

January 2022

## Summary of KFTC's Enforcement Plan for 2022

### 1. Promote Competition and Protect Consumer Rights and Interests in the Digital Economy

As with last year, the KFTC is expected to focus its attention on strengthening law enforcement and making systematic improvements to counteract unfair trade practices in the digital economy. In particular, the KFTC announced its plan to monitor acts that impede incentives for innovation in the digital economy, as well as the emergence of new types of digital content transactions and their potential impact on competition.

Tasks	Key Details
<b>Monitoring unfair trade practices that impede innovation incentives in the digital economy</b>	<ul style="list-style-type: none"><li>▪ Heightened monitoring of abuse of dominance, such as platform operators' self-preferencing in the <b>mobility and online shopping sectors</b>, and app market operators' practice of preventing multi-homing</li><li>▪ Strengthen surveillance of unfair trade practices related to intellectual property rights, such as demanding transfer of <b>secondary copyrights in webtoons and web novels</b>, and foreclosing competitors in the music copyright sector</li><li>▪ Monitoring exclusionary conduct in the <b>semiconductor market</b> in the form of forcing long-term contracts</li></ul>
<b>Strengthen monitoring of new online platforms</b>	<ul style="list-style-type: none"><li>▪ Examine whether consumer protection measures, such as provision of product/service information and allowing withdrawal of subscription, are properly implemented in the context of newly-emerging digital content transactions related to <b>metaverse, non-fungible tokens</b>, etc.</li></ul>

<b>Creating a transaction environment that guarantees the rights and interests of consumers of digital subscription services</b>	<ul style="list-style-type: none"> <li>Identify issues in <b>digital subscription services</b>, such as over-the-top and music services, including imposition of unreasonably burdensome conditions or cancellation fees for termination of service, and develop measures for improvement</li> </ul>
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In addition, the KFTC is expected to focus on establishing the regulatory framework for the digital fair economy by:

- **Continuing to promote the enactment of the "Online Platform Act" and comprehensive amendment of the "E-Commerce Act";**
- **Enacting guidelines** that specify the framework for market definition and evaluating market dominance to reflect the characteristics of **platforms** and set forth representative types of anti-competitive conduct (e.g., self-preferencing, preventing multi-homing, most favored nation clause, and tying);
- Supplementing its Merger Review Guidelines to facilitate closer monitoring of M&A transactions that may result in concentration of market power to platform operators; and
- Closely monitoring regulatory developments in other jurisdictions relating to monopolistic behaviors by big-tech companies and actively participating in related discussions.

Other agenda of the KFTC include:

- Facilitating innovation in competitive markets by (i) actively responding to new issues in industries, such as e-commerce, software, and life sciences, and (ii) conducting a speedy and thorough review of M&As in such industries; and
- Establishing a system that guarantees consumer rights and interests by (i) amending the standard terms and conditions for online shopping and game industries to require online business operators to protect not only subscription information of consumers, but also personal information that is automatically collected after subscription, and (ii) revise the standards for consumer dispute resolution for digital/ICT products, such as the retention period of electric vehicle battery parts and compensation standards for mobile (5G)/high-speed Internet service outages.

## 2. Create an Inclusive Transactional Environment between SMEs and Large Conglomerates

To eliminate unfair trade practices that take advantage of the imbalance of power between SMEs and large conglomerates, the KFTC announced its plan to (i) monitor subcontracting transactions in the automobile sector and strengthen its surveillance of the chemical sector in which exclusive transactions have been more prevalent, (ii) inspect unfair trade practices in online sales, outlets, and shopping malls, and (iii) monitor unfair trade practices in supplier-distributor transactions in the medical device, apparel, and automobile sales sectors. In

addition, the KFTC plans to expand the dispute mediation role of local governments to the subcontracting and wholesale/retail sales sectors.

The KFTC's core tasks in the subcontracting, distributor, franchise, and wholesale/retail sales sectors are as follows:

Classification	Key Tasks
<b>Subcontracting</b>	<ul style="list-style-type: none"> <li>▪ Prepare detailed procedures for public disclosure of payment terms to first-tier subcontractors of conglomerate groups, and method/procedures for negotiating subcontract price adjustments by the Korea Federation of SMEs</li> <li>▪ Increase monitoring of unfair trade practices, by <b>surveying subcontracting transactions in the automobile industry</b>, management interference and unfair payment decisions in the <b>chemical industry</b> where exclusive transactions are frequent, and outstanding payments in the <b>construction industry</b></li> <li>▪ Implement and distribute a standard confidentiality agreement and establish an "anonymous reporting center for technology misappropriation" to increase surveillance of technology misappropriation</li> </ul>
<b>Distributor</b>	<ul style="list-style-type: none"> <li>▪ <b>Expand and reorganize</b> the industry-specific fact-finding survey to a <b>fact-finding survey of all industries</b></li> <li>▪ Increase monitoring of unfair trade practices in the <b>medical device, apparel, and automobile sales sectors</b> <ul style="list-style-type: none"> <li>– Medical Device: coercion to provide groundless economic benefits</li> <li>– Apparel: unilateral transfer of various necessary expenses, such as transportation costs</li> <li>– Automobile sales: interference with dealer's business activities by, for example, restricting advertising media</li> </ul> </li> </ul>
<b>Franchise</b>	<ul style="list-style-type: none"> <li>▪ Amend the standard franchise agreement to expand the prohibition on forced cash payments and protect sales territories to account for both offline and online transactions</li> <li>▪ Extend the application of "Guidelines for Stable Contract Renewal of Long-Term Stores" which has been introduced to certain sectors, including convenience stores, to the restaurant industry</li> <li>▪ Improve the registration and disclosure process for franchise disclosure statements</li> <li>▪ Stipulate the <b>proportion of franchisees that the franchisor must obtain prior consent from</b> for any advertisement/promotional event where the franchisee bears the cost</li> <li>▪ <b>Inspect the provision of false or exaggerated information, imposition of disadvantages for conducting collective bargaining-like activities,</b></li> </ul>

	<b>etc.</b> and issue a warning on frequent types of unfair acts to prevent harm
<b>Wholesale/Retail Sales</b>	<ul style="list-style-type: none"> <li>Amend the standard transaction agreement for online shopping malls</li> <li>Monitor frequent unfair trade practices in the changed wholesale/retail environment, such as <b>online sellers'</b> demand for exclusive transactions, unfair receipt of sales incentives, and unfair transfer of promotional expenses</li> </ul>

### 3. Respond to Unfair Trade Practices and Consumer Harm during the Phased Daily Recovery from COVID-19 Process

The KFTC set the following initiatives to respond in a timely manner to unfair trade practices in the health and hygiene sectors, where demand is expected to increase while recovering to daily life from the COVID-19 pandemic. In particular, the KFTC is expected to tighten its surveillance of major platform operators, such as online travel agencies ("OTAs") and hotel booking apps, and unfair trade practices against healthcare workers.

Task	Key Details
<b>Preemptive response to unfair trade practices in sectors where demand is expected to increase as Korea recovers from the COVID-19 pandemic</b>	<ul style="list-style-type: none"> <li>Strengthen monitoring of unfair trade practices by major platform operators, such as <b>OTAs and hotel booking apps</b>, against small and medium-sized accommodations and travel businesses</li> </ul>
<b>Prevent health-related unfair trade practices and infringement of consumer interests by taking advantage of the pandemic</b>	<ul style="list-style-type: none"> <li>Inspect unfair trade practices, such as <b>provision of illegal kickbacks to healthcare professionals</b></li> <li>Enact and enforce a fair competition code to prevent unfair solicitation of customers for health functional foods</li> <li>Provide information to consumers by expanding review of in-demand hygiene and health-related products</li> <li>Conduct survey on the status of products that have not been verified for safety, such as products that claim to have anti-virus effects</li> </ul>

### 4. Promptly Respond to Unfair Trade Practices and Provide Damage Relief

Lastly, the KFTC plans to operate three "Case Handling Improvement Task Forces" to improve the case handling procedure and prepare measures to promote alternative dispute resolution, such as the adoption of an appraisal process for disputes over subcontracting fees to promptly resolve disputes and provide damage relief. In addition, the civil remedies introduced under the Monopoly Regulation and Fair Trade Law (the "FTL") and the Fair Transactions in Subcontracting Act, such as the court's order to submit materials, will be extended to the three

major distribution-related laws.

## 5. Implications

As with last year, the KFTC's 2022 Plan continues to stress the establishment of a fair trade regime in the digital economy sector by heightened monitoring of platform operators and institutionalizing the relevant regulations. Given that the COVID-19 pandemic has accelerated the digital transformation of Korean society, we expect the KFTC to maintain this policy stance for the time being. In addition, as the sweeping amendment to the FTL began to take effect at the end of 2021, special attention should be paid to the KFTC's enforcement of the newly enacted provisions under the FTL, such as classifying information exchange as a new type of illegal collusive conduct, doubling the maximum percentage of revenues that can serve as the basis of administrative fines, and an individual's right to directly seek injunctive relief against unfair trade practices.

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