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English - Or. English

8 June 2026

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

Information Sharing in Competition Policy – Note by Korea

24 June 2026

This document reproduces a written contribution from Korea submitted for Item 5 of the 149th OECD Competition Committee meeting on 24-26 June 2026.

Ori SCHWARTZ
Email : Ori.Schwartz@oecd.org

JT03588889

Korea

1. Introduction

1. Traditional forms of unlawful concerted conduct typically involved explicit and outwardly identifiable agreements, such as price-fixing or output restrictions. However, as competition authorities have strengthened monitoring and enforcement, businesses have increasingly sought to avoid overt collusion and instead adopted more subtle and sophisticated means of restricting competition. One of the most representative methods is the exchange of information among competitors.

2. Even in the absence of explicit agreements on prices or other competitive factors, information exchanges can substantially restrict competition by reducing strategic uncertainty among market participants. Through such exchanges, businesses can gain advance knowledge of competitors' key business information—such as prices, output levels, and transaction terms—and thereby anticipate rivals' responses. This, in turn, increases the likelihood of avoiding price competition and other forms of competitive rivalry.

3. Nevertheless, under the traditional framework of the Monopoly Regulation and Fair Trade Act ("MRFTA"), the legality of conduct had generally been assessed based on the existence of a specific agreement. As a result, there were limitations in effectively regulating competition-restricting practices such as information exchanges. In particular, because information exchanges alone often made it difficult to directly prove agreements on prices, output levels, or other competitive factors, gaps in enforcement remained.

4. Against this backdrop, the Korea Fair Trade Commission ("KFTC") introduced information exchanges as an independent category of prohibited conduct through the 2020 comprehensive amendment to the MRFTA. In addition, the KFTC established review guidelines setting out specific assessment criteria in order to enhance regulatory effectiveness while improving predictability for businesses.

5. The following section explains the background and regulatory framework underlying Korea's introduction of the prohibition on information-exchange cartels, and then examines the Loan-to-Value ("LTV") information-exchange cartel case involving four major commercial banks, which marked the first application of the regulation.

2. Korea's Regulatory Framework for Information-Exchange Cartels

2.1. Background to the Introduction of the Prohibition on Information-Exchange Cartels

6. Under the former MRFTA framework, an unlawful concerted act required the existence of an agreement between businesses, and only specifically listed types of conduct were prohibited. No separate provision specifically addressed information exchanges. Within this legal framework, Korean courts acknowledged that the exchange of various types of information—including price information—and the incorporation of such information into business decision-making could have competition-restricting effects. However, the courts also held that, in the absence of an agreement to jointly determine prices or other competitive factors, such conduct could not be recognized as a violation of

the law.. As a result, there were practical limitations in effectively regulating information exchanges that restricted competition among businesses, leading to growing recognition of the need for a dedicated regulatory framework.

2.2. Relevant Regulatory Framework

2.2.1. *Monopoly Regulation and Fair Trade Act*

7. The MRFTA, as amended on December 29, 2020, explicitly included the exchange of 1) prices, 2) output levels, and other information prescribed by Presidential Decree, where such exchanges substantially restrict competition, as a type of prohibited unlawful concerted act. (Article 40(1)(9) of the MRFTA)

2.2.2. *Enforcement Decree of the Monopoly Regulation and Fair Trade Act*

8. Pursuant to the delegation under the MRFTA, the Enforcement Decree specifically sets out the categories of information whose exchange is prohibited. In addition to prices and output levels prescribed under the Act, the Decree identifies 3) costs, 4) shipment volumes, 5) inventory levels, 6) sales volumes, 7) transaction terms, and 8) payment terms and conditions as categories of information that may not be exchanged among businesses. (Article 44(2) of the Enforcement Decree)

2.2.3. *Guidelines for Reviewing Unlawful Concerted Acts Involving Information Exchanges Between Businesses*

Overview

9. In December 2021, [the Guidelines for Reviewing Unlawful Concerted Acts Involving Information Exchanges Between Businesses] were enacted and took effect in order to improve predictability for businesses regarding changes in enforcement arising from the introduction of the prohibition on information exchanges.

Requirements for Establishing the Illegality of an Information-Exchange Agreement

10. According to the Guidelines, the illegality of an information-exchange agreement is established where: 1) an agreement to exchange information exists; 2) the implementation of the agreement unreasonably restricts competition in the relevant market; and 3) there are no efficiency-enhancing effects sufficient to outweigh the anticompetitive effects.

11. First, an information-exchange agreement refers to a mutual understanding among businesses to exchange competitively sensitive information, such as prices, output levels, or transaction terms. An explicit agreement is established where businesses expressly agree to exchange information, while an agreement may also be established where there is an implicit or tacit mutual understanding to exchange competitively sensitive information.

12. Next, information exchanges are likely to produce anticompetitive effects by eliminating uncertainty regarding competitive variables, thereby reducing competitive pressure in the market or effectively resulting in coordinated price increases. Whether such unreasonable anticompetitive effects have arisen is assessed comprehensively based on the following six factors.

- **Market Conditions:** Competition is more likely to be restricted where, despite stable economic conditions, information exchanges are followed by outcomes such as price increases or rigid market shares.
- **Market Structure and Product Characteristics:** Competition is more likely to be restricted where the market is oligopolistic, where supply and demand conditions remain relatively stable, or where the relevant products are highly similar in quality.
- **Market Shares of the Participants:** The higher the combined market share of the relevant businesses, the greater the likelihood of restricting competition. Where the combined market share is 20% or less, competition is generally presumed not to be restricted.
- **Characteristics of the Exchanged Information:** Competition is more likely to be restricted where the exchanged information consists of future information, non-public information, or information that identifies the competitive variables of individual businesses.
- **Manner of the Exchange:** Competition is more likely to be restricted where the exchange continues over a longer period, occurs more frequently, involves senior-level personnel, or takes place close to the timing of decision-making.
- **Purpose of the Exchange:** Information exchanges conducted for the purpose of restricting market competition are considered unlawful.

13. Finally, with respect to the efficiency-enhancing effects of information exchanges, the assessment should be made based on the following criteria: information exchanges are not considered unlawful where they generate efficiency-enhancing effects, the exchange of information is indispensable to achieving such effects, and those efficiency-enhancing effects outweigh the anticompetitive effects.

3. Enforcement Case Involving an Information-Exchange Cartel: LTV Information Exchanges Among Four Major Commercial Banks

3.1. Facts of the Conduct

14. Major commercial banks in Korea exchanged Loan-to-Value (“LTV”) ratio information from March 2022 to March 2024. LTV ratios are a key factor in determining mortgage limits and directly or indirectly affect various aspects of lending, including interest rates and loan services. Accordingly, such information constitutes transaction terms—that is, competitively sensitive information—applied between banks and borrowers.

15. Considering the following circumstances as a whole, the banks had reached a mutual understanding to exchange competitively sensitive information, thereby establishing an information-exchange agreement. The banks’ employees exchanged information prior to determining their respective LTV ratios, and there was a shared understanding that such exchanges would assist one another in setting LTV ratios. In addition, the employees continued the information exchanges over a prolonged period—including through staff handovers—even though they were aware that the conduct was unlawful.

16. Each bank used information received from other banks to compare its own LTV ratios with those of other banks and adjusted its LTV ratios so that they did not significantly

deviate from the average level of other banks. In other words, banks raised their LTV ratios when they were lower than those of other banks and lowered them when they were higher.

3.2. Anticompetitive Effects

17. Considering the following factors set out in the Guidelines as a whole, the information exchanges among the banks gave rise to anticompetitive effects. Specifically, the banks used information obtained from other banks as a reference in determining their respective LTV ratios, thereby undermining the competitive process and reducing competitive pressure.

3.2.1. Market Structure and Product Characteristics

18. The banking market may effectively be regarded as an oligopolistic market, and the banking industry is characterized by a relatively stable competitive environment due to financial regulations that make entry by new competitors difficult. In addition, mortgage loan products do not differ substantially in their nature or quality across banks, as their primary purpose is to provide financing to borrowers. Considering these characteristics, information exchanges are more likely to have a significant impact on competition.

3.2.2. Market Shares

19. In the relevant market in this case—the primary banking sector’s mortgage loan market—the combined market share of the four major commercial banks amounted to approximately 57.6%, accounting for more than half of the market. Accordingly, because the market effectively constituted an oligopolistic market, the exchanged information was considered likely to have a significant impact on competition.

3.2.3. Content and Characteristics of the Exchanged Information

20. The information exchanged in this case consisted of the banks’ overall lending strategies and plans regarding: 1) all mortgage loan transactions conducted from a particular point in time onward; and 2) how the competitive variable of LTV ratios 3) would be applied under various circumstances. In addition, the exchanged information was non-public information applicable both currently and in the future, and consisted of individual business information relating to competitive variables without any processing or aggregation. Accordingly, the exchange of such information was considered highly likely to give rise to anticompetitive effects.

3.2.4. Manner of the Information Exchange

21. The information exchanges in this case were considered highly likely to give rise to anticompetitive effects, given that they were carried out continuously over a prolonged period, took place whenever adjustments to LTV ratios were considered necessary, occurred close to the timing of LTV revisions, and were conducted among employees from departments with decision-making authority over LTV adjustments.

3.2.5. Purpose of the Information Exchange

22. The banks exchanged information not merely to verify the accuracy of LTV figures, but to alleviate and manage competitive pressure relating to LTV ratios, which constitute a competitive variable. Accordingly, because the information was exchanged for the purpose of restricting competition, the agreement was considered unlawful.

3.2.6. Whether the Information Exchange Affected or Was Likely to Affect LTV Determinations

23. It was clearly established that the banks had agreed to exchange LTV information, implemented the agreement through actual information exchanges, and used the exchanged information as reference and comparative material in the process of adjusting and determining their respective LTV ratios. As a result, the banks' incentives to independently set LTV ratios—a key competitive variable—and differentiate themselves from competing banks were weakened, creating a significant risk of reduced competitive pressure relating to LTV ratios.

3.3. Conclusion

24. As a result of the information exchanges, the banks' LTV ratios were maintained at similar levels over a prolonged period, enabling the banks to reduce uncertainty regarding their business strategies and avoid competition through LTV ratios, which constitute an important transaction term. Consequently, borrowers' ability to choose among banks was restricted, and the conduct negatively affected access to financing for small and medium-sized enterprises, small business owners, and other borrowers that rely heavily on secured lending.

3.4. Whether Efficiency-Enhancing Effects Existed

25. No efficiency-enhancing effects were recognized, as the banks already relied on the same real estate auction data in assessing collateral values, making it difficult to conclude that the information exchanges improved the accuracy of such assessments. In addition, because the banks shared only the final results rather than their methods for analyzing collateral values, it could not be concluded that the exchanges enhanced credit risk management capabilities, such as by improving the ability to forecast real estate market conditions.

3.5. Enforcement Outcome and Expected Effects

26. Following a thorough investigation and review, the KFTC concluded that the banks' information exchanges had substantially restricted competition in the mortgage lending market. Accordingly, the KFTC imposed cease-and-desist orders on the banks, together with fines totaling KRW 270.014 billion.

27. This case marked the first application of the newly implemented prohibition on information-exchange cartels and made clear that conduct restricting competition through the exchange of information on important transaction terms is also subject to enforcement. In addition, by identifying and sanctioning anticompetitive practices that had persisted over a prolonged period in the financial sector, the case is expected to promote competition in entrenched oligopolistic sectors and further strengthen the protection of financial consumers' interests.

4. Future Plans: Strengthening Enforcement Against Information Exchanges

28. Strict enforcement against information exchanges is essential to addressing increasingly sophisticated forms of collusion. In today's markets, competition-restricting conduct through information exchanges occurs more frequently than explicit agreements, and failure to regulate such conduct appropriately could undermine the market's

autonomous competitive mechanisms and ultimately cause significant harm to the overall competitive order, including reduced consumer welfare.

29. Beginning with the bank LTV cartel case, Korea will continue to actively build a wide range of enforcement cases in order to enhance the effectiveness of information-exchange regulation. The KFTC also plans to strengthen monitoring of conduct that restricts competition through information exchanges across various sectors, including the financial industry, and to take strict enforcement action where violations are identified.

30. At the same time, alongside strict enforcement, continued efforts will also be made to enhance market predictability and acceptability. Information exchanges with clear anticompetitive effects will be addressed firmly, while clear guidance will continue to be provided in a manner that does not unduly hinder legitimate business activities or innovation. Through this balanced approach to enforcement, Korea hopes that regulation of information exchanges will go beyond mere sanctions and serve as a strong foundation for enhancing market transparency and restoring the competitive order.