

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****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 5-7 June 2019.

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Contents

Korea	3
1. Changes to competition laws and policies, proposed or adopted	3
1.1. Summary of new legal provisions of competition law and related legislation	3
1.2. Other relevant measures, including new guidelines.....	3
2. Enforcement of competition laws and policies.....	4
2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions	4
2.1.1. Summary of activities of the KFTC	4
2.1.2. Description of significant cases, including those with international implications	4
2.2. Mergers and acquisitions	5
2.2.1. Statistics on number and type of mergers notified and/or controlled under competition laws.....	5
2.2.2. Summary of significant cases.....	5
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies	6
3.1. Regulatory reform overview	6
3.2. Preliminary review and consultation on anti-competitive regulations.....	6
3.3. Ex-post improvement of anti-competitive regulations.....	6
4. Resources of competition authorities.....	7
4.1. Resources overall (current numbers and change over previous year):	7
4.1.1. Annual budget (in your currency and USD):	7
4.1.2. Number of employees (person-years):	7
4.2. Human resources (person-years) applied to:.....	7
5. Summaries of or references to new reports and studies on competition policy issues	7
5.1. Air passenger transport service	8
5.2. Multi-family housing management service.....	8
5.3. Guarantee insurance.....	9

Korea

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

1. In 2018, The KFTC focused on drafting the proposal for comprehensive overhaul of the MRFTA to modernise the competition law. As the MRFTA has remained largely unchanged since its enactment in 1981, it has been limited in its ability to reflect recent changes in economic situations. The KFTC submitted a draft of the amendment to the National Assembly at the end of 2018 and is endeavouring to get it passed. The main changes are as follows.

2. First, the amendment aims to improve the enforcement system of the MRFTA by institutionalizing various civil, criminal and administrative enforcement measures. It plans to introduce injunctive relief by a private party for unfair trade practices. It also introduces the submission order for case-related documents by the court in private damage actions. Regarding criminal enforcement, the KFTC currently has exclusive authority to make criminal referrals for violation of the MRFTA. The amendment abolishes such authority in hard-core cartel cases and also eliminates criminal penalties for anticompetitive mergers and certain types of unfair trade practices.

3. Second, it aims to enhance the rights of examinees and procedural fairness in the investigation and deliberation process. It expands the scope of materials that examinees can have access to. It also clarifies the standard for calculating the statute of limitations in antitrust cases.

4. Third, it aims to enhance the role of the competition authority in establishing an innovative ecosystem. It plans to significantly ease requirements, such as minimum shareholding ratio, for establishing a venture holding company. It also adds a new merger notification criterion based on the value of transaction. It will also revise the provisions related to presumption of an agreement and types of prohibited cartel conducts in order to more effectively regulate anticompetitive information exchange activities.

5. Meanwhile, in August 2018, another amendment that allows punitive damage lawsuit for certain types of antitrust violations was finally passed by the National Assembly and will go into effect in 2019. Under the amendment, any enterpriser who engages in cartel agreements or takes disadvantageous measures in retaliation for acts, including reporting to the KFTC, should pay up to three times the actual damage in compensation.

1.2. Other relevant measures, including new guidelines

6. The KFTC amended ‘Rules on the KFTC’s Committee Operation and Case Handling Procedure, etc. (hereinafter “Case Handling Procedure) through full-committee hearing on May 5th which took into effect from May 18, 2018. Major contents are as follows; in case of re-report, the Examination Committee that decides whether to initiate examination on the reported case shall consist of two non-governmental members; each committee shall grant the complainant an opportunity to state opinion during the investigation and deliberation; interested persons, advisory members, relevant administration organs, public organs and entities having professional knowledge or experience, etc. may participate in the deliberation as reference

witness, and the Chairman may have the person, who has not been adopted as a reference witness before the deliberation, examined as a reference witness on the spot; the Chairman shall notify the reasons where the Chairman does not adopt the request for evidence examination, and the examiner or examinee may examine the contents that had not been submitted after getting an approval from the Chairman on the spot.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities of the KFTC

A. Cartel

7. The KFTC strengthened monitoring on cartels in public, private, and industrial sectors where such conducts cause huge damage to consumers. It detected and sanctioned a total of 44 bid rigging cases for apartment building repair service that increased the public's burden of apartment management fees. In addition, it sanctioned price-fixing schemes that increased the price of raw materials such as rebar and ready-mixed concrete (Penalty surcharges of 15.7 billion won on ready-mixed concrete manufacturers, April 2018 / Penalty surcharges of 119.4 billion won on rebar manufacturers, September 2018) and promoted competition in the markets.

B. Abuse of market dominance

8. The KFTC Intensively monitored the abuse of market dominance by market leaders such as core standard technology holders and monopolistic platform operators. It investigated the abuse of market dominance and unfair exercise of patent rights in the fields of pharmaceuticals, biotechnology, insurance, etc., and imposed measures.

2.1.2. Description of significant cases, including those with international implications

A. Cartel

9. In the public bidding sector, the seven companies were slapped with a total 20.4 billion won surcharges and referred to the prosecution for colluding in the repair and maintenance service bid of waterworks, dam and weir placed by Korea Water Resources Corporation between 2011 and 2016.

10. The KFTC also imposed surcharges of 10.8 billion won against 14 companies that had engaged in the rigging of aerial shooting bids commissioned by the National Geographic Information Institute from 2009 to 2013, and referred them to the prosecution.

11. In the industrial equipment sector, the KFTC detected price-fixing by six steelmakers and levied a total of 119.4 billion won in surcharges and referred them to the prosecution. Further, the 27 ready-mixed concrete manufacturers were fined 15.6 billion won in surcharges and referred to the prosecution for fixing the price of ready-mixed concrete.

12. In the international cartel sector, the KFTC identified anticompetitive agreements that lingered on over the period of 15 years in capacitor market. The KFTC imposed surcharges of 36 billion won on nine capacitor manufacturers colluding to raise or maintain the prices of aluminum and tantalum capacitors, and referred them to the prosecution. Moreover, the KFTC imposed a total of 1.7 billion won surcharges against two steel shot manufacturers for agreeing the price increase rate of steel shot supplied to domestic bearing makers, and referred them to the prosecution.

B. Abuse of dominance

13. A landmark case was Siemens in January 2018, when the KFTC imposed remedies along with penalty surcharges amounting to 6.3 billion won. Siemens abused its market dominance by foreclosing the small and medium-sized repair and maintenance businesses that were newly entering the medical equipment (eg, CT, MRI) market. The case required a highly sophisticated economic analysis such as market definition, anticompetitive effects analysis and so on.

14. As such, the KFTC and the respondent were engaged in a fierce legal debate over the outcomes of economic analysis. The KFTC actively countered by inviting internal and external experts to point out the inaccuracy of the respondent's economic analysis, and proved the illegality thereof.

15. Moreover, the KFTC imposed remedies and 7.6 billion won penalty surcharges (tentative) against Korean Reinsurance Co for blocking potential rivals from entering the general aviation reinsurance market.

16. In addition, the KFTC imposed remedies and 500 million won penalty surcharges on Hyundai Mobis. Hyundai Mobis set an excessively high sales goal and forced its regional agencies to buy its products in order to achieve the goal in domestic auto parts sector.

2.2. Mergers and acquisitions

2.2.1. Statistics on number and type of mergers notified and/or controlled under competition laws

17. In 2018, the KFTC reviewed a total of 702 merger cases. Of those, the KFTC conducted an in-depth review on 24 cases and three of them were found to have anticompetitive concerns.

Table 1.

Year	Horizontal	Vertical	Conglomerate	Total
2018	213(30.3%)	103(14.7%)	386(55.0%)	702(100.0%)

2.2.2. Summary of significant cases

18. The merger of Linde and Praxair (October) in the industrial gas market, the acquisition of NXP by Qualcomm (January) and Celanese-Blackstone's joint venture (March) are some of the high-profile cases. Recognising that the merger between Linde, the world's second-largest industrial gas supplier, and Praxair, the world's third-largest industrial gas supplier, could significantly reduce competition in the relevant markets, the KFTC examined the case by collecting opinions from parties concerned, including

competitors, and by closely cooperating with the United States Federal Trade Commission. After the review, the KFTC concluded that the proposed transaction could intensify monopolistic structure in global markets for excimer laser gas and helium, and in domestic markets for oxygen, nitrogen and argon, and required Linde and Praxair to divest related assets to proceed with the merger.

19. In the case of Qualcomm's acquisition of NXP, the proposed transaction could reduce competition in the NFC chip market. Therefore, the KFTC ordered Qualcomm to sell off NFC-related patents and provide its own NFC SEPs to competitors under FRAND terms.

20. In the case of Celanese-Blackstone's joint venture, there were competition concerns that the proposed joint venture could increase prices in the acetate tow market. To address the concerns, the KFTC issued an examination report containing the imposition of measures, and Celanese abandoned its plan to form a joint venture with Blackstone.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1. Regulatory reform overview

21. 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

22. 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.

23. 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.

24. In 2018, the KFTC reviewed 5,162 statutes and administrative rules to assess anti-competitiveness. Moreover, for government legislation, the KFTC conducted the competition assessment on 647 newly enacted or strengthened regulations (draft) of 302 laws to the Office for Government Policy Coordination. Of them, the KFTC proposed alternatives for 25 draft of 17 laws which are considered anticompetitive.

3.3. Ex-post improvement of anti-competitive regulations

25. 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.

26. 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.

27. In 2018, the KFTC set out improvements plans to revise 40 anticompetitive regulations (restrictions on entry, price and business operations, etc.) and asked (suggested) opinions of the relevant ministries.

4. Resources of competition authorities

4.1. Resources overall (current numbers and change over previous year):

4.1.1. Annual budget (in your currency and USD):

28. In 2018, 121.445 billion won (136 million USD) was allocated, which was 8.4% from the previous year.

Table 2. KFTC's budget status

	Expenditure budget(Million USD)
2018	121.4 billion won (136M)
2017	114.8 billion won (123M)
2016	110.1 billion won (97M)
2015	104 billion won (92M)
2014	84.6 billion won (75M)
2013	93.3 billion won (83M)

4.1.2. Number of employees (person-years):

29. As of 2018, the KFTC consists of a secretariat and five regional offices with a total of 649 staff members. Among them, there are 25 economists, 44 lawyers, 5 CPAs and 2 patent attorneys. There are approximately 95 support staffs in the KFTC.

4.2. Human resources (person-years) applied to:

30. Hundred thirty-one staff members are working for the enforcement against anticompetitive practices including abuse of dominance and cartels, and 25 members are working for merger review, analysis and enforcement. 30 staff members are working for advocacy efforts and related area.

5. Summaries of or references to new reports and studies on competition policy issues

31. The KFTC has annually conducted a total of 24 market studies on 1 ~ 5 monopoly sectors from 2008 to 2018. 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 2018, the multi-family housing management service and air passenger

transport service were selected and through the outsourcing of market analysis on these markets, improvement measures were suggested.

Table 3. Status on market study

Year	Subject of analysis
2008	Air Freight, Internet Portal
2009	Property Insurance, Film, Oil, Pharmaceutical, Gas
2010	Liquor
2011	Cosmetics
2012	Online Education, Digital Music, Multi-channel Pay-TV
2013	Advertising, Insurance
2014	Car rental, Gas industry
2015	Aluminum Hydroxide, School Uniform
2016	Beer, Shipping, Group Energy
2017	Railway industry (non-transportation), Film, Mobile Telecommunications
2018	Multi-family housing management service, Air passenger transport service, Guarantee Insurance

5.1. Air passenger transport service

32. Air passenger transport service market is closely related with the people's life and it is the one where consumers' complaint is raised in terms of its service. It also falls under monopolistic and oligopolistic industry with high market share by large business groups. According to the market structure study conducted in 2015, it constituted business with monopolistic and oligopolistic structure. Due to the capital-intensive industrial structure and systemic environment with many government regulations, the anti-competitiveness and monopolistic and oligopolistic market structure becomes a permanent problem.

33. This study was conducted mainly focusing on excessive quantitative and qualitative requirements such as criteria for capital, and whether new market entry is excessively deterred due to the approval system for each route. The study also focused on the regulations such as fare approval system or notice system and business plans approval system, etc.

34. As a result of the study, it shows that competition among airlines is getting fiercer with the LCC entering the market and airlines trying to introduce more aircrafts and expand the routes. However, there should be improvement to the excessive measures taken to foreign executives and air mileage system. Currently, the KFTC is in the process of pursuing improvement through consultations with the Ministry of Land, Infrastructure and Transport.

5.2. Multi-family housing management service

35. More than 70% of Korean people reside in this form of housing. The multi-family housing is run and managed through maintenance expense that the residents pay. However, there has been constant complaint raised for the transparency of management. The study was conducted on finding out what elements harm transparency in various contracts and some anticompetitive elements in the systemic aspects of managing the multi-family housing.

36. Also, it focused on unfair trade practices such as collusion in various transactions in the process of selecting the company which will manage the housing and of operating the housing.

37. As a result of the study, it was found out that competition is fierce to win contracts since 517 management companies are registered as of the end of 2015. However, to prevent bidders from excessively raising or lowering bidding price and to enhance competitiveness of new entrants, KFTC will pursue improvements on how to decide the price and standard evaluation index for management companies in 2019.

5.3. Guarantee insurance

38. The competition in the guarantee insurance market is distorted or restricted as Seoul Guarantee Insurance has monopolized the market for a long time. We have focused on anticompetitive elements which hinder service quality and price competition and unfair practices in the process of providing insurance money.

39. The results show that each guarantee insurance company own limited scope and targets which forms separate markets respectively. The companies only compete in some overlapping areas. A majority of specialized guarantee agency and comprehensive guarantee agency are in competitive relations in a restricted manner.

40. There is need to improve approval system of guarantee fee and to expand the participation to the Construction Guarantee Cooperative by introducing the quasi-union member system. Introducing the quasi-union member system to the Construction Guarantee Cooperative will be pursued in 2019.