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**Optimal Design, Organisation and Powers of Competition Authorities – Note by Korea**

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More documents related to this discussion can be found at  
<https://www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm>.

Antonio CAPOBIANCO  
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08.

**JT03531278**

## *Korea*

### **1. Introduction**

1. The Korean Competition Authority began as the Fair Trade Office within the Economic Planning Board and was established as a separate commission with the enactment of the Monopoly Regulation and Fair Trade Act in 1981. Since then, the Korea Fair Trade Commission (hereinafter the “KFTC”) has gone through continuous reorganization and adjustment of its authority and currently functions as a ministerial-level central administrative organization that administers 14 laws, including not only competition and fair trade laws but also consumer-related laws. Since its establishment, the number of employees increased tenfold and the number of laws under the jurisdiction of the KFTC, such as consumer protection, subcontract, and franchise laws, has continued to grow and evolve, experiencing unprecedentedly radical changes in terms of its size and role.

2. The KFTC is experiencing significant changes, recently undergoing a major reorganization 40 years after its establishment to completely restructure its law enforcement system. Below are the details of the KFTC’s organizational restructuring and its approach to new challenges emerging with the changes in market conditions from an organizational perspective.

### **2. Details of KFTC’s reorganization**

#### **2.1. Background or reorganization**

3. In April 2023, the KFTC undertook reorganization to redesign roles & responsibilities and relationships between divisions. As the KFTC’s roles and functions have steadily strengthened, the public and the market have higher expectations of the KFTC. As a result, there has been a growing need to improve the law enforcement system to meet global standards. In particular, as the importance of the KFTC’s role in the national economy has been further emphasized since the inauguration of the new government, there have been growing voices calling for the innovation of the KFTC’s law enforcement system. In response, the KFTC formed a Task Force on Enforcement Innovation and Organizational Reform in August 2022, and after months of consultations with internal and external experts, the KFTC prepared a reorganization plan aimed at separating investigation and policy functions, enhancing the independence of the KFTC’s decisions, and improving its law enforcement system.

#### **2.2. Separation of investigation and policy divisions**

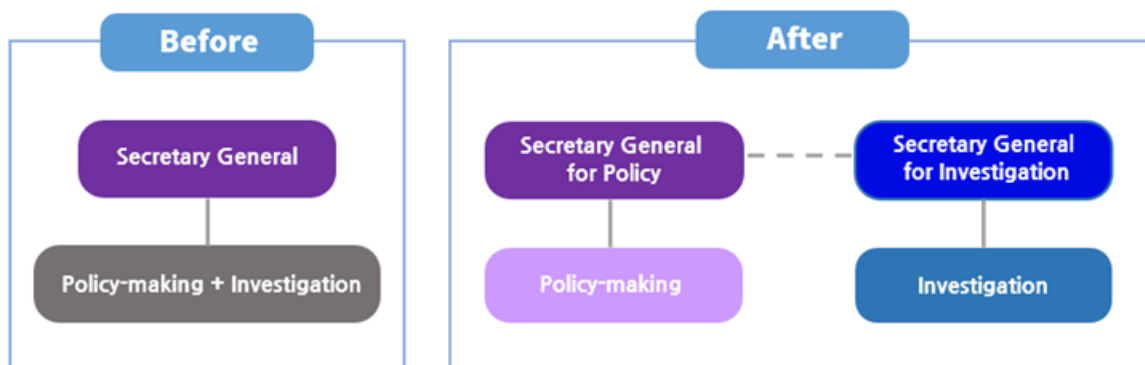
4. The KFTC is a competition authority that performs both investigation/policy-making and deliberation functions. It consists of a decision-making Committee and a Secretariat. The Secretariat has the authority to enforce various laws, such as antitrust, consumer protection, and subcontracting laws, and is responsible for policy-making like proposing laws to the Legislature. Before the organizational reform, the tasks of the divisions in the KFTC Secretariat were divided based on each law they were responsible for, which means a single division was in charge of case handling, such as investigating

legal violations and imposing remedies, and responding to policy issues, including rulemaking.

5. The policy and investigation functions are somewhat different in their nature. While it is important for the policy function to have the ability to prepare necessary policy measures in a timely manner according to changes in the external environment like market conditions, it is important for the investigation function to have the ability to ensure consistent and predictable enforcement against antitrust practices. As such, it has been pointed out that various issues could arise as a single division was responsible for both investigation and policy functions that have different characteristics. For example, since working-level employees are responsible for both policy and investigation work, it is difficult for them to focus on each task, which may reduce efficiency and expertise in policy and investigation work. In particular, policy issues that constantly arise require immediate response, so prioritizing and resolving these issues may delay case handling. Furthermore, as the Secretariat is responsible for both policy and case handling work, the scope of the authority of the Secretariat becomes excessively wide, making it difficult to take an integrated and systematic approach to case handling.

6. In response, the KFTC reorganized its organizational structure to separate policy and investigation functions dispersed in each bureau and division under the Secretariat and newly created the Secretariat for Investigation, in addition to the Secretariat, so that the Secretary-General is responsible for policy-making and the Secretary-General for Investigation is responsible for investigation.

**Figure 1. Separation of policy and investigation functions**



7. Despite the functional classification of policy and investigation, policy divisions that create regulations and investigation divisions that actually enforce them are inseparable in nature, so maintaining a close relationship is important. For example, there is a risk of undermining policy functions due to the discrepancy with market reality if on-site issues recognized by an investigation division are not shared with a policy division in a timely manner resulting from the separation of investigation and policy divisions. On the contrary, if the complaints recognized by a policy division are not properly shared with an investigation division, it may not lead to a timely ex-officio investigation, delaying intervention under investigation. To address these issues, the KFTC is working to minimize these negative effects by establishing a communication channel between the investigation and policy divisions, like holding regular investigation and policy councils, so that investigation divisions share institutional and on-site issues with policy divisions recognized during the investigation process and policy divisions cooperate with investigation divisions for the rulemaking.

### 2.3. Strengthening the separation of deliberation

8. Along with the separation of the investigation and policy divisions, the KFTC further strengthened the separation of the already divided investigation and deliberation divisions to ensure independence and fairness of deliberation. The KFTC has prepared a series of measures such as restricting personnel movement between investigation and deliberation divisions and separating the physical space. Moreover, to address concerns that examiners are given more opportunities to report to commissioners than examinees, the KFTC made institutional improvements by expanding opportunities for both examinees and examiners to report to commissioners and prohibited investigation divisions from reporting exclusively to commissioners after the agenda is set.

### 2.4. Improving the law enforcement system

9. The KFTC laid out plans to improve its law enforcement system to ensure predictability and transparency of case handling while improving expertise and accountability of investigations through organizational reform.

10. First, the KFTC revised investigation procedures and standards to enhance predictability. During on-site investigation, the KFTC now requires the specification of the transaction area, a specific type of conduct subject to investigation, and the duration of investigation when stating the alleged violation in an official notice of investigation. In addition, the KFTC introduced a formal procedure for the return of materials to provide additional opportunities for an investigated company to reexamine the relevance of submitted materials to the purpose of the investigation even if it already voluntarily submitted them during the on-site investigation.

11. Second, the KFTC improved its investigation and deliberation process to better guarantee a company's right to defense. To this end, the KFTC established a "preliminary opinion hearing process," which is a face-to-face meeting process for a respondent company and members of the case team to clarify basic facts and issues of the case in the investigation stage. In addition, two or more hearings will take place in the deliberation stage if certain criteria are met to provide the respondent company with a sufficient opportunity to make a statement.

12. Third, the KFTC created a "swift handling system by case type" in response to the need to shorten the KFTC's case handling period for swift damage relief. For linger cases or cases close to the limitation period, the KFTC created a special system to manage them by stage according to the time required for investigation, and division heads are evaluated for complying with this period. For highly contentious cases requiring swift damage relief rather than a penalty, the KFTC will work to resolve them early through alternative dispute resolution measures, such as supporting corporate compliance activities, strengthening dispute mediation, and the use of commitments.

13. Strengthening procedures and expediting case handling at the same time is not an easy task, which needs to be supported by enhanced efficiency and expertise. To this end, the KFTC is implementing customized training programs for each investigation stage to strengthen investigation capabilities in addition to the aforementioned separation of the investigation and policy divisions to improve work efficiency.

### 3. Organizational responses to other changes in market conditions

14. As mentioned above, the KFTC has been taking the following organizational measures not only to improve the overall enforcement efficiency by improving its law enforcement system but also to respond to changes in market conditions, such as globalization, the emergence of new industries, and the increased importance of technological elements, which are relatively a new phenomenon.

#### 3.1. Establishment of the International M&A Division

15. Since the establishment of the M&A Division in 1996, the KFTC has experienced significant changes with a sharp increase in market size and the number of domestic and international merger cases. In response to these changes, the KFTC separated tasks involving international merger cases from the M&A Division and created the International M&A Division in December 2022. Although the KFTC raised the merger filing thresholds three times in the past, the number of merger reviews nearly doubled from 602 in 2022 to 1,113 in 2021 and their size also grew significantly from KRW 15.3 trillion to KRW 349 trillion. In particular, the number of global merger review cases, including mergers between foreign companies, acquisitions of foreign companies by domestic companies, and acquisitions of foreign companies by domestic companies, surged from 90 in 2002 to 180 in 2021 and the scale of merger review work grew rapidly from KRW 1.3 trillion in 2002 to KRW 297 trillion in 2021.

16. In addition, the number of large-scale global mergers and mergers involving platforms and Big Tech companies reviewed by the KFTC increased and global mergers led by domestic entities in the aviation, semiconductor, and shipbuilding industries are on the rise. In the case of global merger cases, close interagency collaboration is needed on investigation, remedies, follow-up measures, and supervision. Therefore, the KFTC will continue to strengthen networks with international competition authorities by improving its organization and increasing staffing to enhance the quality of global merger reviews.

#### 3.2. Strengthening competition impact assessment and building the Competition Impact Assessment Center

17. In accordance with Article 4 of the Monopoly Regulation and Fair Trade Act, the KFTC is responsible for preventing anti-competitive regulation and conducting competition advocacy work, including establishing measures to promote competition in monopolistic markets and providing opinions on how to improve the market structure to relevant administrative agencies. As part of its competition advocacy efforts, the KFTC has been conducting competition impact assessments under Article 7 (1) of the Framework Act on Administrative Regulation and has identified dozens of issues every year and carried out projects to improve them.

18. In particular, there is a growing need to monitor anti-competitive regulations with the growing demands for new and reformed regulations due to the establishment of new technology-based markets and the transition to the low-carbon economy. In addition, securing expertise for robust competition impact assessment has become an urgent task with the advancement of markets and the complexity of regulations. As the importance of regulatory innovation has been particularly emphasized by the new administration, reforming anti-competitive regulation has been included as a key policy task. Accordingly, the KFTC established the Competition Impact Assessment Center under the Korea Fair Trade Mediation Agency in January 2023. The new specialized research center will carry out competition assessments on major regulations that were previously conducted within

the KFTC. Given the rapid pace of change in new industries, there is a greater need for timely analysis of regulatory impacts in this area. So one to three new industries will be selected each year by the Center for preemptive market analysis.

### **3.3. Establishment of the Technology Appropriation Investigation Division**

19. In addition to traditional competition law, the KFTC has investigative and policy authority over unfair trade conducts that may arise from the abuse of superior bargaining power in subcontracting relationships. Also in this area, technical aspects are emphasized in recent case handling. Particularly for technology appropriation, expertise in this area is highly required as technical judgment is needed when determining violations of law. In December 2022, the KFTC established the Technology Appropriation Investigation Division as a permanent division and increased staffing to strengthen law enforcement against technology appropriation in SMEs. The division consists of patent attorneys, lawyers, accountants, science and engineering majors, and employees dispatched from the Korea Intellectual Property Office. Furthermore, the KFTC established the Technology Examination Advisory Committee, which is composed of experts in each area (AI/bio/machinery/automobiles/chemical/electricity & electronics/SW) to strengthen expertise with external experts.

### **3.4. Cooperation with specialized research institutes**

20. In response to the rapidly increasing number of digital market cases, the KFTC has continuously worked to promote cooperation with special research institutes to improve expertise. In June 2021, the KFTC signed an MOU with Seoul National University on knowledge sharing in science and technology to strengthen cooperation on fair trade policy research, policy development in science and technology, technology consultations, staff training program development, and co-hosting of seminars and workshops. In November 2021, the KFTC signed an MOU with the Electronics and Telecommunications Research Institute on knowledge sharing in telecommunications technology and agreed to cooperate not only in policy development and technology consultations but also in advancing the information system and developing staff training programs for the KFTC.

### **3.5. Strengthening digital forensic capabilities**

21. As companies have become computerized and networked, collecting computerized data has become highly important. To proactively respond to the changing investigative environment, the KFTC established the Digital Forensics Team for the first time within the Cartel Investigation Bureau in 2010. With the promotion of the team to the Digital Investigation Analysis Division in 2017, a significant number of digital forensic experts were recruited. In recent years, the KFTC has been implementing system improvements by integrating the digital evidence management system, preventing forgery and tempering through the comparison of hash value from input and output data, and improving the function to restore to a certain point in time when problems occur so that digital evidence collected with forensics maintains its evidentiary power until the litigation stage without the risk of forgery, tempering, and loss.

## **4. Conclusion**

22. As the KFTC accumulates law enforcement cases and expands its role, the biggest challenge facing the agency is to ensure predictability and transparency in law enforcement

to meet people's expectations. At the same time, the KFTC needs to address new challenges resulting from recent changes in market conditions, such as an increase in global cases and a surge in regulations on new industries. To respond to these changes, the KFTC is striving to address these challenges by using internal resources through organizational reform while making appropriate use of external resources, including affiliated organizations and advisory groups, to make up for the insufficiencies. The KFTC expects to enhance the reliability and credibility of law enforcement through reorganization and other complementary efforts.