Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

09-Oct-2008

English text only

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP(2008)18/29
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN KOREA

-- 2008 --

This report is submitted by Korea to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 October 2008.

JT03252452

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Executive Summary

1. During the year 2007, the KFTC made relentless efforts to establish competition order and empower consumers. By amending the Monopoly Regulation and Fair Trade Act (MRFTA) twice (in April and June), the KFTC pave the ground for advancing the market economy, while setting up the institutional framework to strengthen consumer rights through the transfer of the rights to control and supervise the Korea Consumer Agency (KCA).

2. Under a new vision for 2007, "Competitive Market, Trustworthy KFTC, Happy Consumers," the KFTC made various endeavors to upgrade Korea's fair trade system to be on par with that of advanced countries. To begin with, in the second half of 2006, the KFTC formed a Taskforce for Advancing Market Economy to start in-depth discussions on broad issues surrounding the fair trade act/system and large business group policy. The Taskforce composed of eight subgroups and the one for large business group involved relevant government agencies, academia, businesses and civic organizations. In reflection of the research result from the Taskforce, from early 2007, the KFTC launched amendment of the MRFTA, its Enforcement Decrees and Guidelines for Reviews. These efforts led to amendment of the MRFFTA twice in April and June, and revision of Guidelines for Merger Review and Cartel Review and Notification on Types of Criteria for Surcharge Imposition in December.

3. The year 2007 was a very meaningful year for the KFTC in that it has solidified the groundwork to further empower consumers. In March 2007, the Framework Act on Consumers was amended, thus enabling the KFTC to enforce overall consumer policies like consumer safety, information provision and training, while the jurisdiction over the Korea Consumer Agency (KCA) was transferred to the KFTC from the Ministry of Finance and Economy.

4. In addition, in order to support consumers to play a role commensurate with that of businesses, the KFTC shifted its consumer policy direction from the previous "protectionism" to more of "empowerment." Accordingly, the KFTC, in April 2007, enacted and proclaimed 『Measures to Develop Consumer Policy』 as its blueprint for future consumer policy enforcement amid the launch of the KCA, ushering a new era of consumer empowerment. The Measures aim at integrating competition and consumer policies to create a virtuous cycle in which consumers' reasonable choices promote competition between companies, and the promoted competition in turn expands the scope of choices for consumers. In the Measures, the KFTC presented 『Autonomy, Responsibility, Cooperation and Balance』 as the four overarching values of its consumer policy enforcement. Also, the KFTC set six priority tasks to focus on including providing consumers with sufficient information, establishing a practical and comprehensive educational foundation and reinforcing infrastructure for consumer safety.

5. The KFTC's case-handling in 2007 can be characterized by strict law enforcement on abuse of market dominance and cartel and correction of unfair trade practices in industries closely related to people's daily lives.

6. First, the KFTC actively uncovered cartels in sectors closely related to people's daily lives such as sugar and synthetic resins. In fact, the hard-core cartels such as three sugar manufacturing companies' cartel in price and output control and 10 synthetic resin manufacturing companies' price-fixing cartel have had a far-reaching influence on people's lives for over ten years. In particular, the cartel case of the ten petrochemical companies ranked second in the amount of surcharge the KFTC has imposed ever, for it involved many undertakings and high sales revenue, and lasted for long. In addition, the KFTC uncovered a multitude of cartels that is directly related to people's livelihood involving price-fixing by wedding halls,

Taekwondo gyms and kindergartens so that the effect of competition policy can be immediately felt on the daily lives of the public. And besides, the KFTC identified and corrected a part of the price-fixing cartel by oil refineries, which it could not impose any sanction on for lack of hard evidence to prove it.

7. Next, the KFTC handled cases that it saw undermined consumer interests including Hyundai Motor's interference with its sales agencies' business operation, and cable TV system operators' suspension of collective agreements as well as cases regarding abuse of market dominance like Interpark Gmarket's exclusion of its rivals. In particular, the law enforcement concerning abuse of market dominance was meaningful in that it reformed the past case-handling practice, which lumped abuse of market dominance with other unfair practices without thoughtful consideration.

1. Major Statutory and Policy Changes of 2007

1.1 Cartel : Leniency Program Improvements

1.1.1 Summary

8. The first version of Korea's leniency program was introduced in 1996 and was revised in 2005 in order to increase transparency and predictability, after which the number of leniency application soared. In 2007, the KFTC amended the Enforcement Decree of the Monopoly Regulation and Fair Trade Act (hereinafter, "Enforcement Decree") and the Notification on Implementation of Leniency Program (hereinafter, "Notification") to solve problems identified in the course of running the program thus far. The changes include the following.

1.1.2 Improvements

Increased surcharge reduction rate for the second leniency applicant

9. Previously, the first leniency applicant or cooperating individual received 100 percent mitigation of sanctions while the second applicant or cooperating individual got 30 percent mitigation. But under the revised system, the second applicant or cooperating individual receives 50 percent reduction in surcharges. This change was prompted by the fact that there were companies that chose to lower the level of sanction by denying or trivializing their wrongdoings instead of benefiting from 30 percent mitigation of sanctions by becoming the second leniency applicant.

Exclusion of cartel coercers from the leniency program

10. The revised leniency program does not give leniency benefits to an enterpriser that coerced cartel formation (Article 35 (1)-5 newly added to the Enforcement Decree). This is because exempting coercers of illegal act from punishment while holding non-coercers responsible is against legal justice. The change is also intended to prevent abuse of the leniency program by those who try to receive exemption from sanction after coercing competitors to join in a cartel.

11. In addition, the criteria for determination of "coercion" were introduced to clarify the vague concept of the term (Article 6 (2) newly added to the Notification) as follows;

- whether the enterpriser in question physically abused or threatened other enterprisers to make them participate in the concerned cartel or to dissuade them from quitting it

- whether the enterpriser in question pressured or sanctioned other enterprisers to make them participate in the concerned cartel or to dissuade them from quitting it to the extent that their normal business activities in the concerned market are disturbed

Addition of the duty to sincerely cooperate with the investigation

12. The revised leniency program demands leniency applicants to cooperate with the investigation into the reported cartels in a stronger manner. Previously, it was stipulated that leniency applicants should cooperate with the investigation till the end, but there were companies that did not show active cooperation after applying for leniency, for instance submitting only partial evidence or reducing the period of violation. To prevent such opportunistic behaviors, the revised Notification concretely provides for the sincere cooperation required of leniency applicants in Article 5 as follows;

- Leniency applicants shall state every fact they know about the concerned cartel without hesitation.
- Leniency applicants shall promptly submit all materials, which they have or can obtain, related to the concerned cartel.
- Leniency applicants shall promptly answer and cooperate with the Committee's request necessary for fact-finding.
- Leniency applicants shall do their best to ensure that their staff (including former staff, if possible) shows sincere and continued cooperation to the Committee's interviews and investigations.
- Leniency applicants shall not deliberately destroy, manipulate, damage or hide evidence and information related to the concerned cartel.
- Leniency applicants shall not disclose their involvement in a cartel and their leniency application to a third party without the Committee's consent before the examination report is notified.

Stronger protection of confidentiality for leniency applicants

13. Protection of confidentiality for leniency applicants is an essential prerequisite of leniency program. The KFTC has stipulated the duty to protect confidentiality of the leniency applicant's identity and the content of leniency application in the Enforcement Decree, but with the revision, it is now stipulated in the Monopoly Regulation and Fair Trade Act (MRFTA). In addition, the cases where the applicant's identity and the application content can be disclosed were clearly limited to (i) when the applicant agrees to the disclosure and (ii) when disclosure of information is necessary for lawsuit filing and proceedings.

1.2 M&A Policy Improvements

1.2.1 Revised merger review criteria

Summary

14. According to Article 7 (5) of the MRFTA, the KFTC reviews mergers based on the notified criteria that include whether the merger substantially restricts competition in a given area of trade, whether the merger has enhanced efficiency and whether one of the merging parties is a non-viable company.

15. The Notification on M&A Review Criteria provides detailed standards for merger review in order to increase predictability and maintain consistency of the KFTC's review. It includes criteria for

determination of existence of controlling relation, related market definition method, criteria for determination of anti-competitiveness and of efficiency gain effect and non-viable companies.

Improvements

16. Since early 2007, the KFTC has pursued revision of the criteria for merger review in an attempt to make it more predictable for businesses and also to conduct the review more efficiently. Focusing on changing the CR_k-based review system to a HHI-based system, there were discussions on ways to solve the problems raised during past merger reviews. Then the KFTC held a public hearing to listen to the opinions of economists, legal circles and the business and also fully considered opinions of related ministries including the Ministry of Commerce, Industry and Energy before announcing the final draft of the revision in December 2007.

Introduction of HHI as a measure of market concentration

17. The KFTC introduced the HHI as a measure of market concentration to re-establish a safe harbor, for the HHI can reflect the market competition dynamics more accurately than the previously-used CR_k. A horizontal merger qualifies for the safe harbor when (i) post-merger HHI is (i) less than 1,200, (ii) 1,200 or larger and less than 2,500 and the increment is less than 250 or (iii) 2,500 or more and the increment is less than 150. Under the previous system, the safe harbor requirements were based on CR_k; (i) post-merger combined market share of top three companies is less than 50 percent and the merging companies' market share is less than 25 percent or (ii) post-merger firm ranks fourth or below.

18. The safe harbor requirements for vertical and conglomerate mergers are; (i) HHI in the given area of trade where the concerned company is involved is less than 2,500 and the concerned company's market share is less than 25% or (ii) the concerned company ranks fourth or below in the market. This is a big change from the previous CR_K-based criteria, in which the combined market share of the top three companies in the market where each of the merging firms belong should be less than 50 percent to qualify for the safe harbor.

19. Although the CR_K-based criteria is easy to understand and to use, it is not capable of drawing the complete picture of the entire market competition dynamics since it considers market share of only the top one or three companies. On the contrary, the HHI-based criteria takes into account the market share of all enterprisers and gives greater weight on those with larger market shares. In this respect, it is generally regarded as being superior to the CR_K-based system because it faithfully takes into consideration the common belief that sees it desirable, in terms of competition, to have more competing enterprisers in a market. For this reason, advanced countries, including the U.S., the EU and Japan are already using the HHI to measure market concentration in merger reviews.

Removal of the market concentration requirement for determination of anti-competitiveness

20. The previous merger review criteria stipulated that a merger can restrict competition when the combined market share of the merging firms is 50 percent or more or when the post-merger top three companies' combined market share is 70 percent or higher. However, there had been arguments that the rule was excessively regulating mergers with perfunctory requirements and thus was removed from the revised review criteria. At the same time, the revised criteria clearly indicate that examination of market share or market concentration is meaningful as the starting point of the analysis of a merger's influence on competition.

Improvement of criteria for determination of foreign competition introduction

21. A new provision was added to the merger review criteria, which stipulates that the anti-competitive potential of a merger can be reduced when there is a possibility of increased import competition in the near future without the burden of entry costs or exit costs following a price increase of a certain significance in a given area of trade for a considerable period of time. This is to consider not only the existing import pressure but also the "potential foreign competition pressure" as factors that can lower a merger's anti-competitiveness. Moreover, another provision was newly introduced to state that the anti-competitiveness of a merger can be cut when there is a high probability of diverting goods for exports to the domestic market in response to price increases at home after the merger.

1.2.2 Revised merger notification procedure

Summary

22. The KFTC has released the M&A Notification Guidelines (Notification) to provide for matters related to merger notification, including the notification procedure, notification form and attached documents, according to Article 12 of the MRFTA and Article 18 of the Enforcement Decree. Provisions on merger notification were amended to a large extent in 2007 and took effect from November 4, 2007. In reflection of this change, the KFTC has amended and implemented the M&A Notification Guidelines in order to clarify ambiguous points identified in relation to merger notification in the course of running the merger-related institutions.

Improvements

Reflection of statutory amendments

23. In 2007, merger notification-related provisions were partially revised, under which the definition of the "counterpart company" was changed from the "newly established company" to the "participant(s) in the establishment of a new company" and only the largest shareholder of the newly established company is obliged to notify the business establishment.

24. In the case of overseas mergers, the local nexus requirement was raised from three billion won to 20 billion won.

25. As a result, under the amended Merger Notification Guidelines (Notification), business establishment notification criteria and method are determined based on the largest shareholder and the counterpart company that participates in the company establishment. In other words, when newly establishing a company, if either the largest shareholder or the counterpart company has a total asset or sales revenue of more than 100 billion won or 20 billion won, the largest shareholder must report other participants in the establishment as counterpart companies, and the same standard applies when determining subjects of prior/post notification.

26. In addition, with the newly introduced local nexus-based criteria for overseas merger notification in the Enforcement Decree, the Guidelines provide specific criteria for calculation of local nexus. Local nexus refers to foreign company's sales in the Korean market and is calculated by adding the sales of each merging company's affiliate status-holding companies, pre or post-merger, in the Korean market.

Clarification of subject and method of notification

27. First, application of the simplified notification has been expanded. Simplified merger notification is aimed at reducing burdens for companies by making the notification procedure easier and simpler for mergers that are highly likely to be free of anti-competitiveness. Under the revised Guidelines, participation in establishment of private equity funds (PEFs), merger with special purpose companies (SPCs) and participation in establishment of ship investment companies also qualify for the simplified notification.

28. In addition, considering that the recent rapid growth of PEFs is triggering increasing number of mergers by PEFs, the new Guidelines clearly stipulates for the notification procedure and the person responsible for notification regarding PEF-related mergers. More specifically, with regards to participation in establishment of a PEF, the Guidelines precisely provides that the notification duty lies with the largest holder of shares owned by general partners, thereby removing any uncertainties about the notification duty holder. It also stipulates in detail the matters to be included in the notification and the scope of affiliates to be taken into account when a PEF becomes a company with the merger notification duty.

29. Furthermore, notification duty in case of an interlocking directorate after additional stock acquisition or stock acquisition and the subject of the local nexus rule related to foreign firm's company establishment are clearly provided. The provision requiring domestic sales of more than 20 billion won applies only to the case where the newly-established company is a foreign company. When the newly-established company is a Korean company, the requirement does not apply, even if all participating companies are foreign firms, and only the general requirements of a merger are applied.

1.3 Surcharge Imposition Policy Improvements

1.3.1 Change of the ceiling on surcharges

30. With the amendment of the Enforcement Decree of the MRFTA, the ceiling on surcharges levied for competition law violations has been changed from a certain percentage of the "previous three-year average sales" (different according to the type of violation; 10 percent for cartel, 3 percent for abuse of market dominance and two percent for unfair trade practice) to a certain percentage of the "relevant turnover" (the percentage is same as before) (enforced since November 3, 2007).

31. The reason for the average turnover-based ceiling was to decide the level of sanction within the scope that enterprisers can handle. However, there was a problem with this because when a long-term illegal act is detected, the enterpriser manufacturing and selling only one item would benefit from the ceiling on surcharges according to its average sales while enterprisers handling multiple items would not, thus creating a significant difference in the amount of surcharges imposed on different enterprisers[1]. The revised ceiling on surcharges is expected to solve this problem to a large extent.

[1] For instance, if Company A, whose three-year average sales is 100 billion won, and Company B, whose three-year average sales is one trillion won, have fixed the price of product X for ten years and the two companies' sales of product X are both 100 billion won, Company A would be levied 10 billion won in surcharges, which is 10 percent of its three-year average sales, while Company B would be imposed with the surcharge of up to 100 billion won.

Revision of the detailed criteria for surcharge imposition

32. Following the amendment of the Enforcement Decree, the detailed criteria for surcharge imposition have been recently revised (implemented since December 31, 2007). Major changes made to the criteria are as follows;

33. With regards to surcharge reduction for companies that have introduced and implemented the Compliance Program (CP), the scope of reduction is differentiated according to the actual CP implementation record. In the past, up to 20 percent cut in surcharges was given to companies running the CP and up to 40 percent reduction in surcharges to companies that voluntarily corrected their violations. There were claims that this system was incapable of reflecting the actual operation of the CP. Thus, under the new system, companies are graded after evaluating their CP implementation record and are given surcharge reduction of 15 to 30 percent according to the grade. The 20 percent additional cut in surcharges which is granted to companies that have voluntarily corrected their violations is maintained in the revised system.

34. Under the new system, the leniency program is applied after calculating the amount of surcharges to be finally imposed on law-violating enterprisers. This is intended to make the leniency program clearer. Surcharge imposition process consists of four steps; basic surcharge → mandatory adjustment → arbitrary adjustment → surcharges to be imposed. Previously, the percentage of reduction in surcharges given under the leniency program was applied after the arbitrary adjustment step, after which the final surcharges to be imposed was determined.

35. There are other improvements made to enhance the regulation's clarity and transparency. For example, if the period of violation had already been considered in the basic surcharge calculation step, no extra weight would be given on the surcharge according to the period of violation.

Revision of the criteria for surcharge imposition for violation of the Subcontract Act

36. In 2007, a notification was enacted on the criteria for surcharge imposition on violators of the Subcontract Act (Aug. 30, 2007). The purpose was to improve transparency and objectivity of law enforcement by stipulating the surcharge imposition criteria in detail in accordance with the criteria applied to violation of the MRFTA.

37. According to the criteria, the KFTC decides whether to impose surcharges considering the severity and repercussion of the violation and then calculates the basic surcharge by multiplying twice the subcontract price by a certain percentage designated according to the violation point[2]. The basic surcharge can be adjusted taking into account whether the company has voluntarily corrected the illegal practice and the company's share of trade in cash. In addition, at the final surcharge imposition stage, the surcharge can be reduced up to 50 percent or be exempted when deemed necessary in light of the company's actual capacity to bear the surcharge, the economic circumstances and the size of the profit incurred from the illegal practice.

[2] The violation point is scored out of 100 according to the type of violation (40%), the number of violations (20%), the proportion of money involved in violation out of the total subcontract fee (20%) and previous record of violations (20%), and the rate of surcharge imposition is differently applied between 1% and 8% depending on the violation point.

1.4 Establishment of Measures for Consumer Policy Development

38. In line with the launch of the Korea Consumer Agency and the start of a new era of consumer rights, the KFTC announced its "Measures for consumer policy development" as a blueprint for future consumer policy (April 2007). The key point of the newly introduced measures is to pursue competition policy and consumer policy in connection with each other so as to create a virtuous circle of consumers' reasonable choices leading to facilitation of competition among businesses, which in turn results in expansion of consumer choices with a greater variety of quality goods.

Major Policy Principles

39. The KFTC proposed "self-regulation, responsibility, cooperation and balance" as four principles of future consumer policy. The four principles are intended to break away from the previous regulation-centered policies and to lay the foundation for resolution of consumer problems by consumers and businesses based on the principles of self-regulation and responsibility. They are also aimed at fostering an organic cooperation mechanism among related agencies, including the government, local governments, Korea Consumer Agency and consumer groups, for synergy. Furthermore, the principles are aimed at pursuing balanced policies in response to so-far-neglected consumer issues concerning local consumers, the vulnerable class and international consumers.

Mission

Task 1: Provision of accurate and sufficient consumer information

40. The KFTC will focus its efforts on providing accurate and sufficient consumer information so that consumers can acquire capacity as the ultimate judge amid soaring cross-border transactions triggered by globalization and an overflow of biased information provided through various media including the Internet. To this end, the KFTC will gradually build a comprehensive consumer information network, where public institutions and consumer groups will participate, as the one-stop service center for consumer information. In addition, a fraudulent transaction-related information sharing system will be launched among agencies handling consumer counseling and report, including the KFTC, the Korea Communications Commission, the National Police Agency, the Korea Consumer Agency, consumer groups and local governments.

Task 2: Provision of practical and comprehensive consumer education

41. The KFTC plans to implement policies to improve consumer education, which is currently being pursued by about 250 institutions in an unorganized manner. In particular, the KFTC will develop an index to objectively measure consumer capabilities, in terms of consumers' knowledge and attitude necessary to make reasonable purchases, so that it can provide education tailored to consumers' weaknesses. Moreover, a network linking the government, local government, consumer groups, business associations and the academia will be established to launch a cooperative body for consumer education.

Task 3: Strengthening of consumer safety infrastructure

42. In response to increasing hazards caused by environmental degradation, the KFTC will endeavor to strengthen safety infrastructure to secure consumers' right to safety by establishing a department dedicated to consumer safety within the KFTC and also by building a consultation mechanism among government agencies, which will enable comprehensive and systematic pursuit of consumer safety policies. The KFTC will also efficiently collect and analyze injurious information and provide safety information to consumers promptly through a stronger comprehensive injurious information system.

Task 4: Establishment of consumer-oriented regulatory standard and measures for prompt damage redress

43. To respond to various types of unfair trade practices following changes in the consumption culture, the KFTC plans to establish consumer-oriented regulatory standard and seek ways to promptly redress consumer damage, which is fast growing in number. In this regard, the KFTC will revise main consumer transaction-related laws, including the Fair Labeling and Advertising Act, the Door-to-Door Sales Act and the Adhesion Contract Regulation Act, and also pursue introduction of consent decree as a means of prompt consumer damage redress. Furthermore, the budget and manpower designated to support the Korea Consumer Agency's handling of litigations will be expanded so that the group dispute resolution system can be put into active use.

Task 5: Balanced policy response to vulnerable consumers

44. With the KFTC's regional offices taking the lead, regional consultation bodies consisting of local consumer issue experts from the local governments, local assemblies and consumer groups will be organized to stimulate local consumer policies. Moreover, the KFTC will continue strengthening support for disadvantaged and vulnerable consumers by providing counseling and education programs.

Task 6: Institutional improvement for redress of international consumer damage

45. Globalization of the world economy, particularly the KOR-U.S. FTA, is certain to trigger greater number of international consumer damage. In this respect, the KFTC will focus on revising the system to allow efficient redress of international consumer damage. For this, the KFTC is planning to actively respond to international consumer damage issues by establishing a database on foreign consumer damage redress systems and participating in the international consumer damage network linking worldwide consumer authorities.

2. Major Cases of 2007

2.1 Cartel

2.1.1 Output control and price fixing by three sugar manufacturing companies

Summary

46. In this case, CJ, Samyang, and TS Corporation, Korea's three sugar manufacturers, participated in a cartel on the ex factory price and sugar output for 14 years between 1991 and September 2005.

47. Having predicted a fiercer competition in the wake of the upcoming liberalization of raw sugar imports in 1991, these companies agreed to fix their monthly and yearly sugar output during a sales executive meeting in late 1990 to prevent such competition[3]. In addition, to ensure implementation of the agreement, they exchanged documents on their past monthly outputs and special excise tax payment to check compliance status and, if necessary, agreed to conduct a due diligence for each other. They also agreed to observe the monthly output quota and to adjust the difference at the end of year in case of difference in the yearly quota.

[3] The output agreed by the three companies: CJ (48.1%), Samyang (32.4%), TS Corporation (19.5%), with each figure similar to market share of each company

Imposed remedies

48. On 20 August 2007, the KFTC imposed a corrective order and a surcharge of 51.1 billion won[4] on the three sugar manufacturing companies pursuant to Article 19 (1) 1 and 3 of the MRFTA, prosecuting Samyang and TS Corporation[5].

2.1.2 Price-fixing by 10 petrochemical companies

Summary

49. In this case, 10 petrochemical companies[6] in Korea made a monthly agreement on the "benchmark price" for sales prices for 11 years between April 1994 and April 2005. During the period, they, based on the agreed benchmark price, set sales prices for each item for individual company to raise prices accordingly.

50. These undertakings made the cartel agreement through step-by-step meetings starting from between presidents, sales executives and directors between April 1994 and April 2005. Once presidents agreed to maintain a coordinated regime on price and output, and then executives set benchmark prices for each item and later, sales directors made an agreement more specifically on benchmark prices by usage, monthly sales volume and prices for direct transactions. In addition, in order to check the implementation status of the agreed benchmark prices for the month before, they held a monthly meeting and at the end of every month, they made it a rule to reset a price to close sales for 11 years.

Imposed remedies

51. On 5 June 2007, the KFTC decided that the acts mentioned above was in violation of article 19 (1) 1 of the MRFTA, imposing a corrective order[7] and a 104.5 billion won of surcharge[8] while referring five of them[9] to the prosecution.

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4 CJ (22.7 billion won), Samyang (18 billion won), TS Corporation (10.3 billion won)

5 Apart from surcharge imposition, in case the KFTC deems criminal sanction to be necessary for severity of a violation and possibility of undermining competition, it may file a complaint against violators with its exclusive power. (punishable with imprisonment of less than three years or fine of less than 200 million won pursuant to Article 66 of the MRFTA)

6 The 10 undertakings are Honam Petrochemical Corp., SK Corp. Hyosung, Korea Petrochemical Ind,Co.,Ltd, Samsung Total Petrochemical Co.,Ltd., GS Caltex, LG CHEM, Daelim Industry Company, and SEETEC Ltd.

7 The KFTC said in the corrective order, "Examinees shall not conduct a behavior which unreasonably restricts competition in plastic manufacturing and marketing market by making a joint agreement on sales price of PP and HDPE."

8 SK Corp., (PP: 14.929 billion won, HDPE: 8.488 billion won) Hyosung (PP: 9.787 billion won), Korea Petrochemical Ind,Co.,Ltd (PP: 9.094 billion won, HDPE: 12.069 billion won), Samsung Total Petrochemical Co.,Ltd.(PP: 1.920 billion won, HDPE: 1.423 billion won), GS Caltex (PP: 9.148 billion won), LG CHEM (PP: 2.725 billion won, HDPE: 10. 421 billion won), Daelim Industry Company (HDPE: 11.697 billion won), and SEETEC Ltd (PP: 2.071 billion won, HDPE: 811 million won).

9 Prosecuted: SK Corp., Hyosung, Korea Petrochemical Ind,Co.,Ltd, LG CHEM, Daelim Industry Company

2.1.3 Bid-rigging by six large construction companies for Seoul Subway Line No. 7 extension work

Summary

52. The case dates back to December 2003 when Seoul and Incheon Cities announced a basic plan[10] for six sections of work construction to extend Seoul Subway Line No. 7. Upon the announcement, six large construction companies made a secret deal to participate in the bidding, with each company targeting each section of work on two occasions, in August 2004 and in February 2005. (Section 701 by Daelim Industrial Company Limited, Section 702 by Hyundai Engineering & Construction, Section 703 by Daewoo E&C, Section 704 by Samsung Corporation, Section 705 by GS E&C, and Section 706 by SK E&C).

Imposed remedies

53. On 25 July 2005, the KFTC imposed a corrective order and a surcharge of 22.1 billion won[11], filing a complaint against the six companies for the bid-rigging cartel with the prosecution.

2.2 Major M&A cases and statistics

2.2.1 Vertical merger between POSCO, POSTEEL and Korea Core

Summary

54. On 2 April 2007, POSTEEL established a stock transaction contract to acquire 51% of Korea Core's shares and notified the KFTC of the merger on the day. The merger was formed by POSCO acquiring shares of Korea Core, a buyer of POSCO's electrical steel sheet through its affiliate POSTEEL.

Judgment of Illegality

- Market definition: the upstream market was electrical steel sheet market for domestic core manufacturers while the downstream market was domestic core product market (motor core, motor assembly, EI core, Strip and other silicon steel plate product market).

- Criteria of anti-competitiveness of the merger: Considering the following, the KFTC decided that the merger substantially restricted competition by foreclosing market concerning supply and demand of electrical steel sheet, which is raw material of the market in question.

  – First, POSCO is a practical monopolistic enterprise of the domestic electrical steel sheet supply, accounting for about 92%~93% (its share of supply to core market: about 98%, with 98.8% for NO and 90.5% for GO). And although Korea Core's buying share of electrical steel sheet has reduced to some 30% since 2005, and the top three purchasing companies' combined share also decreased to 60%~70%, in individual core product market (except for EI), the market share of Korea Core stood very high and so did its market concentration.

10 The construction work was worth 1.2456 trillion won.

11 Daelim Industry Company (2.850 billion won), Hyundai Construction (3.925 billion won), Daewoo Construction (4.075 billion won), Samsung Corporation (4.578 billion won), GS Construction (3.542 billion won) and SK Construction (3.144 billion won)

- Second, the KFTC recognized that if the merger were approved, enabling Korea Core to secure stable and concentrated supply of electrical steel sheet from POSCO and to utilize its current facilities to produce each core product at maximum-capacity, Korea Core would be capable of satisfying the demand of all core products except for EI.

- Third, through the merger, POSCO tried to block electrical steel sheet import and prevent weakening of customer loyalty, in particular, aimed at defending the NO electrical steel sheet market and managing customer churn. And POSCO feared that in case Korea Core was taken over by core manufacturing competitors or electrical steel sheet buyer, it would raise buyer's bargaining power, thereby relatively weakening its bargaining power.

- Fourth, through the merger, POSCO tried to prompt restructuring of the core market, with Korea Core at its center, and by tapping Korea Core as its domestic distribution network for electrical steel sheet, it attempted to strengthen its market dominance. Therefore, it has become virtually difficult for Korea Core's competitors to secure a stable supply from other alternative electrical steel sheet sources, thus making harder for other electrical steel sheet markers to secure customers.

Imposed remedies and POSCO's Compliance Status

55. The KFTC clearly stated specific forbidden behaviors to POSCO including supply reduction for no fair reason and material assignment in favor of Korea Core. And in order to monitor POSCO's compliance, the KFTC ordered the enterprise to form and run a compliance monitoring consultation group including an independent transaction supervisor. As of now, POSCO has set up the consultation group and is running in accordance with the corrective order, and reports the monitoring result regularly to the KFTC.

2.2.2 Horizontal merger between Owens Corning and Saint-Gobain Vetrotex

Summary

56. On 26 July 2007, Owens Corning (hereinafter "OC" of the US) cut a deal to take over all asset and shares of fiber glass reinforced plastic business of Saint-Gobain Vetrotex (hereinafter "SG" of France) and notified the KFTC of the merger case on 9 August 2007. Earlier, OC and SG tried to form a joint venture to merge their reinforcements units and ask the KFTC of a preliminary merger review ('06 9.28), but later they changed the form of the merger into business takeover through share acquisition to make a formal report.

Judgment of Illegality

- Market definition: In consideration of demand substitution degree between the six categories of fiber glass reinforced plastics, product market was divided into three (Roving, CS, Mat) while geographical market was classified as domestic one.

- Criteria of anti-competitiveness of the merger: given the following factors, the KFTC saw the merger as substantially competition-restricting in the domestic fiber glass reinforced plastic market.

  - First, the domestic fiber glass reinforced plastic market is worth roughly 143.7 billion won, with OCK, SGK, KCC and HKF participating as market players and imports taking up about 18.4%.

- Second, the number of the market players reduced from four to three (CS: 3>2), and merging companies' combined market share stood at 53.5% (Roving 45.7%, CS: 56.8%, Mat: 58.3%), satisfying the criteria to be presumed as anti-competitive pursuant to the MRFTA.

- Third, while imports tend to increase[12] (driven by low-cost items of China), the trend is expected not to continue down the road due to the difficulty in maintaining the low prices of the made-in-China goods[13], and the need to secure a stable supply of materials and additional costs like transportation cost and tariffs.

- Fourth, as the concerned industry, as a facility-intensive industry, requires a enormous entry cost early on, and considering the supply saturation at home and abroad, plant establishment, and the quality control test period for companies on the demand side, a viable and sufficient new market entry at a proper timing within two years was deemed to be unlikely.

- Fifth, whereas the post-merger company expands its market dominance in terms of production capacity and technology, its competitors have limited production capacity. Thus, they are highly likely to fall in with the post-merger company's initiative in price raise, while at the same time, the possibility of market concentration (the number of companies reduced from four to three, leading to substantial monopolization) and cartels seem to be high compared to the pre-merger period.

Imposed remedies and Compliance Status

57. The KFTC required SG to sell off its stakes in R&C Korea (the acquiring company of SGK's production facilities) through its affiliate SGVI or R&C Korea to sell off its basic production facilities of fiber glass reinforced plastics.

2.2.3 M&A Statistics

58. In 2007, the KFTC examined and handled a total of 857 cases, including 3 cases against which corrective measures have been imposed for anti-competitiveness. The three cases are CJ CableNet's acquisition of shares in two System Operators based on South Chungcheong area (February 2007), POSCO's acquisition of shares in Korea Core (May 2007) and Owens Corning's acquisition of shares in Saint-Gobain Vetrotex (October 2007). Meanwhile, the KFTC imposed negligence fines for violating notification requirements on 50 cases, a slight decrease of 53 in 2006.

Case handling regarding M&As

Year	'01	'02	'03	'04	'05	'06	'07
No. of review	644	602	589	749	658	744	857
No. of remedies	1	2	7	6	3	4	3
No. of notification violation	43	44	36	29	16	53	50

12 8.4%('02) → 15.1%('03) → 19.5%('04) → 20.1%('05) → 24%('06)

13 As China's export Value Added Tax (VAT) refund rate was revised downward, the readjusted rate of 8% has been translated into import prices.

2.3 Abuse of market dominance and other major cases

Hyundai Motor's obstruction of business activities of its sales agencies

59. The KFTC uncovered that Hyundai Motor leveraged its dominant position in the local automobile market to unduly intervene with recruitment and restrain movement of its sales agencies and force sales quotas and on January 17 2007, it imposed a corrective order and a surcharge of 21.5 billion won.

System Operators' act of harming consumer interests by banning collective agreements

60. On July 25, 2007, the KFTC issues a cease and desist order to 18 System Operators (hereinafter "SOs") including 15 Tbroad-affiliated SOs and 3 CJ-affiliated SOs for their abusing dominant market position (seriously harming consumer interests) and imposed a surcharge of 216 million won on 8 Tbroad-affiliated SOs. 15 Tbroad-affiliated SOs were found to have refused to newly establish or renew collective contracts in areas where they had exclusively offered their broadcasting service at a low price, while continuing to provide the same collective contract-based products in areas where they had competitors. In addition, 8 Tbroad-affiliated SOs and 3 CJ-affiliated SOs took out popular channels with high viewer ratings like MBC ESPN, SBS Sports, and drama channels which used to belong to low-end package to insert them into high-end package products, deliberately compromising quality of the low-end package.

Interpark Gmarket's exclusion of competing enterprises

61. On November 7 2007, the KFTC imposed a corrective order and a surcharge of 135 million won on Interpark Gmarket Inc. (hereinafter the "Gmarket") for deterring enterprisers operating in its e-market place[14] from doing business with its competitor, Mple Online (hereinafter the "Mple").

2.4 KFTC's case handling and litigation statistics

2.4.1 KFTC's case handling of 2007

62. In 2007, the KFTC handled a total of 4,478 cases[15], up by 0.9% compared the year 2006's 4,436. Cases which were slapped with corrective measures above warning were 3,223[16] in total, a slight decrease of 4.8% compared to the previous year's 3,383. By type of corrective measures, the number of cases on which surcharge was imposed was 325; corrective order 927, recommendation for correction 124, and warning 2,123. Compared to the previous year's, the number of recommendations for correction has decreased while the number of corrective orders and surcharge imposition has remarkably increased. The number of warnings has changed little compared to the previous year's.

Case handling by type of corrective measures

(remedies of warning or above, no. of cases)

14 E-market place refers to cases where when multiple sellers and buyers carry out transactions on-line, anyone, be it individuals, enterprisers, or companies, can be sellers and buyers.

15 The number of cases for which investigations were initiated and handled is included(including charge-cleared cases)

16 The number of cases in which illegality has been recognized and imposed with remedies above warning

Type \ Year	'81 ~ '94	'95	'96	'97	'98	'99	2000	2001	2002	2003	2004	2005	2006	2007
Referral to the prosecution	61	33	16	35	37	11	22	23	11	18	22	12	47	48
(surcharge)	(-)	(2)	(1)	(-)	(5)	(-)	(3)	(9)	(1)	(4)	(2)	(2)	(3)	(11)
Corrective order	1,495	199	250	221	538 (64)	621	441	346	496	449	477	753	644	927
(surcharge)	(102)	(49)	(21)	(9)		(102)	(46)	(72)	(90)	(33)	(89)	(274)	(154)	(314)
Recommendation for correction	906	119	179	329	57	149	35	84	110	100	100	163	178	124
(request for correction)	(17)	(3)	(4)	(10)	(5)	(4)	(-)	(4)	(5)	(2)	(1)	(-)	(1)	(-)
Warning[1]	5,615	572	619	732	649	487	1,099	3,476	2,013	2,133	2,388	2,420	2,513	2,248
Total	8,094	926	1,068	1,327	1,286	1,272	1,597	3,933	2,635	2,702	2,988	3,348	3,383	3,223

1. Settlement and negligence fine cases are included.

63. In 2007, the number of cases and enterprisers[17] on which surcharge was imposed was respectively 325 and 414, an increase of 107.0% and 65.6% compared to the previous year's 157 and 250. The amount of surcharge stood at 423.5 billion won, an increase of 248.2 billion won compared to the previous year's 175.2 billion won. The surcharge imposed on cartel cases was estimated at 307 billion won, accounting for 72.6% of the total surcharge amount. This is largely attributable to intensive detection and correction of large-scale cartels that lasted for a long period including ones involving petrochemical companies and sugar manufacturing companies.

2.4.2 Competition lawsuits of 2007

64. In 2007, a total of 81 lawsuits were filed against the KFTC's decision. In particular, with cases concerning abuse of market dominance increasing, the scope of tasks related to litigation including development of logics for effective response has become wider.

65. So far, the KFTC made institutional efforts to ensure self-defense right of examinees and reasonable and transparent decision-making process in case-handling procedure. However, fearful of economic burden of surcharge on businesses, negative recognition of society on competition law-violating companies and legal liability under civil and criminal laws, companies are increasingly filing more lawsuits, leading to dissatisfaction with KFTC's decision that remains unaddressed compared to the previous year's.

No. of litigation and appeals for the latest 5 years

(Unit : No. of cases)

Type	2003	2004	2005	2006	2007
No. of litigations filed	46	56	46	46	81
No. of appeals filed	40	60	17	32	49
Total	86	116	63	78	130

17 In case of cartels, the number of examinees can be more than one, so for one single case, surcharge can be imposed on multiple enterprises.

66. Meanwhile, looking at the overall litigation results of 2007, out of 57 final and conclusive judgments, 34 cases were won, 12 cases were partially won and 11 cases were lost, with cases won accounting for 59.7% and partial win 21.0% and loss 19.3%. This is 0.5% and 3.6% drop compared to the previous years regarding cases won and lost respectively, while partial win cases rose by 4.1%.

67. This result is attributable to the fact that as reasoning to respond to various behavioral patterns of undue subsidizing has been completed, most cases concerning undue subsidizing on which the KFTC had handled before 2003 were ruled as partial win.

Court rulings for the latest 5 years (final and conclusive judgment)

(Unit：number of cases, %)

Type	Win	Partial win	Loss	Subtotal
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)
2006	50(60.2)	14(16.9)	19(22.9)	83(100)
2007	34(59.7)	12(21.0)	11(19.3)	57(100)
Total	176(63.1)	48(17.2)	55(19.7)	279(100)

3. Human resources and budget of KFTC

68. As of the end of 2007, the number of KFTC staff stood at 504 and the budget expenditure was 54.7 billion won. The dramatic increase in the budget expenditure of 2007 compared to 2006's is attributable to the transfer of the jurisdiction of the Korea Consumer Agency from the Ministry of Finance and Economy.

KFTC staff and budget expenditure

(As of 2007. 12.31)

Year	No. of staff*	Budget expenditure (unit: billion won/million dollars)
2007	504	547
2006	486	387
2005	484	348
2004	469	288
2003	416	264
2002	416	246
2001	416	220

* No. of the regular personnel