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Annual Report on Competition Policy Developments in Korea

-- 2021 --

This report is submitted by Korea to the Competition Committee FOR INFORMATION.

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Korea

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

1. The Monopoly Regulation and the Fair Trade Act (hereinafter referred to as the “MRFTA”), which was completely amended in 2020, entered into effect in December 2021. In the amended MRFTA, the standard of the transaction amount is added to merger reporting requirements to enhance law enforcement capabilities in new industries. With the new requirements, a business that acquires another business with high growth potential is obligated to report the merger even if it has a low turnover at the time of the merger. In addition, the revised Act prohibits companies from exchanging information on price and production volume to restrict competition and if two or more companies are found to be engaged in such acts, they are assumed to have agreed to conduct the acts in association. Furthermore, the revised Act provides a higher level of legal protection for a business under investigation by mandating a written statement during an investigation and specifying a business’s right to counsel when under investigation or deliberation of the Korea Fair Trade Commission (hereinafter referred to as the “KFTC”).

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 the Fair Trade Act (Dec 30, 2021)

2. The amendments to the Enforcement Decree of the MRFTA entered into effect on December 30 after the approval of the cabinet meeting. The Decree specifies the standards for reporting mergers based on the transaction amount and information about those subject to regulation when exchanging information.

3. The amendments to the MRFTA were promulgated on December 30, 2020 and entered into effect on December 30, 2021. The revised Act requires companies to report mergers when the transaction amount exceeds a certain level and when the acquiree has a considerable influence on the Korean market. Accordingly, the KFTC amended the Enforcement Decree of the MRFTA to mandate companies to report mergers when the transaction amount, including the merger value, ‘exceeds KRW 600 billion’ and ‘when the acquiree sells or provides products and services to more than 1 million people per month’ or ‘when the domestic R&D expenditure exceeds KRW 30 billion a year.’¹ With the amendments, the KFTC expects to prevent anti-competitive concerns arising from business mergers.

4. In addition, the revised Enforcement Decree of the MRFTA prohibits acts that restrict competition by agreeing to exchange information, such as price and production volume, and specifies information about those subject to regulation when exchanging information. Accordingly, the KFTC amended the Enforcement Decree of the MRFTA to specify information about those subject to regulation when exchanging information as the cost of products and services, shipment, inventory, sales volumes, transaction conditions, or payments. Moreover, specific standards for determining illegality, such as the concept of information exchange, establishment of an agreement, and competitive harm, were

¹ Previously, only businesses with annual turnover of over KRW 30 billion (or total assets) were obliged to report. But in this case, if a large company acquires a small company with high growth potential, this merger may not be taken into account in the review process.

specified by establishing the ‘Guidelines for Reviewing the Cartels Related to the Information Exchanges Between Businesses.’

5. Under the revised MRFTA, the revised Enforcement Decree mandates a written statement when hearing a statement from a party to provide higher protection during investigation and provides specific provisions regarding writing a written statement. Accordingly, the Enforcement Decree requires the name, address, date, time, place, and details of a person making a statement to be included in the written statement and apply this rule in investigative procedures.

6. The amendments to the Enforcement Decree of the MRFTA have significance as they finalize the preparations for implementing the MRFTA to support innovative growth and the fair economy and it is expected that the new provisions would enhance the predictability for those who are subject to the MRFTA and effectiveness of enforcement.

1.2. Other relevant measures, including new guidelines

1.2.1. A. Amendments to the Guidelines for Reporting Business Combinations (2021.12.30.)

7. In order to specify the guidelines for reporting business mergers newly stated in the revised MRFTA, the KFTC established standards for calculating the transaction amount and assessing the influence of an acquiree in the domestic market. Specifically, in the case of acquiring or owning stocks, the total amount of the acquired or owned stocks and assumed debt is set as the standard of calculation. In the case of a merger, the value of stocks and the sum of debt in exchange for the merger are set as the standard for calculation. In the case of business transfers, the payment of business transfers and the sum of debt are set as the standard of calculation. In the case of the establishment of a new company, the amount of investment in the joint venture is set as the standard for calculation. In the case of Internet-based services, the numbers of monthly users or visitors are set as the standard for calculation in order to determine the influence of an acquiree in the Korean market. With the amendments to the Guidelines, the KFTC expects to encourage businesses to report mergers based on the newly introduced standards in the revised MRFTA, which will make it easier to determine anti-competitive effects when reviewing mergers of a new company that is small but has high growth potential.

1.2.2. B. Guidelines for Reviewing the Cartels Related to the Information Exchanges between Businesses (2021.12.30.)

8. In the revised MRFTA, the concept of information exchange and the establishment of an agreement are stated to ban information exchange that can cause competitive harm while specifying the standards for determining illegality. The enacted Guidelines stipulate that directly or indirectly ‘notifying’ sensitive information to a competitor, such as price, production volume, and cost is exchange of information but do not regulate release and announcement of information. In regard to the establishment of an agreement, the Guidelines specify that there is an agreement to exchange information when there was implicit or explicit communication to exchange sensitive information of competitors. In order to determine whether competition has been unfairly restricted due to the exchange of information, market conditions, market structure and product characteristics, the total market share of relevant businesses, the nature and the purpose of exchanged information must be considered comprehensively. It is expected that the Guidelines will make law

enforcement of cartels more clear and lay the foundation for the enforcement of the MRFTA.

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

9. In 2021, the KFTC strictly regulated deep-rooted cartels involving intermediate goods (e.g. purchase of scrap iron, pretensioned spun high strength concrete piles and aluminum alloy products) and daily necessities (micropayment by cell phone, chicken) and imposed a fine totaling KRW 572.5 billion on 89 cartel cases detected.

Abuse of market dominance

10. When allocating resources (time and personnel) for law enforcement, the KFTC prioritizes areas that can have significant impact on the national economy, consumer welfare, and market competition (e.g. platform, OTA, online retail). Particularly in 2021, task forces that focus on their specific tasks such as monitoring the ICT sector and legislation on online platform will play an active role in order to enable a more efficient work process.

2.1.2. Description of significant cases

Cartel

11. Involving intermediate goods, it imposed a remedy and fine of KRW 300 billion on seven steel makers for price fixing involving purchase of scrap iron, which continued from 2010 to 2018. It also imposed a remedy and fine of KRW 101.8 billion for a collusion to set unit price and limit production of concrete piles which are used for foundation work in constructing apartment buildings.

12. In areas that involve everyday life, the KFTC imposed remedies and a fine totalling KRW 16.9 billion on four mobile micropayment service providers from 2011 to 2017 for jointly charging late fees and excessively continuing and increasing late payment fees when mobile micropayment service users fail to make payments. In addition, the KFTC imposed remedies and imposed a fine totalling KRW 25.1 billion on chicken manufacturers and producers for rigging the price and fixing the shipment volume of samgyetang (chicken soup with ginseng) chicken.

Abuse of dominance

13. Along with the active work of the KFTC's taskforce to monitor the ICT sector, the KFTC continued to carry out its law enforcement efforts to maintain dynamism and efficiency of the ICT sector. Specifically, the KFTC imposed a remedy and a fine of KRW 207.4 billion on Google because it prevented the emergence of competing Android-based OS's and thus stifled innovation by restricting device makers from forking Android.

14. With regard to platform companies demanding MFN (Most Favored Nation) clause in a contract with online stores, the KFTC induced online travel agents (OTAs) such as

Expedia, Booking.com to stop such unfair practices. In addition, the KFTC imposed a remedy and fined Korea's largest online retailer Coupang KRW 3.3 billion for engaging in unfair practices, such as abusing its dominant position to demand suppliers to increase the sale price on rival online shopping malls and passing marketing costs onto suppliers.

2.2. Mergers and acquisitions

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

15. In 2021, the KFTC reviewed a total of 1,113 merger cases, up by 248 from a year ago. Among them, 20 cases were reviewed under the in-depth investigation for their potential anti-competitiveness, and the KFTC concluded that 1 case of them has competitive concerns.

16. Of the 1,113 cases, 954 cases were mergers by domestic companies while 159 cases were mergers involving foreign companies. The number of cases has increased by 222 and 26 respectively year on year.

17. Of 954 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)
2021	377(33.9%)	64(5.8%)	672(60.4%)	1,113(100.0%)

2.2.2. Summary of significant cases

18. To effectively respond to changes in the pay TV market, the KFTC granted conditional approval to KT SkyLife, a satellite broadcasting provider, to acquire shares of Hyundai HCN, a pay TV service. And it imposed remedies to prevent cable TV fees from increasing higher than the inflation rate so that the competition is not undermined in the digital pay TV and 8VSB (frequency transmission method that converts analog broadcasting to digital broadcasting without a separate set-top box) based broadcasting markets.

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 120 of the MRFTA and the 'Guidelines for Review of Anti-competitive Regulations'.

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 2021, the KFTC reviewed 1,190 new and strengthened regulations of 722 laws to assess anti-competitiveness. Among them, the KFTC assessed that 14 newly enacted or strengthened regulations are anti-competitive and presented its opinion. As a result, 10 of them were improved to facilitate competition and 4 are still under review.

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 2021, the KFTC set out improvements plans to revise 32 anti-competitive regulations that stifle innovative competition and cause unfair practices like cartels.

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 2021, KRW 146.2 billion (123 million USD) was allocated.

Table 2. KFTC's budget status

	Expenditure budget (Million USD)
2021	146.3 billion won (123M)
2020	137.9 billion won (127M)
2019	131.3 billion won (114M)
2018	121.4 billion won (109M)
2017	114.8 billion won (108M)

4.1.2. Number of employees (person-years):

27. As of 2021, the KFTC consists of a secretariat and five regional offices with a total of 675 staff members. Among them, there are 11 economists, 35 lawyers, 4 CPAs and 2 patent attorneys.

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

28. 134 staff members are working for the enforcement against anticompetitive practices including abuse of dominance and cartels, and 16 members are working for merger reviews and economic analysis. 38 staff members are working for competition advocacy and its related area.

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

29. The KFTC conducted market analysis of the guarantee industry in 2021 to analyse the market situation and related policy.

30. The Korean guarantee market is worth KRW 1,450 trillion based on the guarantee balance at the end of 2020. Although the barriers to entry in the guarantee market have been continuously reduced, Seoul Guarantee Insurance is the only comprehensively guarantee service provider in Korea under the Insurance Business Act. Thus, there are growing needs to open up the market, for example, by issuing more permits. Accordingly, the KFTC conducted market analysis to identify major players and the situation and to review the need to open up the market.

31. In a broad sense, there are about 80 companies that provide ‘guarantee services’, other than Seoul Guarantee Insurance, including associations, cooperatives, corporations, funds, and financial institutions. Guarantee services consist of performance guarantees, account receivable guarantees, financial guarantees, and others. Each market has a different situation with different market players and Seoul Guarantee Insurance holds a dominant position as it exclusively deals with certain financial products.

32. Different stakeholders have different opinions over the need to open up the guarantee market. Given the public function of guarantee insurance, there are concerns that opening up the market to private companies could cause a rise in guarantee fees. But some argue that opening up the market will facilitate competition between diverse insurance companies as we saw the case with opening up the car insurance market.

33. The KFTC plans to continuously review ways to improve regulation to gradually open up the guarantee market based on the market analysis results.