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**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Korea

-- 2023 --

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. In 2023, the Monopoly Regulation and Fair-Trade Act (hereinafter “MRFTA”) was amended to encourage compliance with principles of fair trade, strengthen damage relief support for small businesses, and establish the order of fair competition. Moreover, Guidelines for Examination of the Abuse of Superior Bargaining Position Against Workers were legislated and the amendments to Notification on Implementation on Cartel Leniency Program and Guidelines for Merger Review were proposed. In addition, the KFTC announced the legislation of the Act on Mediation of Disputes Related to Fair Trade, which will bring together the provisions on establishing and operating bodies under the Korea Fair Trade Mediation Agency (hereinafter “KOFAIR”) and the procedures and effects of dispute mediation stipulated in six Acts that are within the purview of the KFTC.

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

2. The amended MRFTA encompasses a variety of provisions conducive to encouraging further compliance with principles of fair trade, reinforcing damage relief support for small businesses, and cementing the order of fair competition.

3. To begin with, the legal basis of the KFTC Compliance Program (hereinafter “CP”) was developed. Following its 2001 implementation led by the private sector, the Korean antitrust watchdog supported the program by, notably, running the CP rating system. As CP were run only under subordinate rules without legal basis, however, there were limits against pursuing relevant policies, including the difficulties in incentivizing their implementation and operation. Therefore, together with the development of the legal basis for CP, the Commission was granted the authority to examine the achievements of the companies that have adopted CP and exempt or reduce remedies or fines, offer rewards, or provide support accordingly. Moreover, the legal basis that enables the KFTC to designate or withdraw designation of organizations in charge of the examination was devised as well.

4. Second, the amended Act now permits the suspension of limitation periods for the duration of commitment procedures, even after they have commenced. Previously, concerns have been raised about the potential abuse of these procedures for circumventing sanctions, particularly in that limitation periods may expire during ongoing commitment procedures. To address these concerns, the amended Act mandates the suspension of the limitation period when a commitment application is filed for a case nearing the expiry of its limitation period and also requires its resumption upon the conclusion of the commitment procedure or the implementation of the commitment decision.

5. Third, a new policy has been enacted, empowering trial courts to suspend cases brought before them for dispute resolution. Courts are now authorized to utilize dispute resolution procedures offered by the KOFAIR-affiliated council for fair dispute resolution and suspend litigation proceedings at their discretion as per the circumstances of the parties involved, even when both litigation and dispute resolution procedures are underway concurrently.

6. Moreover, the range of public institutions obligated to submit bidding information to the KFTC to prevent unfair cartel conduct was expanded under the amended MRFTA, adding local public enterprises, quasi-governmental agencies and other public institutions to the list. This allowed the Commission to request submission of documents or cooperation

to a wider range of players, expediting the monitoring and handling of unfair bid-rigging activities.

## 1.2. Other relevant measures, including new guidelines

### *1.2.1. The newly established Guidelines for Examination of the Abuse of Superior Bargaining Position Against Workers*

7. The KFTC developed the Guidelines for Examination of the Abuse of Superior Bargaining Position Against Workers in 2023 to align the Commission's policies with changes in the Industrial Accident Compensation Insurance Act, in which the term "non-standard contract employee" was replaced with "worker". To this end, relevant adjustments were made and examples of conducts that are regarded as causing disadvantage to the contractual counterparty were added to the Guidelines. Moreover, the newly legislated Guidelines stipulate that the superior bargaining position of the worker's contractual counterparty is acknowledged if the worker does not have exclusivity, meaning that they do not provide the required labor to one business or one place of business on a regular basis and get paid accordingly. Furthermore, taking recent deliberation cases into account, cases of causing disadvantage to the contractual party that may be regarded as infringement of law were added to the Guidelines.

### *The amended Notification on Implementation on Cartel Leniency Program*

8. The amended Notification stipulates that (i) applicants cannot receive leniency jointly if they have individually participated in the bid-rigging, even if there is a de-facto parent-subsidiary relation between businesses, and (ii) the businesses receiving leniency jointly are considered as a single entity when calculating the number of businesses involved in the unfair cartel conduct.

### *The amended Guidelines for Merger Review*

9. Aligning the methods of merger review with the trends of the digital economy, the KFTC proposed amendment to the Guidelines for Merger Review in November 2023. The Commission is currently gathering input from stakeholders and the academia and plans to finalize and adopt the amendment before the second half of the year. The amendment allows factoring in alternative parameters instead of prices for defining markets such as demand-side substitutability triggered by worsened service quality in zero-price markets. Furthermore, the amended Guidelines explicitly state that network effect is also a factor to be considered when it comes to analyzing anticompetitive effects. Theories of harm in conglomerate mergers were also substantially revised, allowing the potential of transferring dominance by tying or bundling to be taken into account. Moreover, it is stated that conglomerate mergers among platforms may lead to building ecosystems, raising entry barriers against businesses that provide only a single service. In addition, the Guidelines detail not only anticompetitive concerns but also the cases of efficiency-enhancing effect that are unique to the digital sector so that both positive and negative impacts of the merger can be taken into consideration in a balanced manner.

## 1.3. Government proposals for new legislation

10. The KFTC announced that it will legislate the Act on Mediation of Disputes Related to Fair-Trade on December 2023. Dispute resolution systems for issues related to fair trade were initially incorporated into the MRFTA in 2007 and later into five additional Acts, such as the Fair Transactions in Franchise Business Act and Fair Transactions in

Subcontracting Act, thereafter yielding fruitful results. As the provisions were scattered in six different Acts, however, there were limitations in taking a holistic approach in enhancing relevant policies, which undermined consistency and efficiency of the provisions. The proposed legislation aims to put together the provisions on establishing and operating bodies under KOFAIR and the procedures and effects of dispute mediation stipulated in six Acts within the purview of the Commission; reinforce policy instruments related to dispute mediation; and strengthen the role of KOFAIR for providing damage relief support and preventing disputes.

## 2. Enforcement of competition laws and policies

### 2.1. Action against anticompetitive practices, including agreements and abuses of dominance

#### 2.1.1. Summary of activities of the KFTC

##### *Cartel*

11. In 2023, the Commission strictly sanctioned and fined 132.3 billion won worth of fines on 54 cartels, including (i) cartels within areas that are jointly intertwined with the livelihoods of the people, such as greenhouse plastic films, vaccines, and online recruiting platforms and (ii) cartels involving intermediate goods within the construction industry such as raw and subsidiary materials that may undermine industrial competitiveness.

##### *Abuse of market dominance*

12. In 2023, the KFTC continued law enforcement efforts to further facilitate competition for innovation within the digital economy and technology-intensive industries.

#### 2.1.2. Description of significant cases

##### *Cartel*

13. The KFTC imposed sanctions and fines worth 54.8 billion won against ten steelmakers that conspired to fix bidding prices of steel wire products essential to steel springs used in vehicles and mattresses. In addition, the Commission sanctioned four German automakers that colluded to limit competition over developing eco-friendly technology for reducing vehicle emissions, which is a new type of cartel, and two online job search platforms for fixing prices for services and transaction terms, imposing fines worth 42.3 billion won and 2.6 billion won respectively.

##### *Abuse of market dominance*

14. The KFTC sanctioned unfair self-preferencing practices conducted by the mobility big tech Kakao Mobility in which the company manipulated ride-matching algorithms and fined 27.1 billion won. Moreover, Google was sanctioned by the Commission for hindering mobile game publishers from launching their games on a competing app market in order to maintain the dominance of Google Play, facing a fine worth 42.1 billion won.

15. The KFTC also imposed sanctions and a fine worth 18.7 billion won against leading semiconductor manufacturer Broadcom for coercing smartphone manufacturers into signing unfavorable long-term agreements by using unfair means including suspension of shipment. Moreover, JW Pharmaceutical was sanctioned for providing rebates to hospitals

to solicit customers. The company had to face a fine worth 30.5 billion won, the largest amount ever to be imposed against pharmaceuticals for rebates. The KFTC also sanctioned Strasasys, the world's leading 3D-printing manufacturer, for coercing a domestic distributor to stop business with its competitor and fined 620 million won.

## 2.2. Mergers and acquisitions

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

16. In 2022, the KFTC reviewed a total of 927 merger cases. Among them, 39 cases were reviewed under an in-depth investigation for their potential anticompetitiveness, and the KFTC concluded that two cases of them have competitive concerns.

17. Of the 927 cases, 769 cases were mergers by domestic companies, while 151 cases were mergers involving foreign companies. The number of cases has decreased by 78 and increased by eight respectively year on year.

18. Of the 927 merger cases, conglomerate mergers (483 cases) accounted for the most, followed by horizontal (348 cases) and vertical mergers (96 cases).

**Table 1. Number and proportion of mergers by type**

Year	Horizontal	Vertical	Conglomerate	Total (Domestic)
2023	348(37.5%)	96(10.4%)	483(52.1%)	927(100.0%)

### 2.2.2. Summary of significant cases

19. In 2023, the vertical merger between two leading firms in the defense industry (Hanwha-DSME) was granted a conditional clearance with behavioral remedies to prevent discrimination against rivals. Based on international cooperation with the EU and the US counterparts, the agency granted a conditional clearance to a large-scale M&A deal worth USD 60.1 billion between hardware and software giants (Broadcom-VMWare) that involves ensuring compatibility with rivals.

## 3. The roles 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 anticompetitive regulations to establish a competitive market structure. The role of the Commission is twofold: preventing the development of anticompetitive regulations in advance and improving existing anticompetitive regulations.

### 3.2. Preliminary review and consultation on anticompetitive regulations

21. The preliminary consultation for laws, etc. is directly based on Article 120 of the MRFTA and the Guidelines for Review of Anticompetitive Regulations.

22. In a preliminary consultation, the KFTC comprehensively reviews whether the regulations and dispositions conflict with the MRFTA and other laws of the KFTC; and whether 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 2023, the KFTC reviewed 783 new and strengthened regulations of 509 laws to assess anticompetitiveness. Among them, the KFTC assessed that 22 newly enacted or strengthened regulations are anticompetitive and presented its opinion. As a result, 15 of them were improved to facilitate competition and four are still under review.

### 3.3. Ex-post improvement of anticompetitive regulations

24. The KFTC has been continuously improving anticompetitive 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 anticompetitive regulations such as restriction on entry.

25. To this end, the KFTC selects priorities by reflecting suggestions by businesses, experts' opinions, and results of market analysis conducted by the Commission, 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 2023, the KFTC revised 22 anticompetitive regulations that stifle innovation competition and trigger unfair practices like cartel conduct.

## 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)

27. In 2023, KRW 159.6 billion (116 million USD) was allocated.

**Table 2. KFTC's budget status**

	Expenditure budget (Million USD)
2023	159.6 billion won (116M)
2022	157.0 billion won (114M)
2021	146.3 billion won (106M)
2020	137.9 billion won (100M)
2019	131.3 billion won (95M)

#### 4.1.2. Number of employees (person-years)

28. As of 2023, the KFTC consists of a secretariat and five regional offices with a total of 650 staff members. Among them, there are 28 economists, 39 lawyers, five CPAs and two patent attorneys.

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

29. 139 staff members are working for the enforcement against anticompetitive practices including abuse of dominance and cartels, and 22 members are working for

merger reviews and economic analysis. 23 staff members are working for competition and advocacy and its related areas.

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

30. The Korea Fair Trade Commission conducts market structure research into market concentration within mining, manufacturing and services industries on a regular basis. As of 2021, the level of monopolization that was curbed over the past decade is being maintained without any significant changes according to a 2023 study. Twelve industries, such as semiconductors, automobiles and cell phone manufacturing, exhibited comparatively elevated market concentration, value of shipments and domestic market concentration whereas the investment into research and development is relatively low. As of 2020, service industries saw a decrease in monopolies over the past decade, allowing room for increased competition. But it turned out that the market concentration of the top four service industries in terms of revenue, including financial industries such as banking or insurance, has risen compared to five years ago – where the intensity of competition remains low.