

Unclassified

English - Or. English

25 May 2023

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Korea

-- 2022 --

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

JT03519649

Table of contents

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
1.3. Government proposals for new legislation	4
2. Enforcement of competition laws and policies	4
2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions	4
2.2. Mergers and acquisitions	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
4.2. Human resources (person-years) applied to:	7
5. Summaries of or references to new reports and studies on competition policy issues.....	7

Tables

Table 1. Number and proportion of mergers by type	5
Table 2. KFTC's budget status	7

Korea

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

1. First, the Korea Fair Trade Commission (hereinafter referred to as the “KFTC”) has been preparing to adopt the “Guidelines for Review of Abuse of Market Dominance by Online Platform Operator” to effectively regulate the abuse of monopoly power by online platform operators (advance notice of proposed rulemaking on Jan 6th, 2022). The Guidelines specify criteria for assessing market dominance and competitive harm and defining relevant markets, reflecting the unique characteristics of platforms, and describe major anti-competitive practices through specific examples.

2. Second, the KFTC proposed and announced revisions to the M&A Review Standard and M&A Notification Guidelines to support business restructuring and effectively review mergers (Dec 29th, 2022)¹. Promoting the autonomy of business, the Commission will allow companies to submit voluntary remedies and grant conditional approval (widely used as a global standard) to swiftly and effectively review anti-competitive mergers and expand the scope of exemptions from merger notification requirements for mergers that lack competitive concerns².

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

1.2. Other relevant measures, including new guidelines

1.2.1. Guidelines for Review of Abuse of Market Dominance by Online Platform Operator

3. The KFTC prepared these industry-specific review guidelines to supplement the existing review guidelines on abuse of dominance under the Monopoly Regulation and Fair Trade Act (the “Act”), to reflect the distinct characteristics of online platforms, including the multi-sided nature of such platforms, network effects, tipping effects from data concentration, and innovation and dynamic effects in the market.

4. The Review Guidelines come over a year after the KFTC issued an advance notice on the guidelines on January 6, 2022. In that time, the KFTC gathered opinions from various stakeholders and relevant ministries, culminating in the adoption of the Review Guidelines after a resolution at the KFTC’s full committee hearing held on January 11, 2023.

5. The Review Guidelines explain the key characteristics of online platforms, such as multi-sided markets, cross-network effects, economies of scale, importance of data, and nominally free services, the factors for assessing restriction of competition, such as market definition, assessment of market power, and assessment of anti-competitiveness, and review criteria by type of practices, such as restricting multi-homing, demanding most-favored-nation (MFN) treatment, self-preferencing, and tying.

¹ Form and operate a task force composed of experts on M&A legislative reforms (June, 2022 - October, 2022)

² M&A between subsidiaries, establishment of PEFs, less than one-third of executives holding an executive position

1.2.2. Amended M&A Review Standard and M&A Notification Guidelines

6. Mergers with clear investment purposes such as additional investment for private equity funds (PEF) and concurrent holding of an executive position following investments in venture and startup businesses will be eligible for simplified review and notification as part of a fast-track merger procedure. Companies can easily notify mergers that qualify for simplified review through an online notification system and mergers subject to simplified review will go through a quick review period (15 days, in principle). Other types of mergers, including establishment of project financing vehicles (PFV) and mergers that have gone through voluntary pre-merger review, will be eligible for simplified notification.³

7. Moreover, the amended Review Standard expands the criteria for safe harbor⁴, under which vertical or conglomerate mergers that result in a combined market share of less than 10% in each relevant market will be deemed as having no competitive concerns.

1.3. Government proposals for new legislation

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

8. In 2022, the KFTC strictly regulated deep-rooted cartels involving daily necessities that can put a burden on the public and cartels involving transport, intermediate goods, and infrastructure that can undermine industrial competitiveness and imposed a fine totalling KRW 745 billion on 65 cartel cases detected.

Abuse of market dominance

9. In 2022, the KFTC has continued to make law enforcement efforts to facilitate innovative competition in the digital economy and technology-intensive industries.

2.1.2. Description of significant cases

Cartel

10. The KFTC strictly regulated deep-rooted cartels involving daily necessities (e.g. ice cream, micropayment by cell phone, poultry) that can put a burden on the public and cartels involving transport, intermediate goods, and infrastructure that can undermine industrial competitiveness (e.g. rebar, shipping, rolling stock) and imposed a fine totalling KRW 745 billion on 65 cartel cases detected.

³ Mergers subject to simplified review are presumed not to restrict competition. Among them, mergers subject to simplified notification are mergers in which obligations to submit documents are considerably eased.

⁴ Presumed to have no competitive concerns if market concentration, market share of merging parties etc. meet certain criteria.

11. Regarding cartels involving daily necessities, the KFTC imposed a fine totalling KRW 135 billion on eight ice cream manufacturers and distributors for price fixing and dividing retail channels for distribution. In addition, it imposed a fine totalling KRW 175.8 billion on 16 poultry companies for fixing prices and restricting production and supply volume for 16 years (2003 - 2009).

12. Regarding cartels involving transport, intermediate, goods, and infrastructure, the KFTC imposed a fine of KRW 256.6 billion on 11 steelmakers for colluding to fix quotations to bid on rebar contracts between 2012 to 2018. Furthermore, it imposed a fine of KRW 176.4 billion on 27 container shipping companies for colluding to fix freight rates on import and export routes for 16 years (2003 - 2019).

Abuse of dominance

13. The KFTC completed the investigation into Broadcom(chipmaker) for forcing its trade partners to sign long-term contracts for the supply of smart-device components and initiated the Consent Decree process (Sep 2022).

14. In addition, the KFTC actively detected and sanctioned illegal kickbacks of pharmaceutical companies that violate consumers' right to choose medicine and restrict price cuts (KyungDong Pharmaceutical, Youngil Pharmaceutical).

2.2. Mergers and acquisitions

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

15. In 2022, the KFTC reviewed a total of 1,027 merger cases. Among them, 25 cases were reviewed under the in-depth investigation for their potential anti-competitiveness, and the KFTC concluded that 2 cases of them have competitive concerns.

16. Of the 1,027 cases, 876 cases were mergers by domestic companies while 151 cases were mergers involving foreign companies. The number of cases has decreased by 78 and 8 respectively year on year.

17. Of the 1,027 merger cases, 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)
2022	401(39.0%)	116(11.3%)	510(49.7%)	1,027(100.0%)

2.2.2. Summary of significant cases

18. In particular, the KFTC closely reviewed the merger of Koran Air and Asiana Airlines and determined that the combination of the two airlines could hamper competition on domestic and international routes(26 international routes, 14 domestic routes). As a result, the KFTC ordered the two airlines to return slots and traffic rights and restricted them from hiking fares and reducing the number of flight seats(Feb, 2022).

19. In addition, the KFTC closely reviewed the merger of LX International and Hanglass and imposed a price cap, determining that it could increase monopoly power in the coated glass market (Dec 2022).

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

20. 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

21. The preliminary consultation for laws, etc. is directly based on Article 120 of the MRFTA and the ‘Guidelines for Review of Anti-competitive Regulations’.

22. 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.

23. In 2022, the KFTC reviewed 941 new and strengthened regulations of 546 laws to assess anti-competitiveness. Among them, the KFTC assessed that 16 newly enacted or strengthened regulations are anti-competitive and presented its opinion. As a result, 12 of them were improved to facilitate competition and 4 are still under review.

3.3. Ex-post improvement of anti-competitive regulations

24. 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.

25. 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.

26. In 2022, the KFTC set out improvements plans to revise 30 anti-competitive regulations that stifle innovative competition and cause unfair practices like cartels.

27. For example, large supermarket chains in Korea had been banned from delivering online orders on the second and fourth Sunday of every month and between midnight and 10 A.M. to protect traditional markets and small distributors. However, the KFTC determined that there is a need to improve this regulation considering the growing online market with changing consumption patterns and the importance of promoting fair competition between big supermarkets and online stores. So the KFTC reached a consensus to ease the regulation after continuous discussions with related agencies and stakeholders. It is expected to promote competition in the online market and increase convenience for consumers through this measure.

28. Moreover, the KFTC eased restrictions on car sharing and rental zones, increased the amount of money allowed to spend on marketing for insurance and credit card

companies, and eased requirements for participation in bidding for food services in public institutions to make it easier for new companies to enter the market.

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):

29. In 2022, KRW 157.0 billion (122 million USD) was allocated.

Table 2. KFTC's budget status

	Expenditure budget(Million USD)
2022	157.0 billion won (122M)
2021	146.3 billion won (123M)
2020	137.9 billion won (127M)
2019	131.3 billion won (114M)
2018	121.4 billion won (109M)

4.1.2. Number of employees (person-years):

30. As of 2022, the KFTC consists of a secretariat and five regional offices with a total of 713 staff members. Among them, there are 14 economists, 27 lawyers, 4 CPAs and 2 patent attorneys.

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

31. 138 staff members are working for the enforcement against anticompetitive practices including abuse of dominance and cartels, and 19 members are working for merger reviews and economic analysis. 41 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

32. The KFTC conducted market study on cloud service in 2022 to understand the overall cloud service market situations and conditions for competition.

33. The Korean cloud service market is highly concentrated with a few global big techs. Over the recent three years from 2019 to 2021, Amazon Web Service(AMS) ranked first, accounting for 62-78%, followed by Microsoft(MS) at 6-12% in terms of annual market share. Google and Naver, which ranked third and fourth respectively, have been expanding their market share.

34. When it comes to anti-competitive factors in the cloud market, the research found various constraints clients face regarding interoperability and data transfer in switching to competing cloud services or using multiple services (multi-homing).

35. Interoperability is not guaranteed when companies migrate to rival cloud services or adopt a multi-cloud strategy, which means they have to redesign or redevelop their

existing work environment - e.g. programming languages, application programming interfaces(API), software development kits(SDK).

36. When switching to competing cloud services, they face data transfer challenges across different cloud environments, which takes a lot of time and money. As a way of acquiring customers, cloud service providers usually do not charge for inbound data traffic but charge for outbound data traffic in a data migration.

37. The research indicated that there is a need to pay close attention to anticompetitive business practices in the market: whether service providers harm competition through bundling or self-preferencing and whether they use unfair terms in consumer contracts. Yet, regulators should comprehensively review the circumstances, such as how competition plays out and what disadvantages clients suffer in the domestic market.

38. Cloud computing is a key platform across all industries, so establishing an even playing field is important. It turned out, however, that the domestic cloud market is highly concentrated with a few global big techs and that the market competition tends to be restricted due to lack of interoperability and data concentration.

39. Based on such research results, the KFTC will set the overall approach to antitrust policies in the cloud market that can effectively improve relevant systems and increase competitive pressure while keeping an eye on any potential risks that could harm competition or put domestic firms in an unfavorable position.