

Competition law fact sheet

Korea

March 2021





Main features of the law

Prohibition on cartels, abuses of dominance and anticompetitive mergers

High fines and criminal sanctions

Extraterritorial effect

Wide-ranging investigation powers



Enforcement trends

Focus on cartels and bid-rigging

Focus on digital marketplaces and big data

Focus on cartels related to public safety and health, bid-rigging in public procurement, and international cartels

Substantive provisions

Main rules

The Monopoly Regulation and Fair Trade Act (the “MRFTA”) provides for four main types of prohibitions:

- Unfair collaborative acts (Cartels and anticompetitive agreements).
- Abuses of dominance.
- Unfair trade practices.
- Mergers and acquisitions that substantially lessen competition in Korea.

The purpose of the MRFTA is to promote fair and free competition, to encourage creative enterprising activities, to protect consumers and to strive for balanced development of the national economy, by preventing any abuse of dominance by business entities and any excessive concentration of economic power, and by regulating undue collaborative acts and unfair trade practices.

Cartels and anticompetitive agreements

The Act generally prohibits “unfair collaborative acts”, i.e. any agreements between competitors that unreasonably restrain competition. These include:

- Fixing, maintaining or changing prices.
- Determining terms of trade or payment conditions for goods or services.
- Restricting production, distribution or transaction.
- Limiting or allocating geographic areas or customers.
- Restricting the establishment or extension of facilities and preventing the installation of new equipment.
- Restricting the types or specifications of traded goods or services.
- Jointly carrying out the main parts of a business, or jointly establishing a company for the same purpose.
- Determining the successful bidder or the highest bid in biddings or auctions.
- Any other practices that substantially restrict competition in a particular market by obstructing or restraining other companies’ business activities.

The Act also prohibits the same restrictive activities where they are committed by business associations.

Monopolies and abuses of dominance

Abusive conduct by a dominant business entity is prohibited under the MRFTA. The Act does not provide for a general definition for abusive conduct. Instead, the MRFTA lists six types of specified abusive behaviour:

- Price abuse (conduct unreasonably determining, maintaining or changing the price of commodities or services).
- Output control (conduct unreasonably controlling the sale of commodities or provision of services).
- Obstruction of business (conduct unreasonably interfering with the business activities of other enterprises).
- Obstruction of new entry (conduct unreasonably obstructing the participation of new competitors).
- Exclusion of competitors (conduct unreasonably excluding competitive enterprises).
- Infringement of consumer interests (conduct that might considerably harm consumer interests).

Unfair trade practices

In addition to major antitrust prohibitions, the MRFTA regulates unfair trade practices, which consists of the following eight categories.

- Unfairly refusing a transaction.
- Unfairly discriminating against a transacting party.
- Unfairly excluding competitors.
- Unfairly soliciting customers.
- Unfairly coercing customers.
- Unfairly taking advantage of one's bargaining position.
- Trading under terms and conditions which unfairly restrict business activities of a transacting party.
- Disrupting business activities of another enterprise.

Mergers and acquisitions

The MRFTA prohibits business combinations that substantially lessen competition in Korea, and provides for a merger control regime under which certain transactions must be approved by the Korea Fair Trade Commission (KFTC) if the relevant merger control thresholds are met. Transactions that may fall within the scope of the merger control rules include acquisition or ownership of 20 per cent or more of the shares of another company (15 per cent in the case of a publicly listed company); an increase in an existing shareholding of a shareholder who already owns 20 per cent (or 15 per cent in the case of a public company) or more of the shares when such an increase leads it to become the largest shareholder (even if the existing shareholding already gave rise to joint control); an interlocking

directorship; a merger, an acquisition by transfer of business (or sometimes substantial assets); and participation in the establishment of a new company or a joint venture - provided there are two or more parent companies (not affiliated to each other) subscribing for the voting shares of the new company. The Korean merger control rules do not make a distinction between full function and non-full function joint ventures and apply to both.

Sanctions

Cease-and-desist orders and remedies

The KFTC can order the parties to discontinue the practice, publicly announce the fact that the company received a corrective order by the KFTC or take other actions needed for remedies. In addition, the KFTC can order the market dominant company to reduce prices.

Administrative and criminal fines for cartels

The KFTC can impose an administrative fine up to 10 per cent of the turnover generated by the sale of relevant goods or services during the period of a violation. Criminal penalties can also be imposed by the courts. Companies can be subject to a criminal fine of up to KRW200 million (US\$177,000). In addition, individuals can be subject to either imprisonment of up to three years or a criminal fine of up to KRW200 million (US\$177,000). It should be noted that damages up to three times may be awarded for cartel conduct.

Administrative and criminal fines for abuse of dominance

Companies can be subject to administrative fines up to three per cent of the turnover generated by the sale of the relevant goods or services during the period of a violation. Companies can also be subject to a criminal fine of up to KRW200 million (US\$177,000). In addition, individuals can be subject to either imprisonment of up to three years or a criminal fine of up to KRW200 million (US\$177,000).

Administrative and criminal fines for unfair trade practices

Companies can be subject to administrative fines of up to two percent of the turnover generated by the sale of the relevant goods or services during the period of the violation. Companies can also be subject to a criminal fine of up to KRW150 million (US\$133,000). The culpable individual can be subject to either imprisonment of up to two years or a criminal fine up to KRW150 million (US\$133,000).

Extraterritorial effect

The MRFTA is also applicable to firms located outside Korea whose behaviour directly affects competition and consumers in domestic markets. The MRFTA's merger control provisions are also applicable to foreign mergers.

Enforcement regime

Public and private enforcement

Enforcement authority rests with the KFTC, a ministerial-level central administrative organization under the authority of the Prime Minister and also functions as a quasi-judicial body. The KFTC formulates and administers competition policies, and also deliberates, decides, and handles antitrust cases. The KFTC consists of a committee, the decision-making body, and a secretariat, a working body. The committee consists of nine commissioners, who deliberate and make decisions on competition and consumer protection issues. Criminal cases can be brought either by the KFTC or by the public prosecutor's office.

In addition, a person can claim damages in the district court for losses suffered from an agreement that unreasonably restricts competition or from abusive conduct.

Leniency

The KFTC has adopted program for the detection of anticompetitive agreements and cartels whereby automatic immunity from all or part of the administrative fines can be granted. The reduction for a party who comes forward and provides evidence of a cartel is as follows:

- The first party is eligible for full immunity.
- The second party is eligible for partial leniency (50 per cent reduction in administrative fines).
- Under the amnesty plus scheme, a party that does not qualify for full immunity but reports another cartel (unrelated to the initial cartel) is eligible for an additional less than 20 per cent, 30 per cent, 50 per cent or 100 per cent reduction in the administrative fines for participating in the initial reported cartel. A party that has coerced other firms to either join or remain in the cartel is excluded from such immunity.
- The first party and the second party eligible for immunity are exempt from criminal prosecution.

Investigation powers

The KFTC is granted broad administrative investigative powers, allowing it to:

- Require suspected violators and other interested parties to present documents or other materials and provide oral statements or written answers to investigators.
- Appoint expert witnesses and request them to give their opinions.

The KFTC investigators can:

- Enter the offices or other business places of suspected violators to examine books and records and other materials belonging to the suspected violators.
- Seize any documents or materials produced.

Any person who refuses, interferes with, or evades the KFTC investigation through verbal abuse, assault, or intentionally blocking or delaying access to the site is subject to a punishment by imprisonment for not more than three years or by a fine not exceeding KRW200 million (US\$177,000). On the other hand, any person who disobeys an order to submit a report, materials, or articles or submits a false one and any person who rejects, interferes with, or evades an investigation by concealing, discarding, or refusing access to, materials, or by forging or falsifying materials during an investigation is subject to a fine not exceeding KRW100 million (US\$88,000).

Recent enforcement trends

Public and private enforcement

Cartels and bid-rigging

Key activities of the KFTC have included:

- The KFTC created the information and communications technology (ICT) task force in November 2019 in order to respond effectively to abusive behaviours of dominant firms and other unfair practices in ICT sectors. As its first case, in 2020, the task force team investigated NAVER, Korea's No.1 online search platform, and imposed administrative fine for abuse of dominance and unfair trade practice.
- A total of 29 infringement decisions were adopted in 2020, including in relation to bid-rigging and international cartels, with corrective orders and surcharges amounting to KRW222 billion (around \$196 million).
- The KFTC set up plans to improve 19 restrictive regulations that can impede innovation and unnecessarily burden business activities in sectors such as food, medicine and tourism.

Year	Total fines	Number of cases	Main types of cases
2015	KRW474.4 million (around US\$420,000)	35	Cartels and bid-rigging
2016	KRW1.9 trillion (around US\$1.6 billion)	46	Cartels, bid-rigging and abuse of dominance
2017	KRW379.5 billion (around US\$336 million)	30	Cartels and bid-rigging
2018	KRW272.2 billion (around US\$240 million)	28	Cartels, bid-rigging and abuse of dominance
2019	KRW91.9 billion (around US\$80 million)	25	Cartels, bid-rigging and abuse of dominance
2020	KRW222 billion (around US\$196 million)	29	Cartels, bid-rigging and abuse of dominance

Mergers and acquisitions

The KFTC reviewed more than 850 merger cases notified in 2020, a 13 per cent increase from 766 in 2019. The KFTC imposed remedial measures on three cases that were found to have substantial competitive concerns.

Year	Number of cases	Unconditional approvals	Conditional approvals	Domestic	Foreign
2015	669	98.8%	1.2%	80%	20%
2016**	646	99.1%	0.9%	76%	24%
2017	668	99.4%	0.6%	77%	23%
2018	702	99.6%	0.4%	81%	19%
2019	766	99.3%	0.7%	78%	22%
2020	865	99.7%	0.3%	85%	15%

* In number and % of cases

** Two transactions were prohibited in 2016

Latest enforcement priorities

- Promoting innovation competition and secure dynamic efficiencies in ICT sectors: alleged abuse of superior bargaining power and abuse of dominance.
- Cartels: the KFTC recently placed importance on cartels related to public safety and health, bid-rigging in public procurement, and international cartels.
- Mergers and acquisitions: in an attempt to specify criteria for assessing the competitive effects of mergers in innovation-based industries and to effectively address the concerns of monopolisation through buying out potential competitors (so-called "killer acquisitions"), the KFTC made an amendment to its Merger Review Guidelines in February 2019 to introduced a new set of merger review standards in connection with R&D-intensive industries and those involving big data.
- On December 9, 2020, the Korean National Assembly passed the amendments to the MRFTA, under which information exchanges amongst competitors became a form of illegal conduct, the scope of application of the merger rules was expanded, the upper limit of fines for cartels, abuses of dominance and unfair trade practices were doubled, and injunctive relief from the court for unfair trade practice claims became a remedy available to a damaged party. The amended MRFTA will come into effect one-year from the date of its promulgation.
- In 2020, KFTC announced the proposal for the "Fair Intermediation Transactions on Online Platform Act," which refines the existing provisions of the MRFTA that prohibits the abuse of superior bargaining position to better accommodate the online platform industry's characteristics. This draft bill is under review of the Ministry of Government Legislation as of January 2021.

Key information

Relevant legislation

Monopoly Regulation and Fair Trade Act

Competition authority

Korea Fair Trade Commission

Korea Fair Trade Commission
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Relevant officials and contacts

Members of the Commission

- Ms Sung-Wook Joh (chairperson)
- Mr Jae-Shin Kim (vice chairperson)
- Mr Young-Ho Shin
- Mr Hyung-Bae Kim
- Mr Su-Hyun Yoon
- Mr Bong-Suk Kim
- Mr Jung-Hee Lee
- Mr Jae-Hoon Jung
- Ms Yun-Jeong Choi

Executives of the Commission

- Mr Kyu-Sung Oh (General Counsel)
- Mr Dong-Ilh Nam (Director General, Spokesperson)
- Mr Byung-Hoon Ahn (Planning and Coordination Bureau)

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