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Recent Development of Competition Laws in Korea

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1

Contents

-  **Overview of KFTC**
-  **Outline of KFTC Legislation**
-  **Recent Issues of KFTC**

2

I. Overview of KFTC



- 1. Who We Are**
- 2. What We Do**
- 3. Our Organization**

3

1. Who We Are



- ❖ **Ministerial-level central administrative agency**
- ❖ **Quasi-judiciary body**
- ❖ **Consist of a committee(the decision-making body) and a secretariat(the working body)**
- ❖ **Committee has 9 members**
 - **chair & vice-chair : recommended by the Prime Minister appointed by the President**
 - **other commissioners : recommended by the chair appointed by the President**

4

2. What We Do



A. Promoting Competition

- ◆ Reforming anti-competitive regulations which allow entry barriers and limit business activities
- ◆ Regulating M&As with anti-competitive effects
- ◆ Promoting fair competition in the market by banning abuse of market dominant positions, cartels, and various other unfair trade activities

B. Strengthening Consumers' Rights

- ◆ Protecting consumers from unfair adhesion contracts
- ◆ Helping consumers to make informed choices
- ◆ Preventing specific damage, which may occur in certain types of transactions, - i.e. installment transactions, door-to-door sales, electronic commerce, etc

5

2. What We Do



C. Securing a Competitive Environment for SMEs

- ◆ Correcting various unfair practices likely to be inflicted by large companies in subcontracting processes - i.e. payment and receipt of goods
- ◆ Correcting various unfair practices of large distribution companies and franchisers, conducted against small-and-medium-sized stores, suppliers or franchisees, in abuse of their superior trade positions

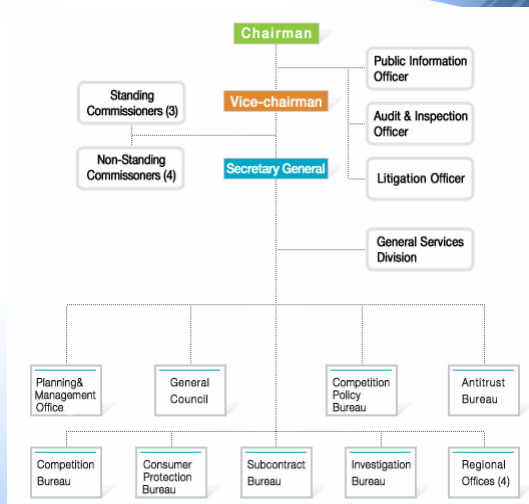
D. Restraining Concentration of Economic Power

- ◆ Banning cross-equity holding & cross-debt guarantees among affiliates of large business groups
- ◆ Controlling undue subsidizing between affiliates of large business groups
- ◆ Setting a ceiling on total amount of shareholdings in other domestic companies

6

3. Our Organization

- ❖ KFTC consists of a committee and a secretariat
- ❖ The committee has 9 members
 - Chairman
 - vice-chairman,
 - 3 standing commissioners
 - 4 non-standing commissioners (composed of lawyers and economists)
- ❖ The secretariat is headed by Secretary General, who leads 6 bureaus and 4 regional offices (Busan, Gwangju, Daejeon, Daegu)



7

II. Outline of KFTC Legislation

1. Monopoly Regulation and Fair Trade Act
2. Omnibus Cartel Repeal Act
3. Adhesion Contract Act
4. Fair Labeling and Advertising Act
5. Door-to Door Sales, etc. Act
6. Installment Transactions Act
7. Consumer Protection in Electronic Commerce, etc. Act
8. Fair Subcontract Transactions Act
9. Fair Franchise Transactions Act

8

II. Outline of KFTC Legislation



1. Monopoly Regulation and Fair Trade Act

- ❖ It is Korea's general competition law and aims to promote creative business activities and protect consumers by facilitating fair and free competition in the market
 - ◆ Encompassing all traditional issues of competition policies, i.e. anti-competitive M&As, cartels, resale price maintenance, monopolization, exclusive transactions, etc
 - ◆ Addressing unfair trade practices, undue subsidies / debt guarantees / equity investment among affiliates of large business groups
 - ◆ Giving KFTC the right to investigate into possible law violations

9

II. Outline of KFTC Legislation



2. Omnibus Cartel Repeal Act

- ◆ It abolished fee cartels in 9 certified professions, including lawyer, accountant, tax accountant, patent lawyer, architect and veterinarian
- ◆ It improved around 20 regulations (consolidated liquor price, collective contract by the Salt Association...)

3. Adhesion Contract Act

- ◆ Regulating unfair one-way contracts, written and circulated by businesses, which precludes consumers' right to choose the terms of transaction
- ◆ Mandating businesses to issue and explain contracts to consumers
- ◆ Invalidating clauses that unduly infringe on consumers' rights

10

II. Outline of KFTC Legislation



4. Fair Labeling and Advertising Act

- ◆ Aiming to provide accurate information to consumers
- ◆ Demanding false or exaggerated representations / advertisements, which may mislead consumers, should be temporarily stopped or corrected
- ◆ Requiring disclosure of all information essential to consumer decisions

5. Door-to Door Sales, etc. Act

- ◆ Mandating door-to-door sales and pyramid sales businesses to purchase consumer compensation insurance policy
- ◆ Allowing unconditional withdrawal of contract within 14 days of purchase

11

II. Outline of KFTC Legislation



6. Installment Transactions Act

- ◆ Recognizing consumers' right to withdraw contracts within 7 days of purchase
- ◆ Mandating businesses to issue notice in advance of 14 days or more when contracts are terminated due to consumer's default

7. Consumer Protection in Electronic Commerce, etc. Act

- ◆ Establishment of safety measures or mechanisms for preventing consumer error while using electronic devices
- ◆ Protection of consumer information from possible abuse
- ◆ Adoption of unconditional contract withdrawal period (7 days)

12

II. Outline of KFTC Legislation

8. Fair Subcontract Transactions Act

- ◆ **Creating competitive environment for small-and-medium-sized subcontractors**
- ◆ **Prohibiting undue reduction of payment on subcontract, undue refusal / return of goods by large companies**
- ◆ **Mandating subcontract payments to be made within 60 days**

9. Fair Franchise Transactions Act

- ◆ **Banning of various unfair transactions in franchise operations and defining of basic rules between franchisers and franchisees**
- ◆ **Mandating provision / updating / correction of information by franchisers**
- ◆ **Obligating parties to return franchise fees under certain conditions**

13

III. Recent Issues of KFTC

- 1. Promotion of Market Competition**
- 2. Consumer Policies to Promote Competition**
- 3. Promotion of Fair Transaction Between Large Companies and SMEs**
- 4. Improvement of Transparency in Large Business Conglomerates**
- 5. Encouragement of Self-monitoring and Voluntary Compliance**

14

1. Promotion of Market Competition



A. Increase of surcharges against cartels

- ◆ **The revised Act** raised the *ceiling on surcharges against cartels* to 10% from 5% of related sales

* Monopoly Regulation and Fair Trade Act (MRFTA) were revised and entered into force on April 1, 2005

B. Improvement of M&A Review System

- ◆ In case of share acquisition of large companies with more than 2 trillion won in assets or sales, the merging parties are required to make *pre-notification* instead of post-notification
- ◆ *Review period* can be extended by up to 90 days from 60 days
- ◆ Companies of small-scale M&As will be exempted from notification requirement

15

2. Consumer Policies to Promote Competition



A. Increased Information Given to Consumers

- ◆ KFTC will collect and *provide information* on the labeling and advertising regulations that are scattered throughout 70 laws
- ◆ KFTC also plans to establish the *Consumer Gateway*, a one-stop service website where consumers can acquire the information they need

B. Immediate Remedy for Consumer Damage

- ◆ KFTC will work for early establishment of the *payment escrow system*, which was introduced to prevent possible fraud in electronic commerce
- ◆ KFTC plans to encourage businesses to adopt their *Consumer Complaint Management System* in an effort to immediately relieve consumer damage

16

3. Promotion of Fair Transaction Between Large Companies and SMEs



A. Expansion of Application Scope of the Act

- ◆ The amendment of the Fair Subcontract Transaction Act on March 2, 2005, expanded the application scope to include the *service sector* (previously only manufacturing and construction industries had been included)

B. Measures to strengthen Bargaining Power of SMEs

- ◆ KFTC will encourage the private sector to set a *contract model* for helping SMEs have equal bargaining power in negotiations with large enterprises
- ◆ To protect promising SMEs from being deprived of their new technology by large purchasing companies, the *technological information escrow mechanism* will be introduced

17

4. Improvement of Transparency in Large Business Conglomerates



- ❖ In order to improve transparency and accountability of large business conglomerates, or chaebols, *important information* on corporate ownership and governance structure of unlisted companies under chaebols is required to be *disclosed*
- ❖ To prevent adverse effects of excessive circular shareholdings, the framework of restriction on *total amount of shareholdings in other domestic companies* will remain
 - However, a *graduation system* was newly implemented from April 1 that allows companies meeting graduation standards to be exempted from the regulation

18

5. Encouragement of Self-monitoring and Voluntary Compliance



A. Introduction of the Reward System for informants

- ❖ It is difficult to detect evidence on cartel behavior, unfair practices in newspaper selling and large-scale retailers' transaction
 - To increase detection and enhance deterrence, the *reward system* was introduced for those who report the illegal transactions

B. Voluntary Prevention of Law Violations

- ❖ KFTC is exploring ways to incorporate the *compliance program* as a core factor into corporate culture or business management

19



Thank you

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20