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## **Annual Report on Competition Policy Developments in Korea**

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This report is submitted by Korea to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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## 1. Changes to competition laws and policies

### 1.1. Amendment of the MRFTA

1. Major contents of the 2017 amendment to the *Monopoly Regulation and Fair Trade Act* (hereinafter referred to as “MRFTA”) and the Enforcement Decree are as follow:

#### *1.1.1. The amendment to the MRFTA (Subparagraph 14813 of the Act, April 18, 2011)*

2. Major contents of the amendment include enhanced sanctions against an act of disrupting investigation, and writing a resolution for a case cleared of suspicion.

- The amendment enables the imposition of criminal penalty on acts of refusing or interfering with investigation and enforcement fine on any person who refuses to submit data. Before the amendment, administrative fines were imposed on a person who fails to submit materials, submits false materials, conceals or destroys materials. But it is now punishable by imprisonment for not more than two years, or a fine not exceeding 150 million won. In addition, the enforcement fine is newly introduced to impose a penalty on a person who fails to comply with an order to submit materials within 3/1,000 of the average daily turnover per day. This change is expected to enhance sanctions against acts of disrupting investigation, thereby improving the KFTC’s investigative effectiveness.
- Before the amendment, a resolution was written and disclosed only for a case in which the committee decided it has illegality. However, a written resolution will now be prepared and disclosed for every case dealt by the committee regardless of whether it is found to be illegal or not. By disclosing reasons for the KFTC’s decision to drop a case, it is expected to improve reliability and transparency of its case handling process.

#### *1.1.2. The amendment to the Enforcement Decree of the MRFTA (Subparagraph 28352 of the Presidential Decree, September 29, 2017)*

3. The amendment is to implement the imposition of enforcement fine on failing to submit materials and improve deficiency in operation according to the amendment to the MRFTA that was promulgated in April 18, 2017. Major contents of the amendment includes i) introduction of the enforcement fine, ii) increased thresholds for merger notification, and iii) an increased upper limit of aggravated penalty surcharges for repeated violations.

#### *Establishment of procedures for imposing and collecting enforcement fine on a person who fails to submit materials*

4. As the amendment to the MRFTA introduced the enforcement fine on failing to submit materials, it established procedures regarding the subject to the enforcement fine, imposition and collection methods, penalty rate, average daily turnover and etc.

#### *Increased thresholds for merger notification*

5. The thresholds for merger notification including the total amount of assets and turnover of merging companies were increased to over 300 billion won from 200 billion

won while the thresholds for merged companies were also increased to 30 billion won from 20 billion won. In addition, the threshold of foreign company's domestic turnover was increased to 30 billion won.

*Increased upper limit of aggravated penalty surcharges for repeated violations*

6. The upper limit of aggravated penalty surcharge for repeated violations was raised from 50% to 100% to prevent reoccurrence and improve deterrent effects by enhancing sanctions against repeated violations.

## **1.2. Amendment of relevant public notifications and guidelines**

### ***1.2.1. The amendment to the Rules on the KFTC's Committee Operation and Case Handling Procedure, etc. (April 14, 2017)***

7. The purpose of the amendment to the Rules on the KFTC's Committee Operation and Case Handling Procedure, etc. (hereinafter referred to as 'the Rules on Case Handling Procedure') is to ensure internal stability of the KFTC's Committee operation through reforming the deliberation process and improve procedural rationality and transparency. Major changes include i) establishment of procedures for hearing opinions ii) rationalization of the subject to deliberation by the committee, and iii) expansion of matters subject to a written resolution.

*Establishment of procedures for hearings prior to deliberation*

8. In December 2016, the Deliberation preparation procedures were introduced for effective and faithful deliberation, but it was removed due to the operational difficulties. Instead, the KFTC revised the Rules on Case Handling Procedure by newly establishing procedures for hearing opinions.

9. The Deliberation preparation procedures require the same process of deliberation and duplicate the complex procedures including writing a final report and reporting it to the KFTC court. They also increase the workload of practitioners while merely improving the efficiency. For these reasons, the procedures were rarely utilized.

10. Meanwhile, there has been demand for improvement of the practice in which examinees and counsels explain the case to the commissioners through a face-to-face meeting instead of going through the Deliberation preparation procedures since it has problems including difficulties in management and supervision, procedural opaqueness, and issues of fairness.

11. In this regard, the procedures for hearing opinions were newly established to increase the efficiency of the process while improving legitimacy and transparency. To be specific, for a case that involve complex and many factual issues, the commissioners, if necessary for the effective proceeding, can proceed the procedures for hearing opinions allowing an examiner and examinee to make verbal statements on major issues. The examinee can also request the procedures. The procedures, in principle, are participated by the commissioners, examiner, examinee, and the person in charge of a case from the General Counsel. However, even if the examiner can't attend the hearing, the examinee is guaranteed to make statements and the person in charge of the case should take minutes during the procedures and manage the records. Through a stable operation of the procedures, the right of examinee to make statements would be fully guaranteed while procedural legitimacy, transparency, reliability and efficiency would be improving.

*Rationalization of the subject to deliberation by the committee*

12. Of matters subject to hearing, determination, and resolution by the full committee, some parts that are not matched with the reality were removed to rationalize the subject to the full committee hearing.

13. The same standard would apply to foreign and domestic companies in determining in which meeting a case will be examined. In addition, the provisions were revised in accordance with the operational practices\* of the system for filing a complaint to the prosecution.

*Expansion of matters subject to a written resolution*

14. As the matters subject to a written resolution were expanded from matters violating the provisions of the Act to matters in which illegality is examined according to the amendment of the MRFTA(April 18, 2017), the matters of subject to a written resolution under the Rules on Case Handling Procedure was expanded to reflect the change.

15. The Rules on Case Handling Procedure was revised to clarify the subject to a written resolution by newly adding matters including cleared of suspicion, closing of deliberation procedures, closing of a case, the extension of penalty payment deadline, installment payment, and granting a marker for leniency applicant in addition to matters including issuance of warning, corrective measures, and prosecution.

***1.2.2. The amendment to the Announcement on Detailed Standards, Etc. for the Imposition of Surcharges (November 30, 2017)***

16. The purpose of the amendment to the Announcement on Detailed Standards, Etc. for the Imposition of Surcharges (hereinafter referred to as ‘the Announcement for the Imposition of Surcharges’) is to increase aggravated surcharges according to a period and frequency of violations so that it can be an effective means of preventing repeated violations and strengthening deterrence. Major changes include ① Increasing aggravated surcharges according to a period and frequency of violations, and ② improved assessment of the gravity of a violation in imposing fixed penalty surcharges.

*Increasing aggravated surcharges according to a period and frequency of violations*

17. Before the amendment, the aggravated surcharge rate according to the period or frequency of violations was up to 50% of each calculation criterion and the comprehensive upper limit of aggravated surcharge rate was also 50% of the calculation criterion. However, the aggravated rate was raised to strengthen the sanctions against violations that last for a long period of time (Under the current Announcement: up to 50% of the calculation criterion → The amendment: up to 80%), and when the calculation criterion is decided on a fixed basis, the range of the aggravated rate is determined and applied so that a case-specific and appropriate amount of surcharges are imposed.

18. In addition, in order to strengthen the sanctions against repeated violations, the aggravated surcharge rate was increased (Under the current Announcement: up to 50% of the calculation criterion → The amendment: up to 80%) and extended the calculation of the violation period from 3 years to 5 years. In addition, a zero-tolerance policy was

introduced even for a single violation in the past and redesigned the aggravated rate system to correct the current reversed structure. Furthermore, a lower limit on the discretion range of the aggravated surcharge rate was put so as not to apply an excessively low aggravated rate.

*Improved assessment of the gravity of a violation in imposing fixed penalty surcharges*

19. Before the amendment, in the case of imposing fixed penalty surcharges because of difficulties in estimating the relevant revenue, the relevant revenue was considered based on the ‘table for detailed assessment criteria’ to judge the gravity of a violation.

20. Therefore, the Announcement was revised to take into account other considerations in judging the gravity of a violation instead of estimating the relevant revenue for calculating the fixed penalty surcharges.

21. It is expected that the revision of the Announcement for the Imposition of Surcharges will enhance the level of sanctions against repeated violations for a long period of time, thereby preventing the recurrence of violations and improving deterrent effects.

***1.2.3. The amendment to the Rules on Operation of, Procedure, etc. System For Resolution by Agreement (June 21, 2017)***

22. The purpose of the amendment to the Rules on Operation of, Procedure, etc. System For Resolution by Agreement (hereinafter referred to as ‘the Rules on procedure for resolution by agreement’) is to improve the fairness and validity of the assessment by clarifying assessment criteria for payment-in-kind. To be specific, if an examiner needs to assess the value of payment-in-kind after deciding to commence the consent resolution, appraised values presented by multiple reliable appraisal agencies or experts should be considered. In addition, it was revised to take into account a nature of the payment-in-kind and other external circumstances so that its specific and respective characteristics can be reflected.

***1.2.4. The amendment to the Guidelines for the Combination of Enterprises Review (December 20, 2017)***

23. Before the amendment, if a joint venture is established in a foreign country, the same period for a review applies which is from 30 to up to 120 days as is the case with a general merger review. It increased a merging company’s burden of notification while causing a delay in business activities.

24. Under this amendment, if a merger is an incorporation of a new corporation among the types of merger, and this new company is a foreign entity so its business does not affect the domestic market, it is subject to simplified review instead of general review. Since a merger subject to simplified review is presumed to be not anti-competitive, the KFTC notifies the review result within 15 days after examining only the facts of the notification.

25. As a result, a joint venture established overseas that does not affect the domestic market due to its characteristics such as a product market or geographical market will be able to speed up its business.

## 2. Enforcement of competition laws and policies

### 2.1. Achievement on cases

#### 2.1.1. Unfair trade practice

##### *Achievement on cases*

26. The KFTC has dealt with 196 cases of unfair trade practices in 2017 accounting for 34.0% of the total of 577 cases related to the MRFTA in 2017. Categorizing unfair practices by type, most of the cases were related to abuse of its position in trade (89 cases, 45.4%), unfair inducing of customers (35 cases, 17.9%), and unfair transaction refusals (21 cases, 10.7%).

##### *Major cases*

##### Sanctions on Novartis Korea's unfair inducing of consumers

27. The KFTC decided to impose corrective measures and penalty surcharges of 500 million won on Novartis Korea Co.,Ltd., a Korean corporation of the multinational pharmaceutical company for unfairly inducing consumers including meddling with the selection of funding recipients for overseas trips to attend academic conferences. The KFTC also decided to refer the case to the prosecution.

28. Novartis Korea Co.,Ltd., is a Korean corporation of Novartis, a multinational pharmaceutical company. It supplies a number of prescription drugs such as Gleevec(Leukemia), GALvus (Diabetes), and Exelon (Dementia) and over-the-counter drugs.

29. Novartis Korea has used support for overseas academic conferences as unfair promotional means which is in violation of the Fair Competition Code on Pharmaceutical Trade (hereinafter referred to as the 'Code') from March 2011 to August 2016. They had spent 7.6 billion won to fund medical practitioners to attend a total of 381 academic conferences.

30. Under the current Code, pharmaceutical companies must select and support academic conferences overseas in a form of donation to industry associations. They are not allowed to provide direct support to individuals participating in academic conferences. However, each division of Novartis Korea selected the recipient doctors to support by itself and controlled the association to provide the funds to them. In particular, it analyzed data to select the recipients based on their prescription of the company's drugs, or anticipated prescriptions of the drugs.

31. The case has great significance in that for the first time, it sanctioned and rectified illegal acts by pharmaceutical companies that have been using support for academic conferences overseas as an unfair promotional means. The KFTC will continue to monitor the relevant markets and consult with related ministries and stakeholders to improve the current system so that funding for academic conferences by the pharmaceutical industry is not abused as an unfair promotional tool.

##### Sanctions on CJ CheilJedang's trading with restrictive condition

32. The KFTC imposed corrective measures and a penalty surcharge of 1 billion won on CJ CheilJedang Co., Ltd., the No. 1 company in the domestic food and beverage

industry, for prohibiting its distributors from selling outside the designated business areas and forcing them to maintain the resale prices.

33. CJ CheilJedang prohibited its distributors from selling its products such as sugar, cooked rice, and spam at lower prices. In addition, it prohibited sales outside the designated business areas, and created 'The Right Business Standards' that contains sales standards and sanctions for violations.

34. CJ Cheiljedang monitored products selling outside the designated areas by leaving secret signs on major products originally shipped to each distributor. If products are found to be sold outside their designated business areas, the company checked the secret signs to detect distributors selling the products and forced the distributors to compensate retailers for the loss, or transfer their sales performance to the retailers. The company also increased prices of products shipped to the distributors.

35. In addition, CJ Cheiljedang stopped distribution of its products or increased prices of products shipped to online retailers if they sold the products at lower prices than the standard consumer prices set by the company. As a result, small and medium-sized supermarkets, which sell products shipped from distributors, have lost an opportunity to get products at the lowest possible prices by comparing prices among their distributors. The increases in purchase prices of small and medium-sized supermarkets led to increases in consumer prices.

36. The KFTC prohibited CJ CheilJedang from restricting business areas and its trading partners, and also banned its resale price maintenance. It also decided to impose a penalty of 1 billion won. This action which aimed to correct competition-restrictive practices by the largest food company is expected to eliminate a market allocation practice in the food industry.

### *2.1.2. Cartels*

#### *Achievement on cases*

37. In 2017, a total of 69 cartels were detected and sanctioned. Categorizing cases by type of measure, 54 cases were imposed corrective orders, with 15 cases being imposed warnings. Of the 54 cases, 27 cases were imposed penalty surcharges and referred to the prosecution and 25 cases were imposed penalty surcharges along with corrective orders while the rest of the 2 cases were only imposed corrective orders.

#### *Major cases*

##### *Bid rigging in foods products for military meal service*

38. The KFTC decided to impose corrective orders on 19 companies<sup>1</sup> and refer them to the prosecution with the imposition of a total of 33.5 billion won in penalty surcharges

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<sup>1</sup> The sanctions were imposed on 19 companies include Dongwon Home Food Co., Ltd., Bockcheon Food Co., Ltd., Taerim Agricultural Products Co., Ltd., Taelim Fwel Co., Ltd., Sebok Food, Yousung C&F Co., Ltd. Glucksschwein Co., Ltd., Shinyang Food Co., Mangu Co., Ltd., Namil General Food Industry, Sama CF Co., Ltd., Seodo C&T Co., Ltd., Di Inc., Dong Yang Food Co., Ltd., Gaya F& D Co., Ltd., Seogang Dairy Co., Ltd., Sias Co., Ltd., Sawon Food, and KJ One.

for rigging the bids to purchase food products including sausage and pork cutlets for military meal service.

39. They agreed to winning bidders, false bidders and bidding prices in advance in 22 bids to purchase food products for military meal service offered by the Defense Acquisition Program Administration from 2006 to 2015. The total number of bids rigged was 329, and the total value of contracts awarded reached about 500 billion won.

40. They colluded to prevent failure in bidding and paying and sharing the amount of winning bid, and as a result of the scheme, the overall winning bid rate increased. In the case of canned tuna and sea snails, the winning bid rate was 90 ~ 93% in a competitive-bidding situation, but it was increased to 93 ~ 98% after the collusion. The higher the proportion of the conspirators in the bidding, the higher the winning bid rate.

41. The KFTC imposed corrective orders on a total of 19 companies and a total of 33.5 billion won in penalty surcharges on 13 companies including Bockcheon Food Co., Ltd., while prosecuting 12 companies. This was the first sanction against the collusion in bidding for main items of military food service. It took strict measures taking into account that it was the bid rigging involving foods for national soldiers and lasted for a long period of time.

42. Meanwhile, the KFTC will support the Defense Acquisition Program Administration if it files a claim for damages based on the measures imposed through providing related materials. In addition, considering that dividing regions for bidding makes it easier for companies to collude, it also plans to request the Defense Acquisition Program Administration to improve its way of offering bids.

#### Bid rigging in construction of railway roadbed between Wonju-Gangneung

43. The KFTC decided to impose penalty surcharges of 70.19 billion won on four companies including Hyundai E&C, Hanjin Heavy Industries & Construction, Doosan Industries & Construction and KCC Construction for colluding in bids for the Wonju-Gangneung railway roadbed construction.

44. In a bid for 4 construction sections of Wonju-Gangneung railway roadbed (Section 2, 3-1, 3-2. and 4) offered by Korean Railroad Corporation, four companies agreed to winning bidders, false bidders and bidding prices in advance, and jointly prepared necessary documents for bidding. The companies decided to win a bid in each section by abusing the Low-bid system. When the three false bidders lower the average bidding prices reflected in the Low-bid system, the designated winning bidder was able to bid at a low price compared to competitors not engaged on the bid rigging. The four companies colluded by exchanging phone calls and text messages 35 times or more on the day before and the bidding day. Then they jointly reviewed the necessary documents and determined the bidding prices of winning bidders for each section. The employees of four companies met each other when submitting the bidding documents to monitor whether they carried out the agreement as promised.

45. The KFTC imposed corrective orders and penalty surcharges of 70.19 billion won in total on the four companies with 21.69 billion won on Hyundai E&C, 16.07 billion won on Hanjin Heavy Industries & Construction, 16.1 billion won on Doosan Heavy Industries & Construction, and 16.33 billion won on KCC Construction respectively. The case has great significance in that it corrected a new type of bid rigging that abused the Low-bid system in the bidding for railway construction.

## 2.2. Achievement on Merger

### 2.2.1. Outline of merger cases

46. In 2017, the KFTC reviewed a total of 668 merger cases and the total amount of mergers reached 509.4 trillion won. The number of mergers reviewed increased by 22 cases (3.4%) compared to the previous year (646 cases), and the amount decreased by 84.2 trillion won (14.2%) from the previous year (593.6 trillion won).

47. The reason that while the number of reviewed mergers slightly increased while the amount of mergers decreased was because of a significant decrease in the amount of mergers by foreign companies. The number of mergers by domestic companies increased by 24 cases (4.9%) from 514 cases in the previous year (490 cases), and the amount of mergers increased by 27.5 trillion won (104.6%) from the previous year. The number of mergers by foreign companies decreased by 2 cases (1.3%) compared to the previous year (156 cases) and the amount of mergers decreased by 111.7 trillion won (19.7%) to reach 455.6 trillion won from the previous year (567.3 trillion won).

### 2.2.2. Major Merger review cases

#### *Merger between Dow and Dupont*

48. The KFTC decided to grant conditional clearance of the proposed merger of the Dow Chemical Company (hereinafter referred to as "Dow") and E. I. du Pont de Nemours and Company (hereinafter referred to as "DuPont"), requiring a divestiture of acid copolymer business related assets.

49. Dow and DuPont signed a merger deal of establishing a new combined company on December 11, 2015 and reported it to the KFTC on May 4, 2016. Dow and DuPont are global chemical companies headquartered in the United States. Since both companies have domestic sales of more than 20 billion won, they are subject to merger notification. After the merger, Dow and DuPont shareholders each owned 50 percent of DowDupont, the combined company, and Dow and DuPont became a subsidiary of DowDupont, Inc.

50. The KFTC conducted an in-depth investigation of this merger since there were concerns about competition restriction in the field of acid copolymer, which is a kind of petrochemical product. Copolymer is a type of synthetic adhesive resin and is used to increase the adhesion of various packing materials such as aluminum foil. The KFTC saw the acid copolymers market as a separate product market, where the combined companies compete with each other. Dow currently produces PRIMACOR while DuPont produces NUCREL acid copolymers and sells them worldwide.

51. In the case of acid copolymer, the relevant geographic market was defined as the world market considering the facts that it is easy to transport long distances because it is not easily decomposed and that the domestic demand is fully relying on imports.

52. The KFTC concluded that the merger could restrict competition in the acid copolymer market considering the level of market concentration, unilateral effect, and coordinated effect. After the merger, the combined market share of the top three competitors market will increase to 77.7%, thus triggering the anti-competitive effect presumption. DuPont and Dow are respectively the largest and third largest competitors in the acid copolymer market and the combined market share of the combined parties is twice as high as ExxonMobil's, the next largest competitor, market share. The acid copolymer market is highly concentrated and oligopolistic market due to a high technical

entry barrier. After the merger, the competition between Dow and DuPont, which are competitors in the acid copolymer market, will disappear and the possibility of cooperation between the two will increase. In this situation, it is very likely that other competitors will follow the price of the combined company.

53. To resolve the competitive concerns, the KFTC required the merging parties to divest either DuPont or Dow's assets related to the development, production, and sale of acid copolymers within six months of the consummation of the merger. The KFTC also required the merging parties to hold each party's acid copolymers assets separately until completion of the divestiture. The merged company is also required to file a detailed compliance report with the KFTC within thirty days from the required divestiture.

54. The corrective action is significant in that the KFTC imposed structural measures on the merger of large global companies through cooperation with major competition authorities including the US and Japan.

*The acquisition of DS Power Co., Ltd. by Esmeralda Co., Ltd.*

55. The KFTC reviewed the acquisition of DS Power Co., Ltd. by Esmeralda Co., Ltd. (hereafter Esmeralda), and decided to impose behavioral measures concluding that the acquisition is anti-competitive in the related market.

56. Esmeralda signed a deal to acquire 45.13% of DS Power's stock on April 14, 2017, and reported its M&A to the KFTC on the same day. Initially, the stock acquisition contract was made by its affiliated company, IMM Investment Co., Ltd. However, Buyer's status, rights and obligations were transferred to Esmeralda on April 18, 2017.

57. In order to examine the anti-competitiveness of the merger, the KFTC conducted on-site investigation of the merging companies while listening to stakeholders' opinions. In particular, in determining the anti-competitiveness and the level of corrective measures of the case, the KFTC referred to the merger cases examined by the US competition authorities.

58. The 'waste heat supply market' in which an affiliate of Esmeralda (Shindaehan oil refining industry) and affiliate of DS Power (DS I & II) are operating business and the 'CES(Community Energy System) market' in which DS Power is operating business were defined as the relevant product market. Since the 'waste heat supply business' and CES business', which are in question in this merger case were supplying steam, heating and cooling heat through pipes in Osan City, 'Osan City Market' was defined as the relevant geographic market.

59. A horizontal merger occurs because the Shindaehan refinery and DSI are competing in the waste heat supply market in Osan. A vertical merger occurs between Shindaehan refinery industry and DS Power since they are in a dependent relationship in supplying raw materials.

60. After the merger, the company's market share will be 100%, which will dominate the waste heat supply market in Osan (As of the end of 2016, 42.4% for Shindaehan refining industry and 57.6% for DS E&E) With this merger, all of the companies in the waste heat supply market in Osan will belong to a single enterprise group, and it is not easy for new companies to enter in to the market in the short term. As the company dominates both the supply and demand markets of waste heat in Osan, the possibility of arbitrary increase in the waste heat supply price increases. Considering these points, the possibility of anti-competitive behaviors, such as an unilateral price increase, increases after the merger.

61. With regard to a vertical merger (the waste heat supply market in Osan – the CES market in Osan), this merger makes it more difficult for new operators to enter into the waste heat supply market in Osan. The complete vertical integration of existing waste heat suppliers and CES suppliers makes it difficult for new operators to supply waste heat to DS Power. Even if new entry is available, there is a possibility of unfair discrimination based on the trading terms such as supply price and quantity.

62. The rise in the supply price of waste heat increases the cost of steam sold by DS Power and it leads to upward pressure on steam prices.

63. Considering the fact, the KFTC prohibited increasing prices of steam supplied to the existing steam consumers above the increase of the PPI released by the Bank of Korea. Unfair discrimination against new waste heat suppliers in terms of trading conditions such as waste heat prices and contract quantity was prohibited. When charging for steam prices to the steam consumers, the suppliers were required to provide detailed information about the steam price calculation to them. The implementation period of the corrective measures was set by the end of 2028 when the waste heat supply contract between the Shindaehan refinery industry and DS Power is completed.

64. This corrective action is significant in that it resolved the concerns that the price increase in the upstream market due to the vertical combination of the upstream and downstream markets can be passed down to the end users of the downstream market by the monopolist.

#### *The acquisition of HSDG by Maersk*

65. With regard to reviewing the Maersk Line A/S (hereinafter referred to as “Maersk”)’s acquisition of a full stake in the German shipper, Hamburg Sudamerikanische Dampfschiffahrts Gesellschaft (hereinafter referred to as “HSDG”), the KFTC concluded that its merger could substantially harm fair competition in the trade routes on Far East Asia-Caribbean Sea, Central America and Far East Asia-west coast of Central America, and imposed remedies including the order to pull out of shipping consortium, etc.

66. A Danish company Maersk signed a contract to acquire a 100% stake of HSDG, a German company, on Oct 28, 2016, and notified the proposed merger to the KFTC on April 24, 2017. Maersk is the world’s largest container shipping company and HSDG is the world’s seventh- largest container shipping company.

67. In order to determine the anti-competitiveness of the merger, the KFTC conducted analysis based on a market share per consortium unit for the first time along with the traditional analysis based on individual enterprises unit, thereby allowing it to find out about the possibility of anti-competitiveness among members between or within the consortiums. It also referred to the opinions given by interested parties and similar cases of other foreign competition authorities including the EU, when assessing the anti-competitiveness and deciding the level of remedies.

68. First of all, the Container shipping market which is in mutually competitive relations between Maersk and HSDG was defined as the relevant product market. In addition, taking into account the association with Korean ports out of all the sea routes that are overlapping with Maersk and HSDG, a total of 10 sea routes including Far East Asia-Central America-Caribbean Sea was defined as the relevant geographic market.

69. After comprehensively considering elements such as the level of market concentration after the merger, unilateral effect and coordinated effect, etc., the said merger would substantially restrict competition in the sea routes of Far East Asia-Central America Caribbean sea and Far East Asia-west coast, Central America.

70. To resolve the competitive concerns, the KFTC required the merging company to withdraw from consortium on trade routes connecting Far East Asia-Central America & Caribbean Sea, and not to extend its contract in the alliance on the sea route from Far East Asia to the west coast of South America once it expires. The KFTC also prohibited the merging from joining any other consortium for five years to come after the expiration date of the consortium contract and the date of withdrawal from the consortium. If the company obtains sensitive information such as freight charges, it is not allowed to share it not only between Maersk and HSDG, but also with other members of the consortium.

71. This merger case was the first to impose corrective measures on the horizontal merger of the container shipping market and was the first to conduct an analysis based on the market share per consortium unit to assess the anti-competitiveness. It is also significant in that the KFTC conducted an in-depth analysis by listening to various opinions from stakeholders (10 global shipping companies) and having telephone conferences with Japanese and Chinese competition authorities that have similar interests.

### 3. The role of competition authorities in the formulation and implementation of other policies

#### 3.1. Overview

72. The KFTC has been making continuous efforts for improving anti-competitive regulations to establish a competitive market structure. The role of the KFTC is largely divided into two activities: Preventing anti-competitive regulations in advance and improving anti-competitive regulations that already exist.

#### 3.2. Preliminary review and consultation on anti-competitive regulations

73. The preliminary consultation for laws, etc. is directly based on Article 63 (1) of the MRFTA and the Guidelines for Review of Anti-competitive Regulations under Article 63 of the MRFTA.

74. In a preliminary consultation, the KFTC comprehensively reviews whether the regulations and dispositions conflict with the MRFTA and the KFTC's other laws, and they contain any restrictions on determination of price and transaction conditions, market entry, business activities, and unfair collusive acts before it suggests its opinions to the relevant administrative agencies.

75. In 2017, the KFTC reviewed 4,247 statutes and administrative rules to assess anti-competitiveness. Of those, 1,940 were legislations and administrative rules by the government while 3,007 were legislations by Assembly members.

76. In the case of the government legislation-related consultation, a total of 1,940 cases were reviewed in 2017 and opinions on 13 of which were submitted to the relevant ministries and agencies. And 9 of them or 69.2% reflected the KFTC's suggestion. In the case of the national assembly-related legislation, the KFTC reviewed a total of 3,007 cases in 2017, and suggested opinions that 104 of them contain anti-competitive factors.

### 3.3. Ex-post improvement of anti-competitive regulations

77. The KFTC has been continuously improving anti-competitive regulations since 2009, recognizing that it is urgent for the Korean economy to shift to an advanced market economy with a competitive market structure by reforming anti-competitive regulations such as restriction on entry.

78. To do this, the KFTC selects priorities by reflecting suggestions by businesses, experts' opinions, and results of market analysis conducted by itself, and then requests research to research organizations. Then it holds public debates or gatherings to hear from stakeholders, while collecting opinions from the relevant ministries and going through the adjustment process by the Office for Government Policy Coordination to prepare measures for improvement.

79. In 2017, the KFTC focused on foods, daily necessities, leisure activities that are closely related to people's lives, and SME-related fields. To be specific, the KFTC came up with measures for improvement of 25 issues including "relaxation of restriction on the distribution network of small and medium-sized beer companies," "relaxation of Korean certification requirements for parallel importers of electronic products", and "relaxation of capital standards for tourism business registration".

#### *3.3.1. Relaxation of restriction on the distribution network of small and medium-sized beer companies and relaxation of standards for manufacturing facility*

80. Small and medium sized beer companies were able to distribute beer only through general liquor wholesalers. However, as they are usually producing small quantities of craft beer, which require refrigerators in distribution, there was a shortage of refrigerator cars and limitation on the amount of beer they can distribute through the general wholesalers which are more suitable for mass distribution.

81. In order to facilitate the distribution of craft beer produced by small and medium-sized beer companies, the restriction was relaxed to allow certain liquor wholesalers to distribute their beer as well as general wholesalers, thereby expanding sales channels of craft beer for small and medium-sized beer companies and diversifying consumer choices.

82. Also, under the Liquor Tax Act, the annual amount of beer small and medium-sized beer companies can manufacture was limited to 5 kℓ - 75 kℓ per manufacturing facility (brewing and storage tank). By increasing the manufacturing capacity of beer from 75 kℓ to 120 kℓ, the competitiveness of the beer industry is expected to be enhanced.

#### *3.3.2. Relaxation of Korean certification requirements for parallel importers of electronic products*

83. When importing broadcasting and communication equipment such as smart phone, even if it already obtained a verification of Conformity under the Radio Waves Act, an importer was obliged to get a separate certification if the product was imported by a different person. This excessively limited the sales of parallel import products by small domestic importers.

84. In order to mitigate the excessive burden of getting a certification, the measure was introduced so that a certification obtained by a person earlier can be replaced by a certification obtained by a person later. This change is expected to decrease consumers'

purchasing costs of broadcasting and communication equipment<sup>2</sup> such as smart phones and enhance the competitiveness of domestic parallel importers.

### ***3.3.3. Relaxation of capital standards for tourism business registration***

85. A person who intends to register a tourism business should prepare the capital prescribed by the Tourism Promotion Act<sup>3</sup>. However, the excessive capital requirements restricted entry into the market while reducing consumer choices.

86. By permanently reducing the capital requirements (50%) which was supposed to temporarily apply for two years from July 2016, it is expected that there would be more entry and competition in the market.

## **4. Resources of competition authorities**

### **4.1. Organization and number of employees**

87. As of 2017, the KFTC consists of a secretariat and five regional offices with a total of 601 staff members.

88. Among the employees are 44 lawyers<sup>4</sup> and 26 economists<sup>5</sup>. Looking at the number of staff by task, 25 staff are in charge of market structure policy (Office of Director General for Market Structure Policy), 67 staff<sup>6</sup> are in charge of cartel investigation, 90 staff are in charge of abuse of market dominance cases (Anti-Monopoly Bureau, General Affairs Division · Competition Division of regional offices), and 46 staff are in charge of competition advocacy<sup>7</sup>.

#### **Box 1. New establishment of Business Group Bureau and Digital Investigation and Analysis Division (September 2017)**

Siphoning corporate profits by owner families of large business groups and unfair support for their affiliates undermine the country's economy by depriving independent SMEs of opportunities for fair competition and unfairly transferring management rights and wealth. In addition, holding companies, which are a main target of policies for restricting economic power concentration along with large business groups, are rapidly increasing in number recently, and demands for various institutional improvements are being raised. In order to enhance transparency in ownership and governance structure of large business

<sup>2</sup> As 60,000 domestic parallel importers will reduce the cost of getting a certification (estimated at least 5 million to 100 million won depending on the type), consumer prices are expected to decrease (Korea Internet Corporations Association)

<sup>3</sup> Over 200 million won for general tourism business, over 60 million won for overseas tourism business, and over 30 million won for domestic tourism business

<sup>4</sup> The figure including person with US lawyer or Korean lawyer certification

<sup>5</sup> The figure including person with master and doctor's degree in Economics

<sup>6</sup> Cartel Investigation Bureau + Competition Division of regional offices

<sup>7</sup> Market Structure(7) + Regulatory Reform(5) + Administrative Innovation(10) + Competition Policy(9) + Spokesperson(15)

groups, disclosing and monitoring of their status on shareholding and transaction with related persons are needed.

In order to strengthen the enforcement against unfair business practices by large business groups, Business Group Bureau was newly established with Holding Company Division, Intra-group Transaction Division, and Unfair Support Division as its subordinate division. Business Group Division which was originally under Competition Policy Bureau was also reorganized as Business Group Policy Division under Business Group Bureau.

Meanwhile, under the rapidly changing business environment (computerization), it is increasingly difficult to detect violations through collecting evidence based on paper documents. In particular, digital forensic investigation becomes a must as corporations deliberately delete and alter data stored on their computers, and the methods of concealing evidence are getting sophisticated and intelligent. In order to strengthen capabilities of investigating and analyzing electronic evidence, Digital Investigation and Analysis Division was newly established.

## 4.2. Annual budget

89. As of the 2017 fiscal year, the KFTC's annual expenditure budget is 114.8 billion won

**Table 1. KFTC's personnel and budget status**

	Staff(person)	Expenditure budget(Million USD)
2017	601	114.8 billion won
2016	532	110.1 billion won(97M)
2015	530	104 billion won (92M)
2014	527	84.6 billion won(75M)
2013	529	93.3 billion won (83M)

## 5. Summary of new reports and studies on competition policy issues.

90. The KFTC has annually conducted a total of 24 market studies on 1 ~ 5 monopoly sectors from 2008 to 2017. Market study refers to activities that analyze individual industries in which competition and market principles are not working properly to find its causes and countermeasures, and specialized agencies conduct a research on the market concerned. In 2017, the railway industry, film industry, and the mobile telecommunications industry were selected and through the outsourcing of market analysis on these markets, improvement measures were suggested.

**Table 2. Status on market study**

Year	Subject of analysis	Year	Subject of analysis
2008	Air freight, Internet portal	2013	Advertising, Insurance
2009	Property Insurance, Film, Oil, Pharmaceutical, Gas	2014	Car rental, Gas industry
2010	Liquor	2015	Aluminum hydroxide, School uniform
2011	Cosmetics	2016	Beer, Tugboat, Group energy
2012	Online education, digital music, multi-channel pay-TV	2017	Railway industry (non-transportation), Film, mobile telecommunications

### 5.1. Market study on the railway industry<sup>8</sup>

91. The railway industry is a regulation industry with a monopolistic structure led by the government and is largely divided into the railway facilities (the Korea Rail Network Authority) and the operation organization (the Korean Railroad Corporation). In the case of the railway transportation (Passenger and cargo) sector, a competition system was introduced to allow multiple businesses to operate in the market. However, non-transportation businesses including the railway traffic control, railway facility management, railcar leasing and maintenance are monopolized by the Korea Rail Network Authority.

92. Therefore, the need for the market analysis on the railway industry in which no analysis has been conducted from the viewpoint of the competition law has increased to solve problems caused by monopoly in the industry and improve efficiency.

93. As a result of the market analysis, the introduction of competition in the transportation sector has resulted in the reduction of railway fares and improvement of services. However, as the Korean Railroad Corporation, one of the transportation companies, is still monopolizing non-transportation businesses including the railway traffic control, railway facility management, and railcar leasing and maintenance, there are still concerns that it may impose high costs on competitors in the railway transportation business impeding fair competition and prevent new entry. To resolve this, it is imperative to lay a ground for fair competition among business operators in the rail transportation industry through the improvement of the legal system of the non-transportation business sector.

94. Based on the market analysis above, the KFTC came up with measures to encourage short- and long-term competition. In addition, for two tasks that have a more direct impact on the transportation sector in which the competition is introduced, it requested the relevant ministry(the Ministry of Land, Infrastructure, and Transportation) to improve the current system and now the consultation is underway. The other four issues will be reviewed over the long term.

<sup>8</sup> The network industry that provides railway transportation services based on railway network is divided into the railway facilities and its operation, and the operation sector is divided into the transportation business (passenger and cargo) and non-transportation business (railroad traffic control, railcar leasing and maintenance).

## 5.2. Market study on the mobile telecommunications industry

95. Although the mobile communication industry is closely related to people's daily lives (the service subscription rate is 122.2%), it is a process industry that requires huge cost and technological prowess to enter the market. In addition, as the government allocates frequency resources and implements various regulations on entry and prices with the recognition that the mobile telecommunication services is necessities, the monopolistic structure of the market by top 3 large business groups has been entrenched for a long time<sup>9</sup>.

96. Given that Korea's mobile telecommunications fee is globally high<sup>10</sup>, it was necessary to analyze recent competition issues raised in the industry, such as the effects of various regulations for the industry on the telecommunication costs and diversity of communication services.

97. The result of the market analysis can be summarized as follows: Although the competitive environment is improving little by little because of the proliferation of MVNO<sup>11</sup>, the market concentration level of top large operators is higher than that of the international level. In addition, due to problems such as licensing and registration system of telecommunication businesses, restrictions on frequency, large-scale initial investment, and inefficiency caused by duplicated investment in network, the number of operators is limited and this led to a formation of oligopolistic market structure. This entrenched oligopolistic structure, the saturation in subscriber base, the distribution structure revolving around the telecommunications carriers, and the complicated fee system are restricting competition in the market.

98. Based on the results of the market analysis, the KFTC plans to prepare two measures<sup>12</sup> for promoting competition and include them in the 2017 tasks for improving anti-competition regulations. Then, through consultation with the Ministry of Science and ICT, the KFTC will encourage improvement.

## 5.3. Market study on the film industry

99. The film industry is closely related to people's lives. As the concentration level of top three theaters<sup>13</sup> is gradually increasing, and large business groups such as CJ and Lotte have achieved vertical integration throughout the production-distribution-screening

<sup>9</sup> The number of subscribers in June 2017 is as follows: SKT 43.1% (50.6% in 2010), KT 25.8% (31.1% in 2010), LGU+ 19.7% (17.6%)

<sup>10</sup> It is the third highest among OECD countries with the burden of household telecommunications costs (including the purchase of a device) being about 140,000 won while it is the highest considering the GDP level.

<sup>11</sup> (Mobile Virtual Network Operator) Leasing telecommunication networks from operators (MNO: SKT, KT, LGU+) that have mobile telecommunications networks and providing their own services. As of June 2017, a total of 38 companies (8 of which are leasing multiple MNO networks) are operating business.

<sup>12</sup> ① Relaxing the license system for key telecommunications business operators to registration system ② Changing from the approval system to report system for telecommunication fees

<sup>13</sup> Changes on the market share of the three multiplexes: 45.7% (2005) → 59.5% (2007) → 77.3% (2009) → 86.9% (2011) → 91.4% (2013) → 92.2% (2015 years)

market, there has been a growing concern that the monopoly in the screening market including screen monopolization can distort competition among business operators in the production and distribution market and undermine the entire film industry's competitiveness.

100. Therefore, it was necessary to come up with measures to promote competition in the markets at each stage by analyzing the effects and problems of the vertical integration of production, distribution and screening in the film market, and the effects of monopolization of individual markets on other markets at different stage.

101. The market analysis result shows that the competition of the film industry is dominated by large companies in the investment, production, distribution, screening and VOD markets, and four companies participating in the screening market (CJ, Lotte, Megabox, CINE Q) have vertically integrated 3-4 markets and increased their share in each market. In addition, they gave more screens and screening times to a movie in the early stage of its release to increase the sales.

102. Due to the characteristics of the film industry, operators try to return prepaid costs as much as possible, reduce transaction costs, and vertically combine businesses to avoid risks. As a result, screening companies expand their business to investment, increasing their influence and monopolistic power in the industry. However, introducing the prohibition of vertical integration (operating both the screening and distributing businesses) requires a prudent approach because many are opposing it for reasons such as infringement of property rights, fairness among industries, possibility of evading regulations, weakening competitiveness in the entire film industry.

103. Screen monopolization is intensifying as distributors and theaters try to maximize revenue by giving a lot of screens to a movie that is predicted to be a big hit, a growing number of movies are being released globally and simultaneously, and a cycle of consumer's movie consumption is getting shorter. The screen monopolization reduces opportunities for other films, increasing inequality among competitors while limiting consumer choices. In particular, there was a need to set an appropriate limit on screens through consultation with stakeholders to ensure diversity of films.

104. The KFTC plans to organize a consultative body with and the Ministry of Culture and Sports and Tourism for the improvement of unfair practices in the field of cultural contents (December 2017), and discuss ways of limiting allocation of screens as well as unfair practices discussed above.