
CHAMBERS GLOBAL PRACTICE GUIDES

Cartels 2025

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South Korea: Law and Practice & Trends and Developments

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SOUTH KOREA

Law and Practice

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Contents

1. Cartels Law and Regulation p.5

- 1.1 Legal Bases p.5
- 1.2 Regulatory/Enforcement Agencies and Penalties p.5
- 1.3 Private Enforcement p.6
- 1.4 "Cartel Conduct" p.6
- 1.5 Limitation Periods p.7
- 1.6 Jurisdiction p.7
- 1.7 Principles of Comity p.8
- 1.8 Enforcement Priorities p.8
- 1.9 Guides Published by Governmental Authorities p.8

2. Early Stages of Cartel Enforcement p.8

- 2.1 Initial Investigation p.8
- 2.2 Dawn Raids/Search Warrants p.9
- 2.3 Spoliation of Evidence p.10
- 2.4 Role of Counsel p.10
- 2.5 Obtaining Evidence/Testimony p.11
- 2.6 Attorney-Client and Other Privileges p.11
- 2.7 Non-Cooperation p.11
- 2.8 Protection of Confidential/Proprietary Information p.11
- 2.9 Arguments Against Enforcement Actions p.12

3. Leniency, Immunity and Whistle-Blower Regimes p.12

- 3.1 Leniency p.12
- 3.2 Amnesty/Immunity p.14
- 3.3 Whistle-Blowers p.14

4. Procedural Framework for Cartel Enforcement p.14

- 4.1 Obtaining Evidence From Employees p.14
- 4.2 Obtaining Documentary Evidence From Subject/Target Companies p.14
- 4.3 Obtaining Evidence From Entities Outside the Jurisdiction p.15
- 4.4 Domestic Inter-Agency Co-Operation p.15
- 4.5 International Inter-Agency Co-Operation p.15
- 4.6 Issuing Criminal Indictments p.15
- 4.7 Issuing Civil Complaints p.15
- 4.8 The Role of Experts p.17
- 4.9 Possibility of Multiple Proceedings p.17

5. Sanctions and Remedies in Criminal Cartel Enforcement p.17

- 5.1 Imposition of Sanctions/Fines p.17
- 5.2 Plea Bargaining/Settlement p.17
- 5.3 Effect of Liability Being Established p.17
- 5.4 Sanctions and Penalties in Criminal Proceedings p.17
- 5.5 History of Criminal Sanctions p.17
- 5.6 Relevance of Effective Compliance Programmes p.18
- 5.7 Mandatory Consumer Redress p.18
- 5.8 Judicial Review or Appeal p.18
- 5.9 Timeline of Cartel Enforcement Process p.18

6. Civil Litigation p.19

- 6.1 Private Rights of Action p.19
- 6.2 Collective Action p.19
- 6.3 Indirect Purchasers and "Passing On" Defences p.19
- 6.4 Evidence Obtained From Governmental Investigations/Proceedings p.19
- 6.5 Frequency of Completion of Litigation p.20
- 6.6 Attorneys' Fees p.20
- 6.7 Costs/Fees p.20
- 6.8 Judicial Review or Appeal p.21

7. Trends in Cartel Enforcement p.21

- 7.1 Information Sharing as a Cartel Offence p.21
- 7.2 Use of AI and Algorithms p.21
- 7.3 Monopolisation as a Cartel Offence p.21
- 7.4 Focus on Certain Industries/Sectors p.21
- 7.5 Use of Messaging Applications and Chat Platforms p.22
- 7.6 "No Poach" and Labour Market Allocation Conduct p.22
- 7.7 Leniency v Ex Officio Investigations p.22
- 7.8 Domestic v International Investigations p.22
- 7.9 Environmental, Social and Governance (ESG) Cartels p.22
- 7.10 Crisis Cartels p.22

Shin & Kim has the largest team of antitrust specialists in Korea, with more than 70 dedicated experts, including a former Korea Fair Trade Commission (KFTC) chairman, officers and committee members, and former prosecutors and judges. The group is complemented by the largest number of KFTC alumni lawyers of any law firm, all of whom have extensive expertise in antitrust law and deep familiarity with KFTC en-

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1. Cartels Law and Regulation

1.1 Legal Bases

In Korea, the statutory basis for challenging cartel behaviour/effects is the Monopoly Regulation and Fair Trade Act (MRFTA). Although there are other statutes that regulate cartels, including the Criminal Act and the Framework Act on the Construction Industry, most cartels are regulated under the MRFTA, through Article 40 to Article 44, and the Enforcement Decree of the MRFTA details or supplements the MRFTA provisions. In addition, as the enforcement authority of the MRFTA, the Korea Fair Trade Commission (KFTC) provides the following guidelines for cartels:

- Guidelines for Filing Applications for the Approval of Cartels and Competition-Restrictive Practices;
- Guidelines for Cartel Review;
- Guidelines on Examination of Cartels in Bidding;
- KFTC Notice on the Operations of the Leniency Guidelines for Voluntary Disclosure of Unfair Collusive Acts;
- Guidelines for Examination of Cartels Involving Administrative Guidance; and

- Guidelines for Review of Cartels Involving Information Exchange Between Business Entities.

On 10 December 2020, the prosecutors' office introduced "*Guidelines for the Reduction of Penalty in Cartel Cases and Investigation Procedures*", formally implementing a criminal leniency programme for cartel cases.

In addition, the fully amended MRFTA, effective as of 30 December 2021 (the "*Amendment*"), contains a number of changes regarding cartels.

1.2 Regulatory/Enforcement Agencies and Penalties

The KFTC may impose remedial orders and a surcharge on a company that has taken part in a cartel in violation of the MRFTA, and may file a referral to the prosecutors' office. According to the Amendment, the KFTC may impose a surcharge of up to 20% of the relevant revenue for cartels and raised the maximum amount of fixed surcharge to KRW4 billion, which is twice the amount in the previous MRFTA.

However, for conduct that ended before the effective date of the Amendment (30 December

2021), the increased maximum surcharge does not apply, and the previous provision applies.

The MRFTA also has a provision on criminal punishment for cartels. A person who has engaged in a cartel may be subject to imprisonment for up to three years or a fine of up to KRW200 million, and a company that has engaged in a cartel may also be subject to a fine. If the company is a corporation, its representatives and employees may also be subject to criminal punishment.

1.3 Private Enforcement

A person who has suffered damages due to a cartel may file a damages lawsuit against the cartel participant. In such a case, standing for plaintiffs in the damages lawsuit is not necessarily limited to the cartel participant's competitor or direct transaction counterparty. Meanwhile, although a private person may report a cartel to the KFTC in order to urge the KFTC to investigate, a private person cannot directly file a lawsuit seeking to impose remedial orders or a surcharge on a cartel participant.

The limit in a damages lawsuit for a cartel was previously actual damages, but this has been changed with the adoption of punitive damages. The punitive damages provision regarding cartels applies to violations that occur for the first time from September 2019. Accordingly, a cartel participant is liable for damages not exceeding three times the actual damages to the injured party.

The court, when deciding the amount of damages not exceeding three times the actual damages, considers the cartel participant's intention, the degree of harm, the economic benefit gained by the cartel participant, a fine and surcharge for the violation, the duration and number of violations, the cartel participant's financial situation,

the degree of effort made to provide relief for harm, etc. However, if a cartel participant has filed for leniency and been granted leniency status, the cartel participant is liable only within the scope of actual damages.

1.4 "Cartel Conduct"

Regarding cartels, the MRFTA provides that a company shall neither agree with any other company to jointly perform the following acts that unfairly restrict competition nor require any other company to engage in such illegal cartel conduct under contract, agreement or arrangement, or in any other manner:

- price fixing;
- determining terms and conditions for transactions;
- output restrictions;
- imposing limitations on the area in which transactions can be conducted, or transaction partners;
- hindering installation of facilities;
- imposing limitations on the kinds of, and standards for, goods or services to be produced or traded;
- jointly conducting and managing substantial business activities;
- bid rigging; and
- any other conduct that substantially restricts competition in certain areas of transaction by interfering with or imposing limitations on the business activities or the business of any other company, or by exchanging price, production volume and other information prescribed by presidential decree.

Previously, Korean courts determined that information exchange itself was not a cartel. Unlike the previous MRFTA, the Amendment includes information exchange as a type of cartel and prohibits an agreement if such agreement to

exchange information between companies restricts competition. The conduct of substantially restricting competition in certain areas of transaction by exchanging price, production volume and other information prescribed by presidential decree was added as a type of cartel. Other information prescribed by presidential decree of the MRFTA includes the following information on goods or services:

- the cost of goods or services;
- delivery, inventory, or sales volume; or
- the transaction terms, price, or payment terms.

The Amendment's provision that regards information exchange as a type of cartel does not apply to conduct that has been terminated before the effective date of the Amendment (30 December 2021).

Joint conduct between competitors that is not anti-competitive is not prohibited. In this regard, according to the KFTC's Guidelines for Cartel Review, if the combined market share of the companies that participated in the cartel does not exceed 20%, the KFTC will end its review based on the view that an anti-competitive effect will not arise due to the joint conduct or that the anti-competitive effect is minimal. In addition, a cartel is exceptionally permitted if it has been approved by the KFTC on the grounds that its purpose is for industrial restructuring to help overcome recession, develop research and technology, improve trade term rationalisation, and improve the competitiveness of small and medium-sized businesses.

1.5 Limitation Periods

The KFTC may not impose remedial orders or a surcharge on a cartel if the following limitation period has elapsed:

- if the KFTC has commenced an investigation into an MRFTA violation – five years from the investigation commencement date; or
- if the KFTC has not commenced an investigation into an MRFTA violation – seven years from the date of termination of the violation.

Even if seven years have elapsed since the date of the cartel participants' agreement, the KFTC may impose sanctions if the cartel is still in progress. However, if a sanction has been cancelled according to a court's decision and a new sanction has been imposed according to a court's decision, the provision on the limitation period above does not apply. If an applicant filed for leniency by specifying the details of the cartel and the KFTC conducted an on-site investigation afterwards, the date the KFTC commenced its investigation is not the date of the on-site investigation but the date of the leniency filing.

Regarding an MRFTA violation other than a cartel, the statute of limitations for the KFTC to impose remedial orders or surcharge is seven years from the end date of the alleged violation. Unlike in the case of cartels, the statute of limitations does not differ based on whether the KFTC has commenced its investigation.

1.6 Jurisdiction

Cartels outside Korea may also be regulated by the KFTC under the MRFTA if they affect the Korean market. In this regard, in an appeal of an air cargo case, the Korean Supreme Court held that the MRFTA's scope of application for overseas conduct should be limited to overseas conduct that has a direct, substantial and reasonably foreseeable effect on the domestic market.

Meanwhile, the Korean Supreme Court has determined that if the Korean market is included in the subject of an anti-competitive agreement

among foreign companies, then it should be considered to affect the Korean market, unless there are special circumstances.

1.7 Principles of Comity

The Korean court has emphasised the importance of comity with respect to competition law. In the air cargo case mentioned in **1.6 Jurisdiction**, the Korean Supreme Court expressed its concern that *“excessive extraterritorial application of the MRFTA would give rise to unfair consequences”*.

Likewise, the KFTC has emphasised comity in areas involving competition law. It submitted an amicus brief on 23 May 2014 in *Motorola Mobility LLC v AU Optronics Corp*, No 14-8003 (7th Circuit 2014), where extraterritorial application of the US antitrust laws was a key issue. In this amicus brief, the KFTC asked the US court to uphold the comity principle by stating: *“Furthermore, the antitrust regime of a country typically accommodates the country’s unique legal tradition and socioeconomic characteristics... If this Court disregards such fundamental differences and applies the US antitrust laws to claims arising out of transactions that took place outside the US between non-US entities without any direct effect on the US market, such expansive application of the US antitrust laws is likely to create conflicts with other countries’ sovereignty.”*

1.8 Enforcement Priorities

According to the KFTC’s 2023 annual statistic report, the KFTC sanctioned 1,703 cartel cases between 1981 and 2023. Among these, price fixing accounted for 744 cases (43.7%), and bid rigging for 705 cases (41.4%). Additionally, according to the KFTC’s 2025 White Paper, the KFTC has sanctioned a total of 31 international cartel cases from 2002 through January 2024,

beginning with the graphite electrode cartel case in 2002.

The 2023 annual statistic report also categorises the initiation of cartel investigations as either to be based on *“report”* or *“ex officio”*. In 2021, of 138 initiated cases, 94 were based on reports and 44 ex officio; in 2022, of 149 cases, 96 were report-based and 53 ex officio; and in 2023, of 189 cases, 62 were report-based and 127 ex officio. The term *“report”* in this context may include leniency applications from cartel participants as well as third-party reports.

Separately, the KFTC’s 2025 White Paper provides data on leniency trends. Of the cartel cases resulting in surcharge imposition, 34 out of 52 cases in 2021, 28 out of 45 cases in 2022, and 24 out of 47 cases in 2023 were initiated through leniency.

1.9 Guides Published by Governmental Authorities

An English translation of [the Monopoly Regulation and Fair Trade Act and the Enforcement Decree of the Monopoly Regulation and Fair Trade Act](#) is available online.

2. Early Stages of Cartel Enforcement

2.1 Initial Investigation

The KFTC may commence an investigation into an alleged cartel case on its own or by receiving a report of such cartel. According to the annual statistical report issued by the KFTC, of the KFTC’s 189 cartel cases in 2023, 62 were based on reports to the KFTC and 157 cases were commenced by the KFTC on its own.

2.2 Dawn Raids/Search Warrants

The KFTC may conduct a dawn raid to investigate whether there has been a violation of the MRFTA by sending investigating officials to the place of business of the company that is suspected of participating in a cartel. In fact, the KFTC frequently conducts dawn raids. The KFTC's dawn raid is conducted with the consent of the company that is subject to the investigation (ie, it is not a compulsory investigation). However, if the company, an officer or an employee interferes with the KFTC's investigation, criminal punishment may be imposed, depending on the type of interference. Meanwhile, the investigating official and such official's supervisor who receive a report of the investigation plan have an obligation to keep information related to the dawn raid confidential so that it is not leaked.

Procedure of Dawn Raids

Before investigating the desks and drawers, etc, of the investigated company, the investigating official should seek co-operation from the person in charge of the division that is subject to the investigation at the investigated company or an officer or employee of equivalent position.

When investigating data in the information processing system of the investigated company, the data should be accessed or copied with the co-operation or in the presence of the person concerned at the investigated company. At this time, the investigating official may collect digital data by deciding the scope of the data and printing it or using the imaging method at the investigation site. However, if it is difficult to decide the scope of the data and to image it at the investigation site, the digital storage media can be held in custody or the entire digital data may be imaged, in which case, data is selected later at the KFTC office with the investigated company's counsel in attendance. If an officer or employee

of the investigated company requests a copy of the data collected by the investigating official, the investigating official must comply with the request.

Investigated companies may request the return or disposal of irrelevant materials submitted during dawn raids within seven days of submission. Investigating officials must return or dispose of the materials if they are deemed irrelevant, or they must request a separate determination by a committee within the KFTC if they believe the materials are relevant to the investigation. If the committee determines that the materials are irrelevant to the investigation, they must be returned or disposed of accordingly.

In the dawn raid process, the investigating official may conduct interviews of parties, interested persons, or persons for reference and may request statements or confirmation documents. If an officer or employee refuses to co-operate with an interview, an administrative fine of up to KRW100 million for the investigated company and up to KRW10 million for the officer or employee may be imposed.

Restrictions on Dawn Raids

When conducting a dawn raid, the investigating official must first present a public official identification card and issue a notice of investigation to the officer or employee of the investigated company, stating the period, purpose, subject and method of the investigation. The investigating official must conduct the dawn raid within the scope of the purpose of the investigation stated in the notice of investigation. If, during the investigation, materials appear to be related to other legal violations, appropriate measures should be taken by the KFTC, such as sending the relevant materials to the KFTC division in charge.

The dawn raid must be conducted within the place of business stated in the notice of investigation. If it becomes necessary to investigate another location, this can only be done after issuing a separate notice of investigation that specifies such place of business. The rules of investigative procedure prohibit targeting a company's legal team or compliance department in principle, unless these departments are directly involved in illegal activities or destruction of evidence.

The investigating official must conduct the investigation within the regular working hours of the investigated company. Moreover, the investigating official must complete the investigation within the investigation period stated in the notice of investigation. If an extension is necessary, the investigating official must provide an additional notice indicating the extended period and the reasons for the extension.

2.3 Spoliation of Evidence

Under the MRFTA, if a company, an officer or an employee interferes with the KFTC's investigation by means such as hiding or destroying materials or objects requested by the KFTC, refusing access or forging or falsifying materials, the KFTC may file a referral to the prosecutors' office regarding the company, officer or employee who interfered with the investigation. If the prosecutors' office indicts in connection with this, the court may impose imprisonment for up to two years on the relevant employee, or a fine of up to KRW150 million on the company or relevant employee.

Furthermore, the destruction of cartel-related evidence may also constitute a criminal offence under the charge of evidence destruction. If officers or employees destroy evidence pertaining to their company's involvement in a cartel,

such actions may be regarded as "*destroying evidence related to another person's criminal case*" which is punishable by up to five years of imprisonment or a fine of up to KRW7 million.

2.4 Role of Counsel

In principle, if there is a request by the investigated company, the investigating official must allow counsel appointed by the investigated company to participate in the entire investigation process. However, counsel may be prevented from participating if the request is deemed to delay or interfere with the investigation, if the counsel responds on behalf of the investigated company or induces a specific answer, or if the counsel films, tapes or records the content of the interrogation.

In addition, in relation to cartel investigations that require urgent investigation due to concerns such as the destruction of evidence, investigations may be commenced regardless of whether the request for counsel participation is granted.

Officers and employees of an investigated company that is subject to the KFTC's investigation do not need to appoint counsel other than the counsel appointed by the investigated company, unless there is a conflict of interest. Of course, officers or employees may appoint separate counsel based on their own judgement.

At the initial phase of the investigation, defence counsel should focus on reducing the scope of the charge against the investigated company. For example, it may be necessary to identify and analyse issues about which the KFTC might be suspicious in the statements made by an investigated company or in the contents of the materials in custody, establish defence logic against them, and actively explain them to the KFTC from the initial phase of the investigation.

Defence counsel may request the exclusion from the submission of materials that are unrelated to the subject of the investigation through discussion with the KFTC.

2.5 Obtaining Evidence/Testimony

When necessary for the investigation, the KFTC's investigating official may obtain statements from the investigated company, interested persons and reference persons, and may order the submission of necessary materials and hold them in custody.

Although the KFTC's investigation procedure is based on the consent of the investigated company, the MRFTA does have certain measures in place for enforcement. For example, in the case of failure to attend an interview without justifiable cause, an administrative fine of up to KRW100 million for companies and up to KRW10 million for employees or interested persons may be imposed.

In addition, those who refuse to submit materials without justifiable cause may be subject to an enforcement fine not exceeding 3/1,000 of the average daily sales revenue for each day of delay.

For more details regarding the KFTC's collection of evidence and testimony, see **2.2 Dawn Raids/Search Warrants**.

2.6 Attorney-Client and Other Privileges

Korean law does not recognise the principle of attorney-client privilege.

The privilege against self-incrimination is not recognised in the KFTC investigation process. However, if the prosecutor indicts with respect to the cartel conduct and a criminal proceeding is commenced, the privilege is recognised.

2.7 Non-Cooperation

It is common for the investigated company to co-operate with the KFTC's investigation, to the extent possible, taking into account both the legal and practical aspects. As mentioned earlier, in the event of interference with the KFTC's investigation, there is a possibility of criminal punishment, and in the event of failure to attend an interview or failure to comply with an order to submit materials, an administrative fine or enforcement fine may be imposed.

In addition, any surcharge imposed for the cartel may be reduced by up to 20%, depending on the degree of co-operation with the investigation. From a practical aspect, giving the KFTC the impression of co-operating fully with the investigation will help to bring about a positive result through smooth communication with the KFTC.

2.8 Protection of Confidential/Proprietary Information

The investigated company cannot refuse to submit materials requested by the KFTC solely on grounds that such materials are confidential or proprietary information. Rather, it is the obligation of the KFTC officials to keep information they have discovered about a company as a result of their investigation confidential, and not use such information for purposes other than enforcement of the MRFTA.

If materials requested by the KFTC include information protected by the Personal Information Protection Act, such as employees' registration numbers and addresses, the investigated company may submit materials after excluding the parts containing such personal information.

2.9 Arguments Against Enforcement Actions

There is no separate provision on procedure for defence counsel to defend the investigated company in response to a KFTC investigation. In the course of the KFTC's investigation and review, defence counsel may present opinions regarding the facts and legal interpretation to the KFTC in the form of a statement or written submission, in order to defend the investigated company and persuade the KFTC not to take action against it.

3. Leniency, Immunity and Whistle-Blower Regimes

3.1 Leniency

The MRFTA provides for a leniency programme. As a result, the KFTC may exempt a company or grant a reduction in remedial orders and surcharge to companies that have filed a leniency application for a cartel. The KFTC may also exempt the leniency applicant from referral to the prosecutors' office.

According to the antitrust and competition white paper issued by the KFTC in 2023, the leniency programme was used in 60.1% of the cartel cases in which a surcharge was imposed from 1999 to 2024; from 2005 to 2024, in particular, this rose to 63.2%.

Meanwhile, in December 2020, the prosecutors' office implemented a new criminal leniency programme for cartel cases by introducing the Guidelines for the Reduction of Penalty in Cartel Cases and Investigation Procedures (the "*Criminal Leniency Guidelines*"). In this article, the term "*KFTC leniency programme*" is used to refer to the leniency programme under the MRFTA that is administered by the KFTC, and the term "*crimi-*

nal leniency programme" to refer to the leniency programme led by the prosecutors' office.

KFTC Leniency Programme

Applied standards for leniency

To obtain first-priority leniency status, an applicant must satisfy all the following requirements:

- (a) the applicant must be the first person to exclusively provide the evidence necessary to prove the existence of collusion;
- (b) at the time of the leniency filing, the KFTC must not have obtained information about the collusion, or not enough evidence to prove the existence of collusion;
- (c) the applicant must co-operate in good faith until the end of the KFTC review process by stating all the facts related to the collusion and submitting related information;
- (d) the applicant must stop its participation in the collusion; and
- (e) the applicant must not have coerced another enterprise to participate in collusion, nor have repeatedly committed collusion over a certain period in violation of the MRFTA.

Under the MRFTA, joint leniency applications are permitted. Companies can apply jointly if they have a substantive control relationship or if they are involved in corporate spin-offs/transfer of business and did not participate in the cartel conduct in question.

The KFTC is required to give the applicant with the first-priority leniency status full immunity from the surcharge payment and remedial measures while it is not required, but may decide at its discretion to give full immunity from criminal referral.

To obtain second-priority leniency status, an applicant must satisfy conditions (c), (d) and (e)

above, and the applicant must be the second person to exclusively provide the evidence necessary to prove the existence of collusion, provided that the leniency application is filed within two years of the date of the first applicant's leniency filing. If only two companies participated in the cartel, it is not possible for a company to obtain second-priority leniency status.

The KFTC is required to give the applicant with the second-priority leniency status a 50% reduction of the surcharge payment while it is not required, but may decide to give full immunity from remedial measures and immunity from criminal referral. In practice, the KFTC provides full immunity from criminal referral as well.

Leniency application process

In principle, a leniency application must be in writing, and it may be submitted by visiting the KFTC, or via email or fax. A leniency application must include an overview of the collusion at issue at the time of filing. The application may be supplemented to meet the legal requirements within a certain period.

The application supplement period cannot exceed 15 days, but an additional 60-day period may be granted at the KFTC case handler's discretion. Where necessary, the case handler may even grant more than 60 days for the additional period. However, a leniency application filed by one company can only be supplemented to a joint leniency application within the first 75-day period.

Recognition of leniency status

Priority for a leniency applicant is determined by the time of receipt of the leniency application. The KFTC case team eventually issues an examiner's report as to whether the applicant has satisfied all the requirements to be granted

leniency status, and submits the report to the commission. In the KFTC's review process, it generally holds a hearing which is, in practice, separate from the hearing of the main collusion case. The KFTC typically holds a (closed) hearing for the leniency application review and a hearing for the main collusion case on the same day. Once the hearing for the leniency application review is concluded, the KFTC renders a decision on leniency status.

Withdrawal of leniency status

Under certain circumstances, the KFTC may revoke a reduction or exemption of remedial orders or surcharges granted to an applicant with leniency status, namely:

- if the applicant provides statements during a trial that differ from those made during the investigation;
- if the applicant's statements or documents submitted during the investigation are found to be false during the trial; or
- if the applicant files a lawsuit denying the cartel conduct for which leniency was granted.

Criminal Leniency Programme

For cartel cases, the MRFTA gives the KFTC the exclusive right to make a criminal referral, and the prosecutors' office can proceed with an indictment only where there was a criminal referral from the KFTC. However, the Criminal Leniency Guidelines allow the prosecutors' office to commence investigation of hard-core cartels directly reported to or detected by the prosecutors' office, even without the KFTC's referral.

In terms of the structure of the leniency programme, eligibility and conditions for criminal leniency applications are similar to those for the KFTC leniency programme – ie, first to provide evidence, the duty to co-operate (including a

duty to maintain confidentiality), and the duty to cease cartel activities.

However, there are several differences. Unlike the KFTC leniency programme that applies to cartels including soft-core cartels, the criminal leniency programme applies only to hard-core cartels (those engaged in price fixing, output restrictions, market allocation, etc) under the MRFTA, together with certain bid-rigging conduct.

Also, under the criminal leniency programme, the first leniency applicant is eligible for exemption from an indictment, whereas the second-ranked leniency applicant is not guaranteed exemption or reduction of criminal penalty. For the second-ranked leniency applicant, the prosecutors' office will recommend a 50% less severe penalty, but the court has discretion as to the actual penalty imposed on the second-ranked leniency applicant. Furthermore, the Criminal Leniency Guidelines provide that in principle, the first-ranked leniency applicant will not be subject to search and seizure, arrest, detention, or other compulsory investigation, except in special circumstances.

Moreover, an individual executive/employee (including those who are no longer with the company) can independently file for criminal leniency, in which case, the individual will compete with companies in terms of leniency ranking. The prosecutors' office will determine the leniency ranking independently of the KFTC leniency ranking.

3.2 Amnesty/Immunity

If a party that is subject to sanctions due to cartel conduct (Conduct A) obtains first-priority leniency status for their conduct in another cartel (Conduct B), the KFTC may reduce or exempt

the surcharge and reduce the remedial orders for Conduct A. The party must file the leniency application for Conduct B after the investigation commencement date or leniency application date for Conduct A – whichever is earlier – and before the KFTC deliberation date for Conduct A.

3.3 Whistle-Blowers

Under the MRFTA, a reward system is in place for informants who report violations of the law, including cartel conduct. A third party not involved in the cartel may receive a reward of up to KRW3 billion if they report the cartel conduct and are the first to submit evidence essential for proving the conduct to the KFTC, with the amount determined based on the significance of their contribution. By 2024, the total reward paid in relation to 178 cartel reports amounted to approximately KRW13.4 billion, with around KRW500 million paid in 2024 for 14 cartel reports. This system applies across all cartel types, not only bid rigging in public procurement.

4. Procedural Framework for Cartel Enforcement

4.1 Obtaining Evidence From Employees

The KFTC can directly acquire information by investigating the officers and employees of the investigated company. See 2.5 Obtaining Evidence/Testimony.

4.2 Obtaining Documentary Evidence From Subject/Target Companies

The KFTC can seek documentary information directly from the investigated company. See 2.5 Obtaining Evidence/Testimony.

4.3 Obtaining Evidence From Entities Outside the Jurisdiction

The KFTC can seek information directly from companies or individuals located outside the jurisdiction by issuing requests for information. In this case, the KFTC will usually require the relevant entity to designate a representative in Korea to receive the request for information, and then send the request for information to such representative. However, if the entity does not designate a representative in Korea, then the KFTC will use a method in accordance with the Administrative Procedure Act, such as delivery by post.

4.4 Domestic Inter-Agency Co-Operation

When deemed necessary for enforcement of the MRFTA, the KFTC may ask the head of a relevant administrative agency or other institution or organisation to conduct the necessary investigation or to share the necessary information. In practice, however, this is not common.

4.5 International Inter-Agency Co-Operation

The KFTC actively co-operates with foreign enforcement agencies in the investigation of international cartel cases. Of course, the degree of co-operation may vary from case to case, but the KFTC communicates with foreign enforcement agencies through various channels.

4.6 Issuing Criminal Indictments

As mentioned in **1.2 Regulatory/Enforcement Agencies and Penalties**, the MRFTA has a provision on criminal punishment for cartels, which happens through indictment by the prosecutors' office. In principle, the prosecutors' office can indict for violations of the MRFTA, including cartels, only when the KFTC files a referral to the prosecutors' office. However, according to the MRFTA, if the degree of the violation is objec-

tively clear and serious so that it clearly hinders competition, the KFTC must file a referral to the prosecutors' office. In this case, the prosecutor general may even ask the KFTC to file the referral to the prosecutors' office, which the KFTC chairman is obliged to do.

In addition, even if the KFTC has determined that the requirements for filing the referral have not been met, the chairman of the Board of Audit and Inspection, the minister of the Ministry of SMEs and Startups, and the administrator of the Public Procurement Service may request that the KFTC file the referral to the prosecutors' office based on social impact, the effect on national finance, and harm to small and medium-sized businesses. In such a case, the KFTC chairman must also file the referral to the prosecutors' office.

If the prosecutors' office indicts pursuant to the KFTC's referral, a criminal trial will proceed in court. A defendant in a criminal case involving a cartel is guaranteed the right to counsel, as in criminal cases in general. If the prosecutor submits materials from the KFTC as evidence, the defendant may access and copy such evidence. In addition, the defendant may attempt to obtain materials in the KFTC's possession that the prosecutor has not submitted as evidence by means such as sending a fact enquiry or request for a document.

In a criminal proceeding involving a cartel, the prosecutor has the burden of proving that the cartel constitutes a crime.

4.7 Issuing Civil Complaints Procedure for Imposing Administrative Measures

Unlike the legislation of countries where the competition authority brings a civil action, as a regulatory authority, the KFTC may directly

impose administrative sanctions such as remedial orders and surcharges on companies that violate the MRFTA by participating in cartels. The KFTC handles a case through examination, deliberation and decision.

The KFTC's "*examination*" refers to a series of investigation processes by the KFTC after it has received information about an MRFTA violation, until it determines the need for deliberation and a decision in respect of the case. Parties, interested persons and witnesses may submit opinions or make statements at the investigation stage.

If the KFTC examiner determines that an MRFTA violation is established after the examination and submits an examiner's report to the KFTC (composed of nine members, including the chairman and vice chairman), the "*deliberation*" process commences. After a respondent is provided with the examiner's report and the attached materials, the respondent not only has the opportunity to submit opinions and explanatory materials but also to attend the hearing and give testimony. The KFTC must hold hearings for two or more days upon request if a company is a party and has five or more participants (or 15 or more in the case of a cartel case), or if the estimated maximum amount of the fine is at least KRW100 billion (at least KRW500 billion in a cartel case).

The Commission will listen to the opinions of the parties and interested persons, examine the evidence, deliberate whether there has been a violation of law, and impose measures through "*decision*".

Access to Material

The respondent may request to access and copy materials not disclosed in an examiner's report. The KFTC must allow access and copying, except for trade secrets, leniency material and

confidential material according to other laws. In the case of trade secrets or leniency materials, access or copying is, however, permitted with the consent of the submitter. In addition, in the case of material containing trade secrets, the respondent can access the material through a restricted method pursuant to the decision of the KFTC, even without the consent of the submitter. A person granted access by the KFTC is limited to the respondent's external lawyer. The lawyer can access confidential information (trade secrets) by entering the data room located in the KFTC's office. The lawyer who used the data room is prohibited from expressly writing down the confidential information. The lawyer who used the data room may not disclose the confidential information to anyone, including the respondent.

Burden of Proof

The KFTC bears the burden of proof for all the elements for establishing a cartel, such as the existence of an agreement prohibited by the MRFTA and an anti-competitive effect. However, if there is external conformity of business entities' conduct (ie, two or more business entities engage in conduct falling under a type of cartel), and there is considerable probability that the business entities acted jointly, an agreement is presumed by law. If an agreement is presumed by law, the KFTC only needs to prove anti-competitive effect, and the business entity must prove the absence of an agreement.

Meanwhile, the Amendment added a provision that if there is external conformity of business entities' conduct and the information necessary for such conduct is exchanged, an agreement is presumed by law. The rules for presuming an agreement for information exchange apply only to conduct that is terminated after the effective date of the Amendment (30 December 2021).

4.8 The Role of Experts

During the KFTC's investigation and deliberation process, the KFTC examiner or the investigated company may receive help from experts. There are cases where expert opinions are submitted during the KFTC procedure, or where experts attend the KFTC hearing in person to present their opinions. However, expert involvement is not common for a cartel case in a KFTC proceeding. On the other hand, in a civil damages lawsuit for a cartel it is common for experts such as economists to be involved as appraisers in order to prove damages.

4.9 Possibility of Multiple Proceedings

In cases where multiple cartel proceedings are at issue based on the same or related facts, the KFTC may, at its discretion, handle them separately or in a simultaneous process. In these cases, however, it is common for the KFTC to handle them through a simultaneous process.

5. Sanctions and Remedies in Criminal Cartel Enforcement

5.1 Imposition of Sanctions/Fines

The KFTC may impose remedial orders and a surcharge directly on a company involved in a cartel in violation of the MRFTA. See **1.2 Regulatory/Enforcement Agencies and Penalties**.

5.2 Plea Bargaining/Settlement

There is no plea bargaining or settlement system for a cartel case in Korea.

5.3 Effect of Liability Being Established

If the KFTC finds an illegal cartel and imposes sanctions, it tends to be easily recognised in court in a related damages lawsuit that there was illegal cartel conduct. Of course, the court is not bound by the KFTC's determination.

If the KFTC imposes sanctions for cartel conduct, it may ask an administrative agency to limit the eligibility of a company that participated in the cartel to participate in bidding processes. The head of the administrative agency that receives the KFTC's request may limit such company's eligibility to participate in bidding processes for a certain period of time.

5.4 Sanctions and Penalties in Criminal Proceedings

See **1.2 Regulatory/Enforcement Agencies and Penalties** and **4.6 Issuing Criminal Indictments**. The type and amount of penalties imposed in a criminal proceeding on a company that participated in a cartel are determined by the court. The prosecutor asks the court to impose certain penalties. At this time, the KFTC does not present any opinions.

5.5 History of Criminal Sanctions

Under the MRFTA, cartel conduct is subject to criminal penalties of imprisonment for up to three years or a fine of up to KRW200 million. Criminal liability extends not only to companies participating in cartels but also to their officers and employees. From 1981 through 2023, the KFTC referred a total of 255 cartel cases for prosecution, with three referrals made in 2023.

Due to the varying factual circumstances of individual cases, it is difficult to identify an average penalty. While imprisonment sentences were often suspended in the past, courts have more recently begun imposing actual prison terms.

Moreover, Korean nationals have been sanctioned in foreign jurisdictions for their involvement in cartel conduct. For example, in the 2007 D-RAM price-fixing case and the 2008 LCD cartel case, executives and employees of Korean

companies were fined and sentenced to imprisonment by US courts.

5.6 Relevance of Effective Compliance Programmes

A company's effective compliance programme has not been considered as a factor in imposing sanctions in a cartel case.

The amended MRFTA provisions, effective from 21 June 2024, have introduced legal provisions that could potentially reduce remedial measures or administrative surcharges for companies with compliance programmes. Nonetheless, the amended MRFTA Enforcement Decree and the Compliance Program Guidelines, set for legislation, state that even if a compliance programme is implemented, remedial measures or administrative surcharges will not be reduced in "*hard-core*" cartel cases such as price fixing, output restrictions, market allocation, and bid-rigging. This reaffirms the existing practice where such reductions were not granted for hard-core cartel cases.

5.7 Mandatory Consumer Redress

The KFTC does not have the authority to require a company involved in a cartel to compensate those who have suffered damages due to the cartel. Such claimants may be compensated for damages through civil lawsuits. That is, there is no mandatory consumer redress system.

5.8 Judicial Review or Appeal

A company that has been sanctioned by the KFTC for participating in a cartel may file a lawsuit to cancel the KFTC's decision by submitting a complaint to the Seoul High Court against the KFTC within 30 days of the date of notification of the KFTC decision. The KFTC must submit an answer to the complaint submitted by the plaintiff. Once the answer is submitted, the court usu-

ally sets a hearing to organise the issues. When the court determines that the issues have been organised to a certain degree, the court will set a hearing for examination of the evidence, such as witness examination. Hearings are usually set one to two months apart. After the hearings, when the court determines that the facts have been settled to the extent that it can announce a decision, the court will end the hearings and schedule announcement of its decision. The parties may freely submit briefs and evidence without limit until hearings have ended, unless the court sets a limit.

Commencement of the cancellation lawsuit above does not mean that the KFTC's case record is transferred to the Seoul High Court. The KFTC must submit materials that were the bases for its decision as evidence at the litigation stage. At the litigation stage, the plaintiff may present new arguments and evidence that were not presented or submitted at the KFTC stage. A party that seeks to object to the Seoul High Court's decision may file an appeal to the Supreme Court within two weeks of receiving a written copy of the Seoul High Court's decision. Mostly, however, the Supreme Court makes a decision with respect to the law only and not the facts. According to the KFTC's annual statistical report, 19.1% of its decisions (including non-cartel cases) were challenged in court. Between 2001 and 2023, among all lawsuits seeking to cancel KFTC decisions that resulted in final and conclusive judgments (including non-cartel cases), 59.5% were dismissed, 19.7% partially upheld, and 11.0% fully upheld.

5.9 Timeline of Cartel Enforcement Process

The investigation phase typically lasts around one year. However, in some cases, it has extended to two or three years due to various factors

such as the number of the undertakings involved and the duration of the violation. It typically takes between six months to a year following the investigation phase for the examiner's report to be issued, respondent's opinion to be submitted, and a hearing to be held.

According to court administration statistics, the average duration of administrative lawsuits (including cartel and other administrative cases) before the Seoul High Court is approximately 254.9 days from the date of filing. At the Supreme Court level, the average duration is around 133.6 days.

6. Civil Litigation

6.1 Private Rights of Action

Private firms or individuals who have suffered damages due to a cartel may file a damages lawsuit against companies that participated in the cartel.

In this case, a plaintiff usually claims tort as the basis for the claim. In Korea, in order for a tort to be established, the plaintiff must prove the following:

- unlawful conduct based on the intent or negligence of the perpetrator;
- victim's damages; and
- causation between the unlawful conduct and the damages.

The plaintiff may file a damages lawsuit against a company that participated in a cartel even before the KFTC makes a decision regarding a cartel. However, if a damages lawsuit is filed before the KFTC makes a decision, the plaintiff's burden of proof for establishing the existence of a cartel increases. Therefore, it is common

for the plaintiff to file a damages lawsuit after the KFTC makes a decision, thereby reducing its burden of proof to establish the existence of a cartel. In this case, the main issues for the damages lawsuit are damages and causation.

As for the punitive damages provision that has been in effect since September 2019, see **1.3 Private Enforcement**.

In relation to the damages lawsuit above, the court with jurisdiction over the case is the court with jurisdiction over the defendant's principal office and the plaintiff's address. The court with jurisdiction over the place where the cartel conduct occurred also has jurisdiction over the case.

6.2 Collective Action

Cartel victims can file a damages lawsuit as co-plaintiffs. However, the so-called class action system does not apply to a damages lawsuit for cartel conduct. While a class action bill was prepared by the Korean government to be submitted to the National Assembly, the bill was ultimately not submitted.

6.3 Indirect Purchasers and "Passing On" Defences

Korean courts have not expressly recognised the passing-on defence. However, by taking into account the portion of damages that were passed on when deciding the amount of damages, Korean courts in fact recognise the passing-on defence in part.

6.4 Evidence Obtained From Governmental Investigations/Proceedings

Evidence from government investigations or proceedings may be used as evidence in a damages lawsuit for cartels as well. The plaintiff in the damages lawsuit may try to obtain evidence

held by the KFTC through means such as a request for documents.

In a damages lawsuit filed for cartels, the court, at the request of a party, may order the other party to submit material needed to prove damages or calculate the amount of damages (leniency-related material is excluded). The party receiving this order cannot refuse to submit the material unless there is good cause. The MRFTA states that if the material is necessary for proof of damage or for calculating the amount of damages, even if it is a trade secret, good cause will not be found. If the party receiving the order does not comply with the order without good cause, the court may find that the other party's argument regarding the content in the material – ie, the other party's argument that the material contains certain details – is true.

In addition, if the party receiving the order does not comply with the order without good cause, and it is notably difficult for the party requesting the order to argue specifically regarding the content in the material, and if it is difficult to prove the fact to be proved through the material with other evidence, the court may find the other party's argument as to what the material contains is true.

6.5 Frequency of Completion of Litigation

If a damages lawsuit is filed in connection with cartel conduct, the dispute usually comes to an end through the court's decision. It is not common for a dispute to be resolved based on settlement in the middle of the damages lawsuit.

The time period until announcement of the first-instance court's decision in the damages lawsuit above is usually at least two years, although this may differ depending on the complexity of

the case; some cases can take many years. The main reason for a prolonged time period is related to the damages assessment process and related administrative lawsuit process. During the lawsuit, a hearing will not be set for some time in order to wait for the result of assessment of the damages amount, which generally takes six months to one year.

In addition, if the damages lawsuit is filed while the Seoul High Court's administrative lawsuit is in progress, there is a possibility that the court handling the damages lawsuit will not set a hearing for a prolonged period of time after proceeding with basic procedures in order to observe the result of the administration lawsuit. However, it is also possible for the court handling the damages lawsuit to proceed independently without waiting for the outcome of the administrative lawsuit.

6.6 Attorneys' Fees

When announcing its decision, the court also announces the litigation cost burden (including attorneys' fees). In general, the losing party is ordered to bear the litigation costs. If only a part of the plaintiff's claims have been accepted by the court, it is common for the defendant to bear the costs according to the ratio of the plaintiff's claims that have been accepted, and for the plaintiff to bear the rest. However, the attorneys' fees included in the litigation costs above do not mean actual compensation paid to attorneys, but refer to the amount set by the Supreme Court's rules in accordance with certain standards. Therefore, in most cases, the prevailing party may receive an amount that is substantially less than the actual compensation amount paid to the attorneys.

6.7 Costs/Fees

See 6.6 Attorneys' Fees.

6.8 Judicial Review or Appeal

The losing party at the first-instance court may file an appeal within two weeks of the date of receipt of the first-instance court's decision. At the appellate court, parties may submit new evidence that was not submitted at the first-instance court, and may make new arguments regarding the facts and law. It usually takes around one year for the appellate court to announce its decision. If the appellate court finds it necessary, a reassessment process for the damages amount may also take place.

The losing party at the appellate court may file an appeal to the Supreme Court within two weeks of the date of receipt of the appellate court's decision. At the Supreme Court, only law is reviewed, not facts. It is difficult to predict how long it will take for the Supreme Court to announce its decision.

Although not limited to damages lawsuits for cartels, according to statistics announced by the court in 2024, the rate of appeal to the appellate court for civil cases in 2023 was around 48.5%, and the rate of appeal to the Supreme Court was around 35.7%.

7. Trends in Cartel Enforcement

7.1 Information Sharing as a Cartel Offence

See 1.4 “*Cartel Conduct*”.

7.2 Use of AI and Algorithms

In August 2024, the KFTC commenced a market survey on AI, focusing on major domestic and international companies. In December 2024, it released a policy report titled “*Generative AI and Competition*”. During a press briefing, a KFTC representative stated that no domestic

cases of algorithm-based cartels had yet been addressed.

Meanwhile, in its January 2025 work plan, the KFTC announced its intention to conduct in-depth analyses and develop countermeasures for emerging cartel types, including AI-based cartels, based on legal theories and international trends.

7.3 Monopolisation as a Cartel Offence

Under the MRFTA, abuse of dominance by a company holding a dominant market position is regulated as a violation of the Act. Similar to how cartel conduct is specified under the MRFTA, various types of abuse of dominance are also specifically stipulated. While cartel conduct requires co-ordination among two or more businesses, abuse of dominance involves unilateral actions by a dominant company.

Nevertheless, under the MRFTA, regulations governing abuse of dominance and cartels may influence one another. For instance, the KFTC's Guidelines for Abuse of Market Dominance consider the likelihood of competitors engaging in cartel conduct as a factor when assessing market dominance. Moreover, in assessing the illegality of a cartel, its anti-competitive effects must be evaluated, and the market dominance of the cartel participants serves as an important criterion in this evaluation. According to the KFTC's Guidelines for Cartel Review, the greater the dominance held by the cartel participants, the more likely it is that the cartel in question will have anti-competitive effects.

7.4 Focus on Certain Industries/Sectors

In 2024, the KFTC actively enforced cartel regulations across key industries such as steel and automobiles, as well as sectors closely related to everyday life including vaccines and built-

in furniture. According to its 2025 work plan, the KFTC aims to strengthen its monitoring of cartels that hinder market vitality and increase economic burdens on consumers. To this end, enforcement will focus on four priority areas:

- public health and safety (eg, blood tests);
- daily essentials such as food, clothing, and housing (eg, pork, school uniforms);
- construction materials and intermediate goods (eg, stainless steel wire); and
- public bidding and procurement (eg, treasury bonds).

Additionally, the KFTC announced its plan to analyse cases, legal theories, and international trends on emerging forms of cartels, such as those involving AI, environmental claims, and information exchanges, and to establish appropriate countermeasures in response.

7.5 Use of Messaging Applications and Chat Platforms

See 2.2 Dawn Raids/Search Warrants and 2.3 Spoilation of Evidence.

7.6 “No Poach” and Labour Market Allocation Conduct

In its press release in June of 2019, the KFTC introduced the discussions on no-poach agreements held at the OECD Competition Committee meeting and announced that it would take into account global competition enforcement trends when applying the MRFTA to such agreements. The KFTC’s June 2019 publication on global competition policy trends also highlighted no-poach cases and discussions in the USA. It is therefore understood that the KFTC is closely monitoring international enforcement developments regarding no-poach agreements.

7.7 Leniency v Ex Officio Investigations

See 3.1 Leniency.

7.8 Domestic v International Investigations

See 1.8 Enforcement Priorities.

7.9 Environmental, Social and Governance (ESG) Cartels

In Korea, a public-private joint ESG policy council, led by the Financial Services Commission (FSC), has been established to strengthen companies’ ESG management capabilities. The council is currently discussing measures such as mandatory ESG disclosures.

While these mandatory ESG disclosures are expected to be introduced gradually starting in 2026, a precise timeline has not yet been finalised.

In December 2024, the KFTC issued guidelines that categorise the types of agreements that may arise among climate-tech businesses engaged in environmentally sustainable management activities. These include six categories: joint research and development, technological alliances, voluntary standards, joint production, joint purchasing, and joint logistics and sales alliances, as well as information exchanges. These guidelines were introduced to assess potential violations of the MRFTA. According to the guidelines, if the efficiency-enhancing effects of such agreements outweigh their anti-competitive effects, the conduct may not be deemed a cartel.

7.10 Crisis Cartels

In its January 2025 work plan, the KFTC assessed the current economic situation as one of ongoing instability in the national economy, citing delayed recovery in domestic demand due to prolonged high inflation and heightened

internal and external uncertainties that have increased the risk of economic recession. As a result, the burden on small and medium-sized enterprises, small business owners, and consumers – who are sensitive to economic fluctuations – has intensified. Against this backdrop, the KFTC expressed concern over the potential rise of cartels exploiting such economic anxiety and announced that it would strengthen monitoring of cartels that undermine market vitality and directly increase the economic burden on the public.

For specific sectors the KFTC has chosen to focus on, see **7.4 Focus on Certain Industries/Sectors**.

Trends and Developments

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Shin & Kim has the largest team of antitrust specialists in Korea, with more than 70 dedicated experts, including a former Korea Fair Trade Commission (KFTC) chairman, officers and committee members, and former prosecutors and judges. The group is complemented by the largest number of KFTC alumni lawyers of any law firm, all of whom have extensive expertise in antitrust law and deep familiarity with KFTC en-

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Introduction

In Korea, the legal framework for addressing cartel conduct is established under the Monopoly Regulation and Fair Trade Act (MRFTA). The Korea Fair Trade Commission (KFTC), as the enforcement authority of the MRFTA, is empowered to issue remedial orders, impose surcharges on companies found to have engaged in cartel activities, and refer such cases to the prosecutors' office for potential criminal proceedings. If a company wishes to challenge the KFTC's imposition of remedial orders or surcharges, it may file an administrative lawsuit seeking cancellation of those actions. The fully amended MRFTA, which came into effect on 30 December 2021, introduced several key revisions related to cartel enforcement. Notably, the amendment explicitly classifies information exchanges as a type of cartel conduct – marking a significant development in the regulation of cartels. Recent major KFTC and court decisions have continued to shape the interpretation and enforcement of cartel regulations as follows.

The KFTC's Recent Regulation of Cartels

The KFTC, in line with other foreign competition authorities, actively regulates cartels. According to the KFTC's White Paper and official sta-

tistics, of the 3,454 cases where administrative surcharges were imposed by the KFTC between 1981 – when the MRFTA was first enforced – and 2023, roughly 27% (930 cases) involved cartel conduct. Notably, cartel-related cases accounted for KRW7.37 trillion in surcharges, representing about 66% of the total KRW11.18 trillion in administrative surcharge imposed during this period. In 2023, the KFTC handled a total of 65 cartel cases. The majority were bid-rigging cases (51), followed by price-fixing cases (12). Surcharges were imposed in 47 of all cartel cases, and three were referred to the prosecutors' office for potential criminal prosecution. Major recent cartel cases pursued by the KFTC are outlined below.

Furniture companies case

In February 2025, the KFTC announced its decision to impose a total surcharge of approximately KRW18.3 billion, along with remedial orders, on 20 furniture companies (the “companies”) for colluding in bids to supply storage units to be used in new apartments. Four of the 20 furniture companies were referred to the prosecutors' office for potential criminal charges.

According to the KFTC's press release, the companies engaged in bid rigging across 190 bidding processes organised by 16 construction companies between 2012 and 2022. The bidding involved the supply of storage units – typically consisting of wooden shelves mounted on aluminum pillars – for walk-in closets and pantries in newly built apartment complexes.

According to the KFTC's press release, the companies predetermined the winning bidders through meetings or phone calls, agreeing that the designated winner would either share a portion of the order or provide cash compensation to the other participants, who acted as decoys. Once the agreement was made, the designated winner shared its bid price with the decoys, who then submitted bids reflecting that price to execute the collusive scheme.

This case marks the third time the KFTC has sanctioned bid-rigging in the interior construction sector for apartment housing. In April 2024, the KFTC sanctioned furniture companies for collusion in bids for built-in furniture, and in October 2024, for bid rigging related to bathroom construction. The KFTC highlighted the significance of this case in exposing a long-running and systematic bid-rigging scheme. It also highlighted the broader implications of such conduct, including its potential impact on rising apartment prices. The KFTC also expressed its commitment to strengthen monitoring of collusive conduct in sectors closely tied to consumers' daily lives.

Mobile carriers case

In March 2025, the KFTC announced its decision to impose a total surcharge of around KRW114 billion, along with remedial orders, on three mobile carriers (the “carriers”) for colluding to control the flow of customers switching between

carriers. According to the KFTC's press release, the carriers agreed and implemented measures from 2015 and 2022 to prevent a disproportionate concentration of Mobile Number Portability (MNP) customers – those who switch carriers while retaining their phone numbers – on certain carriers. In South Korea's highly saturated mobile telecommunications market, mobile carriers compete to attract customers from competitors through MNP. The KFTC determined that the carriers had a shared interest in limiting any excessive increase in sales incentives and subsidies typically used to attract MNP customers.

According to the KFTC's press release, the carriers co-ordinated their actions through “*market situation team*” with the Korea Association for ICT Promotion, originally formed as a self-regulatory measure to prevent excessive sales incentives that would violate the Mobile Device Distribution Improvement Act. The KFTC found that the carriers agreed on balancing the net increase or decrease in MNP customers across the market. This was implemented by adjusting sales incentives: when a particular carrier experienced a continued net increase in MNP customers, it would lower its sales incentives, or rival carriers would raise theirs. Conversely, if a carrier saw continued net losses, other carriers would lower their sales incentives or allow the affected carrier to raise its sales incentives. In some cases, employees from a carrier gaining customers apologised to those from losing carriers and promised to reduce their sales incentives to restore balance. The KFTC concluded that these practices restricted competition among carriers to acquire MNP customers, resulting in a decline in both the daily net change and the overall number of MNP cases.

Throughout the KFTC investigation and hearing, the carriers maintained that their conduct was in line with binding regulation issued by the Korea Communications Commission (KCC) under the Mobile Device Distribution Improvement Act. The KCC also defended the carrier's conduct, asserting that the sales incentive adjustments were made in compliance with its guidance and did not constitute cartel conduct restricting competition among independent businesses. It further emphasised that, under its strict regulatory oversight – including its prior sanctions for non-compliance – the carriers lacked any incentive to collude. However, the KFTC concluded that the carriers' agreement exceeded the bounds of KCC's administrative guidance and amounted to anti-competitive collusion under the MRFTA. The KFTC found that the conduct could not be justified under the KCC's regulatory framework and warranted antitrust enforcement under the MRFTA.

Following the decision, the carriers expressed their disappointment and have reportedly indicated plans to pursue legal action.

Meanwhile, the KFTC also reviewed whether the Korea Association for ICT Promotion – an affiliated organisation under the KCC and Ministry of Science and ICT – had engaged in cartel conduct alongside the carriers. However, the KFTC plenary session found no violation and decided to close the hearing procedure with respect to the Association.

Recent Significant Court Decisions Related to Cartels

In South Korea, administrative lawsuits challenging decisions by the KFTC fall under the exclusive jurisdiction of the Seoul High Court as prescribed by the MRFTA. Unlike standard litigation, which follows a three-tiered court system

comprising the district court, high court, and Supreme Court, administrative lawsuits against the KFTC are adjudicated under a two-tiered court system. These cases are heard initially by the Seoul High Court, with final appeals directed to the Supreme Court.

Duck meat processing companies case

The KFTC determined that an agreement among duck meat processing companies concerning the price and production volume of fresh duck meat constituted a cartel. Company A and Company B, both implicated in the same cartel case, filed separate appeals against the KFTC's decision before the Seoul High Court. However, the two Administrative Divisions of the Seoul High Court handling the respective cases reached conflicting conclusions: the KFTC's decision was cancelled in the case of Company A, while it was upheld in the case of Company B. In particular, the two Divisions diverged in their assessment of whether production volume restriction agreements in the agricultural and livestock sector constitute an unfairly restriction of competition. Both rulings have been appealed to the Supreme Court and are currently pending.

KFTC's decision

In its 2022 decision, the KFTC imposed remedial orders and surcharges on nine duck meat processing companies for agreeing on and implementing co-ordination regarding the pricing and production volume of fresh duck meat from 2012 to 2017. According to the KFTC, the collusion was mainly carried out through various meetings and telephone communications within the Korea Duck Association, an industry association. The companies agreed to limit the production of fresh duck meat by reducing the number of ducklings or discarding duck eggs. They also agreed to raise prices and set an upper limit on discounts for fresh duck meat. The KFTC also imposed

remedial orders and surcharges on the Korea Duck Association for its active involvement in determining the production volume restrictions of its member companies.

The KFTC reviewed whether the production volume restriction agreement could be exempt from the application of the MRFTA on the grounds that it aligned the government's supply and demand control policy. However, the KFTC concluded that the exemption did not apply, considering that (i) the Ministry of Agriculture, Food and Rural Affairs (MAFRA) had never issued orders under the relevant laws instructing the companies to adjust production or regulate shipments of fresh duck meat, and (ii) the companies had already agreed to restrict production volumes among themselves prior to MAFRA officials deciding on production reductions in meetings. Based on these findings, the KFTC held that the conduct did not qualify for exemption from MRFTA application.

Seoul High Court ruling cancelling the KFTC's decision

In the appeal filed by Company A, one of the companies implicated in the duck meat cartel case, the Seoul High Court's Administrative Division 3 ("*Division 3*") cancelled the KFTC's decision (Seoul High Court, Sept. 26, 2024, Case No 2022Nu61146). While Division 3 acknowledged that Company A had entered into an agreement to restrict the production volume of fresh duck meat, it ruled that, considering the particular characteristics of the agricultural and livestock sector, the agreement could not be viewed as unfairly restricting competition. Division 3 also found no evidence that Company A had participated in an agreement to raise prices, and held the KFTC's decision to be unlawful.

First, with respect to the production volume restriction agreement in this case (the "*Production Volume Restriction Agreement*"), Division 3 acknowledged that Company A had indeed entered into such an agreement. Division 3 then examined whether the Production Volume Restriction Agreement could qualify as "*legitimate conduct under other laws*" and was thus exempt from MRFTA application pursuant to Article 58 of the former MRFTA.

Article 58 exempts from MRFTA application those legitimate acts conducted by businesses or business associations under other laws or regulations, that is, the conduct that is (i) specifically recognised as an exception to free competition by another law; (ii) permitted under that law; and (iii) limited to the minimum necessary extent. Division 3 concluded that Company A's Production Volume Restriction Agreement did not constitute legitimate conduct under other laws and that the MRFTA did apply to the case, and its reasoning was as follows.

- MAFRA was required to follow certain procedures under the relevant legislation to adjust production or regulate shipments of the relevant livestock, but in this case, MAFRA did not follow such procedures.
- MAFRA only provided general administrative guidance without any specific legal basis, and the Production Volume Restriction Agreement was entered into in accordance with this administrative guidance. Therefore, the agreement did not fall under a legally recognised exception to free competition.

Nevertheless, Division 3 held that Company A's Production Volume Restriction Agreement did not unfairly restrict competition and therefore did not constitute an illegal cartel. Division 3 took the view that the standard for assess-

ing the unfairness of joint conduct in the agricultural and livestock sector should differ from general market contexts. Citing the importance of supply-demand balance and price stability in agricultural products, constitutional provisions related to the agricultural sector, and foreign cases recognising exceptions to competition law in agriculture, Division 3 stated that where joint conduct by producers in the agricultural and livestock sector aims to balance supply and demand or stabilise prices for the sustainability of the industry – and does not lead to undue price increases that hinder fair trade – such conduct does not substantially violate the legislative intent of the MRFTA and cannot be considered as unfairly restricting competition.

Division 3 held that, in this case, the Production Volume Restriction Agreement fell into an exceptional category that did not substantially violate the purpose of the MRFTA, where, considering its overall effect, it ultimately protected consumers and contributed to balanced development of the national economy, and therefore could not be regarded as unfairly restricting competition. Division 3 cited the following grounds.

- The Korea Duck Association qualifies as an “organization founded on the spirit of self-help among farmers” protected by Article 123 (5) of the Korean Constitution. Therefore, production volume restriction agreements entered into through the Korea Duck Association must be reviewed in light of this constitutional intent to protect the agricultural and livestock sector and cannot be deemed unfairly restrictive merely because they limit production.
- The objective of the Production Volume Restriction Agreement was to prevent market prices of fresh duck meat from falling below production costs, rather than to unfairly raise prices using market dominance.
- Fresh duck meat is difficult to control in terms of supply, and in cases of oversupply, only large-scale businesses can survive in the market, leading to market concentration. Furthermore, reliance on imported agricultural products may cause domestic food supply to be affected by external factors. Therefore, production volume restriction agreements to prevent prices from falling below production costs may ultimately benefit consumers and cannot be viewed as having solely anti-competitive effects.
- MAFRA recognised the need to restrict the production volume of duck meat, supported companies’ voluntary efforts to adjust supply, and also formed a consultative group with producers to review production reduction plans and monitor the outcomes. Accordingly, Division 3 concluded that the Production Volume Restriction Agreement did not result in an unfair increase in duck meat prices.

In addition, with regard to the price increase agreement (the “Price Increase Agreement”), Division 3 found no evidence that Company A participated. The court noted that Company A did not attend meetings where other companies discussed price increases and that the meetings attended by Company A did not involve any price increase discussions. Based on this, Division 3 concluded that there was insufficient evidence that Company A had participated in the Price Increase Agreement.

Seoul High Court ruling upholding the KFTC’s decision

In contrast to the ruling issued by Division 3, in the appeal filed by Company B – one of the companies implicated in the same cartel – the Seoul High Court’s Administrative Division 6-2

(“Division 6-2”) upheld the KFTC’s decision (Seoul High Court, Oct. 23, 2024, Case No 2022Nu61382). In other words, two divisions of the Seoul High Court issued opposing rulings on the same matter within a one-month interval. Division 6-2 held that Company B’s participation in the Production Volume Restriction Agreement constituted an unfair restriction of competition, and also acknowledged the existence of a price increase agreement.

First, with regard to the Production Volume Restriction Agreement, Division 6-2 acknowledged that Company B had entered into such an agreement. Division 6-2 further determined that the agreement did not constitute “*legitimate conduct under other laws*” as prescribed by Article 58 of the former MRFTA, and that the MRFTA therefore applied to the case. The grounds for this conclusion were similar to those set out in the ruling of Division 3.

However, on the issue of whether the Production Volume Restriction Agreement unfairly restricted competition, Division 6-2 reached a different conclusion from that of Division 3. Citing the factors below, Division 6-2 found that the agreement restricted competition in the fresh duck meat market, resulting in significant effects on production and pricing, while no sufficient efficiency-enhancing effects were demonstrated. Accordingly, the court held that the agreement constituted an unfair restriction of competition.

- The Production Volume Restriction Agreement had a significant impact on the sup-

ply of fresh duck meat, and given the high combined market share of the companies involved, the agreement likely had a considerable anti-competitive effect on the market. In fact, duck meat prices increased during the period in which the agreement was implemented, and decreased after the agreement ended.

- The agreement was reached independently by the companies in advance, and MAFRA could not be seen as having led the production control. Moreover, no evidence of sufficient efficiency-enhancing effects was presented to outweigh the anti-competitive effects of the agreement.
- While the Constitution and relevant statutes provide mechanisms to protect the agricultural and livestock industries, the companies employed highly anti-competitive means with substantial supply-reducing effects, despite the availability of less restrictive alternatives. Furthermore, the procedures laid out in the applicable legal frameworks established to protect the agricultural and livestock sectors were not followed.

In addition, with respect to the Price Increase Agreement, Division 6-2 found that Company B had reached an agreement with other companies to raise the price of fresh duck meat. While Division 3 had concluded in a separate ruling that there was insufficient evidence to establish Company A’s participation in the Price Increase Agreement, Division 6-2 determined that both Company A and Company B were involved in a co-ordinated effort to increase prices.

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