



**Asia-Pacific
Economic Cooperation**

2009/SOM1/CPLG/015

Agenda Item: 7

Recent Developments in Korea's Competition Policy and Enforcement Cases

Purpose: Information
Submitted by: Korea



**Competition Policy and Law Group Meeting
Singapore
21-22 February 2009**

Recent Developments in Korea's Competition Policy & Enforcement Cases

22. 02. 2009.

Jung Won Song

Director of International Division

Korea Fair Trade Commission

Contents

I

Recent Developments in
Korea's Competition Policy

II

Major Enforcement Cases

I. Recent Developments in Competition Policy

- Improvement of Merger Review System
- Enhancing Anti-cartel Enforcement & Improvement of Cartel Regulations
- Efforts to Advance Competition Laws

3

1. Improvement of Merger Review System

● Changes in criteria for merger notification

- Asset/turnover threshold : 100b → 200b (Korean won)
- Local nexus threshold in case of a merger between foreign firms: 3b → 20b (Korean won)

● Extension of merger notification time limit

- Within 30 days after the date of the merger contract
→ Any time before the merger is completed (underway)

4

1. Improvement of Merger Review System

Improvement of merger review

- $CR_k \rightarrow$ HHI (As a measure of market concentration)
- Adjustment of safe harbor

☞ In case of a horizontal merger

✓ When the post-merger combined market share of top three companies is less than 50% and the merging company's market share is less than 25%

✓ When the post-merger company ranks fourth or below

✓ When the post-merger HHI is less than 1,200

✓ When the post-merger HHI is 1,200 or more but less than 2,500 and the increment is less than 250

✓ When the post-merger HHI is 2,500 or more and the increment is less than 150

1. Improvement of Merger Review System

- Removal of the market concentration requirement \rightarrow

Considering related factors including degree of market concentration, level of foreign competition and possibility of new entry & cartel behaviors

◀ Recent statistics on KFTC's merger review ▶

Type	00	01	02	03	04	05	06	07	08.10
No. of cases	703	644	602	589	749	658	744	857	427
Violation of merger notification	42	44	44	36	29	16	53	50	22
No. of remedies	4	1	2	7	6	3	4	3	4

2. Enhancing Anti-cartel Enforcement & Improvement of Cartel Regulations

Enhancing anti-cartel enforcement

- Establishment of new Divisions

- Cartel Bureau (05), International Cartel Division (08)

- Recent anti-cartel monitoring & enforcement is focused on sectors that are 1) closely related to consumer's everyday life and have a 2) big influence on industrial competitiveness

- Cartel enforcement cases (sector 1):

Bank service fee cartel (April 08, 13.9b won surcharge),
 Insurance Premium cartel (August 08, 26.5b won surcharge),
 Movie ticket price cartel (April 08, 6.9b won surcharge),
 LPG price Cartel (June 08, 400m won surcharge), etc.

7

2. Enhancing Anti-cartel Enforcement & Improvement of Cartel Regulations

- Cartel enforcement cases (Sector 2) :

Petrochemical products price cartel (July 08, 12.7b won surcharge),
 Elevator sales price cartel (September, 47.6b won surcharge), etc.

◀Recent statistics on cartel enforcement▶

Year	No. of remedies	Amount of surcharge(US\$ 1,000)
2005	28	249,326 million won(180,671)
2006	31	110,548 million won(79,6450)
2007	22	307,043 million won(222,495)
2008	45	191,080 million won(138,464)
Total	126	875,997 million won(621,275)

8

2. Enhancing Anti-cartel Enforcement & Improvement of Cartel Regulations

● Improvement of Leniency Program (Nov. 2007)

- **More incentives for second applicant's**
 - The surcharge reduction rate : from 30% to 50%
- **Stronger protection of confidential information ; Disclosure can take place only when**
 - Applicant(s) agrees to the disclosure
 - In case of filing a suit or legal proceedings(Nov. 2007)
- **Excluding cartel coercers from leniency benefits**

9

2. Enhancing Anti-cartel Enforcement & Improvement of Cartel Regulations

● Bid Rigging Indicator Analysis System(BRIAS)

- **BRIAS refers to KTFC's system which electronically receives bidding information from public organizations, and automatically carries out quantitative analysis of the bidding information → Detecting bid rigging.**
 - On January 19, 2006, BRIAS was launched to receive bidding information from the Korea Public Procurement Service → BRIAS began to collect bidding information from a total of 322 public agencies(Jan. 2009)
 - Recently, through BRIAS, KFTC ferreted out a bid-rigging involving six local large construction companies over the Seoul subway Line 7 construction project → A total of 22.1 billion won in surcharge (July, 2007)

10

2. Enhancing Anti-cartel Enforcement & Improvement of Cartel Regulations

● Enhancing international cartel investigation capacity

- **Launching International Cartel Division (March, 2008)**
 - Building a foundation for accumulating know-how and legal knowledge in handling international cases
- **The Division ferreted out an international cartel involving four copy paper manufacturing firms (Indonesia, Thailand, Singapore, and China) → A total of 4 billion won (US\$ 2.6M) in surcharge (Dec. 2008)**
- **KTFC continues to improve the criteria for jurisdictions in handling international cartels and the investigation procedure**

11

3. Efforts To Advance Competition Laws

- **Efforts to advance Korean competition laws and enforcement decrees reflecting economic environment changes and global standards are underway**
 - “A Task Force to Advance Competition Laws and Regulations” was launched(5 Teams and 14 Breakout Groups)
 - Between Apr. and Nov. of 2008, a total 108 Breakout session meetings and 3 consultation meetings were held
 - 65 laws and regulations are under review

[Examples]

Rearrangement of unilateral conduct regulation system, Easing criteria to presume a dominant firm, and expansion of the scope of safe harbor for unilateral conduct, etc.

12

II. Major Enforcement Cases of Korea

- Import Car Dealers' Cartel
- DC Chemical's Merger
- Intel's Exclusion of Competitor
- Ms's Abuse of Dominant Position

13

1. Import Car Dealers' Cartel (Oct 15, 2008)

Seven BMW dealers and nine Lexus dealers agreed respectively to market allocation (sales area) and the range of price discounts

Supposing that the car price is 100m won (about \$77,000), consumer price is estimated to have been raised illegally by some 3.7m won (\$ 2,800) and 1.6 m won (\$ 1,230) per unit respectively

Corrective Order & Surcharge
14.3 b won,
7.4b won,
respectively
(US \$ 11, \$ 5.6 M)

14

2. DC Chemical's Merger With Columbia Chemical Korea (Aug 7, 2006)

● Findings

DC Chemical acquired 100% of Columbia Chemicals' shares in Jan. 2006, merging with CCK, its affiliate as a result

● Market Definition

Carbon black market
(for domestic rubber)

15

2. DC Chemical's Merger With Columbia Chemical Korea (Aug 7, 2006)

● Determining of Anti-competitiveness

- ✓ No. of players: 3 → 2
- ✓ Combined share of post-merger firm: 64.2%
- ✓ High probability of cartel activity (similar production and sales conditions)
- ✓ Low probability of new entry to the market
- ✓ Imports' market share : less than 1%

● Remedies

DC Chemical was ordered to sell all of its share in CCK(85%) within a year or to sell one of its carbon black plants to a third party

16

3. Intel's exclusion of competitor (June 4, 2008)

- Findings
 - Intel offered rebates to PC manufacturers (Samsung, Sambo) conditioned upon their suspending purchase of AMD's CPUs
- Grounds for Anti-competitiveness
 - Internal documents and sales staff's e-mails and statement show that real objective of the rebates lies in exclusion of AMD
 - Rebate type : backend way as surveillance of suspending purchase of AMD's CPU
 - Rebate effect : AMD's CPUs, became more costly by 58.64~288 dollars due to the rebates
 - A substantial cause-and-effect relationship between Intel's rebates and the decrease in AMD's market share
- Sanction
 - A corrective order and about 26 billion won in surcharge (US\$ 26M)¹⁷

4. MS's abuse of Market Dominant Position (Feb 24, 2006)

- Case Summary
 - Daum Communications(Korea's leading Internet portal) filed a complaint against Microsoft for bundling its PC messenger with its PC OS (Sep. 2001)
 - Real Networks filed a complaint against MS for tying its WMP with its PC OS(Oct. 2004)
 - The KFTC set up a Task Force for intensive investigation and in-depth economic analysis
- Remedies and Compliance Status
 - KFTC imposed a corrective order on MS to unbundle its programs and to provide download linkages of competitors products and a surcharge of 32.5 billion won (about US\$ 30M) (February 24,¹⁸ 2006)

Thank You !

KOREA FAIR TRADE COMMISSION