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Annual Report on Competition Policy Developments in Korea

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Korea

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

1. To respond to the changes in economic landscape, fair economy and innovative growth, the Korea Fair Trade Commission (hereinafter referred to as the "KFTC") submitted the proposed amendments to the Monopoly Regulation and Fair Trade Act (hereinafter referred to as the "MRFTA"), which include improving the enforcement framework of the MRFTA and enhancing the transparency in the law enforcement procedures and the power to enforcement in new industries, to the National Assembly in November 2018. In the following year, the KFTC worked for the passage of the proposed amendments by stressing the need for legislation at discussions, hearings, and the standing council for the ruling and opposition parties and government.

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

1.1.1. Amendments to the Enforcement Decree of the Monopoly Regulation and Fair Trade Act (March 19, 2019)

2. The amendments to the Enforcement Decree of the MRFTA, which include the revised procedures for making an ex officio request for dispute mediations and prior notification procedures for imposing enforcement fines, entered into effect on March 19 after the approval of the cabinet meeting on March 5.

3. The amendments to the MRFTA that would allow the KFTC to ex officio request for dispute mediations with certain unfair trade practices to the Dispute Mediation Committee were promulgated on September 18, 2018 and entered into effect on March 19, 2019. In accordance with these, the KFTC amended the Enforcement Decree of the MRFTA, which include the revised procedures for making an ex officio request for dispute mediations.¹ It is expected that the introduction of procedures allowing the KFTC to ex officio request dispute mediations to the Dispute Mediation Committee would further expedite the relief of damages to victims of unfair trade practices.

4. In addition, the revised Enforcement Decree of the MRFTA contains new provisions that empower the KFTC to send written notifications to inform companies in advance they could be subjected to enforcement fines if they fail to meet the requirements of such as remedies(corrective measures) for mergers, orders to submit documents and

¹ Previously, only the businesses that suffered damages could apply for dispute mediations to the Dispute Mediation Committee established under the Korea Fair Trade Mediation Agency and the KFTC, on the other hand, could only notify the received applications to the Committee and was unable to ex officio request dispute mediations. Hence, swift and practical damage relief through dispute mediations was limited.

other necessary materials, or consent decrees. There were concerns regarding difficulty in predicting law enforcement for those who are subject to the MRFTA because the MRFTA, albeit it had provisions that enable the imposition of enforcement fines for such defaults, did not contain provisions on prior notification procedures for imposing enforcement fines. However, it is expected that the new provisions would enhance the predictability for those who are subject to the MRFTA and effectiveness of the enforcement.

1.2. Other relevant measures, including new guidelines

1.2.1. Amendments to the merger review guidelines (February 27, 2019)

5. In reviewing mergers and acquisitions(M&As) in the innovation-based industries, the amendments to the merger review guidelines, which clarified the criteria for assessing market definition, market concentration, and anti-competitive effects, made it more effective to review the anti-competitive effects, for instance, resulting from acquisitions of potential competitors. The amendments also clarified the elements to consider when assessing the anti-competitive effects of M&As involving information assets, in order to ensure consistency in reviews and to help companies predict the outcomes of the reviews better. The amendments are expected to enable the KFTC to conduct more effective reviews against M&As in innovation-based industries and protect competition for innovation by preventing attempted monopolization through mergers of potential competitors.

1.2.2. Amendments to the Rules on the KFTC's Committee Operation and Case Handling Procedure, etc. (December 27, 2019)

6. On December 27, the KFTC implemented the amendments to the Rules on the KFTC's Committee Operation and Case Handling Procedure, etc.(hereinafter referred to as the “Rules on Case Handling Procedure”) that include ensuring stronger examinees’ right to defence and effectiveness in handling cases. The key highlights of the amendments are as follows: (1) To strengthen the defence right of examinees by extending the deadline for the submission of opinions and moving up the date for notification of deliberation for examinees, which would help them to be well prepared for the deliberations of the Commission. (2) To ensure effective handling of cases by making the dispute mediation system more accessible for reporters and reducing the administrative workload associated with handling cases. The amendments to the Rules on Case Handling Procedure are expected to improve the defence right of examinees in the examination and decision process and effectiveness in handling cases.

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

Cartel

7. In 2019, the KFTC focused on and corrected cartels related to public safety and health, bid riggings that waste taxes in public procurement, and international cartels. As a

result, the KFTC imposed remedies along with penalty surcharges to KRW 92 billion in total on 51 infringement cases.

Abuse of market dominance

8. The KFTC has focused its efforts on the law enforcement for unilateral conducts including abuse of market dominance, unfair practices, RPM(resale price maintenance), etc. In particular, the market dynamics and efficiency in the ICT sector has been one of the KFTC's main subjects in 2019.

2.1.2. Description of significant cases

Cartel

9. In the area of public safety and health, the KFTC imposed remedies and KRW 7.6 billion penalty surcharges against 2 companies which rigged bids for contracts to supply blood bags to the Korean Red Cross and referred them to the prosecution. The KFTC also sanctioned 17 medical institutions for agreeing to fix the medical examination fee for visa application and the Korean Dental Association for unfairly restricting member dentists' business activities by allowing dentists to take a dental specialist exam only when they fully paid the association fee.

10. As for the area of public procurement, the KFTC detected bid rigging conspiracies at auctions of shipping services for imported brown rice, which have been committed for a long span of time from 2000 to 2018. It decided to impose remedies and KRW 12.7 billion penalty surcharges against companies involved. The KFTC also imposed KRW 13.3 billion penalty surcharges against 4 companies which rigged bids for governmental projects to set up dedicated telecommunication lines and referred them to the prosecution.

11. Regarding international cartels, the KFTC decided to impose remedies with KRW 9.2 billion penalty surcharges against 4 auto parts suppliers for agreeing to allocate their automaker buyers of alternators and ignition coils. It also decided to impose a total of KRW 693 million penalty surcharges and remedies on 4 foreign banks for fixing prices of foreign currency derivatives.

Abuse of dominance

12. Since September 2019, the Committee has been deliberating on whether to open a resolution of agreement process for Apple Korea's abuse of superior power against mobile carriers. In addition, investigation was done in November 2019 against Naver's alleged abuse of dominance through which it favoured the search ranking of its service users. Furthermore, in November 2019, the KFTC organized a task force team that is responsible for the ICT sector investigations so as to speed up the case handling and also take full account of systematic and high-quality response for the future litigation processes.

13. The KFTC has strictly sanctioned unfair practices that occur in sectors closely related to people's daily lives. It imposed remedies and KRW 990 million penalty surcharges in May 2019 against Korea Vaccine for abusing its dominance through which it stopped import of tuberculosis vaccine in order to maximize profit. Additionally, on April and July 2019, the 3 tire makers including Kumho, Nexen and Hankuk tires were imposed KRW 7.87 billion penalty surcharges and remedies for forcing their dealers to sell tires at the price set by them.

2.2. Mergers and acquisitions

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

14. In 2019, the KFTC reviewed a total of 766 merger cases up by 64 from a year ago. Among them, 18 cases were reviewed under the in-depth investigation for their potential anti-competitiveness, and the KFTC concluded that 5 cases of them have competitive concerns.

15. Of the 766 cases, 598 cases were mergers by domestic companies while 168 cases were mergers involving foreign companies. The number of cases has increased by 28 and 36 respectively year on year.

16. Of 598 merger cases by domestic companies, conglomerate mergers accounted for the most, followed by horizontal and vertical mergers.

Table 1. Number and proportion of mergers by type

Year	Horizontal	Vertical	Conglomerate	Total (Domestic)
2019	191 (31.9%)	45 (7.5%)	362 (60.5%)	598 (100.0%)

2.2.2. Summary of significant cases

17. Two prime examples are first, the merger between SK Telecom/Broadband and t-broad in Jan. 2020 and second, the merger between LG U+ and CJ Hello in Dec. 2019. The two cases are the tie-ups between IPTV networks and cable TV networks that happen to be occurring in the process of reshuffling pay TV market following the digitalization and convergence of broadcasting and telecommunications markets. The KFTC thoroughly reviewed the cases through diverse methods such as conducting economic analysis and collecting ideas from various stakeholders. Consequently, the KFTC approved the mergers so that the companies could respond in time to the rapidly evolving broadcasting and telecom markets. The KFTC were also able to protect consumers by imposing remedies that prohibit price hike and coercion of product switch.

18. The first merger case related to OTT services approved by the KFTC was between SK Telecom and three local broadcasters. Being concerned that the tie-up between Korea's top mobile carrier and the largest OTT service provider could significantly foreclose rivals by restricting their access to a sufficient customer base, the KFTC imposed remedies on the three broadcasters. The remedies make them mandatory to negotiate with their rivals on reasonable and non-discriminatory terms, etc. The other areas that the KFTC touched upon were Dongbang and four other companies' establishment of a firm managing the port of Incheon, and Global Taxfree's acquisition of KTIS' stocks. The KFTC imposed remedies on both cases in Nov. 2019.

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

19. 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

20. 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.

21. 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.

22. In 2019, the KFTC reviewed 5,601 statutes and administrative rules to assess anti-competitiveness. Moreover, for government legislation, the KFTC conducted the competition assessment on 1,171 newly enacted or strengthened regulations (draft) of 589 laws to the Office for Government Policy Coordination. Of them, the KFTC proposed alternatives for 12 draft of 11 laws which are considered anti-competitive.

3.3. Ex-post improvement of anti-competitive regulations

23. 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.

24. 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.

25. In 2019, the KFTC set out improvements plans to revise 19 anti-competitive 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):

26. In 2019, 131.295 billion won (158 million USD) was allocated, which was 8.1% from the previous year.

Table 2. KFTC's budget status

	Expenditure budget(Million USD)
2019	131.3 billion won (114M)
2018	121.4 billion won (109M)
2017	114.8 billion won (108M)
2016	110.1 billion won (91M)
2015	104 billion won (88M)

4.1.2. Number of employees (person-years):

27. As of 2019, the KFTC consists of a secretariat and five regional offices with a total of 655 staff members. Among them, there are 10 economists, 32 lawyers, 4 CPAs and 3 patent attorneys.

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

28. 146 staff members are working for the enforcement against anticompetitive practices including abuse of dominance and cartels, and 16 members are working for merger review, analysis and enforcement. 37 staff members are working for advocacy efforts and related area.

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

29. The KFTC conducted a market analysis on agricultural products distribution and broadcasting media industry, etc. in 2019 in order to analyze the current status of the market and relevant institutions, and to come up with measures to stimulate competition.

5.1. Agricultural products distribution area

30. The wholesale market system for agricultural products in Korea was adopted in 1985 as a channel connecting agricultural producers and consumers for transparent and fair price formation, and efficient collection and distribution of products. However, some side effects of the system have also been found in the midst of the changing and diversifying market environment.

31. Due to the long-time oligopoly by a few wholesale market corporations, the wholesale market for agricultural products is structurally vulnerable to collusion. In addition, despite the development of ICT and emergence of various distribution techniques, the wholesale market for agricultural products still sticks to the trading methods at the time of introduction, which results in reduced choices for producers and consumers.

32. The market analysis on the wholesale market for agricultural products shows that it is necessary to promote competition in the field of agricultural products distribution and to improve regulations for shippers and consumers. In order to induce market entry of new players in the distribution area, it is needed to address oligopoly which has long been entrenched in a few wholesale markets and to diversify trading methods such as direct transactions in consideration of fast and mass distribution of information following the development of ICT.

5.2. Broadcasting media area

33. OTT services are not subject to broadcasting related laws. Therefore, even if OTT services provide the same or similar services as the existing broadcast, the regulations applied to OTT services are softer than those applied to the existing broadcasting services providers. This has continuously stirred controversies over the fairness of regulations, and a bill to close the regulatory gaps has also been introduced.

34. The current situation of the Korean market shows that, unlike other countries, there has been no phenomenon, such as code cutting, where OTT services replace or threaten the existing broadcasting services. Therefore, at this point, in order to level the playing field between OTT services and the existing broadcasting services, rather than tightening up regulations on OTT services to the level of those for the existing broadcasting services, it is required to conduct an objective analysis on whether the regulations applied to the existing broadcasting market are appropriate. Based on this, it would be necessary to identify unreasonable regulations that stifle innovation of the existing businesses and ease those regulations.