

February 13, 2024

## THE KOREA FAIR TRADE COMMISSION ANNOUNCES ITS “2024 MAJOR OPERATIONAL PLANS”

On February 8, 2024, the Korea Fair Trade Commission (“**KFTC**”) announced its “2024 Major Operational Promotion Plans.” The KFTC announced its goals to ‘establish a fair market economy that supports livelihoods and innovation’ and highlighted the following five key tasks: (i) establishing a fair trade environment that supports a dynamic economy, (ii) establishing a stable transactional basis for small and medium-sized enterprises (“**SMEs**”) and small businesses, (iii) creating an environment where consumer rights are guaranteed, (iv) rational application of conglomerate-related regulatory systems, and (v) expanding the infrastructure for promoting fair trade policies.

### I. KEY TOPICS OF THE “2024 MAJOR OPERATIONAL PLANS”

#### A. Establishing a Fair Trade Environment that Supports a Dynamic Economy

1. Creating fair trading conditions across the platform ecosystem
  - Promoting the enactment of the Platform Competition Promotion Act (“**PCPA**”)
  - Improving transactional practices related to mobile gift vouchers, which impose a significant burden on small businesses; supporting the formulation of win-win strategies to reduce advertising expenses for enterprises that congregate hotel booking apps; and reviewing the results of cooperative efforts between delivery apps and open markets
  - Examining conducts that prevent competitors from entering and disrupt business in areas such as music streaming and video advertising; strictly regulating unfair trade practices in online shopping and hotel booking app markets; and actively correcting unfair contract terms existing in emerging platform models like vertical platforms
2. Improving trade practices and market structures that impose burdens on the public
  - Focused examination of cartels in the sectors that provide for basic needs (such as clothing, food, and shelter), finance and telecommunications, and intermediate goods; development and implementation of cartel prevention programs targeted at schools and construction companies, which are the customers of school uniforms and furniture; restructuring of Korea’s Bid Rigging Indicator Analysis System (BRIAS) to prevent bid rigging in the public sector
  - Correcting unfair trade practices for the semiconductor distribution market, such as setting sales prices, restricting transaction counterparties; inspecting unfair trade practices by indirect suppliers in the medical devices industry
  - Analysis of market structures and preparation of measures to promote competition in markets where monopolistic practices are engrained, such as bakery and alcoholic beverage markets; devising measures to promote competition and relax regulations in sectors related to household waste collection and pet care

3. Continuously supplementing systems to enhance competition for future innovations

- Publishing a “Policy Report” to proactively identify and to conduct in-depth analysis of issues restricting competition focusing on the new AI technology markets; monitoring potential issues of legal violations in cloud and OTT markets; actively identifying and improving regulations that hinder the growth of innovative companies in the climate tech sector
- Deregulations of Corporate Venture Capital (CVC) to facilitate the discovery and investment in venture companies by large corporations
- Expediting merger and acquisition (M&A) cases meant for restructuring, and therefore are less likely to pose competition concerns; actively encouraging pre-consultation with the KFTC before the formal merger filing to ensure a swift review process

**B. Establishing a Stable Transactional Basis for SMEs and Small Businesses**

1. Creating an environment that ensures a fair share for SMEs and venture companies

- Amending the Subcontracting Act to statutorily nullify unfair special agreements in the construction sector, and activating protective measures for subcontract payments such as construction subcontract payment guarantees
- Making efforts to settle the delivery unit price interlocking system to ensure a smooth operation of the system
- Intensively monitoring sectors raising unfair subcontracting practice concerns, such as software and home appliances markets
- Amending the Subcontracting Act to allow companies affected by misappropriation of technology to directly request the courts to correct the violation; focused monitoring of unfair demands for technical data in key industrial materials sectors such as automotive parts and energy equipment; correcting unfair contract terms that limit creators’ rights in the webtoon and web novel sectors

2. Improving business conditions for small businesses

- Revising the enforcement decree and notification of the Franchise Business Act for franchisors to mandatorily consult with franchisees before changing transaction terms in ways that may disadvantage them, such as increasing the number of mandatory purchase items; inspecting unfair practices of franchisors (e.g., the restaurant sector) that raise concerns of seeking to unjustly enrich themselves
- Amending the Large-scale Retail Business Act to introduce a punitive damages system and increase the fixed penalty limit, in order to inhibit conducts that unfairly transfer promotional costs onto small suppliers
- Promoting the revision of standard contracts to require suppliers to discuss contract periods prior to distributorship renewals
- Intensive monitoring of unfair practices in basic needs sectors such as convenience stores, furniture, and tires
- Correcting contract terms that impose excessive penalties on distributors or transfer risks unfairly

3. Strengthening support for SMEs and small businesses damage relief
  - Amending the Fair Trade Act to actively allow affected companies to provide the court with evidence held by the KFTC during civil damage claim lawsuits
  - Expanding the document submission order system, which allows courts to order parties to submit evidence, to include the Franchise Business Act, the Large-scale Retail Business Act, and the Agency Act within the scope
  - Amending the Subcontracting Act to enable dispute mediation even for cases where the KFTC has already imposed corrective measures for violation of the Subcontracting Act

### **C. Creating an Environment Where Consumer Rights Are Guaranteed**

1. Establishing a foundation to allow informed spending choices in response to an economic downturn
  - Monitoring changes in product volumes by distribution and food companies; designating conducts that change significant matters on a product, including reducing product size or reducing the amount of raw material without notifying the consumers, as unfair practices in the relevant notifications
  - Pursuing an increase in the refund amount for mobile gift vouchers; developing measures to extend the expiration dates of accumulated rewards (points)
2. Strengthening consumer protection in the digital transaction environment
  - Conducting surveys on consumer damage in SNS markets and inspecting compliance with responsibilities and obligations under the Electronic Commerce Act
  - Revising the Electronic Commerce Act related to dark patterns and actively regulating conducts that can be governed by current laws.
  - Operating a dedicated refund service for random item purchases in online and mobile games, where the period after the game service has exceeded 30 days; revising the standard terms and conditions for online and mobile games to reflect the amendment to the Game Industry Act which requires game operators to disclose the probability of winning
  - Strengthening the management responsibility and information provision functions of platform operators towards their business partners
  - Amending the Electronic Commerce Act to require foreign operators to designate a domestic representative to fully comply with their responsibilities as telecommunication intermediaries
  - Amending the Electronic Commerce Act to ease the conditions for issuing temporary business suspension orders which would enable platform operators to immediately halt transactions with businesses allegedly in violation of laws
3. Establishing a foundation for consumer safety and correcting infringements of consumer rights
  - Preparation of an amendment to the Product Liability Act which would allow for compensation for accidents caused by AI, software, etc., and would lower the victims' burden of proof

- Expanding the institutions that submit hazard information to the Consumer Injury Surveillance System (CISS) for rapid detection of safety issues, by including the National Fire Agency to the list, and constructing an AI-based hazard monitoring system.
- Conducting intensive monitoring of greenwashing, where products that are not environmentally friendly are advertised or labeled as such
- Closely monitoring false and exaggerated advertising related to performance in the beauty sector, smartphones, and health care devices markets
- Inspecting compliance with prepayment registration of travel packages and mandatory rate of reserves for advance payments in installment transactions; inspecting deceptive practices related to prepaid bundle products offered with discounts on electronic products

#### **D. Rational Application of Conglomerate-Related Regulatory Systems**

- Intensive inspection of unfair internal transactions in sectors such as food and beverage, pharmaceuticals, and apparels
- Strict responses to conducts supporting affiliates through indirect methods such as financial support agreements and Total Return Swaps (TRS)
- Expanding the range of tax information received from the National Tax Service to detect suspicious unfair internal transactions
- Amending the Fair Trade Act to raise the criteria for designating enterprise groups subject to disclosure
- Amending the Enforcement Decree of the Fair Trade Act to establish clear and rational criteria for determining the 'same person' within the law
- Amending the Fair Trade Act to allow financial and insurance companies within conglomerates to exercise voting rights in companies closely related to finance, such as fintech

#### **E. Expanding the Infrastructure for Promoting Fair Trade Policies**

- Specify incentives such as reduction of fines for companies with excellent Fair Trade Compliance Programs (CP), and actively explore new incentives, to encourage development of CPs
- Simplify the certification system's evaluation indicators and clarify the content of the indicators, to encourage Consumer-Centered Managements (CCM),
- Enact the "Fair Trade Dispute Mediation Act" to ensure the uniformity and completeness of the mediation system
- Promote collaboration with corporations and related organizations (consumer organizations, mediation agencies, etc.) in responding to policy issues
- Enhance the violation monitoring system by linking and collecting major information provided to government agencies and private companies on the KFTC's Data Portal

## **II. IMPLICATIONS**

The KFTC has been enforcing the laws within its jurisdiction and pursuing system improvements according to its annual operational plans. Therefore, it is advisable for companies within the industries recently noted

by the KFTC that it would “inspect,” “watch,” and “monitor” to check for any violations of the law and correct any such violations promptly. Moreover, as the KFTC plans to propose and amend various laws and regulations during 2024, it is necessary to closely monitor legislative movements and consider adjusting the company’s systems proactively. Additionally, on February 7, 2024, the KFTC further announced that it decided to delay the publication of the draft PCPA bill indefinitely, deviating from its original plans. The KFTC noted that it would be reasonable to review and seek public opinions on the regulatory approaches taken under the PCPA. Given the PCPA’s substantial impact on the market, the KFTC would also consider alternative approaches, including reassessment of the pre-designation system. Concerning the timeline going forward, the KFTC stated that it is unable to yet pinpoint exactly when the draft PCPA bill would be publicized but expect that the additional review would take some time.

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

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