

August 2022

## Korea Fair Trade Commission's Annual Report to the President Emphasizes Due Process, Free Market Competition and Protection of Small and Medium-sized Enterprises and Consumers

### 1. Due Process in Competition Law Enforcement

The Korea Fair Trade Commission (the "KFTC") emphasized that it will enhance procedural due process in competition law enforcement as the first of its five central tasks for next year. For this purpose, the KFTC plans to increase predictability and transparency in its investigation and case handling process and provide swift and effective relief for damages through efficient law enforcement.

- **Enhance procedural transparency and strengthen procedural rights in line with global standards**

The KFTC plans to strengthen procedural rights at all stages of its investigation and deliberation process.

First, during the initial investigation stage, the KFTC will more clearly inform the companies of the specific subject and scope of investigation, and create a new process for filing objections during the investigation (e.g., regarding the scope of materials that should be submitted). The KFTC also plans to provide companies with opportunities to formally submit opinions similar to the 'state of play' meetings in the EU.

During the deliberation stage, the KFTC will more actively hold multiple hearings, which is currently a matter decided at the discretion of the Commissioners, by, in principle, making it

mandatory to hold more than one hearing upon the respondent company's request in a significant case.

Further, if the KFTC decides not to refer a case to the Prosecutors' Office for a criminal investigation, the KFTC will specify in its written decision the reasons for excluding a criminal referral.

In addition, the KFTC plans to gather feedback from the interested parties regarding the new process that will allow respondents to file objections with the KFTC regarding the agency's case handling. The new process is expected to address the difficulties respondent companies have been facing in cooperating with the KFTC's investigation in which they are without any means to formally raise their concerns or disagreements regarding the scope of the KFTC's requests during the investigation.

- **Introduce more objective and fair case examination criteria**

The KFTC will further refine the criteria for identifying the types of unfair support and misuse of company assets for private gains that will be exempt from the regulation under the Monopoly Regulation and Fair Trade Law ("FTL"), and prepare review guidelines for online platforms, which take into account their dynamic efficiency. In the process, the KFTC will try to reflect the market realities to the greatest extent possible based on the feedback from the interested parties and experts.

- **Prioritize case handling for a more efficient process**

The KFTC plans to promote voluntary dispute resolution within the private sector by taking active measures to prevent legal violation and promote dispute mediation, and to allocate more of its resources on providing swift relief from antitrust damages than on imposing sanctions against legal violations.

For this purpose, the KFTC plans to streamline its case handling by, for example, (i) transferring relatively minor violations in franchise or distributorship transactions to local governments, (ii) conducting internal review of long-pending investigations, (iii) placing a real-time case status board at the KFTC to allow closer monitoring of pending investigations and proceedings, and (iv) setting up separate case teams dedicated to handling large-scale cases involving complex legal issues.

## **2. Promotion of Free Market Competition**

To promote innovation in the private sector, the KFTC plans to reform unnecessary regulations and support business restructuring in response to the emerging digital economy.

- **Reform/abolish regulations that discourage market entry or restrict business activities**

The KFTC's regulatory reform will go beyond merely addressing the difficulties of market participants to promoting innovative competition in the market. For example, the KFTC will promote competition in the market by abolishing regulations that have prevented new market entry or restricted business activities, such as by easing the bidding requirements for group catering services for public institutions and revising the territorial restrictions on car-sharing service providers.

- **Support business restructuring by expediting merger reviews and guarantee of autonomy**

The KFTC plans to expand the merger review exemptions and the eligibility for the fast-track review process to include establishment of PEFs and other entities engaged in pure investment activities, and financial investments in venture companies. In addition, the KFTC will give the parties an opportunity to formally propose their own remedy package to the KFTC. The introduction of the new remedy proposal system is expected to enable the KFTC to conduct its merger review more effectively as it would allow the KFTC to better consider the unique circumstances of the parties and the relevant industry. The KFTC also expects that the new remedy proposal system would allow more consistency in remedies in global mergers.

- **Improve regulatory system to ease the burden on large business conglomerates**

The KFTC will improve the system for designating large business groups so as to reflect the changed regulatory policies under the Yoon administration. For example, a proposed amendment to the Enforcement Decree of the FTL has already been announced. This amendment seeks to narrow the scope of individuals who will be regarded as 'related persons' of the business group owner.

### **3. Eradication of Impediments to Market Competition**

The KFTC plans to impose strict sanctions against violations that create barriers to entry and fundamentally undermine fair competition.

- **Regulate abuse of dominance in technology industries**

The KFTC plans to prevent companies in key areas of the digital economy (e.g., semiconductor and mobile industries) from foreclosing competitors from entering the market and interfering with their business activities.

In particular, the KFTC identified the following as major examples of abuse of dominance in the technology sector: (i) exclusion of competing app markets from the mobile ecosystem, (ii) abuse of standard essential patents, and (iii) coercion to sign long-term contracts in the semiconductor sector.

- **More aggressive law enforcement against cartels**

Citing recent cartel cases in the ice cream, poultry, and steel bars industries, the KFTC stated that it will continue to focus its cartel monitoring efforts on areas that are closely related to the daily lives of the public and helping industries remain competitive in the market.

In addition, the KFTC will also look into existing systems and practices that induce bid-rigging by preventing project owners from interfering in public bids (e.g., requesting companies to participate as straw bidders) and improving the private bidding system.

- **Strengthen monitoring of transactions among related parties involving misuse of company assets for private gains and provision of undue support**

The KFTC will conduct a focused inspection on companies funneling business opportunities to their affiliates for the purpose of providing support unrelated to efficiency. However, considering the surge in the number of companies meeting the statutory thresholds for being subject to the said regulation (from 265 in May 2021 to 835 in May 2022), the KFTC first plans to provide training for companies that have been newly included in the KFTC's watch list on how to avoid violating the FTL.

- **Introduce stricter and more objective standards for exercising the KFTC's exclusive right to make criminal referrals against FTL violations**

The KFTC reiterated its principle that it will actively exercise its exclusive right to make criminal referrals against serious FTL violations, especially those that substantially undermine fair market competition. In this regard, the KFTC plans to amend the current Criminal Referral Guidelines to introduce more objective criteria for exercising its criminal referral authority in reference to past indictments and court precedents.

At the same time, in order to enhance transparency and predictability, the KFTC will be looking into setting a deadline for other government agencies in requesting the KFTC to make criminal referrals.

#### **4. Stronger Foundation for Fair Transactions Involving Small and Medium-sized Enterprises**

The KFTC plans to guarantee small-to-medium sized enterprises ("SMEs") fair compensation

for their innovative efforts and eliminate unfair trade practices attributable to imbalance of bargaining power.

- **Foster an environment for fair transactions that ensure timely payment of fair price for products and services**

The KFTC plans to utilize all available enforcement measures, such as market surveys and investigations, to detect and sanction possible violations of the relevant laws.

Further, the KFTC will be promoting the voluntary adoption of supply contracts that contain variable supply price arrangements (i.e., arrangements in which supply price can be adjusted during the term of the contract in response to changes in the cost of production) by providing incentives (e.g., reducing penalty points for FTL violations if a company adopted a variable supply price-based contract) and sharing best practices. The KFTC will consider whether to turn this into an enforceable statutory obligation depending on how the market reacts to the voluntary arrangement.

- **Prevent misappropriation of SMEs' technologies**

The KFTC plans to prioritize elimination of the incentives for misappropriating SMEs' technologies. For this purpose, the KFTC plans to (i) take more proactive measures to detect SME technology misappropriation, including operation of a hotline in cooperation with local governments and other organizations and increasing the whistleblower reward, (ii) more frequently conduct ex-officio investigations by expanding the organization and personnel, and (iii) impose heavier sanctions against technology misappropriation by increasing the maximum administrative fine amount.

In addition, the KFTC plans to support efforts to increase punitive damages and introduce standards for calculating damages in civil lawsuits, introduce an appraisal system in the mediation process, and allow mediation even after the corrective orders have been imposed and fully complied with in order to ensure effective relief.

- **Promote innovative growth and fair transactions in the platform industry through self-regulation**

The KFTC plans to develop a detailed self-regulatory framework for online platforms based on close coordination with a private-led social opinion gathering body. This framework will include the establishment of a self-regulated dispute mediation organization and preparation of model agreements and terms and conditions for self-regulation.

In addition, the KFTC will support discussions on abuse of superior bargaining position and consumer protection issues in the key platform industry sectors, such as food delivery and open market (e.g., excessive fees, lack of transparency in search exposure criteria, distribution of counterfeit products, and manipulation of consumer reviews), as well as

providing incentives (e.g., granting additional points in the compliance program evaluation) to ensure effectiveness of self-regulation.

- **Regulate unfair practices against small business owners and suppliers that are based on imbalance in bargaining power**

The KFTC plans to focus on monitoring abuse of superior bargaining position by franchisors, large retailers, and distributors' headquarters that engage in transactions with small business owners and suppliers. The KFTC will continue to regulate unfair trade practices in the online distribution sector to prevent interferences with the small business owners' and suppliers' operation of their respective businesses, including asking suppliers to raise their supply price to competing online shopping malls.

## 5. Establishment of Consumer-oriented Transaction Practices

The KFTC plans to take regulatory measures to prevent damages attributable to new types of digital transactions and eliminate blind spots in consumer safety.

- **Conduct focused inspection on deceptive business practices in the digital platform sector**

The KFTC will strengthen monitoring of deceptive acts, such as deceptive advertising on social media, false testimonials and use of dark patterns, and correct unfair trade practices in highly trending markets involving younger consumers (e.g., game items and pre-owned luxury goods).

In this regard, the KFTC is expected to strengthen enforcement of relevant laws and regulations on consumer protection, such as the Fair Labeling and Advertising Act, the Regulation of Standardized Contracts Act, and the Consumer Protection in E-Commerce Transactions Act.

- **Create a safe and reliable environment for consumers**

The KFTC plans to strengthen safeguards for domestic consumers in directly making overseas purchases, such as blocking distribution of hazardous products and mediation of international disputes. The KFTC also plans to enact the Framework Act on Consumer Safety to establish a government-wide consumer safety policy for the purpose of eliminating blind spots in relevant trades and establishing an expedited process for addressing consumer protection issues.

- **Prevent consumer harm in markets directly related to public welfare**

The KFTC will correct unfair terms and conditions and prepare or amend model contracts for lifestyle and leisure products and services (e.g., laundromats, golf courses, food delivery apps, open markets, software, and airline mileage) and take enforcement actions against exaggerated or deceptive advertisements of new technologies and services (e.g., electric vehicles and 5G networks).

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