

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

**Purchasing Power and Buyers' Cartels – Note by Korea**

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More documents related to this discussion can be found at  
<https://www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm>

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## *Korea*

### **1. Regulation of Abuse of Purchasing Power through an Act Enacted for a Specific Industry**

1. In order to regulate the abuse of bargaining position of large business entities with purchasing power, Korea has applied the Act on Fair Transactions in Large Retail Business (hereinafter the "Large Retail Business Act") for the past 10 years, which is an act for a specific industry.
2. The background of the enactment and the characteristics of the Large Retail Business Act will be discussed in the following text. In addition, relevant cases of law enforcement by the KFTC will be introduced. Specifically, law enforcement cases related to the hypermarket chain market, which is a typical oligopoly market, and the recently burgeoning online shopping mall market will each be analyzed. For an example of the former, the Lotte Mart case will be introduced, and for an example of the latter, the Coupang case will be mentioned.

### **2. Background of the Enactment of the Large Retail Business Act**

3. Since 1996, when Korea completely opened up its retail market as a result of the Uruguay Round negotiations, monopoly and oligopoly were formed in a short period of time due to a small number of large retailers. For example, in the case of department stores and hypermarket chains, the market share of the top three companies in 2010 exceeded 80 percent.
4. It was found that the influence that large retailers exert on their transaction partners across both upstream and downstream, namely suppliers and final consumers, increased in such monopoly and oligopoly situations. In other words, it was possible that competition in the relevant and adjacent markets could be affected by large retailers, and also harmful effects could be directly caused to consumer welfare. However, in many cases, even if large retail business entities abused their bargaining positions as buyers, suppliers often tolerated them for fear of greater disadvantages such as discontinuation of transactions, which raised the need for the development of effective regulations.
5. In Korea, there was a shared consensus that institutional improvement was needed to regulate the abuse of bargaining power by large retail business entities against suppliers. Based on this, the Large Retail Business Act was enacted in 2011 after at least four years of research, discussion, and deliberation by the National Assembly, and it entered into force in 2012 and set a precedent for dealing with a specific industry where harmful effects of monopoly or oligopoly have been exacerbated with separate legislation.

### **3. Characteristics of the Large Retail Business Act**

6. The market situation assumed by the Large Retail Business Act is basically the same as the theory of competitive harm premised on the abuse of bargaining position under MRFTA. In other words, public intervention is necessary since a large number of people can suffer damage continuously and repeatedly, which in total can represent a significant amount of damage and eventually cause serious damage to the long-term efficiency of the

overall economy. However, the Large Retail Business Act differs in two aspects, which are "entities subject to the Act" and "types of violations."

### 3.1. Entities subject to the Large Retail Business Act

7. Large retailers with significant purchasing power are more than just buyers for their suppliers. First of all, large retailers sell various products and not just the products of one supplier. So, while most suppliers depend on large retailers for a significant portion of their final sales, generally the share of each supplier's sales in the total sales of a retailer is relatively insignificant. Moreover, as one-stop shopping<sup>1</sup> becomes a common trend, customers' loyalty to manufacturer brands is weakening and loyalty to large retailers is growing. Due to this trend, it is easy for large retailers to replace their suppliers' products with other suppliers' products or PB products, while suppliers are highly likely to suffer a significant blow to sales if they stop doing business with large retailers.

8. In other words, unlike in the case that a supplier had a superior bargaining position, now the relationship between a retailer and supplier is not mainly affected by the market share or the characteristics of the goods being traded. Instead, it is highly likely that an asymmetric relationship will be formed simply due to the fact that a retailer has significant purchasing power. Based on this, the Large Retail Business Act stipulates that a retail business entity that uses a certain size of sales area or makes a certain amount of retail sales<sup>2</sup> is considered as an entity with significant buying power and thus subject to the Act. However, since a bargaining position is a relative concept, application of the Act is excluded when there are individual and specific circumstances that can be regarded as not having a superior position over suppliers.

9. To sum up, in the retail sector where market concentration is very high, it is almost impossible to secure other clients if suppliers discontinue transactions with large retailers with significant purchasing power. Based on this, it can be considered as an approach focused on a "relative business relationship" with respect to the counterparty, rather than on market share and other structural aspects.

### 3.2. Types of violations of the Large Retail Business Act

10. The types of violations stipulated in the Large Retail Business Act can be divided into two main categories. The first category is related to conclusion and fulfillment of a contract, and the second one is related to the abuse of bargaining position specifically involved in retail business transactions.

11. As stated above, the relationship between retailers and suppliers is highly likely to be asymmetric due to significant purchasing power. Moreover, the practice of requiring written contracts was not firmly established in the Korean retail industry in the past. Therefore, the Large Retail Business Act imposes obligations directly related to the conclusion and performance of contracts (such as the duty to deliver written documents) to large retail business entities. It aims to adjust profits between parties that are not equal to each other by acknowledging the illegality when these obligations are violated.

12. Furthermore, the form of abuse of superior position seen in retail business transactions is different from that considered in the traditional competition law. Unlike the abuse of bargaining position by suppliers, it may appear in the form of a price decrease and

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<sup>1</sup> Which refers to consumers completing all purchases in one place

<sup>2</sup> Annual sales of at least 100 billion won or a total store area of least 3,000 m<sup>2</sup>

sales volume increase. Also, various expenses or inventory responsibilities required for sales may be shifted or economic profits may be requested in the name of sales promotion. Therefore, the abuse of bargaining position especially related to retail business transactions was specifically reflected in the types of violations of the Large Retail Business Act, and these include reducing product price, not returning product price to its original level, having suppliers deliver a quantity significantly larger than the usual level for a promotional event, shifting the burden of promotional expenses, forcing purchase of ads, unreasonably returning goods, and unfairly collecting sales incentives.

## 4. Corrective Action against Lotte Mart's Abuse of Purchasing Power

### 4.1. Market situation of hypermarket chains

13. A hypermarket is a type of discount store, and it can be defined as a group of shops with a total store area of at least 3,000 m<sup>2</sup> that mainly offer goods such as food, home appliances, and daily necessities to consumers without the help of shop assistants (Attached Form 1 of the former Enforcement Decree of Distribution Industry Development Act).

14. The opening of the first hypermarket in Chang-dong in 1993 marked the beginning of the hypermarket chain business in Korea. Ten years after the introduction of hypermarkets, which sell household goods and food based on a fixed price system in spacious and comfortable stores, it has rapidly emerged as the number one type of business representing the retail industry. However, its growth has stalled since 2013 due to the long-term low growth of the domestic economy and the rapid rise of contact-free, online retail seen recently, and this situation is getting worse with the COVID-19 crisis that began in 2020.

15. In Korea, there are six retailers that operate hypermarket chains including Emart, Homeplus, Lotte Shopping, and Costco Korea. As of the end of 2020, the number of their stores reached 471 in total, and the total sales amounted to about 38.2 trillion won.<sup>3</sup> Among them, the top three companies, E-Mart, Homeplus, and Lotte Shopping, account for about 78% of the market share, indicating that the market is oligopolistic.

### 4.2. Lotte Mart's Unfair Practice & KFTC's Corrective Measure

16. Lotte Mart, a traditionally strong player with a significant market share (22.3%) in the local market, abused its dominant position and unfairly passed on the costs associated with cutting meat and PB product development consulting to its pork supplier. Moreover, Lotte Mart gave disadvantage to its supplier by purchasing products at low prices.

17. First, although Lotte Mart sold the supplied pork products as its own PB products, the retailer passed on PB product development consulting fees to the supplier. PB products are goods that are branded and sold by retailers in their own stores. So, expenses incurred from the PB product should be covered by the retailer, but they were passed on to the supplier without any justifiable reasons. The KFTC judged that the transfer of costs is an act of providing economic benefit to a third party without justifiable reasons.<sup>4</sup>

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<sup>3</sup> Distribution logistics statistics for 2021 (November, 2021, Korea Chamber of Commerce and Industry)

<sup>4</sup> Related law: Violation of the Article 15 (1) of the Large Retail Business Act (Prohibition of Requests for Economic Profits)

18. Next, Lotte Mart stated executing promotional event as the reason behind lowering the unit price of purchased goods, but the retailer only raised its selling price back to its original level and did not return the buying price to its original price, which caused the supplier to suffer losses (not returning purchasing price to its pre-promotion level). Furthermore, Lotte Mart purchased goods at a price lower than the unit price agreed with the supplier, which greatly disadvantaged the supplier (purchasing at low price). The KFTC decided<sup>5</sup> that those practices are acts that illegally disadvantage the supplier.

19. In addition to the above three acts, it was discovered as a result of KFTC's investigation that Lotte Mart committed three unfair acts of unfairly forcing the supplier to take on costs associated with promotional events, cutting meat, and labor without going through legal procedures. The KFTC imposed a corrective order and a penalty surcharge of around 40.8 billion won, the largest amount imposed since the Act went into effect, on Lotte Mart for its unfair trade practices in November 2019.

## 5. Corrective Action against Coupang's Abuse of Purchasing Power

### 5.1. Market situation of online shopping malls

20. An online shopping mall can be defined as a virtual business place set up to enable business operators and consumers trade goods and services using computers and information communication equipment. Among various types of online shopping malls, those subject to the Large Retail Business Act are online shopping malls that sell products directly<sup>6</sup> to consumers after purchasing products from a manufacturer or going through a consignment arrangement with a manufacturer.

21. Online shopping has been growing with the rise of consumers looking for more instant and convenient ways to consume, development of Internet and mobile technologies, and improvement of delivery processes. Moreover, the growth has been accelerated with the spread of contact-free consumption patterns in the wake of the recent coronavirus outbreak. The numbers also show that as of 2021, the sales growth rate of Korean retailers compared to the previous year was significantly higher for online (14.2%) than for offline (7.5%). Moreover, the proportion of online versus offline sales also shows that the proportion of online is continuously increasing<sup>7</sup>.

22. Among major offline retailers and online business operators in Korea, Coupang showed the most noticeable annual sales growth. Unlike other retailers, it achieved an annual growth<sup>8</sup> of at least 60% from 2017 to 2019.

### 5.2. Coupang's Unfair Practice & KFTC's Corrective Measure

23. Like its role model Amazon, Coupang adopted aggressive strategies to expand its market share, and one of the strategies called lowest price matching policy or dynamic

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<sup>5</sup> Related law: Subparagraphs 7 & 10 of the Article 17 of the Large Retail Business Act (Prohibition against Giving Disadvantages)

<sup>6</sup> Therefore, open markets that play the role of intermediaries between consumers and sellers to facilitate transactions are not subject to the Act

<sup>7</sup> (2019) 41.2% → (2020) 46.5% → (2021) 48.3% annually in 2021, (Jan. 2022, MOTIE)

<sup>8</sup> (2017) 2681.3 billion won → (2018) 4347.6 billion won → (2019) 7140.7 billion won (Source: KISLINE)

pricing was used since 2016. This is a type of price policy that lowers the prices of products sold on its platform immediately when competing online malls (Emart, 11st, Gmarket, and etc.) lower prices on their platforms. The lowest price matching policy has the effect of attracting consumers, but this will lead to Coupang's margin decrease since although the supply price is determined in advance and cannot be lowered, Coupang has to reduce its price when it is recognized that a rival online mall is selling a product at a lower price.

24. To minimize this loss of margin that may occur due to its lowest price matching policy, Coupang forced its suppliers to raise the prices of the products sold in rival online malls, if suppliers' products were sold at a lower price than Coupang. When suppliers did not accept this demand, Coupang continuously put pressure on them by not placing purchase orders, or discontinuing sales of suppliers' products, or implying that such actions will be taken. The KFTC judged this as an act interfering<sup>9</sup> in the business activities of suppliers since it infringed on the freedom to conduct business activities freely by preventing suppliers from selling their products at lower prices than those of Coupang in its rival online malls.

25. In addition, some of the suppliers that were unable to raise product prices were coerced to purchase advertisements regardless of their will. If suppliers refused to purchase them, Coupang urged them to accept the demand by not placing purchase orders, or discontinuing sales of suppliers' products, or implying that such actions will be taken. The KFTC determined this as an act of having the supplier advertise<sup>10</sup> products against its will without justifiable reasons.

26. One point noteworthy from this case is that Coupang's acts of interfering in the business activities and forcing purchase of advertisements was not limited to small and medium-sized suppliers, and even a large-sized business, one of the top five in the manufacturing industry, was affected by Coupang's unfair practices. In fact, most of them accepted Coupang's request in consideration of the importance of the online shopping mall as a sales channel.

27. In addition to the above two acts, the KFTC's investigation found that Coupang unfairly shifted its sales promotion fees to suppliers and collected sales incentives from them without going through legal procedures. The KFTC imposed a corrective order and a total penalty surcharge of 3.297 billion won on Coupang for these unfair trade practices in August 2021.

## 6. Implications

28. With enormous purchasing power, large retail business entities are in a predominant bargaining position over their suppliers, and they are adopting a variety of strategies to increase their market share and attract competing retailers' consumers. In this process, there is a risk of abuse of bargaining position against suppliers in order to reduce costs, so it is necessary for the competition authority to consider monitoring large retailers and developing appropriate ways of intervention.

29. Retailers with significant purchasing power in Korea are regulated with the Large Retail Business Act, which is an act for a specific industry developed based on consideration of the asymmetric relationship between retailers and suppliers. The Large

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<sup>9</sup> Related law: Article 23 (1) 4 of the former MRFTA (Prohibition of Unfair Trade Practices, Article 45 (1) 6 of the current Act)

<sup>10</sup> Related law: Subparagraph 6 of the Article 17 of the Large Retail Business Act

Retail Business Act is derived from the provision on abuse of bargaining position under MRFTA, but it differs in that the distinct characteristics of business relations in the retail industry were considered when deciding entities subject to the Act and types of violations. The Lotte Mart case and the Coupang case are the two representative examples where measures were taken after the enactment of the Large Retail Business Act.

30. The Lotte Mart case is an example of the KFTC taking action against a hypermarket chain that used its superior bargaining position and purchasing power in the domestic consumer goods market to pass on various costs to suppliers in the process of price competition for maintaining and expanding market share. It is worth noting that effective implementation of regulation was possible based on the law in specific industry. In particular, the restriction on not returning purchasing prices to pre-promotion level was possible because such unfair practice specific to large retailers was prohibited through Subparagraph 5 of Article 17 of the Large Retail Business Act.

31. The Coupang case is an example of the KFTC actively taking action against an online retailer that has gained superior bargaining position with enormous purchasing power in the midst of rapidly growing online shopping market in recent years. In this case, the KFTC impose sanctions on unfair trade practices such as forcing price increase and purchase of advertisements. The Coupang case clearly indicates the need for enforcing the Large Retail Business Act against the online shopping mall industry, which uses aggressive strategies focusing on sales growth rather than profits, by noting that it is likely to engage in new types of unfair practices such as meddling in the management of suppliers.