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THE AMENDED MONOPOLY REGULATION AND FAIR TRADE ACT TO TAKE EFFECT IN THE SECOND HALF OF 2024

On January 25, 2024, the Korea Fair Trade Commission (“**KFTC**”) announced that the plenary session of the National Assembly passed the proposed amendments to the Monopoly Regulation and Fair Trade Act (“**MRFTA**”). The amended MRFTA will take effect six months after its promulgation, which is expected to be around July or August 2024.

The amended MRFTA aims to enhance Korea’s merger review system by (i) exempting the reporting obligation for various types of transactions that are unlikely to cause anti-competitive effects, and (ii) imposing remedies based on the proposal from the parties for transactions with anti-competitive concerns. These improvements are expected to allow the KFTC to allocate its limited resources more effectively in conducting merger reviews, focusing on high-profile transaction posing potential anti-competitive concerns, and enhancing the efficacy of remedies for such transactions.

We further highlight below the changes introduced to Korea’s merger review system by the amended MRFTA.

A. EXPANSION OF THE SCOPE OF TRANSACTIONS EXEMPTED FROM MERGER FILING OBLIGATION

The amended MRFTA additionally exempts the following types of transactions from reporting obligations:

- (1) Establishment of a private equity fund
- (2) Merger or business transfer between companies that are a parent company and its subsidiary under Korea’s Commercial Act
- (3) Interlocking directorate of less than 1/3 of directors of another company, provided that the representative director is not an interlocking director
- (4) Merger between affiliated companies where the standalone size of the merged entity is less than KRW 30 billion

According to the KFTC, transactions falling under the four categories above accounted for approximately 42% of the total number of merger notifications filed in 2022. By exempting the merger filing obligation for transactions that are highly unlikely to be anti-competitive, the KFTC aims to reduce the burden of reporting and create an environment where it can focus its resources on reviewing complex cases.

B. IMPLEMENTATION OF A REMEDY PROPOSAL SYSTEM

The amended MRFTA allows the parties in a transaction posing anti-competitive concerns to initially propose a plan to remedy the transaction’s competitive concerns and the KFTC to impose corrective measures by revising and supplementing the proposed remedies.

Under the current system, the KFTC reviews the relevant market information for anti-competitive transactions and independently devises remedies that the KFTC believes addresses the concerns. However, maintaining this approach is becoming increasingly challenging due to the growing number of international

transactions and the complexity of industrial structures. Allowing companies to propose remedial measures for addressing the anti-competitiveness of transactions takes advantage of the abundant market information that the transaction parties have in formulating appropriate remedies, which may ultimately enhance their effectiveness and enforceability. Furthermore, as most of the competition authorities worldwide operate such a remedy proposal system, the implementation of this system is expected to narrow the gap between the Korean merger review system and global standards.

C. AMENDMENTS TO THE KFTC'S MERGER FILING GUIDELINES

In addition to amending the MRFTA, the KFTC has been actively working on revising its Merger Review Guidelines ("**Guidelines**") to enhance the efficiency and effectiveness of Korea's merger review system. The amendments to the Guidelines are expected to be finalized and implemented soon.

The amended Guidelines now offer clearer standards in identifying the market related to online platforms and analyzing the related anti-competitive effects, thereby better aligning the Guidelines with the unique characteristics of the digital economy. In the realm of digital market, where products or services are often offered without charge, defining a market by considering demand substitutability resulting from price changes can be challenging. The amended Guidelines provide alternative methods for defining the market, such as considering demand substitutability resulting from a deterioration in service quality.

In addition to stipulating that the analysis of the transaction's anti-competitiveness should consider the network effect—where the value of a product or services offered by platforms increases as the number of users increases—the amended Guidelines also introduce a more balanced consideration. This involves taking into account the positive effects of the transaction by highlighting examples of efficiency enhancement that are specific to the digital sector, such as new innovative services created through the transaction or the acquisition of new companies, which in turn facilitates the exit of investment capital and the creation of additional startups.

Another notable change is that, whereas conglomerate mergers without complementarity or substitutability were previously subject to simplified review, presumed to lack anti-competitiveness unless extraordinary circumstances exist to indicate otherwise, the amended Guidelines now specify that transactions involving an online platform should be subject to a general review if the online platform (i) supplies goods and services to more than 500 million people on average per month, or (ii) spends more than KRW 30 billion on research and development. In implementing this new approach, the KFTC appears to have considered the significant economic impact of a transaction by an online platform with a large number of users, which may still be the case even if the transaction lacks complementarity or substitutability.

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For any inquiry or questions regarding the content of this newsletter, please contact us.

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