

January 2023

# Summary of KFTC's Enforcement Plan for 2023

## 1. Promote Innovation in the Digital Market by Fostering Competition

As part of its plan to tackle issues of **abuse of dominance and structural reform** in the **digital market sector**, the KFTC announced the following as the key areas of inspection.

Tasks	Key Details
<b>Monitoring abuse of dominance practices that impede innovative competition</b>	<ul style="list-style-type: none"> <li>Heightened monitoring of practices that prevent competitors from entering the market or interfere with business activities in digital economy-based industries, such as <b>semi-conductor and app markets</b></li> <li>Prevent unfair transfer of control through self-preferencing and interference with the business of competing platforms in the platform industry, such as <b>mobility and open markets</b></li> </ul>
<b>Closely reviewing M&amp;As that impede dynamic innovation</b>	<ul style="list-style-type: none"> <li>Conduct balanced reviews of <b>M&amp;As involving Industry 4.0</b>, such as <b>Games and Cloud</b>, considering their ripple effects on industry and consumer welfare</li> <li>Improve review standards and supplement the reporting criteria for a thorough review of <b>big-tech company M&amp;As</b> that are likely to expand its market dominance</li> </ul>
<b>Establishing an effective regulatory regime against abuse of dominance by big-tech companies</b>	<ul style="list-style-type: none"> <li>Strengthen international cooperation to prevent global big-tech companies' monopolistic behavior and discrimination of the Korean market</li> <li>Review the need for legislative reform to supplement the types of abuse of dominance unique to platforms and devise effective corrective measures</li> </ul>

In addition, the KFTC announced that the following three sectors will be selected as subjects of intense surveillance in order to combat collusive conducts that violate the principle of

competition: (a) **daily lives items** (energy, household goods, telecommunications equipment, etc.), (b) **intermediate materials** (raw and subsidiary materials in the construction sector, industrial parts, materials, and equipment, etc.), and (c) **platforms** (interference with business activities of existing business associations). With respect to content, leisure, and health industries, it is expected that the KFTC will also monitor and examine unfair practices and trade practices.

Sectors	Details
<b>Content</b>	<ul style="list-style-type: none"> <li>• <b>Strengthen surveillance of unfair practices</b>, such as (i) coercion to provide right to create secondary works in the web novel industry, (ii) interference with entry of new businesses into the music copyright market, and (iii) unfair customer solicitation through social media</li> <li>• <b>Inspect transactional structures, unfair trade practices</b>, etc. by conducting a survey of the <b>OTT market</b></li> <li>• Investigate <b>business practices between agencies and celebrities</b>, and <b>monitor for coercive contracts that are unfair</b></li> </ul>
<b>Leisure/Health</b>	<ul style="list-style-type: none"> <li>• Inspect unfair practices in <b>lodging apps</b>, such as setting disadvantageous transaction terms for accommodation businesses</li> <li>• Focus on <b>provision of illegal rebates</b> in the pharmaceutical and medical device markets</li> </ul>

In addition, regulatory reforms will be underway to promote competition by (i) making systematic improvements to foster competition in markets where monopolies have persisted for a long time, such as the **auto parts repair market and mobile communication device distribution market**, (ii) implementing deregulation, such as adding start-up accelerators to corporate venture capitals that non-financial holding companies may hold to enhance the competitiveness of **SMEs**, and expanding the grace period to incorporate into large conglomerate groups for industry-academia-research cooperation technology holding companies, etc., and (iii) **improving the merger review system** by extending reporting exemptions for M&As with low anti-competitiveness to support business reorganizations.

## 2. Strengthen the Basis for a Fair Transaction of SMEs and Small Businesses

The KFTC detailed the following four tasks to ensure that SMEs and small businesses receive fair consideration for their innovation efforts and to eradicate unfair practices.

Classification	Key Tasks
<b>Guarantee fair consideration for SMEs</b>	<ul style="list-style-type: none"> <li>• Amend the Subcontracting Act to establish and strictly enforce a "<b>sliding scale system to unit price of supply</b>" to reflect increases in raw material prices in the unit price of supply</li> </ul>

<p><b>Eliminate unfair subcontracting practices</b></p>	<ul style="list-style-type: none"> <li>• Check for unfair subcontracting practices such as verbal contracts, unfair special agreements, delayed inspection and payment in <b>software</b> (system integration, cloud, game, etc.), <b>content</b> (drama, movie, etc.) and <b>advertising</b></li> <li>• Check for unfair price determinations and non-payment of design change costs in the so-called "root industry," such as the <b>6 basic processes</b> (casting, molds, etc.) and the <b>8 next generation processes</b> (injection/press, precision processing, robots, sensors, etc.)</li> <li>• Close monitoring of provision of technical data to third parties and overseas technology leakage, etc. with a particular focus on industries such as <b>automotive parts, energy, and machinery</b></li> </ul>
<p><b>Reduce actual burden on small businesses</b></p>	<ul style="list-style-type: none"> <li>• <b>Reduce the burden on franchisees</b> by clarifying the criteria for determining essential items for <b>franchise business</b>, conducting intensive inspections such as coerced purchase, and overhauling the information disclosure statement system</li> <li>• Amend the Act on Fair Transactions in Large Franchise and Retail Business to <b>prohibit large retail businesses from interfering in business activities</b>, such as demanding an increase in sales prices in other distribution channels, to protect supplier SMEs</li> </ul>
<p><b>Encourage self-regulation by platforms and participating businesses</b></p>	<ul style="list-style-type: none"> <li>• Encourage self-regulation in the <b>open market and delivery app</b> sectors to improve contractual practices that are difficult to regulate under the current law</li> <li>• Discuss eventually extending this self-regulation to major industries, such as <b>lodging apps and app markets</b></li> </ul>

### 3. Reasonable Regulation of Large Conglomerates

It is expected that the KFTC will strictly enforce the law on unfair intragroup transactions by (i) intensively monitoring for instances of intragroup transactions that undermine the basis of fair competition, such as illegal succession of control, infringement upon the competition base of SMEs and provision of support for insolvent affiliates, (ii) reviewing financial products that may serve as circumvent means of intragroup transactions, such as TRS, and devise adequate measures for their regulation, and (iii) amending the Guidelines on the Prohibition of Unjust Profits by Owners and Families of Large Conglomerate Groups to set forth standards for what constitutes unjust profits in relation to owners and families of large conglomerate groups, as well as exceptions to its application.

With regard to the regulation of large conglomerates, the following regulatory improvements are expected to be pursued with regard to the designation of the large conglomerates and the respective disclosure system.

Task	Details
<b>Improving the large conglomerates designation system</b>	<ul style="list-style-type: none"> <li>Adjust the <b>criteria for designation of business groups subject to public disclosure</b> (currently, total assets of KRW 5 trillion or more) to reasonable standards, e.g., by linking to GDP or by adjusting the threshold amount</li> <li>Prepare guidelines on the standards for designation of the "same person," procedures for change, etc., and <b>establish standards for designating a foreigner as the "same person"</b> in consultation with the Ministry of Trade, Industry and Energy</li> </ul>
<b>Improving the disclosure system</b>	<ul style="list-style-type: none"> <li><b>Increase the threshold amount subject to disclosure</b> (KRW 5 billion to KRW 10 billion) and exclude small-scale internal transactions (to exclude transactions less than KRW 500 million)</li> <li><b>Replace</b> certain items that are less informative with <b>business group disclosures</b>, etc., and convert 8 of the 12 quarterly disclosure items into annual disclosure items</li> </ul>

In addition, the KFTC will set up a policy network involving academics, legal professionals, and stakeholders to identify and discuss the tasks of improving the large conglomerate system, and seek mid- to long-term directions for development with respect to the separation of banking and commerce and the holding company system.

#### 4. Foster a Transactional Environment that Guarantees Consumer Rights

The KFTC plans to implement the following detailed objectives in relation to the creation of a **digital consumption environment**.

Classification	Details
<b>Actively prevent consumer deception in online markets</b>	<ul style="list-style-type: none"> <li>Devise effective regulatory measures for "<b>dark patterns</b>" in large platforms</li> <li><b>Inspect and encourage voluntary correction of back-advertisements and tainted user reviews</b>, focusing on health and hygiene products (cosmetics, etc.), food and items of personal preference (supplemental health foods, etc.)</li> <li>Detect cases of information manipulation, such as <b>manipulation of search ranking of products and probability by game companies</b></li> </ul>
<b>Prevent consumer damage in C2C transactions</b>	<ul style="list-style-type: none"> <li>Work with consumer-to-consumer (C2C) platform operators, such as <b>used goods transactions and resale businesses</b>, to devise a market-autonomous solution to consumer damage and dispute resolution</li> </ul>
<b>Devise improved systems to prevent consumer damage in online markets</b>	<ul style="list-style-type: none"> <li>Relax requirements for issuing temporary suspension order and the application for collective dispute mediation to prevent the simultaneous spread of consumer damage</li> </ul>

Meanwhile, in order to enhance consumer safety and strengthen the related systematic foundation, the KFTC plans to (i) promote the enactment of the Framework Act on Consumer Safety, which includes the establishment of a "public-private joint consumer safety committee" and reinforcement of measures such as the collection, destruction, and announcement of unsafe products; and (ii) **improve the labeling and advertising system** by establishing standards on what constitutes green washing (i.e., labeling and advertising non-eco-friendly products as if they were eco-friendly) and imposing a strict burden of proof for advertisements that contain statements, such as "no harm to the human body."

In addition, in order **to prevent damage to consumers in their daily lives**, the KFTC will **examine unfair terms and conditions** in sectors where demand has increased recently, such as terms and conditions that shift the burden on consumers in the subscription service, live commerce, and mobility sectors, as well as terms and conditions pertaining to refunds and indemnities in the travel and lodging sectors. It is expected that the KFTC will conduct inspections on unfair practices, focusing on industries that have witnessed a great deal of damage to consumers, such as exaggerated advertising in smartphones and open markets, and actions taken to obstruct purchase cancellations in online markets.

## 5. Establish a Law Enforcement System that is Trusted by the Public and the Market

The KFTC announced its plan to improve the law enforcement system and undergo structural reorganization as follows.

Task	Details
<b>Clarify the details and boundaries of the KFTC's investigative authority</b>	<ul style="list-style-type: none"> <li>Clarify details in on-site investigation notices</li> <li>Establish procedures for the respondent's claim for return of documents that were collected beyond the scope of the investigation notice</li> </ul>
<b>Reorganize the investigation and deliberation system</b>	<ul style="list-style-type: none"> <li>Establish a preliminary opinion hearing process as a formal face-to-face meeting between the respondent and the case handler to clarify basic facts and issues</li> <li>Promote the reopening of deliberation to adequately guarantee respondent's right to be heard</li> </ul>
<b>Establish a system of case management by case type</b>	<ul style="list-style-type: none"> <li>Establish a system for intensive management of long-term cases and cases where the statute of limitations is imminent</li> <li>Promote alternative means of dispute resolution</li> </ul>
<b>Structural reorganization to improve law enforcement</b>	<ul style="list-style-type: none"> <li>Strengthen supervision of case handling management and enhance expertise and efficiency by separating the investigation and policy divisions</li> <li>Reinforce the independence and fairness of the KFTC's decision by strengthening the separate operation of the investigation and adjudication divisions</li> </ul>

In addition, the KFTC announced that it will reinforce its case handling capacity by establishing a system for managing case records and reforming and expanding its internal training programs for all stages of law enforcement.

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