

THE DOMINANCE AND
MONOPOLIES
REVIEW

ELEVENTH EDITION

Editors

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I INTRODUCTION

The primary statutory provision under Korean law that regulates abuse of market dominance is Article 5 of the Monopoly Regulation and Fair Trade Act (MRFTA). Details on the types of conducts and standard used to determine abuse of market dominance are provided in Article 9 of the Enforcement Decree of the MRFTA and the Korea Fair Trade Commission (KFTC)'s Standard of Review of Abuse of Market Dominance (Standard of Review). The MRFTA has undergone its first full amendment in 40 years since its enactment and the amended MRFTA came into effect on 30 December 2021. The provisions on abuse of market dominance have not undergone much change in the past² relative to other provisions, and there have been no material changes to such provisions when the MRFTA was fully amended.

Several bills to the effect of *ex-ante* regulation, similar to the EU's Digital Markets Act (DMA) has been proposed in Korea. Nineteen online platform bills have been proposed in Korea since May 2020 (when the current National Assembly was formed). These 19 bills are aimed at regulating online platform companies that meet a certain size criterion. In particular, among them, five bills are similar to the EU's DMA in that they impose *ex-ante* regulations on only a limited number of online platform operators pre-designated by the KFTC. The pre-designation threshold under these bills is set based on the number of users, annual revenue, and market share, etc. However, none of them has passed because of the major political parties' lack of drive. All of the proposed bills are pending for review at the standing committee and have not yet been presented to the entire National Assembly for further consideration.

Meanwhile, the KFTC recently enacted the Guidelines on the Review of Abuse of Market Dominance of Online Platform Companies to improve the effectiveness of enforcement of laws on the dominance of online platforms by taking into account the key characteristics of online platforms (e.g., network effect and tipping effect as a result of data concentration).³ Online platform operators engaged in business activities in the Korean market are advised to

1 John H Choi and Hyunah Kim are senior foreign attorneys and Changhun Lee and Jae-Hyuk Choi are partners at Shin & Kim LLC.

2 Bong Eui Lee (2015) Critical Approach to the Guidelines on the Abuse of Market-Dominant Undertakings. *Yeungnam Law Journal*, 40, 95.

3 KFTC Press Release dated 12 January 2023.

attend to these Guidelines because they apply to overseas activities of foreign companies that have an effect on the Korean market. The Guidelines provide the following conducts as major conducts that take place in the online platform field that raise anticompetitive concerns:

- a* multi-homing;
- b* most favoured nation;
- c* self-preferencing; and
- d* tying.

II YEAR IN REVIEW

i KFTC investigations and sanctions

The KFTC is an agency with authority to enforce the MRFTA. Recently, the KFTC has shown great interest in the abuse of market dominance of online platform operators.

On 12 January 2023, the KFTC announced that it would impose a remedial order and tentative administrative fine in the amount of 25.7 billion won on Kakao Mobility, a Korean taxi service provider, for abusing its dominance in the standard taxi hailing service market.⁴ According to the KFTC's press release, Kakao Mobility was found to have engaged in self-preferencing by manipulating the taxi hailing algorithm to prioritise the dispatch of calls to 'franchise taxis' that executed an agreement with its affiliate when a consumer hailed a taxi through the taxi hailing app. The KFTC ruled that such a conduct of Kakao Mobility unreasonably interfered with the business activities of standard taxi service providers that did not execute a franchise agreement with Kakao Mobility's affiliate.

In another case, the KFTC had once again imposed a huge administrative fine on Google finding that Google abused its market dominance. Google had already been sanctioned by the KFTC in 2021. On 11 April 2023, the KFTC announced that it would impose a tentative administrative fine in the amount of 42.1 billion won on Google for excluding its competitor by providing various benefits to game companies on the condition that they do not deal with One Store, an app store that competes with Google.⁵ In addition, the KFTC's investigation on Google's suspected abuse of market dominance by tying YouTube Music with its YouTube Premium subscription, and thereby raising its market share, is currently ongoing.⁶

The KFTC has announced its plan to tighten its regulation of anticompetitive conducts of platform operators. Hence, platform operators are advised to keep a close watch on the KFTC's future regulatory trends in relation to online platforms.

ii Major court decisions

If the KFTC imposes remedial orders and a surcharge on a company suspected to have abused its dominance, the violator may file an administrative lawsuit against the KFTC by submitting a complaint to the Seoul High Court. The decision of the Seoul High Court may be appealed at the Supreme Court. Two notable decisions were issued by the Supreme Court in 2023 related to the abuse of market dominance by foreign enterprises.

Recently, the Supreme Court of Korea issued a landmark decision related to the abuse of dominance by a foreign company that holds standard essential patents (SEPs).

4 KFTC Press Release dated 14 February 2023.

5 KFTC Press Release dated 11 April 2023.

6 <https://www.hani.co.kr/arti/economy/it/1081146.html>.

On 13 April 2023, the Supreme Court issued a decision upholding the Seoul High Court’s finding that the KFTC’s disposition of imposing an administrative fine in the amount of 1 trillion won on Qualcomm was lawful.⁷ According to a press release issued by the Supreme Court, the Supreme Court held that Qualcomm used its dominance in the SEP licence market and modem chipset market for each standard to mutually and organically link Conduct 1 (refusing to execute and limiting patent licence agreements with competing modem chipmakers) and Conduct 2 (executing patent licence agreements with handset manufacturers by linking modem chipset supply agreements with patent licence agreements) and found that there was anticompetitive intent and effect. However, the Supreme Court rejected the KFTC’s finding of disadvantageous contract terms, including royalty terms, offered to handset manufacturers.

On the same day that the Qualcomm decision was issued, the Supreme Court issued its decision upholding the KFTC’s finding that Gaztransport & Technigaz SA (GTT)’s tying of engineering services with a licence for its liquid natural gas (LNG) storage technology offered to shipbuilders that build LNG carriers was unlawful. The Supreme Court held that the KFTC’s disposition, which included an administrative fine in the amount of 12.5 billion won on GTT, was lawful.⁸

The Seoul High Court also issued important decisions on abuse of dominance. On 14 December 2022, the Seoul High Court upheld the KFTC’s finding that Naver, a company with dominance in the online comparison shopping service market, restrained competition in the open market by artificially adjusting its search algorithm to expose products sold at its own open market at the top of the search results.⁹ This decision is meaningful in that it shows that abuse of dominance may be established even when the market where one is found to hold dominance and the market where the anticompetitive effect occurs are not the same.¹⁰ Naver filed an appeal with the Supreme Court.

Other abuse of dominance cases that are currently pending at court are listed below:

Plaintiff	Defendant	Sector	Courts	Conduct	Date lawsuit/appeal filed	Status of the proceedings
1. Google LLC 2. Google Korea LLC 3. Google Asia Pacific Pte Ltd	KFTC	Mobile	Seoul High Court	Interference with business activities	January 2022	Pending
1. Korea Vaccine Co, Ltd 2. Korea Vaccinesales Co, Ltd 3. Korea Vaccine Corp	KFTC	Pharmaceutical	Seoul High Court	Restriction of output	October 2019	Pending
1. Siemens Ltd Seoul 2. Siemens Healthcare Ltd 3. Siemens Healthineers	KFTC	Software	Supreme Court	Interference with business activities	April 2018	Pending
Korean Reinsurance Company	KFTC	Insurance	Supreme Court	Exclusion of competitors	April 2019	Pending

7 Supreme Court Decision No. 2020Du31897.

8 Supreme Court Decision No. 2023Du30147.

9 Seoul High Court Decision No. 2021Nu36129.

10 2022 Summary of Fair Trade Cases at 19.

III MARKET DEFINITION AND MARKET POWER

i Market dominance

A market dominant business entity is defined as a supplier or consumer in a certain business area with market position to determine, maintain or change the price, quantity, quality or other trade terms of goods or services either alone or together with other business entities (Article 2(3) of the MRFTA). When determining whether a company falls under a market dominant business entity, factors such as market share, existence and height of entry barriers, relative size of competitors, possibility of joint conduct among competitors, existence of similar products or adjacent market, power to foreclose the market and financial ability are considered comprehensively.¹¹

The definition on market dominant business entity provided above includes ‘other business entities’ that can determine, maintain or change trade terms together with the market dominant business entity. This provision raised questions whether market dominant position may be found based on collective dominance. In relation to such issue, the Seoul High Court found that even when independent companies formed an alliance or a group to make similar or the same decisions in various business-related matters, such companies could not be viewed as a single company and held that the multiple credit card companies could not be deemed a market dominant company.¹² This decision was upheld by the Supreme Court. Thus, the courts in South Korea do not recognise the concept of collective dominance.

ii Definition of the relevant market

To determine whether a certain entity has market dominant position, the particular trade area where the competitive relationship may become an issue (i.e., the relevant market) must first be defined. The ‘particular trade area’ here is defined as an area where a competitive relationship exists or may be established by the subject, stage or geographic area of transaction (Article 2(4) of the MRFTA). If the customers for the product in question can readily switch to a similar product or geographic area in response to a meaningful price increase or decrease, or suppliers can readily switch production to the relevant products and sell them on the relevant market, such relevant product or geographic market will be the relevant market.

The relevant market combines both the product market and the geographic market. According to the Standard of Review, the following factors are considered when defining the scope of the relevant product market:¹³

- a* similarities in function and utility of the product or service;
- b* consumer awareness of substitutability and related purchasing behaviour;
- c* seller awareness of substitutability and related managerial decision-making behaviour; and
- d* Korean Standard Industrial Classification announced by the Commissioner of Statistics Korea.

11 Guidelines III.

12 Seoul High Court Decision No. 2001Nu15193.

13 Guidelines II. 1. B.

In addition, the Standard of Review provides the following as factors to be considered when defining the scope of the relevant geographic market:¹⁴

- a* characteristics of the product or service (perishability, fragility, etc.) and seller's business ability (production capacity, scope of sales network, etc.);
- b* transportation cost;
- c* purchaser awareness of shiftability of purchasing area and related purchase area shifting behaviour;
- d* seller awareness of shiftability of purchasing area and related managerial decision-making behaviour; and
- e* ease of switching purchasing area from a temporal, economic and legal perspective.

The Supreme Court further specified the standard by holding that the speed of technical development and the situation of the market of other products that are needed to produce the product and other products produced based on the product must also be considered when defining the relevant market.¹⁵

iii Presumption of a market dominant company

A business entity is presumed to have market dominance when the requirements under Article 6 of the MRFTA are satisfied.

Market dominance is presumed when (1) a single entity's market share is 50/100 or more, or (2) the total market share of not more than three entities is 75/100 or more in a certain trade area (excluding entities with less than 10/100 market share). However, an entity with annual revenue or purchase amount of less than 4 billion won in a certain trade area is not presumed to have market dominance.

A market dominant entity that succeeds in rebutting a presumption of market dominance will not be subject to regulation under the provision of the MRFTA on abuse of market dominance.

IV ABUSE

i Overview

Market dominance itself is not prohibited under the MRFTA. Rather, the MRFTA prohibits the abuse of market dominance. The types of abuse of market dominance are provided in Article 5(1) of the MRFTA. Below is an exhaustive list of conduct types, meaning that only the conduct types below are sanctionable:

- a* unreasonably deciding, maintaining or changing the price of goods or services;
- b* unreasonably restricting the sale of goods or provision of services;
- c* unreasonably interfering with the business activities of other entities;
- d* unreasonably interfering with the participation of new competitors; and
- e* engaging in transaction to unreasonably exclude competitors or conduct that creates concern of substantial harm to consumer benefits.

14 Guidelines II. 2. B.

15 Supreme Court Decision No. 2002Du8626.

The unreasonableness requirement must be established to find an abuse of market dominance. Proof that a certain company suffered disadvantages because of the conducts above is insufficient to establish unreasonableness. Instead, unreasonableness may be found when the conduct was engaged in with intent or purpose to artificially exert influence on market order with intent or purpose to maintain or strengthen monopoly in the market (i.e., restricting free competition), and the conduct objectively raises such concern of anticompetitive effect.¹⁶

The online platform bills mentioned above that are currently under review predesignate market dominant operators or core online platforms that are subject to regulation and impose certain obligations on such companies with the aim of *ex-ante* regulation. Under these bills, online platforms subject to regulation are determined based on the number of active users or business users of the platform. From such aspects, these bills are similar to the DMA which designates gatekeepers. If these bills become legislated, giant platforms such as Google and Apple will likely become subject to regulation. Predesignated online platforms will also face certain restrictions related to M&A and the sale of products or services through their own platforms.

ii Exclusionary abuses

Interference with business activities

Article 5(1)(iii) of the MRFTA prohibits the conduct of unreasonably interfering with the business activities of others. Specific examples of conducts that directly or indirectly interfere with the business activities of others that are provided in Article 9(3) of the Enforcement Decree of the MRFTA are as follows:

- a interference with another company's purchase of raw materials that are needed for its manufacturing activities, without justifiable cause;
- b hiring personnel of another company that is essential to its business activities by providing or promising to provide economic benefits that are excessive in light of normal trade practices;
- c refusing, suspending or restricting use of or access to an element that is essential to another company's manufacture, supply or sale of products or services, without justifiable cause; and
- d other conducts notified by the KFTC that make the business activities of others difficult using unreasonable means.

Interference with business activities is a type of abuse of market dominance that is often regulated by the KFTC. The KFTC provides specific regulations on conducts that make the business activities of others difficult in its review standard. The conduct of providing discriminatory prices or trade terms falls under a type of interference with business activities of others.¹⁷ The 'others' mentioned above that are subject to the interference are not necessarily limited to competitors and generally include transaction partners.¹⁸ This is also the view upheld by the Supreme Court.¹⁹

16 Supreme Court Decision No. 2002Du8626.

17 Guidelines IV. 3. D (3).

18 Young-chul Lim (2021). Monopoly Regulation and Fair Trade Act, Beobmunsa, 51; Oh-seung Kwon. (2008). Economic Law, Beobmunsa, 153.

19 Supreme Court Decision No. 2008Du7465.

The KFTC has recently regulated and imposed significant sanctions on a few foreign businesses for interfering with the business activities of other companies. In 2021, Google was imposed an administrative fine of approximately 200 billion won for interfering with the business activities of competitors by executing a mobile service licence agreement and OS early access agreement with handset manufacturers including Samsung and preventing them from manufacturing devices installed with modified versions of Android.²⁰ Google appealed by filing a lawsuit at the Seoul High Court seeking cancellation of the KFTC's disposition.

Restriction of entry

The MRFTA prohibits unreasonable interference with a new entrant's participation in competition.²¹ The Enforcement Decree of the MRFTA provides the following specific examples of conduct of restricting entry of new competitors:²²

- a* executing an agreement on exclusive dealing with a distributor without justifiable cause;
- b* purchasing rights, etc. necessary for an existing business entity to continue its business activities, without justifiable cause;
- c* refusing or limiting the use of or access to elements indispensable for a new competitor to produce, supply or sell its goods or services, without justifiable cause; and
- d* other conducts notified by the KFTC that unreasonably make entry of new competitors difficult.

Exclusion of competitors

Engaging in a transaction to unreasonably exclude a competitor is prohibited under Article 5(1)(v) of the MRFTA. Specific types of such conduct include:²³

- a* unreasonably supplying at a price lower than that normally traded price or purchasing at a price higher than the normally traded price, which raises concern of excluding a competitor (predatory pricing, etc.); and
- b* unreasonably trading on the condition that the transaction partner does not deal with a competitor (exclusive dealing).

Exclusive dealing often becomes an issue together with interference with business activities. For a conduct to become caught under the provision prohibiting exclusive dealing, a unilateral conduct of the market dominant business entity that is at issue must have an impact on the transaction partner's decisions and be binding.²⁴ Courts have also made clear that the relevant provisions can apply only when the transaction partner is bound or coerced through use of means such as sanctions.²⁵ A representative example of exclusive dealing is when an agreement including a term that prohibits a party from dealing with a competitor is executed between the parties.

20 KFTC Decision No. 2021-329 dated 30 December 2021.

21 Article 5(4) of the MRFTA.

22 Article 9(4) of the Enforcement Decree of the MRFTA.

23 Article 9(5) of the Enforcement Decree of the MRFTA.

24 Dae Sik Hong (2011). Exclusive Dealing, Competition-restrictiveness Standard or Coercion Standard?; BUP JO, 60(10), 170–172.

25 Seoul High Court Decision No. 2009Nu19269.

The role of economics and in particular the as-efficient competitor test

Economic analysis based on the as-efficient competitor test is important in exclusionary abuse cases. For example, in the 2008 *KFTC/Intel* case, both sides of the examiner and the defendant were keenly confrontational on whether conditional rebates at issue might be capable of excluding the competitor equally efficient as the dominant undertaking from the market. Both sides adopted ‘as efficient competitor’ effective price-cost comparison test, which was introduced by European Commission in 2005, as the basic method.²⁶

iii Exploitative abuses

Price abuse

The MRFTA prohibits the conduct of unreasonably determining, maintaining or changing the price of products or services.²⁷ Examples of such conduct include substantially increasing or minimally reducing the price of products or services in comparison with fluctuations in demand or the cost of supply (of the level normally incurred by the same or similar type of businesses) without justifiable cause.²⁸

To determine whether a conduct falls under a price abuse, the price that would have been formed in a competitive market and the price level set by the market dominant company must be compared and whether the difference between the two prices exceeds the level permitted by the MRFTA must be determined. Calculating the price that would have been formed in a competitive market and determining the amount of difference that would be deemed illegal are both difficult tasks. Hence, instead of providing an absolute standard to determine the unlawfulness, the Enforcement Decree of the MRFTA requires that the determination be made by comparing the price set by the market dominant company with the fluctuations in demand and the supply costs.

In addition, a substantial price increase is required to find price abuse. The KFTC has the burden of proof to show that the change in price is substantial. As for the unreasonableness requirement, there must be a showing of intent or purpose to excessively fulfil a monopolistic benefit and potential effect of hindering the benefits of the transaction partner or consumers in the market.

Restriction on output

Restriction on output refers to the conduct of unreasonably controlling the provision of goods or services.²⁹ It includes (1) substantially reducing the supply volume of goods or services in light of recent trends without justifiable cause and (2) reducing the supply volume of goods or services despite a supply shortage in the distribution stage without justifiable cause.³⁰

26 Seonghoon Jeon (2019). ‘As Efficient Competitor’ Effective Price-Cost Test on Intel Rebates. *Korean Journal of Law and Economics*, 16(2), 237–260.

27 Article 5(1)(i) of the MRFTA.

28 Article 9(1) of the Enforcement Decree of the MRFTA.

29 Article 5(1)(ii) of the MRFTA.

30 Article 9(2) of the Enforcement Decree of the MRFTA.

Output is closely related to the price level of the product. Thus, output control is fundamentally similar to price abuse. While the provision prohibiting price abuse is a direct regulation related to pricing, the provision prohibiting output control is an indirect regulation related to pricing.³¹

Hindrance to consumer benefit

The MRFTA prohibits conducts that create concern of substantially hindering consumer benefits.³² The purpose of such regulation is to catch exploitative abuse other than abusive pricing and output control.³³

Hindrance to consumer benefit must be substantial to be deemed unlawful. The Supreme Court ruled that substantiality must be determined specifically and individually by comparing trade terms that changed because of the conduct at issue with the trade terms of other companies in a similar market or comparing the effect of price increase because of the conduct at issue with the degree of cost fluctuation of the market dominant company before and after the conduct at issue, by examining factors such as the characteristics of the relevant product or service, the period, frequency and timing of the relevant conduct, and the scope of consumers whose benefits have been hindered.³⁴

V REMEDIES AND SANCTIONS

i Sanctions

In principle, an administrative fine is imposed in cases of abuse of market dominance except in cases where it is found reasonable not to impose a fine considering specific circumstances such as the motive and effect of the violation and the market situation.³⁵

The KFTC may impose an administrative fine that does not exceed 6/100 times the relevant revenue.³⁶ Relevant revenue is the revenue that the violator generated from the sale of the relevant product or service in a certain trade area during the violation period.³⁷ Prior to the full amendment of the MRFTA which took effect in 2021, the administrative fine could not exceed 3/100 times the revenue; however, the rate was increased twofold with the amendment. Hence, depending on the seriousness of the abusive conduct, the imposition rate can range between 0.3 and 6.0 per cent. The KFTC's notification on administrative

31 Yeong-chul Lim and Sung-guk Cho (2021) Monopoly Regulation and Fair Trade Act, Bakyounsa, 50–51; Bong Eui Lee (2010) Control of Exploitative Abuse in Korea. *Journal of Korean Competition Law*, 22, 124; Dae Sik Hong (2010) Improvement Scheme of Standard for Determining Abuse of Market-dominant Position. *Journal of Korean Competition Law*, 21, 417.

32 Article 5(1)(v) of the MRFTA.

33 Bong Eui Lee & Jong Ik Chon (2008) Constitutionality of the Prohibition of 'act that may considerably harm the interest of consumers' in Monopoly Regulation and Fair Trade Act Art. 3-2 I (v). *Seoul Law Journal*, 49(3), 274; Jeong-Joong Kim (2010) 'Standard for Determination of Substantiality and Unreasonableness Requirements for Hindrance to Consumer Benefits', Commentary on Supreme Court Precedents no. 84, 18; Dae Sik Hong (2010) Improvement Scheme of Standard for Determining Abuse of Market-dominant Position. *Journal of Korean Competition Law*, 21, 421.

34 Supreme Court Decision No. 2009Du1983.

35 Section III. 2. A. of Notification on Detailed Criteria for Imposition of Administrative Fine.

36 Article 8 of the MRFTA.

37 Article 13(1) of the Enforcement Decree of the MRFTA.

finer provides in detail the factors that must be considered to assess the seriousness of abusive conduct. When revenue data is not available or cannot be calculated, a fixed amount of administrative fine not exceeding 2 billion won may be imposed.³⁸

The online platform bills similar to the DMA also allow the KFTC to impose sanctions in the event of a violation. The severity of the sanction seems to be comparable to those imposed for the abuse of market dominance under the MRTA.

The MRFTA also has a provision on criminal punishment for abuse of market dominance. An entity that has engaged in abusive conduct may be subject to a fine of up to 200 million won. If the entity is a corporation, its representative and employees may also be subject to criminal punishment of up to three years.

ii Behavioural remedies (including interim measures)

As a behavioural remedy, the KFTC may impose a remedial order.³⁹ Remedial orders include an order to reduce price, an order to cease conduct, and an order to publicly announce the fact that a remedial order was imposed. A failure to perform the KFTC's remedial order may be punishable by imprisonment of not more than two years or a penalty of not more than 150 million won.⁴⁰ Unlike the EU laws, the MRFTA does not have interim measures in place.

iii Structural remedies

The MRFTA provides divestiture as a structural remedy for anticompetitive mergers.⁴¹ However, an order to divest is not a type of measure that can be imposed for abuse of market dominance. Whether the KFTC may order divestiture on entities for abusing market dominance is unclear and the KFTC has not done so in the past.

VI PROCEDURE

The KFTC's investigation procedure for MRFTA violations is provided in detail in the Rules on the KFTC's Investigation Procedure.

The KFTC may launch an investigation upon receipt of a third-party complaint or by initiating an investigation on its own. The KFTC may collect information necessary for its investigation by conducting dawn raids on entities suspected of abusing dominance, interviews of the parties, interested parties, or references, and requesting for information.

The investigation may close if the entity is cleared from suspicion. If, on the other hand, the KFTC suspects a violation, it may present the case before the commissioners. The respondent may dispute the findings of the KFTC by submitting its opinion to the commissioners and if the KFTC finds that the respondent violated the law after deliberation, sanctions such as a remedial order and administrative fine may be imposed on the respondent. The KFTC decision may be appealed by filing an objection with the KFTC or filing an administrative lawsuit with the Seoul High Court, within 30 days from the date of receipt of the KFTC decision.⁴²

38 Article 8 of the MRFTA.

39 Article 7(1) of the MRFTA.

40 Article 125(i) of the MRFTA.

41 Article 14(1) of the MRFTA.

42 Article 99 of the MRFTA.

Some of the online platform bills that are under review in Korea provide that the KFTC may conduct market surveys to designate the platform companies subject to regulation and that the KFTC may investigate violation of the law.

VII PRIVATE ENFORCEMENT

In the event of a violation of the MRFTA by abusing market dominance, the victim may bring a claim for damages against the violator based on the MRFTA or the Korean Civil Code.⁴³ In a claim for damages for violation of the MRFTA, the burden of proof shifts to the defendant, and therefore, the defendant must prove that the conduct was not wilful or that it was not negligent.

The amount of damages awarded to the victim is, in principle, determined based on the actual amount of damages suffered by the victim. In addition, the claimant must prove the causation between the unlawful conduct and the damages. Sometimes, the claimant submits results of analysis conducted by an economic expert or industry expert as evidence. If the causation between the unlawful conduct and damages is shown but showing the amount of damages is difficult because of the nature of the relevant facts, the court may determine the damage amount based on its examination of the overall arguments presented and the evidence.⁴⁴

Class actions have not been introduced in claims for damages related to violations of the MRFTA. In addition, while treble damages may be awarded and injunctions may be granted for some violations of the MRFTA, neither are recognised in abuse of market dominance cases.

Courts can hear the case and determine whether there has been a violation, separately from the KFTC's decision. Therefore, the fact that the KFTC found abuse of market dominance itself does not naturally lead the court to find liability for damages. However, courts that hear claim for damages lawsuits tend to respect a court decision in an administrative lawsuit upholding the KFTC's decision.

Some of the online platform bills contain provisions on a violator's liability for damages and treble damages. However, these bills have not yet been legislated.

VIII FUTURE DEVELOPMENTS

The KFTC has made clear of its plan to rigorously sanction conducts that form an artificial entry barrier and fundamentally harm the principle of fair competition. We expect that the KFTC will also tighten its regulation of abuse of dominance.

The KFTC has also announced its policy direction in various events early this year. Under the policy goal of 'establishing a market environment that promotes competition on innovation', various objectives related to the regulation of abuse of dominance were included. Specifically, with the aim of correcting the abuse of dominance of big tech companies, the KFTC plans to focus its monitoring activities on conducts that block entry of competitors and interfere with business activities of others in the semiconductor and app market fields. With respect to the mobility and open market field, the KFTC plans to prevent the transfer of unlawful dominance using self-preferencing and conducts that interfere with business

43 Article 109(1) of the MRFTA; Article 750 of the Civil Code.

44 Article 115 of the MRFTA.

activities of competing platforms. Furthermore, the KFTC also mentioned that it would take joint action with the competition authorities of other jurisdictions against issues related to the monopoly of global big tech companies and review the impact of the EU DMA on the Korean market. The KFTC also mentioned that it would supplement the types of abuse of dominance and the standard for determination thereof by taking into account the characteristics of the platform field.

Aside from the online platform bills that are similar to the DMA, the KFTC is also reviewing a new online platform bill with *ex-ante* regulation elements. This new bill will probably include a prohibition on anti-steering and a temporary suspension order system. How the existing bills and this new bill will correlate with each other is unclear.

The KFTC is investigating and regulating abuses of market dominance of global big tech companies from various angles. Therefore, global companies are advised to exercise caution in relation to the changes in competition and antitrust in Korea and in particular the trend in regulation of big techs and platforms.