

Updates in Korea's Merger Control Regime

- Expanded Merger Notification Exemptions and New Remedy Proposal System to Take Effect in Around August 2024 -

On January 25, 2024, the Korea Fair Trade Commission (the "KFTC") announced that the amendments to the Monopoly Regulation and Fair Trade Act (the "MRFTA") had passed the National Assembly's plenary session on that day. The amendments are expected to take effect in around August 2024, 6 months from their promulgation. The amendments include two major changes to the Korean merger control regime that could be of significance to foreign companies investing in Korea: (i) expansion of exemptions from the merger notification requirement and (ii) introduction of the new remedy proposal system.

1. Broader Exemptions from the Merger Notification Requirement

Pursuant to the first of the amendments, the following four types of transactions—which are highly unlikely to raise anticompetitive concerns according to the KFTC—will enjoy exemptions from the merger notification requirement: (i) statutory mergers or business transfers between a parent and its subsidiary (limited to where the parent directly holds more than 50% of the subsidiary's total issued and outstanding shares), (ii) interlocking directorships involving less than one-third of the board members (excluding the representative director), (iii) establishment of PEFs, and (iv) mergers between affiliates involving a target entity with the total assets and worldwide turnover below KRW 30 billion on a stand-alone basis.

Considering that the transactions that fall under the four new exemption categories, at least in 2022, accounted for approximately 42% of the total merger notifications filed with the KFTC (431 out of 1,027 filings), the KFTC is hopeful that the amendment would help reduce their caseload to a similar extent, thereby enabling them to focus on and prioritize more complex and competitively significant transactions. Companies contemplating these four types of transactions will also benefit from the amendment in terms of time and resource savings.

2. Introduction of the Remedy Proposal System

Pursuant to the second of the amendments, companies will be invited to formally design and propose to the KFTC a remedy package of their own that would address anticompetitive concerns raised during the review process. Under the current system, it is the KFTC that comes up with merger remedies based on the limited information they have, later imposing it on companies as a remedial order.

Should companies decide to exercise the new option, they must submit a remedy proposal, in writing, within the KFTC's review period (which, by default, lasts for 30 days and may be extended up to 120 days). Following the submission, the KFTC may issue requests for information as necessary to revise and modify the proposed remedies, during which the review period will be suspended. Once the authority finds that the remedy package, in its final form, is appropriate and sufficiently addresses their anticompetitive concerns, they will issue conditional clearance with that remedy package.

The KFTC is optimistic that the amendment will help pave the way for effective and actionable remedy packages that are designed by the companies themselves and based on their own robust information and data at the market, industry, and company levels. Furthermore, given that a similar approach to the remedy procedures has already been adopted by many of the major competition authorities around the world (including the US Department of Justice, the European Commission, and the UK Competition and Markets Authority), the KFTC has come to view the amendment as an opportunity to further align the Korean competition legal framework with the global standards.

The amendment is expected to help companies as well, particularly those that are contemplating global transactions, as the risks of the companies having to implement potentially conflicting remedies in different jurisdictions could be reduced by having the opportunity to come up with remedy proposals that are globally aligned to some extent.

What's Next

To implement the two amendments, amendments or enactments of other laws and regulations are expected to follow. Also, the overall impact of these changes on Korea's merger control regime remains to be seen. We will monitor these developments and provide any further updates.

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