

Unclassified

English - Or. English

14 May 2020

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Start-ups, killer acquisitions and merger control – Note by Korea

11 June 2020

This document reproduces a written contribution from Korea submitted for Item 2 of the 133rd OECD Competition Committee meeting on 10-16 June 2020.
More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/start-ups-killer-acquisitions-and-merger-control.htm>

Please contact Mr Chris PIKE if you have questions about this document.
[Email: Chris.PIKE@oecd.org]

JT03461712

Korea

1. Introduction

1. Mergers and acquisitions are business strategies to improve companies' competitiveness by realizing the economy of scale and scope. At the same time, however, they can also be used to expand firms' market power or exclude competitors. From a competition policy point of view, M&As can result in market monopoly or the creation of entry barriers which can lead to decreases in efficiency of resources allocation and consumer welfare. In addition, when it comes to dynamic industries, M&As can negatively affect future production and quality, etc. by eliminating potential competitors and restricting innovation. This would eventually harm the economy in general.

2. For these reasons, the Korea Fair Trade Commission ("KFTC") requires companies with certain sizes and above to notify their M&A deals, and reviews anti-competitiveness of the transactions and imposes remedies, if necessary, to address potential anti-competitive effects. However, the existing M&A notification and review regimes have weaknesses as they are not sufficient to block so called "killer acquisitions" which can remove potential competitors through acquisitions of start-ups in emerging industries such as the digital sector. In this respect, this report addresses the current status of start-ups market and relevant M&A cases in Korea, and the developments of related merger control regimes of the KFTC.

2. Mergers and acquisitions of start-ups in Korea

3. "Start-ups" refer to new businesses that may be equipped with innovative technologies and have great potential and growth prospects whose value can be recognized based on future expectations rather than current performance.

4. Even though start-ups do not account for significant proportion in the Korean economy, the number is on a continuous rise every year. According to "Korean Start-ups and Investment Trends in 2019", the number of investment made in start-ups in 2019 was 606 which is up by 48.9 percent from 2018. The amount of investment showed greater growth with a total of about USD 4 billion being invested in start-ups including venture capital investment in 2019, which is up by around 223.9 percent from 2018. Mergers and acquisitions of start-ups started to increase significantly at the end of 2017. The number increased from 29 in 2017 to 43 in 2019. Major mergers and acquisitions of start-ups are as follows.

Table 1. Major M&As of Start-ups in Korea in 2019

Acquiring firm	Acquired start-up	Business activities of the acquired company
Yanolja	SeeReal, Garam	Property management system
Naver	Venture Republic	Online travel agency
Samsung Electronics	Pudiente Industrial	AI based food analysis
Kakaopay	INBYU	InsurTech
Afreeca TV	PODTY	Podcast platform
Kakaomobility	TAGO Solutions	Taxi franchise

Source: Korean Start-ups and Investment Trends in 2019 (jointly published by Platum and RocketPunch in Mar. 2020)

5. A “killer” acquisition usually refers to an acquisition whereby an established company in a certain market, mostly a large company with market dominance, acquires a promising start-up which lacks capital and capabilities for operation and production, etc. with the ultimate purpose of eliminating the future competitor. If an incumbent large firm with market dominance removes future competition by acquiring a potential competitor equipped with innovative technology, this can restrict innovation in a relevant market and have negative impact on the industry in general by hindering long-term growth of the industry. In particular, when it comes to the digital platform market, due to the network externality and significant switching costs consumers have to pay, concerns that “killer acquisitions” would stifle innovation are greater. In other words, if an emerging platform is expected to be acquired by a giant incumbent platform, users would have less incentive to test the new platform by investing their time and money, which would eventually reduce the likelihood of technology innovation by the promising nascent platform.

6. While there are vigorous ongoing debates around the world over killer acquisitions and their anti-competitive effects on dynamic markets, no particular harm or issue related to killer acquisitions has been brought up in Korea in the merger review practice.

7. The platform and digital economy has been rapidly growing in Korea, and is continuously expanding due to an increase of non-face-to-face consumption following the outbreak of COVID-19. This has led to rising demands for closing regulatory loopholes in the M&A notification regime and review standards. In response to this, the KFTC has pushed forward with the following efforts to improve relevant rules.

3. Reforms to prevent innovation restriction

3.1. Specifying innovation-stifling effects as a factor to be considered

8. In Feb. 2019, the KFTC amended its M&A Review Guidelines in order to specify how to assess the dynamic effects of mergers that can restrict innovation competition.

9. First, in terms of market definition, given the characteristics of an industry in which merging parties have business activities, if innovative activities such as R&D are essential for competition, or continuous competition for innovation exists, an area in which similar innovative activities take place (“innovation markets”) may form a relevant market separately, or otherwise, a relevant market can be defined to broadly include both R&D activities and the products.

10. Second, the guidelines now provide alternative measures that can be considered when calculating market concentration of innovation market. Such measures include the size of R&D expenditure; the size of assets and capabilities dedicated to innovative activities; the number of patent applications or citations in a relevant area; and the number of actual participants in innovation competition.

11. Third, when assessing substantive anti-competitive effects, the following factors can be comprehensively considered: whether merging parties are important innovators; closeness or similarity between innovative activities of the merging parties; whether there remains a sufficient number of participants in innovation competition; and disparity in innovative capabilities between merging parties and competitors.

3.2. Adopting the transaction value-based threshold

12. In accordance with the Article 12 of the Monopoly Regulation and Fair Trade Act (“MRFTA”), when a company with total assets or turnover of KRW 300 billion (about USD 250 million) or more merges with or acquires a firm with total assets or turnover of KRW 30 billion (about USD 25 million) or more, the merging parties shall notify the transaction to the KFTC.

13. However, this kind of threshold based on the size of assets or turnover of the merging parties does not catch the mergers and acquisitions of companies that are small in size but with big potential as may be the case with start-ups. This has caused concerns that acquisitions of potential competitors by dominant incumbents can lead to market monopoly or creation of entry barriers, thereby eventually eliminating future competition.

14. With the purpose of addressing the concerns, the KFTC proposed a bill to amend the MRFTA in Dec.2018 to add transaction value to the existing notification thresholds which have only been based on the size of assets and turnover.

15. According to the proposed amendment, even if an acquired company’s total assets or turnover does not meet the current thresholds, (1) when the transaction value is above a certain level and (2) the acquired company is engaging in substantial activities in domestic market (such as providing products and services, operating R&D facilities, and hiring researchers), then the M&A transaction shall be notified to the KFTC.

16. If the bill is passed, the KFTC plans to enact sub-regulations such as thresholds for calculating transaction value and criteria for measuring the degree of activities a firm undertakes in the domestic market. Once the merger control regime is established, the regulatory loopholes concerning killer acquisitions are expected to be closed.