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Practical cross-border insights into merger control issues

Merger Control 2023

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The Korea Fair Trade Commission ("**KFTC**") is the relevant merger authority that enforces the Monopoly Regulation and Fair Trade Act of Korea ("**MRFTA**"), which is the primary competition law in Korea.

1.2 What is the merger legislation?

The MRFTA and its Enforcement Decree govern "business combinations" (or "mergers"). In addition, these are the following KFTC guidelines and standards for merger control:

- Guidelines for Notification of Business Combination ("**Merger Filing Guidelines**");
- Guidelines for Review of Business Combination ("**Merger Review Guidelines**");
- Guidelines for Imposition of Administrative Fine for Violation of Business Combination Notification Provisions ("**Merger Fine Guidelines**");
- Guidelines for Remedies on Business Combination ("**Merger Remedies Guidelines**"); and
- Standards for Imposing Administrative Fine to Compel Compliance with Remedies on Business Combination.

1.3 Is there any other relevant legislation for foreign mergers?

The Foreign Exchange Transaction Act and the Foreign Investment Promotion Act would be relevant for foreign mergers as a notification obligation may arise when a foreign company acquires an interest in a Korean company.

1.4 Is there any other relevant legislation for mergers in particular sectors?

The Telecommunications Business Act, the Act on Structural Improvement of Financial Industry, and the Financial Holding Companies Act are relevant for mergers in the telecommunications and finance sectors. Pursuant to these pieces of legislation, mergers meeting certain thresholds and requirements are required to be notified to the Korea Communication Commission ("**KCC**") or the Financial Supervisory Commission ("**FSC**"), as applicable, for review.

In the review process, the KCC and the FSC must consult with the KFTC regarding whether the merger restricts competition. If the KCC or FSC has consulted with the KFTC, no separate notification to the KFTC is required.

1.5 Is there any other relevant legislation for mergers which might not be in the national interest?

Generally, there is no separate national security notification requirement that applies to foreign companies. However, certain restrictions may apply to foreign investment if the investment is viewed as a threat to national security. Whether any foreign investment is considered a threat to national security is reviewed and determined by the Ministry of Trade, Industry and Energy, following deliberation by the Foreign Investment Committee, at the request of the competent Minister.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

Under the MRFTA, the following types of transactions constitute "business combinations" and are subject to merger control legislation:

- acquisition of 20% or more (or 15% or more in the case of Korean-listed companies) of the total voting shares of another company;
- acquisition of additional shares by a shareholder who already owns 20% or more (or 15% or more in the case of Korean-listed companies) of the total voting shares of another company and becomes the largest shareholder of such company through the acquisition;
- participation as the largest shareholder in the establishment of a new joint-venture company;
- acquisition of all or a substantial part of the target company's business or fixed assets;
- statutory merger with another company; and
- interlocking directorate; that is, a director or an employee of one company concurrently holding a position as a registered director of another company (interlocking directorates between affiliates are excluded).

Meanwhile, "control" is not a factor that is considered in determining whether a notification to the KFTC is required (please see the answer to question 2.2 below). However, "control" is

a factor that is considered in determining whether anticompetition exists. That is, a business combination that does not involve the acquisition of "control" in principle is assumed to be not anticompetitive, and a simplified review process would apply (please see the answer to question 3.11 below).

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Yes. The acquisition of a minority shareholding can amount to a "business combination" if it falls under the definition of a "business combination" under the MRFTA.

2.3 Are joint ventures subject to merger control?

Yes. Establishment of a joint venture company is subject to merger control if the thresholds in the MRFTA are met.

2.4 What are the jurisdictional thresholds for application of merger control?

Under the amendments to the MRFTA, which took effect as of 30 December 2021 ("**Amended MRFTA**"), a transaction is subject to notification if it is a "business combination" as explained in the answer to question 2.1 above and meets either of the existing size-of-parties thresholds or new size-of-transaction thresholds:

- **Existing Size-of-Parties Threshold**: A party to the transaction has total worldwide assets or total worldwide turnover (including those of its affiliates) equal to or greater than KRW 300 billion (approximately EUR 221.76 million, USD 262.14 million) during the immediately preceding business year; and the other party to the transaction has total worldwide assets or total worldwide turnover (including those of its affiliates) equal to or greater than KRW 30 billion (approximately EUR 22.17 million, USD 26.21 million) during the immediately preceding business year.

  The total assets or total turnover is calculated by adding the total assets or total turnover of companies that maintain the status of an affiliate before and after the transaction. However, in a business transfer, when calculating the total assets or total turnover of the company that is transferring the assets, the total assets or total turnover of the company's affiliates is not added.

  In the case of a foreign-to-foreign merger or Korean-to-foreign merger, the following requirements must additionally be met (this does not apply to a foreign company's acquisition of a Korean company): the Korean turnover of each of the two foreign companies in a foreign-to-foreign merger and the Korean turnover of the target foreign company in a Korean-to-foreign merger (including turnover of affiliates) is equal to or greater than KRW 30 billion (approximately EUR 22.17 million, USD 26.21 million).
- **New Size-of-Transaction Threshold**: the Amended MRFTA added a size-of-transaction-based threshold to the current size-of-parties threshold ("**size-of-transaction threshold**") consisting of the (i) "Transaction Value Test", and (ii) "Korean Activities Test":
  (i) **Transaction Value Test**: the transaction value is KRW 600 billion (approximately EUR 443.52 million, USD 524.28 million) or more; and
  (ii) **Korean Activities Test**: (a) the target has ever sold or provided products or services to at least one million people per month in the Korean market during the immediately preceding three years; or (b) the target has either leased research and development ("**R&D**") facilities or used R&D personnel in Korea and has ever had an annual R&D budget of at least KRW 30 billion (approximately EUR 22.17 million, USD 26.21 million) for the Korean market during the immediately preceding three years.

  The Amended Guidelines lay out each factor considered in applying the Korean Activities Test of the size-of-transaction threshold as following. Regarding item (a), if the target's services to be provided in Korea are internet-based services, the number of monthly customers that purchase those services is determined based on the number of monthly active users or visitors ("**MAU**"). Regarding item (b), the annual R&D budget is determined based on the sum of the target's (i) annual ordinary R&D expenses, and (ii) other R&D costs accounted as intangible assets.

  Meanwhile, the local nexus test (i.e., requiring each of the parties to a foreign-to-foreign or Korean-to-foreign merger to have an annual Korean turnover of at least KRW 30 billion), which was a part of the size-of-parties threshold, does not apply to the new size-of-transaction threshold. In this regard, a foreign-to-foreign merger that does not meet the current local nexus test could be subject to a merger notification in Korea if a specific foreign-to-foreign transaction meets the size-of-transaction threshold.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes. Regardless of whether there is a substantive overlap, if the thresholds in the answer to question 2.4 above are met, then the transaction is subject to notification.

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

Foreign-to-foreign transactions would be subject to notification when the thresholds in the MRFTA are met. For specific notification thresholds applied in foreign-to-foreign transactions, please see the answer to question 2.4 above.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

There are mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions – including certain exemptions from merger notification requirements provided under the MRFTA and available to business combinations of special companies established pursuant to the laws of Korea. That said, those exemptions seldom apply to foreign-to-foreign mergers or foreign-to-Korean mergers, and as such, they will not be discussed in detail here.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

In principle, for a merger that takes place in stages, each stage must be reviewed separately to determine whether it would constitute an independent transaction subject to a notification obligation.

However, (i) where there is a resale immediately after the acquisition of shares or during the notification period, or (ii) where two or more mergers arise from a single agreement, it is possible to consider the various stages as a single transaction and submit a notification for only the main transaction. In these cases, the whole transaction must be specifically explained in detail in the notification.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Where the thresholds are met, notification is compulsory. There are two types of notification: (i) pre-closing notification; and (ii) post-closing notification.

Pre-closing notification is required where one or more of the parties to the merger is a large-scale corporation with total worldwide assets or total global turnover (including those of its affiliates) equal to or greater than KRW 2 trillion (approximately EUR 1,478 million, USD 1,747 million) as of the immediately preceding business year. There is no deadline for the pre-closing notification itself – meaning there is no requirement that the pre-closing notification should be submitted within a certain period of signing the agreement. However, the merger may not be closed without the KFTC's clearance.

In the case of a transaction that is subject to a post-closing notification, the MRFTA requires the notification within 30 calendar days from the closing date.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

There are no exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

3.3 Is the merger authority able to investigate transactions where the jurisdictional thresholds are not met? When is this more likely to occur and what are the implications for the transaction?

Yes. The KFTC may investigate transactions where the jurisdictional thresholds are not met. However, the KFTC rarely initiates investigations of transactions that do not meet the jurisdictional threshold.

3.4 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

Yes. An administrative fine of up to KRW 100 million (approximately EUR 73,900, USD 87,400) may be imposed if there is a failure to file or if there are misrepresentations in a required notification. The Merger Fine Guidelines address the calculation mechanism for an administrative fine in detail.

3.5 Is it possible to carve out local completion of a merger to avoid delaying global completion?

While it is technically possible, the KFTC has negative views about carving out the local completion of a merger to avoid delaying global completion.

3.6 At what stage in the transaction timetable can the notification be filed?

The notification can be filed before or after the closing depending on each case.

In the case of mergers subject to a pre-closing notification, the notification may be filed after the execution of a binding transaction agreement.

The parties may file a voluntary pre-merger notification (which is not a formal merger filing but a request to the KFTC to conduct a preliminary review of the proposed transaction in advance) even before the execution of a binding transaction agreement if the parties to the transaction can demonstrate their intention to enter into such agreement to the KFTC, for example, based on a memorandum of understanding, a letter of intent, or a draft of the transaction agreement.

In the case of mergers subject to a post-closing notification, the MRFTA requires the post-closing notification to be filed within 30 calendar days from the closing date.

3.7 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The initial review period is 30 calendar days from the date of filing of the notification; however, the KFTC may extend it by an additional 90 calendar days, if necessary. When the review period is extended, the KFTC simply gives notice of extension without issuing any formal decision.

If the KFTC issues a request for additional information ("**RFI**"), the review period will be suspended until the submission of all requested information.

If the KFTC's Mergers and Acquisitions Division ("**M&A Division**") determines after its review that the merger raises no anticompetitive concerns, it will issue the notice of clearance within the review period, and the review process ends.

If the M&A Division determines after its review that the merger raises anticompetitive concerns and plans to prohibit the transaction or impose remedies, it will prepare an Examiner's Report ("**ER**") based on its review and submit the ER to the Commissioners. The parties can submit opinions regarding the ER, and the Commissioners will hold a hearing and deliberate before making an ultimate decision and notifying the merging entities.

3.8 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks of completing before clearance is received? Have penalties been imposed in practice?

Yes. In the case of mergers subject to a pre-closing notification, closing the transaction before the KFTC's clearance is

prohibited. Even if the 30-day review period discussed above in the answer to question 3.7 expires, it is not regarded as an automatic clearance, and the parties may not close the transaction before the KFTC grants clearance. The risks in completing before clearance is received are explained in the answer to question 3.4. In practice, the KFTC frequently issues an administrative fine.

3.9 Is a transaction which is completed before clearance deemed to be invalid? If so, what are the practical consequences? Can validity be restored by a subsequent clearance decision?

No. A transaction that is completed before clearance is not deemed invalid. For reference, although there is a statute that allows the KFTC to file a lawsuit with the court seeking invalidation of a statutory merger or establishment of a company, the statute is ineffectual or defunct in practice.

3.10 Where notification is required, is there a prescribed format?

Yes. There is a prescribed format for each type of merger, and a notification must be submitted in accordance with the applicable prescribed format with the required information and relevant documents (e.g., a copy of the agreements, minutes of a board/shareholder meeting, the certificate of incorporation, annual reports, and financial statements).

3.11 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

According to the Merger Review Guidelines, a transaction may qualify for a simplified review in the case of (i) an intragroup transaction, (ii) a transaction that does not involve the acquisition of control, (iii) a conglomerate merger of companies with total assets or a total turnover of less than KRW 2 trillion (approximately EUR 1,478 million, USD 1,747 million), (iv) a conglomerate merger that does not involve any overlap or relevance among the respective products of the parties, or (v) participation in the establishment of an overseas joint-venture company that is not likely to affect the Korean market. In principle, a merger qualified for a simplified review will be granted clearance from the KFTC within 15 calendar days from the date of the merger filing.

According to the Merger Filing Guidelines, a simplified notification form may be used in any of the following circumstances: (i) an intragroup transaction; (ii) an interlocking directorate where the number of interlocking directors in the counterpart company is less than one-third of the total number of directors in the counterpart company; and (iii) the establishment of a special purpose vehicle of a special type under Korean law.

Meanwhile, it is possible to shorten the review period by filing a voluntary pre-merger notification to the KFTC before signing a transaction agreement (please see the answer to question 3.6 above).

Additionally, the KFTC may decide to process the review more quickly if the parties are able to persuasively present the absolute necessity for closing to occur by a certain time to the KFTC. However, this is entirely up to the KFTC's discretion and may not always be effective.

3.12 Who is responsible for making the notification?

The acquiring company is responsible for submitting the notification to the KFTC. In the event a transaction vehicle is used, the transaction vehicle – which would be the direct acquiring entity – bears the notification obligation, not the ultimate acquiring company. When a joint venture is established, its largest shareholder is responsible for making the notification.

3.13 Are there any fees in relation to merger control?

No, there are no fees for filing the notification.

3.14 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

In the case of a public offer for a listed business, even if one of the parties to the transaction is a large-scale corporation with total worldwide assets or total worldwide turnover (including those of its affiliates) equal to or greater than KRW 2 trillion (approximately EUR 1,478 million, USD 1,747 million) as of the immediately preceding business year, the transaction would be subject to a post-closing notification. This exception does not apply to all public offers under foreign laws and applies only to a public offer that is recognised as being similar to a tender offer under Korean law.

3.15 Will the notification be published?

No. The KFTC does not publish all or part of the notification. However, the KFTC may publish its decision or distribute a press release in certain circumstances (e.g., prohibition or conditional clearance with remedies). In addition, even when the KFTC grants unconditional clearance, the KFTC may distribute a press release, although it would only occur in a case where the transaction is of substantial importance in Korea.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

According to the MRFTA, a horizontal merger between competitors is presumed to be anticompetitive when all the following conditions are met: (i) the combined entity has a market share of 50% or more (or the top three market players, including the combined entity, have an aggregate market share of 75% or more); (ii) the collective market share of the combined entity is the largest in the relevant market; and (iii) the market share difference between the combined entity and the second-largest company is equal to or greater than 25% of the collective market share of the combined entity.

Pursuant to the Merger Review Guidelines, a horizontal merger between competitors is presumed not to be anticompetitive in any of the following cases: (i) the Herfindahl-Hirschman Index ("**HHI**") of the relevant market is less than 1,200; (ii) the HHI of the relevant market is 1,200 or more and less than 2,500, and the increase in such HHI as a result of the proposed merger is less than 250; or (iii) the HHI of the relevant market is 2,500 or more

and the increase in such HHI as a result of the proposed merger is less than 150. If a merger falls under a "safe harbour" based on its HHI value, the KFTC is highly likely to end its review without raising any particular anticompetitive concerns.

If the question of whether a contemplated merger will be anticompetitive cannot be clearly determined based on the two types of analysis noted above, then the KFTC will review and determine whether the merger is anticompetitive based primarily on the following factors: (i) whether the combined entity can unilaterally increase prices ("**Unilateral Effects**"); and (ii) whether a possibility of concerted practices will increase after the closing of the merger ("**Coordinated Effects**").

4.2 To what extent are efficiency considerations taken into account?

In principle, even if anticompetition is recognised, if a party to the contemplated merger successfully proves that efficiency gain is greater than potential anticompetitive harm, the merger may be permitted. That said, in practice, there are almost no cases where the KFTC permitted an anticompetitive merger based on the grounds that there are potential efficiency gains.

4.3 Are non-competition issues taken into account in assessing the merger?

In principle, the KFTC does not consider non-competition issues (including public interest) when assessing mergers. The KFTC's review is generally based on objective standards, and one of the important factors considered by the KFTC is the likelihood of anticompetitive effects of the transaction on the relevant market in Korea. The KFTC decision is generally not influenced by politics; however, the KFTC does try to protect small and medium-sized local enterprises and consumers. In addition, our understanding is that the KFTC conducts a more thorough review of foreign mergers that would have significant effects on the Korean industries.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

When the KFTC recognises the necessity, it may consider the opinions of interested parties. In the case of a merger with anticompetitive concerns, the KFTC often inquires about the opinions of third parties (including competitors, customers, suppliers and experts) and takes their opinions into consideration.

4.5 What information gathering powers (and sanctions) does the merger authority enjoy in relation to the scrutiny of a merger?

If a merger notification and/or supporting evidence filed by the notifying party is incomplete or inadequate, the KFTC can order the notifying party to supplement. If the notifying party fails to submit the supplementary documents without any good reason or submits false information, the KFTC has the authority to impose an administrative fine of up to KRW 100 million (approximately EUR 73,900, USD 87,400).

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

There is no specific provision in the MRFTA for the protection of commercially sensitive information; however, even if the relevant party has not made a request for the protection, the KFTC considers the notification and related submissions as business secrets and does not disclose them to the public. Even if the KFTC decision is published, all sensitive information would be deleted if such a request is made by the relevant party before the KFTC decision is disclosed publicly.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Please refer to the explanation of the regulatory process in the answer to question 3.7. The KFTC will issue a written notice of its decision.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Yes. It is possible, and from our experience, the parties can propose and negotiate the remedies at any time before the KFTC holds a hearing and renders its decision. The KFTC will review the proposed remedies submitted by the notifying parties, and if the KFTC determines that they are insufficient for eliminating all the anticompetitive concerns, the KFTC may request the parties to revise or supplement the proposed remedies. This is not an official process, and it happens through unofficial negotiations between the parties and the M&A Division of the KFTC.

In addition, while the MRFTA officially provides for the consent decree process, in practice, it is not often used.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

The KFTC imposes remedies in foreign-to-foreign mergers by applying the same standards used for other non-foreign-to-foreign mergers.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

The parties may commence the negotiation of remedies by submitting proposed remedies or an application for commencement of the consent decree process any time before the KFTC holds a hearing and renders a decision.

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

Yes. Regarding a divestment remedy, the Merger Remedies Guidelines specifically address the assets that are subject to

divestment, the buyer in the divestment transaction, the divestment agreement, the time period for performing the divestment remedy, and the accompanying obligations, among other things.

5.6 Can the parties complete the merger before the remedies have been complied with?

Yes. Under the MRFTA, the KFTC cannot impose the so-called "fix-it-first" remedy or the "up-front buyer" remedy. That is, the KFTC can only order the divestment of assets within a certain period of time from the date that the remedies are imposed (please see the answer to question 5.5 above) and cannot demand that divestment be completed or that the transaction agreement for divestment be executed before it grants clearance.

5.7 How are any negotiated remedies enforced?

The KFTC can have the parties report, or independently take necessary measures to confirm (e.g., RFIs or on-site investigations), the status of performance of the remedies.

In case the remedies are not performed within the time period given, certain administrative fines to compel compliance with the remedies may be imposed, not exceeding 0.03% of the total transaction amount for each day of delay. Furthermore, the KFTC may impose imprisonment of up to two years or a fine of up to KRW 150 million.

5.8 Will a clearance decision cover ancillary restrictions?

There are no provisions on this issue under the MRFTA, nor are there any relevant KFTC precedents. That said, even if a merger with ancillary restrictions is cleared, it does not mean that the KFTC approved those restrictions as lawful. Accordingly, we cannot completely rule out the possibility that another government agency or a division of the KFTC other than the M&A Division (e.g., the Cartel Division) may raise an issue later after the clearance decision.

5.9 Can a decision on merger clearance be appealed?

Yes. A decision on merger clearance can be appealed by the parties to the merger (to the KFTC for reconsideration or to the Seoul High Court) or a third party (through the submission of a constitutional complaint to the Constitutional Court of Korea).

5.10 What is the time limit for any appeal?

If a party wishes to appeal the KFTC decision and decides to appeal to the KFTC itself (the first option in the answer to question 5.9), that appeal must be filed within 30 calendar days of receiving the notice of the KFTC's measures. If a party wishes to appeal the KFTC decision by filing an appeal with the Seoul High Court, the appeal must be filed within 30 calendar days of receipt of the notice of the KFTC's measures or receipt of an official copy of the KFTC's decision after the KFTC's reconsideration of the appeal.

5.11 Is there a time limit for enforcement of merger control legislation?

Yes. Even if a merger notification obligation was not carried out, if five years have passed since the date of the violation of the obligation, the KFTC may not impose an administrative fine. Moreover, even if a merger is later determined to be anticompetitive, if seven years have passed from the date of closing of the merger, the KFTC may no longer impose remedial measures.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

The KFTC has been actively cooperating with foreign competition authorities in reviewing mergers of global companies.

6.2 What is the recent enforcement record of the merger control regime in your jurisdiction?

In 2021, the KFTC examined a total of 1,113 merger cases, 159 of which involved foreign entities, accounting for approximately 14.3% of all merger cases. The KFTC imposed remedies in one out of the 1,113 cases for being anticompetitive.

From 2021 until now in early September 2022, major cases in which the KFTC imposed remedies on mergers involving foreign companies are as follows:

- In February 2021, the KFTC imposed structural remedies on Delivery Hero SE's acquisition of Woowa Brothers' shares.
- In April 2021, the KFTC imposed structural remedies on DuChemBio-CARECAMP radiological medicine division merger case.

6.3 Are there any proposals for reform of the merger control regime in your jurisdiction?

As discussed above, the Amended MRFTA (which took effect from 30 December 2021) introduced the new size-of-transaction threshold, and it applies to all transactions executed after 30 December 2021 in the case of pre-merger filing (which is required if either party has worldwide assets or annual turnover of at least KRW 2 trillion) and all transactions whose closing date falls after that date in the case of post-merger filing.

6.4 Please identify the date as at which your answers are up to date.

The answers are up to date as at 9 September 2022.

7 Is Merger Control Fit for Digital Services & Products?

7.1 Is there or has there been debate in your jurisdiction on the suitability of current merger control tools to address digital mergers?

The Merger Review Guidelines amended in 2019 introduced the following in connection with digital mergers: (i) additional criteria for assessing the level of market concentration in the innovative market; and (ii) additional criteria for determining anticompetition.

Meanwhile, the new size-of-transaction threshold introduced in the Amended MRFTA is considered to have been introduced in order to prevent "killer acquisitions" (i.e., acquisitions of promising start-ups to "kill" future competition) that often become an issue in digital mergers.

7.2 Have there been any changes to law, process or guidance in relation to digital mergers (or are any such changes being proposed or considered)?

As noted above in the answer to question 7.1, (i) the amended Merger Review Guidelines took effect from 27 February 2019, and (ii) the Amended MRFTA took effect from 30 December 2021.

7.3 Have there been any cases that have highlighted the difficulties of dealing with digital mergers, and how have these been handled?

No. We are not aware of any cases that have highlighted the difficulties of dealing with digital mergers.

John H. Choi has been at the forefront of many of the leading antitrust cases, including major international cartel cases and abuse of market dominance cases. Mr. Choi was also an adjunct professor of law at Seoul National University, College of Law, Korea's top undergraduate school of law, and has been ranked as band 1 by *Chambers Asia* and *The Legal 500 Asia*. Mr. Choi has been a non-government advisor for the International Competition Network ("**ICN**").
Mr. Choi's recent notable speaking engagements include: speaking at the ICN 2016 annual meeting on refusal to supply; speaking at the 2016 International Bar Association Annual Conference on IP and antitrust; speaking at the ICN 2015 annual meeting on making efficiency assessments more effective; lecturing at Korea University on conglomerate mergers; speaking at various Global Competition Review conferences; speaking at the European Chamber of Commerce in Korea luncheon on "Competition Law 2015 – Panorama of antitrust enforcement in Europe and Korea"; and presenting on US and EU enforcement practices at a cartel workshop hosted by the KFTC. Mr. Choi is also a prolific writer.

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Sangdon Lee is involved in approximately 70–80 merger filing cases each year, and is one of the attorneys handling the largest number of merger control cases in Korea. Mr. Lee has represented clients in the most complex cases that the KFTC has recently handled or is handling, including *Google/Motorola Mobility*, *Linde/Praxair*, *SK Broadband/T-Broad*, *Fiat Chrysler Automobiles/PSA Group*, *ZF Friedrichshafen/WABCO* and *Korean Air/Asiana Airlines*. Notably, he acted for Google as lead counsel when Google successfully obtained unconditional clearance to acquire Motorola Mobility, and for Linde as lead counsel when Linde successfully obtained conditional clearance to merge with Praxair. Given the foregoing, he is one of the top-ranked antitrust lawyers with the highest track record in advising clients on merger filings in Korea. Mr. Lee has published numerous articles on merger control issues in the academic journals widely known and highly regarded among Korean legal academics and professional practitioners.

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