, the Commission rigorously pursued reforms of anti-competitive regulations, and as a result, 51 anti-competitive regulations scattered across established rules and notifications were either reformed or eliminated. This created a business friendly environment and promoted vitality in the market.
6. To create an environment where large companies and small-and-medium sized enterprises(SMEs) can prosper together, in July 2005, the Fair Subcontract Transactions Act was amended to cover service sectors as well. To further strengthen the negotiating power of SMEs, "*Measures to Reform Unfair Transactions between Large Companies and Small-and-Medium sized Enterprises*" has been enforced.
7. For consumer sovereignty, the Commission introduced so-called "Integrated Information Provision Regarding Labelling and Advertising." Under this program, the Commission can announce all the matters related to regulations on labelling and advertisements. New websites for consumer information and "consumer damage alert" have been put into operation to help Korean consumers have better access to consumer information, and escrow system and "consumer complaint voluntary management program" were adopted as well.
8. On 19th Dec, 2005, KFTC underwent an organisational restructuring in 25 years. The previous hierarchical, multi-tiered structure was replaced by horizontal structure of teams under headquarters. Now, the Commission focuses its core competency mostly on facilitating voluntary regulations by market forces while reducing its tasks in regulations against companies.

1. Changes to competition laws and policies

1.1 Enactment and Amendment of Laws and Enforcement Decrees

1.1.1 The Enforcement Decree of the Monopoly Regulations and Fair Trade Act

9. To be in line with the revision to the MRFTA on 31st Dec 2004, *the Enforcement Decree of the Monopoly Regulations and Fair Trade Act* was also amended in the following areas¹

M&As

10. To enhance effectiveness of reviews on large companies' M&As for anti-competitiveness, *the Monopoly Regulation and Fair Trade Act* was revised in 2004 to mandate large companies to report their M&A deals through share acquisition to KFTC in advance. To be in line with the revision, the Enforcement Decree of the MRFTA stipulates that when a company acquires shares through an agreement or contract in the over-the-counter market, the acquisition will have to be reported to the Commission within 30 days from the date of the agreement or the contract. (Paragraph 8, Article 18 of *the Enforcement Decree of the Monopoly Regulations and Fair Trade Act*²

11. Meanwhile, in 2004, the MRFTA newly incorporated provisions on exemption from the report obligation when the acquired company in an M&A deal is a small one considering its impact on the nation's economy. To be in line with the change, the Enforcement Decree was revised to define the "small company" as "a company with the combined assets or turnover at less than 3 billion Won."

Cartel

12. Improvements were made to Leniency Program. Previously, the first leniency applicant was eligible for reduction of surcharge by 75 % or more, while the second one by less than 50 %. Under the new program, the first applicant gets a 100 % reduction, while the second one, a 30% and the third one, no reduction at all³.

Policies on large business groups

13. Taking into account of the natural increase of the economy's size, the asset threshold for business groups subject to the ceiling on total amount of shareholding in other domestic companies was increased from 5 trillion Won to 6 trillion Won.

14. The four requirements that companies have to fulfil to graduate from the ceiling are described in great detail in the Enforcement Decree and the scope of exemption from the ceiling was expanded.

15. Large-scale internal transactions that amount to 10 billion Won or more or that account for 10 % or more of the larger of the total shareholders' equity and the capital stock are subject to voting at the

¹ For the revised MRFTA, please refer to [http://ftc.go.kr/data/hwp/kftcnews\(january2005\).doc](http://ftc.go.kr/data/hwp/kftcnews(january2005).doc).

For the revised Enforcement Decree of the MRFTA, please refer to [http://ftc.go.kr/data/hwp/kftcnews\(2005february\)internet.doc](http://ftc.go.kr/data/hwp/kftcnews(2005february)internet.doc).

² <http://ftc.go.kr/data/hwp/improvem&a.doc>.

³ [http://ftc.go.kr/data/hwp/kftcnews\(2005may\).doc](http://ftc.go.kr/data/hwp/kftcnews(2005may).doc)

Board of Directors and to public announcement. Previously, the Commission set the threshold at 10 billion Won or more or at 10 % or more of the capital stock.

16. The public disclosure obligation was adopted in December 2004 where non-listed companies and others have to publicly disclose matters that can cause a significant change to their companies' ownership and management structure, financial structure, management activities and so on. The obligation was to strengthen self-monitoring by market forces and consequently encourage large business groups to improve their ownership and governance structure. The Enforcement Decree newly incorporated provisions covering the obligation in great detail.

17. Laws and regulations on holding company were refined to subject the service industries as well to the judgment of "close business relationship." (Previously, mostly manufacturing industries and others were subject to the judgment.) For companies to be allowed to have sub-subsidiaries, they need to satisfy a set of conditions and one of them is to have "close business relationship" with sub-subsidiaries. There was a set of requirements that companies had to fulfil to have close business relationship. Here, two new conditions were added: even when subsidiaries and their sub-subsidiaries have no tangible transactions between them, if the sub-subsidiaries research and develop products or services produced by subsidiaries or they share production technologies with subsidiaries, close business relationship is deemed to exist between them.

1.1.2 Consumer Protection Related Laws

Fair Labelling and Advertising Act (revised on 29th Dec 2005)

18. To provide consumers, companies, and interested parties with access to comprehensive information regarding labelling and advertising and to better provide useful information to consumers, KFTC adopted a mechanism where, when the Commission notifies⁴ the public of critical information on goods or services, it can notify labelling and advertising-related matters prescribed in laws other than the Act. In addition to this, to discuss and coordinate critical information announced by the Commission, it is allowed under the new Act to set up and operate *the Council on Provision of Critical Information* that consists of officials from administrative agencies, business groups, and consumer agencies. Meanwhile, to prevent the spread of harms from companies' unfair labelling and advertising practices, companies are required to submit documents and other materials for verification within 15 days - previously, it was 30 days - from the date of receiving the Commission's request for the materials. If they fail to meet the deadline, the Commission may issue an order to stop their labelling & advertising activities until they submit the materials.

Consumer protection in *Electronic Commerce, Etc Act* (amended on 31st Mar 2005)

19. To prevent consumer damage in E-commerce characterised by non face-to-face transactions and upfront payment, the Commission adopted escrow system where consumers' payment is held under a third party until consumers are provided with goods or services that they purchased.

20. To eliminate consumer inconvenience from merchants' reckless soliciting advertisements, the Commission has allowed consumers to register on its electronic system their refusal to receive such advertisements. Merchants are mandated to take a look at the list of consumers who are registered on the system and they are banned from sending soliciting messages to these consumers.

⁴ KFTC designates and makes public critical information that can affect consumers' choice, and companies are required to include the information in advertising or labeling.

Instalment Transactions Act (amended on 31st Mar 2005)

21. Pursuant to newly incorporated Subparagraph 11, Paragraph 1, Article 4 of the Act, instalment contracts shall include consumers' defence right and how to exercise the right. This is to prevent consumers from failing to exercise the right just because they did not know that they are entitled to the right.

22. Sellers are mandated to indicate or notify buyers of issues related to late fees prior to signing contracts and the Act stipulates that this obligation should be contained in any instalment contracts. The ceiling for the actual annual rate of instalment commission and the rate used to calculate late fees is stipulated in the Act.

1.1.3 Fair Subcontract Transactions Act (amended on 31st Mar 2005)

23. With the rise of service industries, advertising, cargo transportation and other commissioned services came to fall under the jurisdiction of the Act.

24. Types of activities constituting contractors' unfair decision or reduction of contract prices were added to the Act more in detail. Contractors are banned from abusing its superior standing in transactions to unfairly force subcontractors to provide economic benefits to them.

1.2 Enactment and Revision of Major Guidelines and Notifications

1.2.1 Notification on Implementation of Leniency Program for Corrective Measures against Confessors⁵

25. To strengthen detection of and deterrence against cartels, KFTC incorporated Leniency Program into the MRFTA in 1996 and has enforced it since 1997, but the program was underutilised up until 2004. *The Enforcement Decree of the Monopoly Regulation and Fair Trade Act* was amended on 31st Mar 2005 to overhaul the program, and *Notification on Implementation of Leniency Program for Corrective Measures against Confessors* was enacted to set detailed criteria for surcharge reduction and procedures necessary for the program's implementation.

26. When confessors – those who report cartels to the Commission – satisfy a certain set of requirements, they are automatically eligible for a certain amount of surcharge reduction. Thanks to the change, confessors now have a better knowledge about whether they qualify for leniency and, if yes, how much leniency they will get. Protection of confessors' personal information during investigations was also reinforced. Amnesty Plus was introduced to allow confessors to be awarded with additional leniency for the case currently under investigation if they provide evidence to other cartel cases.

1.2.2 Notification on Reward for Informants⁶

27. With the amendment to the MRFTA on 31st Dec 2004, *Reward for Informants* was introduced, and to define detailed criteria and procedures for reward payment, *Notification on Reward for Informants* was enacted. (1st Apr 2005)

28. The reward will be offered to those who report any of the following competition law violations to the Commission: unfair collusions, undue supportive behaviours, violations of notification with

⁵ [http://ftc.go.kr/data/hwp/kftcnews\(2005may\).doc](http://ftc.go.kr/data/hwp/kftcnews(2005may).doc)

⁶ <http://ftc.go.kr/data/hwp/rewardssystem.doc>

regard to large-scale retail stores by department stores, discount stores, and home shopping network companies, □ unfair business practices in violation of the notification on newspaper sales, or □ prohibited activities by business associations.

29. Financial rewards are awarded to those who report or tipped off to the Commission any of the aforementioned violations with evidence. However, rewards are not awarded when the reported cases are found legitimate or when evidence submitted is not sufficient. When there are multiple reports or tip-offs for the same case, only the first person to submit evidence will be eligible for the reward.

1.2.3 Guideline for Reviews on Undue Supportive Behaviour (amended on 17th Aug 2005)

30. Thanks to the Supreme Court's decisions on not a small number of cases regarding unfair supportive behaviours, many controversial legal issues related to surcharge computation and what constitutes unfair supportive behaviours have been resolved. In addition to this, with increasing demand for more detailed and clearer criteria for reviews, the Commission revised the guideline. The new guideline provides more detailed criteria for determining whether a certain paid-in capital increase constitutes an unfair supportive behaviour – for example, after the capital increase, the shareholding ratio of the existing “specially related persons” is increased by 50% or more from that prior to the capital increase - and also criteria to determine unfair indirect supportive behaviour and to compute the amount of money supported were newly incorporated.

1.2.4 Guidelines on Operating Corrective Measures⁷

31. Up until recently, most of the Commission's corrective measures against competition law violations were cease and desist orders to ban respondents from committing or repeating certain practices. However, as legal violations take more and more complicated forms in varying nature, specific performance orders are necessary more and more, and along with them, complementary measures are also required to ensure respondents' full compliance with the Commission's decisions.

32. So, the Commission developed *Guidelines on Operating Corrective Measures* that states the Commission's authority to issue specific performance orders or complementary orders as well. The guideline also describes what types of performance orders or complementary measures can be imposed in what situations.

33. The specific performance orders include:

- a) the order to force the respondents to provide other companies with the access to essential facilities when the respondents were found limiting or denying other companies' access to the facilities;
- b) the order to withdraw unfair “refusal to deal” and to reinitiate transactions;
- c) the order to nullify cartel agreements;
- d) the order to unbundle in tie-in sales;
- e) etc.

⁷ [http://ftc.go.kr/data/hwp/kftcnews\(2005november\).doc](http://ftc.go.kr/data/hwp/kftcnews(2005november).doc)

34. The complementary orders include:

- a) The order to notify or deliver the Commission's decision: To prevent repetition of violations and spread of harms, respondents are obligated to notify those who suffered the harms of the fact that the respondents became subject to the Commission's corrective measures or the respondents' nullification of cartel agreements or to deliver the Commission's decision to the victims.
- b) The order to report to the Commission: Respondents are mandated to report the commission on their implementation of corrective measures or on how the price of the products involved in their cartel agreements has changed for a certain period of time in the market where the cartels have been maintained for a long time.
- c) The order to provide education programs: Respondents are mandated to provide education programs for a certain period of time to executives and staff on laws & regulations related to their legal violations. After the programs, they are also required to report the results of the programs to the commission.

1.2.5 *Rules on Case Handling Process*⁸

35. Rules on Case Handling Process were revised to adopt a new system called "*Deliberation Preparation Process*." Under the new system, case examiners and respondents exchange and refute each other's evidence and arguments in writing sufficiently to get facts, contested issues, and arguments straight before going to the KFTC's court for official deliberations. Meanwhile, as respondents are given the opportunity to counter argue the examinees' evidence or claims, the respondents' defence right is better protected and the two sides will be able to focus on most contested issues at the KFTC's court. This mechanism will be pilot-tested for about 10 cases until late 2006 and the Commission will make up for the system's weaknesses so that it can be in full operation from 2007. This system is expected to enhance respondents' defence right, legitimacy in case handling procedures, respondents' confidence in and compliance with the Commission's deliberation and decision.

1.2.6 *Guideline on Surcharge*

36. As part of efforts to prevent companies from resisting or obstructing the Commission's investigations, the Guideline on Surcharge was revised to have institutional tools such as exempting companies obstructing investigations from any reduction in surcharge.

1.3 ***Organisational Restructuring***

37. On 19th Dec 2005, the Commission had an organisational restructuring. The previous hierarchical, vertical structure was replaced by a more horizontal, function-oriented headquarters/team structure. Function-wise, the Commission reduced tasks regarding regulations on companies, while focusing its core capacity on encouraging voluntary monitoring by market forces.

38. Investigation Bureau and Antitrust Bureau were shut down to greatly reduce the Commission's authority to enforce regulations on large companies and to conduct large-scale ex-officio investigations into undue supportive behaviours. Investigation Bureau, Antitrust Bureau, and Competition Bureau were combined altogether to create *Headquarters for Competition Law & Policy Enforcement* and *Cartel Bureau*. This is designed to allow the Commission to concentrate on tasks essential in safeguarding the

⁸ [http://ftc.go.kr/data/hwp/kftcnews\(2005november\).doc](http://ftc.go.kr/data/hwp/kftcnews(2005november).doc)

market economy. *Headquarters for Competition Law & Policy Enforcement* is in charge of correcting abuse of market dominance, anti-competitive M&As, and other unfair business practices, while *Cartel Bureau* detecting and correcting cartels, the prime enemy of the market economy.

39. *Economic Analysis Team* was set up to enhance expertise in economic analysis, while *Litigation Team*'s staff was supplemented to have higher expertise in legal proceedings. *Emerging Competition Issues Team* was established to monitor new types of unfair business practices and *Competition Advocacy Team* was set up to disseminate competition culture.

1.4 International Cooperation

1.4.1 Bilateral Cooperation

40. In 2005 alone, KFTC held bilateral meetings with Canada, Australia, Japan, Russia, and Turkey. As for bilateral cooperation agreements, both the Korea-Singapore FTA and the Korea-EFTA agreement included a competition chapter, and the Commission signed an MOU with Turkish Competition Authority.

1.4.2 Multilateral Cooperation

41. KFTC hosted ICN Cartel Workshop in Seoul in November 2005. 81 cartel officials from 34 competition authorities attended the workshop to discuss how they utilised papers of ICN cartel working groups in their case handlings, surcharge computation and sanctions in cartel cases, countermeasures against obstruction of investigation, cooperation between competition authorities for effective cartel investigations and collection of electronic evidence.

1.4.3 Technical assistance

42. In 2005 alone, OECD RCC (OECD-Korea Regional Center for Competition) offered education programs and workshops on 8 occasions for 138 participants. Meanwhile, in Aug 2005, *Competition Policy Study Group* that consists of 17 experts in competition laws and economics was set up within RCC and it published 5 research papers on M&As.

43. KFTC held the 10th International Competition Policy Workshop in Nov 2005 to extend technical assistance to 23 officials from 11 competition authorities including those from India, Vietnam, Thailand, Mongolia, Indonesia, the Philippines, Malaysia and so on. Through KOICA (Korea International Cooperation Agency) training programs, programs under the theme of “*Assistance to Strengthen Market Function for Transition Countries*” were offered to 15 officials from 8 countries including Russia, Ukraine, and Uzbekistan in last April. Meanwhile, in November, 15 officials from 12 countries including China, Jordan, and Dominican Republic took programs on “*Competition Law and Market Economy Growth*.”

2. Enforcement of competition laws and policies

2.1 KFTC's achievement in case handlings and statistics for lawsuits

2.1.1 KFTC's achievement in case handlings in 2005

44. In 2005, KFTC handled a total of 4,299 cases violating laws under the jurisdiction of KFTC. This is a 9.0% increase from 3,943 cases of 2004. Among the cases in 2005, the commission issued warnings or more severe sanctions to 3,348 cases, a 12.0 % increase from 2,988 cases in 2004.

45. MRFTA violation cases numbered 707, a 21.8% increase from 580 cases in 2004, and a total of 259 billion Won was imposed in surcharge, a 621.4% increase from 35.9 billion Won of 2004. The

increase is attributable to the commission's stronger law enforcement against cartels, as clearly demonstrated by the record amount of surcharge against cartels in the telecommunication sector.

Table 1. Case handlings by type of violation

(Unit: Warning or more severe sanction / No. Cases)

Year	96	97	98	99	2000	2001	2002	2003	2004	2005
Type										
Abuse of Market Dominance	1	2	5	2	-	4	-	1	-	-
Violation of restrictions on M&A ¹	36	47	29	19	48	45	46	43	36	17
Violation of controlling Economic power Concentration	14	6	11	38	19	16	80	32	149	108
Cartel	36	22	37	34	47	43	47	23	35	46
Violation of prohibited Behaviours by Business associations	66	53	101	93	117	88	100	91	62	55
Unfair business Practice ²	339	509	406	173	121	169	210	123	298	481
Unfair International contract	26	2	1	-	-	-	-	-	-	-
Subtotal	518	641	590	359	352	365	483	313	580	707
Unfair labelling & Ads ³	(130)	(232)	(185)	342	310	328	338	558	436	513
Unfair Adhesion Contract	56	152	112	255	56	100	175	114	79	144
Unfair Subcontract Transaction	494	534	582	316	874	3,130	1,632	1,583	1,649	1,741
Etc ⁴	-	-	2	-	5	11	7	134	244	243
Total	1,068	1,327	1,286	1,272	1,597	3,934	2,635	2,702	2,988	3,348

1. Violation of rules on notifying M&As to KFTC and anti-competitive M&As are also included.

2. Refusal to deal, exclusion of competitors, coercion in dealing, abuse of dominance in transactions, transaction based on restrictive conditions, maintenance of resale price, and so on.

3. The number in () refers to the number of MRFTA violations committed prior to the enactment of *Fair Labelling and Advertising Act*.

4. In 2005, there were 125 cases in violation of *Consumer Protection in Electronic Commerce Act*, 63 cases of *Door-to-Door Sales, Etc Act* violations, 43 cases of *Fair Franchise Transactions Act* violations and 12 cases of other law violations.

46. Respondents may file an appeal to KFTC when they are not satisfied with the Commission's decisions. From the statistics of the past 5 years, the number of appeals has declined overall. Especially, in 2005, just 34 appeals were filed, a big decrease from 60 appeals per year on average in the past. KFTC believes that the decrease was due to respondents' increased compliance with corrective measures. Thanks to improvements to the operation of the KFTC's Committee and to investigation procedures, respondents came to have more opportunities than before to present their arguments during the deliberations at the

Committee. Among the 17 appeals handled in 2005, 11 cases (64.7%) were dismissed, while 5 cases (29.4%) partially accepted and one case (5.9%) accepted.

Table 2. Appeals filed to KFTC between 2001 and 2005

(Unit: No. of case, as of the end of each year)

Year	Total No. of case			Result						Pend- ing
	Case brought forward	New case	Sub-total	Dismissal	Partial Acceptance	Acceptance	Rejection	Withdrawal	Sub-total	
2001	21	67	88	58 (71.6%)	18 (22.2%)	1 (1.2%)	3 (3.7%)	1 (1.2%)	81 (100%)	7
2002	7	55	62	33 (78.6%)	5 (11.9%)	1 (2.4%)	1 (2.4%)	2 (4.8%)	42 (100%)	20
2003	20	48	68	37 (84.1%)	5 (11.4%)	0 (0%)	0 (0%)	2 (4.5%)	44 (100%)	24
2004	24	40	64	45 (80.3%)	8 (14.2%)	0 (0%)	0 (0%)	3 (5.3%)	56 (100%)	8
2005	8	26	34	11 (64.7%)	5 (29.4%)	1 (5.9%)	0 (0%)	0 (0%)	17 (100%)	17

2.1.2 Litigations related to MRFTA in 2005

47. Forty six lawsuits were filed in 2005 with regard to MRFTA violations, a 17.8 % decrease from 56 cases in 2004. Meanwhile, appeals were filed with the Supreme Court in only 17 cases, a 71 % decrease from 60 cases of 2004. All these declines are attributable to several factors. First of all, the Supreme Court has handled not a small number of competition cases recently and KFTC reflected the Court's decisions in many of its own decisions. Moreover, respondents' acceptance of the Commission's deliberation and decisions has increased significantly as they are guaranteed with their defence right fully.

Table 3. No. of litigations & appeals to the Supreme Court filed for the recent 5 years

(Unit: : No. of case)

Type	2001	2002	2003	2004	2005
No. of litigations filed	67	62	46	56	46
No. of appeals filed	35	19	40	60	17
Total	102	81	86	116	63

48. Among the 45 final and conclusive decisions by the court in 2005, the Commission won in 26 cases (57.8%) and lost 8 cases (17.8%), while having partial win in 11 cases (24.4%). Compared to 2004, its win ratio decreased by 5% and loss ratio increased by 5 % while the ratio of win in toto decreased by 16 % and the ratio of partial win increased by 11.6 %.

Table 4. Court rulings for the recent 5 years (based on final and conclusive rulings)

(Unit: : No. of case, %)

Year	Win	Partial win/loss	Loss	Subtotal
2001	27(71.0)	4(10.5)	7(18.5)	38(100)
2002	28(68.3)	8(19.5)	5(12.2)	41(100)
2003	31(66.0)	5(10.6)	11(23.4)	47(100)
2004	35(74.4)	6(12.8)	6(12.8)	47(100)
2005	26(57.8)	11(24.4)	8(17.8)	45(100)
Total	147(71.1)	34(13.4)	37(15.5)	218(100)

2.2 *Actions against anti-competitive practices*

2.2.1 *Major activities: Refinement of cartel regulations*

49. To reinforce the commission's capacity to investigate cartels, monitor markets and effectively respond to rapidly increasing international cartels, the Commission set up *Cartel Bureau* during its organisational restructuring on 19th Dec 2005. Prior to the reorganisation, a team of about 10 officials was in charge of detecting and correcting cartels, but the function was expanded to have 3 teams⁹ under the leadership of a Director General-level Bureau Head.

50. Leniency program was refined and the monetary reward system for those who report cartels to the Commission was expanded to reinforce cartel detection. (As for detailed information on the improvement to Leniency Program, please refer to I. 2. (1)) The ceiling for the monetary reward was increased from 100 million Won to 1 billion Won from 1st Apr 2005, and protection of informants' personal information was also strengthened. Since the expansion, the monetary reward system has been frequently utilised, as seen in the case where the record amount of 66.87 million Won was awarded.

51. To prevent harms from bid riggings in public projects, the Commission started operating *Bid Rigging Indicator Analysis System (BRIAS)* in Dec 2005. The system automatically receives electronic bid information from government agencies and analyses it for any signs of bid rigging. Tenders for construction projects of 5 billion won or more and for product or service purchases worth more than 2.5 billion won are collected and automatically sent from *Public Procurement Service* through its electronic bidding system to the Commission for reviews. If any signs of bid rigging are detected on the system, the Commission uses the information for its investigations.

2.2.2 *Major cases*

Cartel in the Telecommunication Industry¹⁰

52. Cartel between two local call service providers: Before the start of local call number portability scheme in Jun 2003, the two local telephone call service providers, KT and Hanaro Telecom, made an agreement to bridge the gap in their call rate. Under the agreement, KT would give its local call market share to Hanaro Telecom by 1.2 % every year until 2007 if Hanaro Telecom increases its call rate, while KT maintains its local call rate. Against the cartel, the Commission ordered the two companies to publicly

⁹ *Cartel Bureau* has *Cartel Regulation Policy Team*, *Manufacturing Cartel Team*, and *Service Cartel Team* underneath it.

¹⁰ Please refer to <http://ftc.go.kr/data/hwp/telecomoperator.doc> and <http://ftc.go.kr/data/hwp/ktcartel.doc>.

announce its corrective measures on them on major dailies and imposed a surcharge of 115.196 billion Won.

53. Cartel among 3 international call service providers: KT, Dacom, and Onse Telecom reached an agreement on call rates for discount international calls for China, Japan, and the U.S.. Aside from this, they agreed upon and put into practice expanding the scope of regions subject to standard call rates of IDD (International Direct Dialing), setting standard call rate for each country, cutting discount hours and discount percentage, and phasing out discount scheme for collect calls. Against these agreements, the Commission ordered them to publicly announce its corrective measures on major dailies and imposed a surcharge of 5.379 billion Won.

54. Though the companies argued that their agreements were legitimate since they had no choice but to follow the administrative guideline by *the Ministry of Information and Communication*, the Commission did not accept their argument as the Ministry had not issued any guideline directly related to call rate levels, specific call services and other matters that the companies had the right to decide on their own.

55. Cartel among 4 distance call service providers: KT, Dacom, and Onse Telecom agreed on jointly launching customised distance call flat rate schemes¹¹ in 2002. This scheme had the effect of reducing call rate competition in the market and blocking formation of various call rate schemes. In 2004, the aforementioned three service providers and Hanaro Telecom made agreements on setting call rates for distance call services, allocating distance call service subscribers of among the companies, and refraining from launching bundled services. Against these agreements, KFTC ordered the companies to publicly announce its corrective measures on major dailies and imposed a surcharge of 20.363 billion Won.

56. Cartel among fiber optic cable providers for Internet cafes: KT, Hanaro Telecom, and Dacom shifted from call rate schemes based on the number of PCs to ones based on the Internet connection speed from 23rd Jun 2003. In this process, they agreed upon setting prices for each connection speed band, discount percentages for customers who subscribe to the service for certain preset periods, and fees for equipment lease and installation. They incorporated all these agreements into their contract terms and put them into practice. Against these agreements, KFTC ordered the companies to publicly announce its corrective measures on major dailies and imposed a surcharge of 47.047 billion Won.

Microsoft Case¹²

57. In December 2005, KFTC issued a decision against the abuse of market dominance by Microsoft Corporation and Microsoft Korea where they were ordered to unbundle their tied products and to install competitors products and the Commission imposed a surcharge of approximately 33 billion won (USD 31 million) for violation of the MRFTA. (The Commission's decision was published on 24th Feb 2006.)

58. KFTC found the following practices by Microsoft to be violation of the MRFTA:

- i. first, tying Windows Media Server Program to the Windows PC Server Operating System, where Microsoft has market dominance;
- ii. second, tying Windows Media Player to the Windows PC Operating System, where Microsoft has monopoly power;

¹¹ Under customized distance call flat rate schemes, customers are allowed to enjoy distance call services as much as they want only if they pay a certain amount of call rate fixed according to the monthly average charge they pay.

¹² http://ftc.go.kr/data/hwp/micorsoft_case.pdf

- iii. third, tying instant messaging program to the Windows PC Operating system, where Microsoft has monopoly power.

59. The KFTC found such tying practices liable because they blocked competition in the tied products markets such as media server, media player, and messengers, while raising entry barrier in the tying product markets, namely the PC Server Operating System and PC Operating System, which led to restriction of market competition and obstruction of consumer welfare. Therefore, the Commission decided that all these activities were in violation of the following provisions:

- i. Article 3-2 of the MRFTA – Among abuses of market dominance defined in the paragraph, the respondents violated the ban on obstructing competitors' business activities and the respondents' marketing practice was concerned to significantly undermine consumer benefits.
- ii. Article 23 of the MRFTA – The respondents violated the ban on tie-in sales among unfair business practices defined in the Article 23.

60. For the above violations by Microsoft, KFTC decided to impose the following remedies:

- i. For tying of Windows Media Service, Microsoft was obliged to unbundle Windows Media Service from Windows Server Operating System within 180 day after the decision.
- ii. For tying of Windows Media Player and instant messenger, following remedies have been imposed:
 - First, within 180 days after the decision, Microsoft is required to offer a new version where Windows Media Player and Messenger are separated from the PC Operating System (stripped version). However, when the company offers Media Player Center and Messenger Center that include links to download competitors' media players and messenger programs, the current PC operating system with the two programs installed (installed version) can be provided along with the stripped version. The company is also obligated to do its best to confer with domestic messenger service providers to make MS messenger and its competing programs "talk" each other.
 - Second, as for Windows PC Operating Systems already sold and currently in use by consumers at the time of decision, Microsoft is required to provide them with "Media Player Centre" and "Messenger Center" through CDs or Internet updates.
- iii. On top of these, the company is banned from signing exclusionary contracts and required to provide API(Application Program Interface) sufficiently to competitors in a timely manner.
- iv. The remedies will remain effective for 10 years, and in 5 years, Microsoft will have an opportunity every year to request KFTC to review them taking into account market changes.

61. The Commission imposed a surcharge of 32.5 billion Won.

2.3 Mergers and acquisitions

2.3.1 Statistics on M&As

62. In 2005, 658 cases of M&As were reported to the Commission, a 12 % decrease from 749 cases of 2004. This decline is attributable to the Commission's measure to lessen companies' report obligation in M&A reviews: from April 2005, M&As through interlocking directorate among affiliates or those by small

companies with the total amount of assets or turnover is less than 3 billion Won are exempted from the report obligation.

63. Among 658 cases reviewed in 2005, 3 M&A cases became subject to corrective measures for their anti-competitiveness – 1 case as of the date of entry into force of the corrective measures - while 16 cases were subject to fines for violating rules on the deadline for the report obligation.

Table 2. M&A cases

(Unit: No. Of cases)

Year	2001	2002	2003	2004	2005
Total number of M&As reviewed	644	602	589	749	658
Cases with corrective measures	1	2	7	6	3
No. of cases violating the notification guidelines	44	44	36	29	16

2.3.2 *Major case: Acquisition of shares of Jinro, Co., Ltd (a Korean soju company) by Hite, Co., Ltd (a Korean beer company¹³)*

64. In this case, beer company *Hite* acquired soju company *Jinro* and this led to horizontal integration in bottled mineral water market and soju market, while conglomerate integration in beer and soju markets.

65. As for the horizontal integration, the Commission decided that market share increase from the integration was meager and that the deal had almost no anti-competitiveness as the market had multiple competitors. Meanwhile, as for the conglomerate integration, the Commission found the deal anti-competitive.

66. Most contentious issues in the case were (i) whether soju and beer were alternatives to each other - in other words, whether they belonged to the same market - and (ii) whether there was any possibility of competition restriction from the two liquors using the same distribution channel (wholesale merchants).

67. As for market definition, the Commission defined the soju market and the beer market to be independent from each other. The two liquors are different from each other in many respects such as taste, alcoholicity, and demand. Quantitative analyses also found no close alternative relationship between the two. In the review, economic analysis technique called “critical sales decline analysis” was used for the first time. This technique was developed to apply *SSNIP* (*Small but Significant and Non-transitory Increase in Price*) Test to real cases. Let’s say a monopolistic company is now attempting *SSNIP*. The Commission will compare the company’s actual sales decrease rate and critical sales decrease rate (meaning the maximum rate among sales decrease rates that do not cause profit decreases) to identify the minimum scope of products or the minimum geographic scope where profits increase.

68. Regarding, the possibility of competition restriction, the Commission determined that the conglomerate merger between the soju and the beer companies had the potentials to strengthen the beer company’s market dominance through its control over distribution networks and ultimately undermine competition in the market. More specifically speaking, if the merger strengthens the company’s market dominance, (i) the company was feared to abuse dominance to increase soju and beer prices and (ii) to leverage its control over the distribution networks to commit tie-in sales (iii) hampering latecomers’ entry into the two markets in the future.

¹³ <http://ftc.go.kr/data/hwp/hitejinro.doc>

69. The Commission imposed the following corrective measures on the merger:
- i. For the coming 5 years, *Hite* is not allowed to increase the prices for its soju and beer products over the consumer price increase rate
 - ii. Within 3 months, the company had to develop concrete plans to restrain itself from coercion in dealings, abuse of market dominance, and other unfair business practices when dealing with wholesalers and to get an approval for the plans from the commission
 - iii. The company should run its soju and beer divisions separately from each other for the coming 5 years and this also goes the same for the two divisions' sales forces
 - iv. For the coming 5 years, the newly created company should report to the Commission the details of their product shipment to wholesalers.

3. The role of KFTC in the formulation and implementation of other policies

3.1 "Prior Consultation" with other government agencies on anti-competitive laws and regulations

70. In 2005, KFTC had a total of 658 cases (a 53 % increase from 2004) where it conferred with other government agencies on creation or enactment of laws and regulations to review their potential competition reducing implications. The Commission provided its opinions to 49 cases (7.4 %) out of 658 cases, and among them, 41 cases (83.7%) accepted the Commission's opinions.

Table 4. KFTC's opinion provisions and the status of their acceptance

(Unit: No. of cases)

Year	Total No. of consultation	No. of KFTC's suggestions	Accepted	Not Accepted	Under discussion
2005	658	49(7.4%)	41(83.7%)	2(4.1%)	6(12.2%)
2004	430	44(10.2%)	33(75%)	4(9.1%)	7(15.9%)
2003	361	46(12.7%)	37(80.4%)	9(19.6%)	-
2002	381	36(9.4%)	29(80.6%)	7(19.4%)	-
2001	432	53(12.3%)	47(88.7%)	6(11.3%)	-
2000	481	60(12.5%)	51(85.0%)	9(15.0%)	-

3.2 Regulatory Reform¹⁴

71. KFTC has continuously pursued reforms of anti-competitive regulations. Despite the fact that many anti-competitive regulations remain in notifications, established rules, and other subordinate laws or rules, KFTC has not conferred with government agencies as much as it did to reform anti-competitive regulations included in laws. To reform anti-competitive regulations in such subordinate laws and rules, KFTC collected opinions from *the Federation of Korean Industries, the Korea Chamber of Commerce and Industry, Korea Employers Federation, Korea Federation of Small and Medium Business, Korea International Trade Association*, and other organisations subject to such regulations and identified 136 potentially anti-competitive regulations. KFTC commissioned *Korea Society for Regulatory Studies* to review them and selected 101 regulations that should be either eliminated or reformed. The Commission had discussions with government agencies on these regulations and determined to eliminate or reform 51

¹⁴ [http://ftc.go.kr/data/hwp/kftcnews\(2005november\).doc](http://ftc.go.kr/data/hwp/kftcnews(2005november).doc)

among them during the *Ministers' Meeting for Regulatory Reform* chaired by the Prime Minister on 25th Jan 2006.

4. Resources of KFTC

4.1 Staff and Budget

72. As of the end of 2005, KFTC has 484 employees and its budget spending is 34.75 billion Won. In 2005, the Commission had 15 more employees than in 2004 due to staff increase regarding subcontract transactions area and the creation of *Public Relations Team*.

Table 5. Number of the KFTC Staff and Budget Spending Amount

(As of 31st Dec 2005)

	No. of Staff* (Unit: person)	Budget spent (Unit: 100 million Won)
2005	484	347.5
2004	469	288
2003	421	264
2002	416	246
2001	416	220
2000	401	193
1999	402	172
1998	410	160

*KFTC's statutory maximum number of employees

73. Among the current 470 KFTC employees, 83 (18 %) hold a master's degree or a higher degree. Among those with bachelor's degree or higher, 87 (19 %) have a degree in economics, 66 (14%) in law, 39 (8 %) in business administration, 77 (16 %) in public administration and 106 (23 %) in others. Among them, there are 25 lawyers including 7 US lawyers, 3 accountants including one with AICPA, 12 experts in law and 6 experts in international affairs.

Table 6. Composition of KFTC staff currently employed

(Unit : person, as of Dec 31, 2005)

Persons in charge of competition law enforcement and other related tasks																Technical Official	Total
Persons with Undergraduate or Higher Education															Other		
Economics			Law			Business Admin.			Public Admin.			Other					
PhD	M.A	B.A	PhD	M.A	B.A	PhD	M.A	B.A	PhD	M.A	B.A	PhD	M.A	B.A			
11	19	57	1	10	55	-	6	33	-	28	49	-	8	98	20	67	470

4.2 Allocation of human resources

(Unit: person, as of 31st Dec 2005)

Activities	Staffs
Cartel	31
• <i>Cartel Bureau</i>	
Unfair Business Practice & Abuse of Market Dominance	93
• <i>Headquarters for Competition Law & Policy Enforcement with Mergers & Acquisitions Team excluded</i>	(57 in regional offices and 36 in Headquarters)
• <i>Regional Offices' Competition Divisions and officials from Regional Offices' General Affairs Divisions</i>	
M&As	10
• <i>Mergers & Acquisitions Team</i>	
Competition Advocacy	15
• <i>Competition Advocacy Team</i>	
• <i>Deregulations & Legal Affairs Team</i>	
• <i>Taskforce for Regulatory Reform</i>	

5. Summaries of References to New Reports and Studies on Competition Policy Issues

Study on ways to enhance efficiency in case handling, *Myongji University*

Development and Utilisation of CP Assessment Models, *Korea Fair Competition Federation*

Study on Introduction of Private Action for Injunctive Relief Under the Monopoly Regulation and Fair Trade Act, *The Law Research Institute of Seoul National University*

Assessment of Transparency in Corporate Market, *Korea Corporate Governance Service*

Validity of Anti-competitive Established Rules and Notifications and Reasonable Improvements to them, *Korea Society for Regulatory Studies*

Comparative Study on Competition Policies in Developing Countries in Asia, *Center for Asian Law*

Market Structure Research, *Law Firm Shin & Kim*

Improvements to Legal Frameworks to Eliminate Unfair Business Practices among Small IT Venture Companies, *Kyungpook National University*

Performance of *Fair Franchise Transactions Act* and Future Amendments, *Law Firm Daeil*

Achievement in Major Areas of Consumer Policies and Future Direction, *Sookmyoung Univeristy*

Study on Integrated Information Provision Regarding Labelling and Advertising, *Kyonggi University*

Ways to Build Clean Ad Network, *Hanyang University*

Study on Court Rulings Regarding Regulations Against Unfair Adhesion Contracts by industry and on Use of Foreign Adhesion Contracts, *Kookmin University*

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Ways to Refine *Door-To-Door Sales, Etc. Act* and to Establish Effective Enforcement Mechanism, *Korea Economic Laws Society*

Study on the Scope and Criteria of Pecuniary Transactions Using Multi-level Sales Scheme, *Lee Deok Seung of Green Consumer Network*

Information Disclosure Regarding Subcontract Transactions to Prevent Unfair Reduction on Project Price, *The Korea Institute for Industrial Economics and Trade*

Developments and Comparison of Consumer Policies in E-Commerce of Major Countries, *Korea Consumer Protection Board*

M&A Review Techniques in the Globalized Digital Era, *Korea Development Institute*

Study on Validity of the Legal Deadline for Subcontract Payment, *The Catholic University of Korea*

Study on Ownership & Management Structure of Foreign companies and the Relationship between Industrial Capital and Financial Capital, *Yonsei University*

Research into Transactions in National Newspaper Market, *Core Research & Consulting*

Study on Telephone-based Solicitation Sales in Korea and Ways to Protect Consumers, *Consumers Union of Korea*