Organisation for Economic Co-operation and Development

DAF/COMP/WD(2026)124

Unclassified

English - Or. English

24 November 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Minority Shareholding and coordinated effects – Note by Korea

9 December 2026

This document reproduces a written contribution from Korea submitted for Item 8 of the 150th OECD Competition Committee meeting on 8-9 December 2026.

More documents related to this discussion can be found at oe.cd/msace

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JT03598908

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Korea

1. Introduction

1. Minority shareholdings are commonly used for a variety of purposes. Some serve investment purposes, such as sharing in a company's profits or diversifying an investment portfolio to spread risk; others serve business purposes, such as securing a stable supply of technology or raw materials or launching new services through co-operation.

2. Minority shareholdings are not inherently anti-competitive. They may, however, raise concerns for competition authorities when they create links between competitors or between firms operating in adjacent markets. For example, acquiring a minority shareholding in a competitor may weaken incentives to compete by linking the two firms' financial interests. Such a shareholding may also enable the shareholder to appoint directors to the competitor's board or obtain access to internal information, such as business plans, thereby creating conditions that facilitate co-ordination between competitors. Competition authorities therefore need appropriate legal mechanisms to address co-ordinated effects arising from minority shareholdings.

3. Korea's merger review framework contains two such mechanisms. First, the concept of "joint control", introduced in 2011, enables the Korea Fair Trade Commission (KFTC) to assess co-ordinated effects arising from minority shareholdings that confer joint control. Second, the Monopoly Regulation and Fair Trade Act (MRFTA) treats interlocking directorates as a type of merger, regardless of whether one company holds shares in the other. The KFTC can therefore also assess co-ordinated effects arising from interlocking directorates that establish control over the target company. The following sections examine each mechanism in turn.

2. Expanding Merger Review to Minority Shareholdings Through Joint Control

4. Under the MRFTA, an acquisition of shares that results in the acquiring company holding 20% or more of a company's voting shares (15% or more for a listed company) may trigger a merger notification requirement. Notification, however, does not automatically lead to a substantive assessment of potential anti-competitive effects. Substantive review turns on whether the transaction establishes a relationship of control between the acquiring company and the target company. Where no such relationship is established, the merger is presumed not to restrict competition and qualifies for simplified review: the KFTC verifies only the accuracy of the information provided in the notification and completes its review within 15 days.

5. Before 2011, the KFTC focused primarily on whether a merger would give the acquiring company sole control over the target company. Control was found where the acquiring company held 50% or more of the target company's shares or could otherwise exercise substantial influence over the target, for example as its largest shareholder despite holding less than 50%. Under this approach, minority shareholdings could fall outside substantive review even where a minority shareholder, acting jointly with an existing controlling shareholder, could exercise significant influence over the target company's competitive conduct.

6. To fill this gap, the KFTC amended its Merger Review Guidelines on 28 December 2011 to introduce the concept of "joint control". Joint control arises where the acquiring

company does not control the target company on its own but can exercise substantial influence over the target company's overall management jointly with existing shareholders or other parties. Joint control may arise even where the acquiring company holds only a minority shareholding, for example if it has the right to nominate executives or has agreed with existing shareholders to exercise voting rights jointly. It may also arise where the acquiring company holds veto rights over budgets, business plans, investment plans or other major decisions, or holds significant administrative powers necessary for the conduct of the target company's business.

7. Where joint control is established, the KFTC assesses both the unilateral and the co-ordinated effects of the merger, as it does in cases involving sole control. Co-ordinated effects may thus be found even in cases involving minority shareholdings, if joint control makes it easier for firms to co-ordinate on prices, output or other trading terms, or to monitor compliance with such co-ordination and penalise deviations.

3. Merger Review of Interlocking Directorates

8. The MRFTA treats interlocking directorates, in which an executive or employee of a large company[1] concurrently holds an executive position at another company, as a type of merger in their own right. A large company may therefore be required to notify the KFTC of such interlocking directorates even where it holds no shares in the other company.

9. Before assessing the potential anti-competitive effects of interlocking directorates, however, the KFTC first determines whether they establish a relationship of control. As explained above, mergers that do not establish control, including interlocking directorates, are presumed not to restrict competition and are subject to simplified review.

10. The KFTC applies the following criteria to determine whether interlocking directorates establish control. First, control is generally considered to arise where executives or employees of the acquiring company and its related parties[2] concurrently hold at least one-third of the executive positions at the target company. Second, control may also arise where the position concurrently held at the target company, such as that of representative director, enables the holder to exercise substantial influence over the target company's overall management. Where interlocking directorates accompany an acquisition of shares, the KFTC may also consider the factors discussed above, including the percentage of shares held, rights to nominate executives, veto rights over major decisions and agreements to exercise voting rights jointly. Previously, interlocking directorates involving large companies were generally subject to notification, except for those between companies within the same business group. Following amendments to the MRFTA in 2024, notification is no longer required where the executives holding concurrent positions account for less than one-third of the target company's executives and none of them serves as its representative director.

[1] A company with total assets or sales of KRW 2 trillion (approximately USD 1.4 billion) or more.

[2] Related parties are (i) a person who has de facto control over the company ("the same person"), (ii) a person related to the same person, and (iii) a person who participates in the merger with the common goal of controlling management.

11. In practice, the KFTC actively reviews mergers involving interlocking directorates.[3] In 2025, the KFTC imposed remedies[4] in a case involving interlocking directorates between providers of over-the-top (OTT) services. The competition concerns in that case, however, related to unilateral effects, including the risk that bundled offerings could lead to higher prices and reduced consumer choice in the Korean OTT market.

4. Conclusion

12. By introducing the concept of joint control and treating interlocking directorates as a type of merger subject to notification requirements, Korea has established a merger review framework that enables the KFTC to assess co-ordinated effects arising from minority shareholdings. To date, however, the KFTC has not imposed remedies in cases involving minority shareholdings primarily on the grounds of co-ordinated effects. The KFTC looks forward to deepening discussions on this issue with competition authorities in other jurisdictions.

[3] In 2025, the KFTC reviewed 38 notified mergers involving interlocking directorates.

[4] On 26 December 2024, CJ ENM Co., Ltd. (CJ ENM) and TVING Co., Ltd. (TVING) notified the KFTC of a merger under which their executives and employees would concurrently hold five of the eight director positions at Content Wavve Corp. (Wavve), including that of representative director, as well as one auditor position. TVING, an affiliate of CJ ENM, operates "TVING", a subscription-based OTT service primarily offering pre-produced content, while Wavve operates "Wavve", a competing OTT service. The transaction therefore constituted a horizontal merger in the Korean OTT market. The KFTC found that the interlocking directorates raised concerns about unilateral effects in that market, such as subscription fee increases. On 10 June 2025, the KFTC imposed remedies to address these concerns, requiring the companies concerned to maintain their existing subscription plans and, if they launched an integrated OTT service, to introduce new subscription plans comparable in price and service offerings to their existing plans.