

Unclassified

English - Or. English

25 May 2021

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

Working Party No. 3 on Co-operation and Enforcement

Competition Compliance Programmes – Note by Korea

8 June 2021

This document reproduces a written contribution from Korea submitted for Item 1 of the 133rd OECD Working Party 3 meeting on 8 June 2021.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

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JT03476969

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1. Overview of Fair Trade Compliance Program

1. The KFTC Compliance Program (hereinafter referred to as "CP"), helps companies to mitigate the risk of violations of the law, and enhance the corporate image by securing consumer trust through compliance management. And if growing number of companies participate CPs in a exemplary manner, society as a whole can reduce social and administrative costs caused by antitrust violations.
2. Recognizing this, the KFTC has been operating CPs since 2001 to create and promote a culture of voluntary compliance with laws and regulations administered by the KFTC.
3. Under the “Rules on Operation of Fair Trade Compliance Programs, Offering of Incentives, ETC.” (hereinafter referred to as the "Rules on Operation of CPs”), the term CP means an “internal compliance system for education, training, supervision, etc., that is established and operated by an enterprise itself in order to comply with fair-trade-related statutes”¹. It stipulates that companies must meet eight requirements² in order to be recognized as having adopted CPs.
4. These eight requirements are described in a comprehensive and abstract manner, since companies must autonomously design and operate CPs depending on their own managerial environment rather than following the directions of the KFTC.
5. In order to promote the introduction and effective operation of CPs, the KFTC operates the CP rating system that evaluates companies operating CPs. When companies voluntarily apply for the CP rating evaluation, the KFTC provides various incentives according to the evaluation results. The KFTC also hosts the CP Forum, and shares best practices on CPs as well as distributing the CP manuals.

2. Operation of Fair Trade Compliance Program

2.1. History

6. In January 2001, the KFTC imparted the benefits of CPs to the business community. In March of the same year, the business community led the launch of the Fair Trade Self-compliance Committee (led by Chairperson of the Korea Chamber of Commerce), and five rounds of working-level meetings and public hearings were held. On July 5, 2001, the KFTC promulgated the Code of Conduct, and encouraged companies to

¹ This term was defined for the first time in the "Rules on Operation of Fair Trade Compliance Programs, Offering Incentives, Etc." enacted on October 24, 2008 (Fair Trade Commission Notification No. 2008-17) and has been maintained until now.

² The eight requirements for adopting CPs are as follows: ① Preparation and enforcement of criteria and procedures for CPs, ② CEO's commitment to and support for compliance, ③ Appointment of the Compliance Officer in charge of CP operation, ④ Development and use of the Compliance Manual, ⑤ Implementation of continuous and systematic compliance training, ⑥ Establishment of an internal monitoring system, ⑦ Sanctions on employees violating antitrust laws, ⑧ Effectiveness evaluation and measures for improvement.

adopt and operate CPs so that a culture of voluntary compliance can quickly take root and spread.

7. At that time, it was able to launch CPs in a swift manner because there was a consensus between the business community and the government that the market relying solely on the government's law enforcement incurs considerable social costs including administrative costs for the government and administrative fines and litigation costs for companies, and that the companies should respond to the growing demand for fair transactions around the world.

8. Since 2002, the KFTC had incentivized companies with high ratings by granting reduction in administrative fines, and exemption from accusations or obligation to publish their past records of antitrust violation. But some companies introduced CPs in a perfunctory manner just for the incentives. To prevent companies from operating CPs in such a perfunctory manner, the KFTC introduced the CP rating system in 2006 to offer different incentives based on their ratings.

9. In October 2008, the KFTC improved and integrated provisions on incentives scattered across the "Public Notification on Detailed Guidelines for Imposition of Penalty Surcharges" (hereinafter referred to as the "Public Notification on Penalty Surcharges") and "Operational Guidelines for Publishing Notices of Corrective Orders Issued by Fair Trade Commission" (hereinafter referred to as the "Guidelines for Publishing Notices") by setting out the "Rules on Operation of CPs."

10. In March 2010, in order to strengthen the fairness and credibility of the rating agencies, the rating agency was changed from the Korea Fair Competition Federation, a private organization, to the Korea Fair Trade Mediation Agency, a public organization.

11. In June 2011, rating categories were integrated and adjusted to relieve the burden of companies and to encourage small and medium-sized companies to apply for the CP rating evaluation. In July 2013, in order to secure the credibility of the rating results, the system was revised to prevent companies with past records of antitrust violations for the last 2 years from applying for the CP rating evaluation.

12. In addition, as there was a criticism that companies took advantage of CPs for reduction in administrative fines without a legal basis, the KFTC revised the "Public Notification on Penalty Surcharges" to abolish it.

13. In 2017, as the criticism that the principle of benefit assessment should be applied to the rating system, the KFTC decided that companies pay the cost of the CP rating evaluation while small and mid-sized business are exempted from all or part of the burden.

14. In 2019, to promote the CP system, the KFTC removed a provision that prevented companies who have violated the law in the past from applying for the CP evaluation, overhauled the evaluation procedure and ratings system and introduced a provision that exempts companies with the highest rating (AAA) from the order to publish the fact that a company received corrective order.

2.2. CP Rating Evaluation

15. In the initial stage of operation of the CP, the KFTC provided incentives such as a reduction of fines simply for adopting a CP. However, some companies were negligent in the conscientious operation of the CP, only seeking for incentives. To prevent such malpractices and drive effective operation of the CP, the KFTC introduced a CP rating evaluation system that provides different incentives depending on performance in the operation of CP.

16. The rating evaluation system provides six levels³ of ratings for companies that have adopted a CP for more than a year, depending on the following factors: ① clarification of the willingness and policy for self-compliance by the CEO; ② personnel and budget assistance from the executives, including appointment of a compliance officer ③ publication and distribution of self-compliance booklets; ④ education and training on CP; ⑤ operation of a monitoring system for self-compliance ⑥ sanctions against executives and employees violating laws and operating an incentive system and ⑦ evaluation and improvement of CP operation.

17. Companies that receive a rating of A or higher on a rating evaluation will be given incentives such as exemption from ex officio investigation, reduction and exemption of publication order and grant of a certification.

18. However, the KFTC may suspend or exempt assignment of ratings for companies at risk of hampering fairness and credibility of CP system, among those with a rating of A or higher, such as companies that are currently under investigation for violation of competition law, until the relevant violation is resolved. If a company whose rating has been assessed were subject to KFTC's regulation (accusation or imposition of a fine) for violation of competition law, its rating will be adjusted downward by one rating in case of an accusation and by two ratings in case of an imposition of a fine.

19. In 2006, a total of 60 companies applied for a CP rating evaluation. From 2007 to 2012, around 40 to 50 companies applied for an evaluation each year; however, the number has decreased to around 10 recently. In 2020, a total of 7 companies applied for a CP rating evaluation and a rating of "AAA", "AA", and "A" was assigned to one company respectively.

Table 1. The number of companies applied for CP evaluation and the number of companies that received a CP rating of A or higher

Year	Number of applied companies	Ratings		
		AAA	AA	A
2006	60	-	6	17
2007	41	-	2	17
2008	53	-	2	22
2009	54	-	6	21
2010	44	-	7	22
2011	37	-	1	11
2012	39	-	4	23
2013	14	-	3	6
2014	18	-	5	5
2015	15	-	5	4
2016	9	-	3	5
2017	18	-	5	10
2018	11	-	7	3
2019	5	-	1	3
2020	7	1	1	1

20. In October 2019, the KFTC amended the Rules on Operation of CPs. With the amendment, the KFTC removed restrictions that prevented companies who have violated the law in the past from applying for a CP evaluation, overhauled the evaluation procedure and ratings system and increased incentives by, for instance, adopting an exemption from the order to publish the fact that a company received a corrective order.

³ AAA(Outstanding), AA(Good), A(Fairly Good), B(Intermediate), C(Poor), D(Very Poor)

Table 2. Major changes related to ratings evaluation adopted in the 2019 Rules on Operation of CPs

Major changes	Details
<ul style="list-style-type: none"> Removing restrictions preventing companies with a history of violation from applying for a CP evaluation 	<ul style="list-style-type: none"> Allow all companies, regardless of their past violations, to apply for a CP ratings evaluation to provide with an opportunity to monitor and manage legal compliance <ul style="list-style-type: none"> However, violations records will be reflected in the ratings evaluation to distinguish companies with a history of violation from those with a clean record
<ul style="list-style-type: none"> Overhauling the evaluation procedure and ratings system 	<ul style="list-style-type: none"> Reform the evaluation process from three to two stages (document investigation and on-site investigation) Reduce the number of rating categories from eight to six
<ul style="list-style-type: none"> Increasing incentives by allowing an exemption from the publication of receipt of a corrective order, etc. 	<ul style="list-style-type: none"> Exempt companies with the highest rating (AAA) from the order to publish the fact on receipt of a corrective order from the KFTC, and remove the reasons for an exemption Provide Chairperson's reward for companies that receive a CP rating of AA or higher for two consecutive years

Table 3. Provision of incentives depending on a CP rating

Exemption from ex-officio investigation	Reduction or exemption from the publication of receipt of a corrective order	Others
<ul style="list-style-type: none"> Companies that receive a CP rating of A or higher <ul style="list-style-type: none"> A(1 year), AA(1 and a half years), AAA(2 years) * Those who have received a penalty for interfering with an investigation over the last 2 years are excepted 	<ul style="list-style-type: none"> Companies that receive a CP rating of A or higher <ul style="list-style-type: none"> companies with a rating of AAA (exemption) companies with a rating of A or AA (downgrading the size and number of outlets to be publish in by one level, reducing the publication period) 	<ul style="list-style-type: none"> Certification for a CP rating Chairperson's reward (for those that receive a rating of AA or higher for two consecutive years)

3. Evaluation and Future Challenges

21. The Compliance Program, since first adopted in 2001, has played a significant role in raising companies' awareness in voluntary compliance for fair trade and establishing it as a corporate culture, thanks to the efforts to improve policy by introducing the ratings evaluation system and promotion efforts to spread a voluntarily compliance in connection with fair trade, such as hosting a CP forum.

22. However, there have been limitations to a stable operation and spread of the Compliance Program due to absence of applicable provisions under the Monopoly Regulation and Fair Trade Act (hereinafter the "MRFTA").

23. Against this backdrop, the KFTC has examined comprehensive ways to introduce the legal basis for the Compliance Program to the MRFTA and strengthen incentives for companies that have an effective Compliance Program. As a result, the KFTC amended the Rules on Operation of CPs in 2019 and included a plan to introduce a legal basis for adoption and spread of CPs and reduction in administrative fines in its 2020 Work Plan.

24. Marking the 20 years since the introduction of the Compliance Program, the KFTC will continuously promote the adoption and complete the operation of CP by encouraging companies that don't have a CP in place to voluntarily adopt the system through education, provision of materials and promotion and implementing policies to incentivize companies with a CP to operate it in an effective and exemplary manner.