

September 16, 2022

## Appointment of the New KFTC Chairperson: Implications on Antitrust Enforcement in Korea

On September 16, 2022, Ki-jeong Han, a professor at Seoul National University ("SNU") School of Law, was appointed as the next Chairperson of the Korea Fair Trade Commission ("KFTC") by President Yoon Suk-yeol. With the appointment of the new KFTC Chairperson four months into President Yoon's administration, the new administration's policy goals regarding Korean competition law enforcement are expected to be actively implemented.

### I. Profile of the New KFTC Chairperson

Dr. Han earned a bachelor's degree in law from SNU in 1986 and earned a master's degree in public administration from the Graduate School of Public Administration at SNU in 1990. He then worked for Samsung Life Insurance and received a doctorate in law from the Graduate School of Law at Cambridge University in 1996. Since 2008, he has been a professor at SNU School of Law, while concurrently serving various senior public and private posts, as the director of the Korea Insurance Research Institute, director of the SNU Center for Financial Law, dean of SNU School of Law, and chairperson of the Ministry of Justice's Inspection Committee.

Dr. Han's main research areas are in insurance law, financial law, and commercial law. Dr. Han is generally not considered a competition law expert, although he has had limited research experience relating to buyers' cartels, unfair trade practices, and consumer issues in the finance, telecommunications, and insurance industries. When his lack of experience in competition law was pointed out during his confirmation hearing, Dr. Han responded that he will actively consult and take into account the opinions of the experts both within and outside of the KFTC upon taking the office.

### II. Direction of the KFTC's Enforcement

As the first KFTC Chairperson under President Yoon's administration, Dr. Han will likely align the direction of the KFTC's enforcement with the administration's policy goals. In May 2022, President Yoon announced the following as the government's key objectives relating to antitrust enforcement:

- Easing corporate burdens and promoting investment in innovation through competition law reforms, prompt merger reviews, reasonable regulations against corporate groups, and self-regulation in the digital platform sector.
- Thoroughly monitoring anti-competitive violations such as abuse of market

#### Seong Un Yun

Partner

T 82.2.3404.0164

E seongun.yun@bkl.co.kr

#### Hyun A Kim

Partner

T 82.2.3404.6519

E hyuna.kim@bkl.co.kr

#### Sanghoon Shin

Senior Foreign Attorney

T 82.2.3404.0230

E sanghoon.shin@bkl.co.kr

#### Kee Won Shin

Senior Foreign Attorney

T 82.2.3404.0272

E keewon.shin@bkl.co.kr

#### Junyeun Cho

Partner

T 82.2.3404.7559

E junyeun.cho@bkl.co.kr

dominance, collusion, and unfair affiliate support, and objectively and strictly exercising the KFTC's exclusive right to file criminal complaints.

Dr. Han's plans for the operation of the KFTC, as revealed during the confirmation hearing, appear to align with the above goals. Once Dr. Han takes office, the KFTC's primary focus is expected to be on (A) self-regulation of the digital platform sector, (B) improvement of enforcement procedures, and (C) revisions to regulation on conglomerate groups.

#### **A. Self-regulation of the Digital Platform Sector**

Under the previous administration, the KFTC actively investigated the abuse of market dominance and unfair trade practices by Google, Apple, and NAVER (Korea's No.1 search portal) and imposed corrective measures and fines, and also proposed a bill titled the "Fair Online Platform Intermediary Transactions Act" ("**Online Platform Act**"). Dr. Han, however, repeatedly emphasized during the confirmation hearing the need to establish self-regulatory measures that enable the platform operators, businesses that utilize the platforms, and consumers to autonomously resolve disputes among them, since excessive government intervention in the digital platform sector may disrupt the market dynamics. He has taken a position that the KFTC will consider a legislative approach for the platform market, only after such self-regulatory efforts prove to be unsuccessful. Accordingly, the KFTC's investigative or legislative efforts for the platform market are expected to generally diminish.

Yet, Dr. Han has clearly stated that large platforms' exclusion of competitors and anti-competitive mergers cannot be resolved through self-regulation alone, and the KFTC will actively pursue enforcement in such cases. Accordingly, contrary to the KFTC's expected approach for disputes between individual parties in the digital platform market, the KFTC is expected to actively investigate and regulate structural issues, including the monopoly in the digital platform market. In particular, Dr. Han's position is to actively cooperate with competition authorities in other jurisdictions when it comes to global platform operators' anti-competitive activities like Google and Apple's forced in-app payment policies. In light of the foregoing, the KFTC's investigation against large global platform operators will likely gain momentum.

#### **B. Improvement of Enforcement Procedures**

At the confirmation hearing, Dr. Han emphasized that he intends to prepare transparent and objective case handling standards and procedures to earn the public's trust as a fair and just enforcement agency. The KFTC will be benchmarking the global standards in modifying its case handling procedures, and the rules governing the procedures will be amended to better protect the respondents' rights to be provided with due information during the KFTC process and to properly defend its position.

The following improvements are expected for each phase of the KFTC's investigation and deliberation:

- At the Start of the Investigation: Clearly and explicitly notify the scope and subject of the investigation to the respondents
- During the Investigation Phase: Procedurally allow the respondent to file an objection to the investigation process, and provide opportunities for the respondent to officially submit its defense even prior to the hearing phase
- At the Hearing/Deliberation Phase: For major cases, hold multiple hearings and indicate the

grounds for not filing a criminal complaint in the written decision

Meanwhile, the current Monopoly Regulation and Fair Trade Act ("**MRFTA**"), the key antitrust regulation in Korea, imposes criminal penalties for most MRFTA violations. Dr. Han intends to abolish excessive or unnecessary criminal penalties through the "Task Force for Improvement of Criminal Penalty on Violation of Economic Regulations," an inter-governmental joint task force, while allowing stronger criminal sanctions to be imposed on severe violations of the MRFTA, such as collusion.

### C. Revisions to Regulation on Conglomerate Groups

The KFTC designates Korean conglomerate groups (called "*Chaebol*" in Korean) with total assets of at least KRW 5 trillion (approximately USD 3.6 billion) as corporate groups subject to public disclosure, and with total assets of at least 0.5% of Korea's GDP (approximately KRW 10 trillion, or USD 7.3 billion, as of 2021) as corporate groups subject to limited cross-shareholding. Various regulations, including disclosure obligations, limitations to cross-shareholding, and the prohibition on debt guarantees, apply to such conglomerate groups.

In regards to the above, Dr. Han intends to (i) improve the excessive regulations imposed on conglomerate groups (for instance, amending the regulation to reduce the scope of companies that would be defined as a conglomerate group), (ii) downsize the KFTC's Business Group Bureau and its role and function, and (iii) actively support the business activities of conglomerate groups. That said, while regulations against Korean conglomerate groups could be relaxed, the KFTC may instead switch the focus to investigating global corporations and their anti-competitive conducts.

## III. Summary and Recommendations

In summary, the KFTC will likely prioritize self-regulation of the market, while taking an active stance against abuse of market dominance by global platform operators or anti-competitive mergers. We would encourage global corporations engaging in businesses in Korea to (i) actively present their views in response to the KFTC's request for public opinion on relaxation of regulation and procedural improvements, and (ii) internally establish a compliance system specific to the Korean market, in preparation for the KFTC's active enforcement against abuse of market dominance and collusion.

One final point to note is the increasing strengthening of its role as a competition law enforcer by the Prosecutors' Office under the administration of President Yoon (who is the former Prosecutor General), which seems to be a transition contradicting the KFTC's emphasis on self-regulation. In response to such a shift, corporations would need to closely monitor the policy and legislative changes affecting the criminal enforcement of competition laws in Korea, and prepare not only for the KFTC's investigation, but also for the investigation conducted by the Prosecutors' Office for competition law violations, especially concerning potential cartel law violations.

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