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Merger Remedies Guide - Sixth Edition

South Korea: KFTC's growing use of the new voluntary remedy proposal system

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Successfully remedying the potential anticompetitive effects of a merger can be more of an art than a science. Not only is every deal specific but every remedy contains an element of crystal ball-gazing; enforcers must look to the future and successfully predict outcomes. As such, practical guidance for both practitioners and regulators in navigating this challenging environment is critical.

Edited by Ronan P Harty, Nathan Kiratzis, Anna M Kozlowski and Benjamin J Hartman of Davis Polk & Wardwell, this sixth edition of the ***Merger Remedies Guide*** provides just such analysis. It examines remedies throughout their life cycle: through how remedies are structured and implemented, to how enforcers ensure compliance. Insights from four jurisdictions around the world supplement the global analysis to inform the reality of multi-jurisdictional deals. The Guide draws not only on the wisdom and expertise of distinguished practitioners from a range of jurisdictions, but also the perspective of former enforcers. It brings together unparalleled proficiency in the field and provides essential guidance for all competition professionals.

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South Korea: KFTC's growing use of the new voluntary remedy proposal system

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Summary

INTRODUCTION

Merger review in South Korea began in 1982, and merger control is enforced by the Korea Fair Trade Commission (KFTC) based on the Monopoly Regulation and Fair Trade Act (MRFTA), which has been in effect since 1981. Over the past 10 years (from 2015 to 2024), at least 669 merger review cases were filed annually. This number peaked at 1,113 cases in 2021 before declining to 798 cases in 2024 due to an amendment of the MRFTA that exempts certain types of transactions with no anticompetitive concerns from the merger filing requirement.[1] Nevertheless, the number of merger cases involving foreign companies has exceeded 150 each year since 2021.[2] In particular, the MRFTA does not provide an exemption for mergers occurring outside of South Korea, and the KFTC applies the MRFTA and exercises jurisdiction over transactions that could potentially affect the domestic market. Therefore, it is reasonable to interpret that a filing obligation arises if the thresholds set by the MRFTA are met, regardless of the nationality of the merging parties.

Since the KFTC began its merger review process, 94 transactions have been subject to its remedies as at the end of 2024.[3] While this number is modest compared to the EU or the US, the KFTC has recently been actively introducing various remedy-related systems, such as the voluntary remedy proposal system, to align with international practices. However, the Korean merger control regime still lacks clearly established principles for imposing remedies, and the language in the MRFTA and related guidelines remains somewhat limited. For South Korean merger control, it is therefore important to understand the basic legal framework while closely monitoring the KFTC's evolving enforcement practices and trends.

BASIC FRAMEWORK OF REMEDIES

Similar to other jurisdictions, South Korea's merger regulation aims to prohibit mergers that substantially restrict competition and resolve anticompetitive concerns through appropriate remedies. While the KFTC's approach resembles the European Commission's on many issues, unique features also exist, such as the absence of a phased review process, meaning no officially designated stage exists for assessing potential remedies.

According to the Merger Remedy Imposition Criteria issued by the KFTC, South Korea, like other jurisdictions, generally requires structural remedies in principle.[4] These include prohibition, asset divestiture and intellectual property-related measures that alter the merger parties' assets or ownership structure.[5] Such remedies are preferred because they fundamentally eliminate anticompetitive concerns, providing the most certain solution.

Behavioural remedies refer to measures that restrict the business terms, methods, scope or internal management activities of the merging parties for a set period.[6] The Merger Remedy Imposition Criteria are quite restrictive in accepting behavioural remedies, stating that the KFTC can only impose them in conjunction with structural remedies to complement them, or as the sole remedy only when structural remedies are impossible or ineffective.[7] Situations where no separable business unit exists or where divestiture would severely undermine efficiency or innovation are examples of circumstances where only behavioural remedies may be imposed.

Despite its principle of prioritising structural remedies, the KFTC tends to impose behavioural remedies more actively than other competition authorities. Of 13 cases in which the KFTC imposed remedies from 2020 to the present, only three involved structural remedies alone, while nine featured behavioural remedies exclusively, with one combining both.

No.	Case name (Year)	Imposed remedy
1	*Gmarket/Auction–Alibaba JV Establishment* (2025)	Behavioural remedy only
2	*CJ ENM/Tving–Content Wavve Interlocking Executives* (2025)	Behavioural remedy only
3	*Synopsys–Ansys Share Acquisition* (2025)	Structural remedy only
4	*HD Hyundai Heavy Industries–STX Engine Share Acquisition* (2024)	Behavioural remedy only
5	*Kakao/Kakao Entertainment– SM Entertainment Share Acquisition* (2024)	Behavioural remedy only
6	*Broadcom–VMWare Share Acquisition* (2023)	Behavioural remedy only
7	*Hanwha Aerospace/Hanwha Systems–Daewoo Shipbuilding & Marine Engineering Share Acquisition* (2023)	Behavioural remedy only
8	*LX International–Hankuk Glass Industries Share Acquisition* (2023)	Behavioural remedy only
9	*Korean Air–Asiana Airlines Share Acquisition* (2022)	Both structural and behavioural remedies
10	*KT Skylife–Hyundai HCN Share Acquisition* (2021)	Behavioural remedy only
11	*Delivery Hero SE–Woowa Brothers Share Acquisition* (2021)	Structural remedy only
12	*Borealis AG–DYM Solution Share Acquisition* (2020)	Behavioural remedy only
13	*Danaher Corporation–General Electric Company Business Transfer* (2020)	Structural remedy only

Since structural remedies typically impose a greater burden on the merging parties than behavioural remedies, and considering the KFTC's recent remedy practices, parties to transactions where remedies are anticipated should actively demonstrate to the KFTC the effectiveness of behavioural remedies – specifically, that anticompetitive concerns can

be resolved solely through behavioural remedies alone. To this end, parties may consider utilising the recently introduced voluntary remedy proposal system, which is detailed below in the 'Korean merger review process-related issues' section.

KOREAN MERGER REVIEW PROCESS-RELATED ISSUES

OVERVIEW OF REVIEW PROCESS

South Korean merger review, unlike in the EU, China or Japan, does not have distinct Phase 1 and Phase 2 reviews, nor is the pre-consultation process mandatory. Instead, the KFTC operates with a single review stage and, in principle, completes the review within 30 days from the date of filing notification (with a 'stop the clock' effect until a response to any request for information (RFI) is submitted). However, the KFTC may extend the review period by up to 90 days if deemed necessary (meaning the maximum review period is 120 days). In practice, if an extension is needed, an official letter notifying the parties of the 90-day extension is often sent before the initial 30-day period expires. Issuing an extension letter is fundamentally different from the commencement of Phase 2 in the EU; the KFTC sometimes issues such extensions due to its own workload, even when there are no anticompetitive concerns.

The overall review process for a transaction subject to remedies is as follows:

- filing notification;
- substantive review (including defining the relevant market, assessing anticompetitive effects, conducting economic analysis, and soliciting comments from interested parties);
- issuance of an examiner's report (ER) (confirming the case team's views on potential remedies);
- hearing and deliberation (the case is presented to the Commission to determine the final remedy); and
- publication of the KFTC's decision.

The merging parties can officially confirm the KFTC's intention to impose a remedy through the ER. However, the KFTC may convey its preliminary views on whether to impose remedies to the parties at any time during the review. In practice, the merging parties generally obtain an advance sense of whether a remedy will be imposed and the potential scope of that remedy through continuous consultation with the KFTC during the substantive review stage.

USE OF PRE-CONSULTATION PROCESS

The KFTC first introduced the pre-consultation process in 2024. The pre-consultation process is an optional procedure where parties may consult with the KFTC on market definition or anticompetitive issues prior to formally filing a notification. For transactions with a complex structure, difficult market definition or those requiring an assessment of anticompetitive concerns, the KFTC invests considerable time. Therefore, for transactions where such issues are anticipated, initiating a dialogue through the pre-consultation process allows the KFTC to become familiar with the case in advance, potentially shortening the overall review period.

Specifically, transactions where remedies are anticipated typically involve anticompetitive issues, making use of the pre-consultation process worthy of consideration. The primary advantage of this procedure is that discussions can be initiated with the KFTC without

formal filing. Another advantage is that the process can be converted to a formal filing at any time during the consultation. To utilise this procedure, an application must be submitted to the KFTC at least two weeks before the planned formal filing date. However, there is a notable risk: the KFTC is not subject to a set deadline for notifying the parties of the pre-consultation results. As a result, parties may not receive the results by their desired timeline, or the pre-consultation period could be prolonged in practice, potentially failing to shorten the overall review period as intended.

IMPLICATIONS OF SOLICITING COMMENTS FROM INTERESTED PARTIES AND ECONOMIC ANALYSIS

As the KFTC's merger review process does not have separate phases, the substantive review stage is the most crucial. This is the stage where RFI issuance and response submission occur and where the KFTC solicits comments from interested parties and conducts economic analysis, sharing its views on anticompetitive concerns with the parties and forming its preliminary assessment of the merger.

The MRFTA and related guidelines do not clearly specify at which stage and in which cases the KFTC must solicit comments from interested parties or conduct economic analysis. However, the recently enacted Detailed Operational Guidelines on the Voluntary Merger Remedy Proposal System offer guidance: the KFTC may gather opinions from interested parties or relevant experts if:

- the merger's economic impact is significant;
- the difficulty of assessing the remedy proposal is high; or
- there are other comparable circumstances where the examiner deems it necessary to hear stakeholders' opinions.[8]

When the KFTC proceeds with soliciting comments from interested parties or conducting economic analysis, it should be understood as an indication that the KFTC is reviewing the transaction seriously and that there is a possibility of the KFTC imposing a remedy, as the KFTC conducts these activities selectively. Based on our experience, the solicitation of interested party opinions often takes place in the relatively early-to-mid stages of the review if the KFTC determines the parties' market share to be significant and, if necessary, multiple rounds of opinion solicitation may be conducted. If opposing opinions emerge during the solicitation process, additional RFIs and data requests may be issued, effectively prolonging the review.

In particular, if the KFTC conducts economic analysis, parties should be aware that there is a substantial possibility of a remedy being imposed. Although there have been cases of clearance even after economic analysis was performed, over half of the cases where the KFTC conducted economic analysis in the past five years ultimately led to remedies. Excluding cases where the parties voluntarily withdrew the filing, approximately 62.5 per cent of the cases where economic analysis was conducted (10 out of 16 cases) resulted in a remedy being imposed or the merger being prohibited. The specific number of cases and their outcomes by year are as follows:[9]

Year (number of cases)	Case name (KFTC's action)
2020 (3)	• *SK Broadband–T - broad Merger* (remedies)

	• *Borealis AG–DYM Solution Merger* (remedies) • *Binggrae–Haitai Ice Cream Merger* (clearance)
2021 (3)	• *Delivery Hero–Woowa Brothers Merger* (remedies) • *Hyundai Genuine–Doosan Infracore Merger* (clearance) • *KT Skylife–HCN Merger* (remedies)
2022 (4)	• *Hyundai Heavy Industries–Daewoo Shipbuilding & Marine Engineering Merger* (withdrawal) • *Korean Air–Asiana Merger* (remedies) • *Tving–Seezn Merger* (remedies) • *LX International–Hankuk Glass Merger* (remedies)
2023 (4)	• *Microsoft–Blizzard Merger* (clearance) • *Broadcom–VMware Merger* (remedies) • *Yanolja–Interpark Merger* (clearance) • *Adobe–Figma Merger* (withdrawal)
2024 (4)	• *Megastudy–Gongdangi Merger* (prohibition) • *HD Hyundai Heavy Industries–STX Engine Merger* (remedies) • *Kakao–SM Entertainment Merger* (remedies) • *LG Uplus–Kakao Mobility Merger* (clearance)

ESTABLISHING A TIMELINE CONSIDERING A LENGTHIER REVIEW

In principle, the KFTC's review period is 30 days. However, the KFTC may extend the review period by up to 90 days if deemed necessary. Furthermore, if the KFTC issues an RFI, the review period does not progress until a response to the RFI is submitted (the 'stop the clock'

effect). Therefore, the actual review period can significantly exceed the theoretical maximum of 120 days.

In actual cases where remedies were imposed, most took between six months to over a year from the filing date to clearance. The average review period for remedy cases since 2020 is 328 calendar days. This represents a stark contrast to simple unconditional clearance cases, which are typically completed within one to three months. The cases where remedies were imposed since 2020 and their respective review durations are as follows: the longest was the ***Borealis AG–DYM Solution Share Acquisition*** (2020) at 577 days, followed by the ***Korean Air–Asiana Airlines Share Acquisition*** (2022) at 480 days. The ***Delivery Hero SE–Woowa Brothers Share Acquisition*** (2020) and the ***Kakao/Kakao Entertainment–SM Entertainment Share Acquisition*** (2024) both took 400 days.

#	Case name	Filing date	Clearance date	Duration (days)
1	***Gmarket/Auction–Alibaba JV Establishment*** (2025)	24 Jan 2025	16 Sep 2025	235
2	***CJ ENM–Content Wavve Interlocking Executives*** (2025)	26 Dec 2024	4 June 2025	160
3	***Synopsys–Ansys Acquisition*** (2025)	31 May 2024	27 Mar 2025	300
4	***HD Hyundai Heavy Industries–STX Engine Share Acquisition*** (2024)	17 Aug 2023	12 July 2024	330
5	***Kakao and Kakao Entertainment–SM Entertainment Share Acquisition*** (2024)	26 April 2023	30 May 2024	400
6	***Broadcom–VMware Share Acquisition*** (2023)	4 Oct 2022	19 Oct 2023	380
7	***Hanwha Aerospace and Hanwha Systems–Daewoo Shipbuilding & Marine***	19 Dec 2022	1 May 2023	133

	Engineering Acquisition (2023)			
8	*LX International–Hankuk Glass Industries Share Acquisition* (2022)	4 Apr 2022	19 Dec 2022	259
9	*Korean Air–Asiana Airlines Acquisition* (2022)	14 Jan 2021	9 May 2022	480
10	*KT Skylife and KT Studio Genie–Hyundai HCN and Hyundai Media Acquisition*[[10]] (2021)	6 Nov 2020	29 Sep 2021	327
11	*Delivery Hero SE–Woowa Brothers Share Acquisition* (2021)	30 Dec 2019	2 Feb 2021	400
12	*Borealis AG–DYM Solution Share Acquisition* (2020)	29 Oct 2018	28 May 2020	577
13	*Danaher Corporation–General Electric Company Acquisition* (2020)	13 May 2019	24 Feb 2020	287

There are several factors contributing to the longer review period for remedy-imposed transactions:

- Time required for anticompetitive analysis: the KFTC takes a significant amount of time to conduct the solicitation of comments from interested parties and economic analysis. Interested parties need time to prepare survey responses, and economic analysis in particular requires substantial time from data collection to verification of results.
- Coordination for global transactions: global transactions require additional time for information exchange and coordination with competition authorities in other

jurisdictions. The review period is likely to be prolonged further if a multi-jurisdictional remedy is needed.

- Multiple RFIs for transactions with anticompetitive concerns: transactions with anticompetitive concerns involve several rounds of RFIs, which prolong the review. The KFTC issues extensive and detailed RFIs for transactions with anticompetitive concerns. Importantly, the KFTC frequently requests data necessary for economic analysis and business/practical materials for drafting an ER (which are not needed for simple unconditional clearance cases). RFI issuance itself has a 'stop-the-clock' effect, thus acting as a factor that extends the review period.
- Time needed for discussions on remedy details and implementation: additional time is required for discussions between the parties and the KFTC regarding the specifics of the remedy and implementation methods. Since the remedy must resolve anticompetitive concerns while also being feasible for the parties to implement, it is common practice for the KFTC to consult with the parties before issuing its final decision for transactions where remedies are anticipated. As the parties must continuously communicate with the KFTC until the very end of the review process, cases where remedies are imposed take additional time compared to simple unconditional clearance cases.

When establishing a practical timeline, these various factors must be considered. It is advisable to set a minimum review period of nine to 12 months for mergers with anticipated anticompetitive concerns and to formulate a strategy accordingly. It is also advisable to prepare a contingency plan in case unexpected issues arise or additional remedy proposals are needed during the review process.

SHORTENING THE REVIEW PERIOD WITH THE VOLUNTARY REMEDY PROPOSAL SYSTEM

Transactions where remedies are imposed typically have a significantly longer review period. Therefore, companies seeking to benefit from a shortened review period may consider utilising the voluntary remedy proposal system recently introduced by the KFTC.

The KFTC first introduced the voluntary remedy proposal system with the amendment of the MRFTA in August 2024. This system allows the merging parties to voluntarily propose a remedy for a transaction that the case team has provisionally determined to raise anticompetitive concerns. The advantage of the voluntary remedy proposal system is the shortening of the overall decision period – in other words, enabling a 'fast-track review.' In particular, the system shortens two crucial phases within the KFTC's review: (1) between response to an ER and hearing: the period between the parties' response to the ER and the subsequent KFTC hearing is shortened from 30 days to 15 days; and (2) between hearing and decision: the period between the KFTC hearing and the issuance of the final written decision is reduced from 35 days to 20 days.

Transactions utilising the voluntary remedy proposal system proceed through the following steps: first, the KFTC notifies the merging parties of its preliminary assessment regarding market definition and potential anticompetitive concerns. Upon receiving this notification, the parties can submit a remedy proposal and supporting materials to address the potential anticompetitive concerns raised by the KFTC. Next, the KFTC reviews the submitted remedy proposal and assesses its appropriateness. If the remedy proposal is deemed appropriate, the KFTC begins drafting the ER based on that proposal. Conversely, if the remedy proposal

is deemed inappropriate or insufficient, the KFTC may request the parties to revise or supplement it. If the KFTC finds that the proposed remedies are sufficient and appropriate to resolve anticompetitive concerns, the KFTC issues the ER, and the parties submit their consent. The subsequent procedure is significantly shortened: the KFTC hearing is held within 15 days of the parties submitting their consent to the ER (shortened from 30 days), and the final written decision is issued within 20 days of the hearing date (shortened from 35 days).

Cases utilising the voluntary remedy proposal system, such as the *Gmarket/Auction–Alibaba JV Establishment* (2025) and the *Synopsys–Ansys Share Acquisition* (2025), confirm that this system is effective in shortening the overall review period. Compared to the average review period of 328 days for cases since 2020, the duration was shortened by 93 days and 28 days, respectively, confirming a shortening effect of approximately one to three months.

PRACTICAL IMPLICATIONS AND CONSIDERATIONS FROM RECENT CASES

Recent key remedy decisions by the KFTC offer valuable insights into the practical realities of merger review. The following three representative cases illustrate diverse competitive concerns and remedy approaches, each yielding distinct strategic implications for transaction parties.

GMARKET/AUCTION–ALIBABA JV ESTABLISHMENT (2025)

This landmark transaction involved Shinsegae Group and Alibaba Group establishing a joint venture, which would exercise joint control over Gmarket/Auction and AliExpress Korea, with a total transaction value of approximately 3.4 trillion won. The KFTC determined that the combined market share of AliExpress and Gmarket in the Korean online overseas direct purchase market would reach over 40 per cent, making them the number one operator.

The anticompetitive concern identified by the KFTC was that integrating Gmarket's extensive domestic consumer database – encompassing 50 million Korean users – with Alibaba Group's advanced AI technology would strengthen the parties' market dominance through quantitative and qualitative data enhancement. In particular, the KFTC was concerned about the potential for accelerated platform concentration through a self-reinforcing feedback loop: data accumulation enabling enhanced personalised services, which in turn attracts additional users, generating further data assets. The KFTC was also concerned that entry barriers for competing platforms would be raised through precise personalised marketing and 'doppelgänger-style' targeting.

Accordingly, the KFTC imposed remedies centred on the technical separation of domestic consumer data between the two platforms. Specifically, these included:

- prohibition on using the counterparty's data for Korean online overseas direct purchase services;
- guaranteeing consumers the practical right to choose how their data will be used in services other than overseas direct purchase;
- maintenance of existing personal information protection levels; and
- establishment of a monitoring trustee of up to six members with relevant sectoral expertise.

The remedy term was set at three years with provisions for potential extension contingent on market conditions.

This case marks a new turning point in Korean merger review on several levels. A few implications that can be confirmed from this case are as follows: first, this case constitutes the first Korean case imposing remedies related to data integration. The KFTC established a new review framework that transcends conventional market share and HHI analysis to comprehensively evaluate data volume, AI analytical capabilities and network effects. Drawing explicitly from the EC's ***Google/Fitbit*** case (2020) – which mandated data separation and prohibited health data utilisation for advertising purposes – the KFTC established the basic framework for the data separation approach. The KFTC is expected to introduce this approach in future cases related to the digital economy. Second, this case proved the strategic value of the voluntary remedy proposal system. This is the first case in which the voluntary remedy proposal system was utilised in a cross-border transaction involving foreign and Korean entities. The results were compelling: the review timeline was compressed by more than three months (93 days) compared to the average 328-day review period for comparable cases since 2020. This substantial acceleration demonstrates that the voluntary remedy proposal system delivers meaningful efficiency gains even in structurally complex global transactions with domestic market implications. Lastly, this case reflects a marked evolution in remedy design and implementation oversight. Rather than imposing broad prohibitions on data sharing, the KFTC crafted granular, operationally specific measures addressing technical data separation, consumer autonomy safeguards, and privacy standard maintenance. Furthermore, the mandated monitoring trustee – composed of specialists in privacy, data security and related technical fields – represents a new monitoring infrastructure. This expert-driven monitoring architecture ensures that complex technical remedies are subject to rigorous, informed oversight.

SYNOPSYS–ANSYS SHARE ACQUISITION (2025)

This transaction involved the US-based software company Synopsys acquiring its competitor Ansys for approximately US$35 billion. The KFTC determined this transaction to have a significant impact on the Korean market, given both parties' substantial supply relationships with major Korean semiconductor manufacturers, including Samsung Electronics and SK Hynix, for semiconductor chip design software.

The KFTC concluded that the transaction would likely substantially lessen competition across three core markets. With projected combined market shares ranging from 55 per cent to 100 per cent in each relevant market, the KFTC identified substantial concerns regarding market dominance. The KFTC determined that the transaction presented a high risk of unilateral price increases stemming from two critical factors: the elimination of direct head-to-head competition between the two companies and exceptionally high barriers to entry driven by advanced technological requirements.

To address these concerns, the KFTC mandated structural remedies, ordering the divestiture of all related assets in each market. Specifically, Ansys was required to divest its PowerArtist and related assets in the register-transfer level power consumption analysis software market, while Synopsys was required to divest CODE V and related assets in the optical/photonics simulation software market. Both divestitures were to be completed within six months of the merger's closing date, with assets sold to independent third-party purchasers.

The KFTC's decision in this case provides several significant insights into its enforcement approach: first, the KFTC demonstrated exceptional analytical rigour, even in highly specialised technology sectors. Despite the technical complexity, the KFTC meticulously analysed the technical characteristics of 37 distinct product markets. Notably, although the transaction involved two foreign companies, the KFTC performed a comprehensive competitive effects analysis across all 37 product markets based on the parties' supply relationships with Korean semiconductor manufacturers. Second, this case marked the first application of the voluntary remedy proposal system. The procedural history highlights the system's interactive nature: the KFTC reviewed the parties' initial remedy proposals, requested supplements and required an updated remedy package through an iterative engagement process to ensure an effective remedy design. This demonstrated that the voluntary remedy proposal system can be successfully utilised in practice. Finally, the KFTC conducted its review in close cooperation with foreign competition authorities, including the EC, the UK Competition and Markets Authority (CMA) and the US Federal Trade Commission (FTC), explicitly considering the remedies imposed in other jurisdictions when formulating its own requirements. This demonstrates that the KFTC engages in active cross-border coordination for global transactions and signals that this cooperative approach will remain a defining feature of its review process going forward.

KOREAN AIR–ASIANA AIRLINES SHARE ACQUISITION (2024)

This transaction involved Korean Air's acquisition of Asiana Airlines, representing a large-scale consolidation of the Korean aviation industry. Filed in November 2020 and granted conditional approval in May 2022, the matter proceeded through approximately four years of regulatory review before final closing in December 2024. The transaction constituted a transformative mega-deal expected to fundamentally reshape Korea's aviation landscape where the parties were required to obtain clearance from competition authorities across 14 jurisdictions globally, securing conditional approvals from competition authorities in key jurisdictions, including the EU, the US, China, the UK and Japan.

The KFTC identified competitive concerns on 40 routes out of 87 overlapping domestic and international routes operated by both carriers (26 international and 14 domestic routes) and imposed a comprehensive remedy package combining structural and behavioural measures. Structural remedies included a 10-year commitment requiring the merged entity to: (1) surrender traffic rights and airport slots upon application by replacement carriers on the 40 affected routes; (2) provide support for foreign airport slot acquisition by new entrants; and (3) facilitate codeshare and interline cooperation arrangements with competing airlines. Behavioural remedies encompassed: (1) prohibition on fare increases exceeding the inflation rate relative to 2019 baseline levels; (2) prohibition on reducing seat capacity below 90 per cent of pre-merger levels; (3) maintenance of core service quality standards; and (4) requirement to obtain approval for frequent flyer programme integration plans. Moreover, the KFTC established a robust monitoring infrastructure, mandating the creation of a monitoring trustee comprising up to nine members and imposing quarterly reporting obligations on the merged entity. The KFTC further established a legal framework enabling the delegation of compliance monitoring functions to the Korea Fair Trade Mediation Agency. The remedy term was set at 10 years, extending from the end of 2024 through the end of 2034.

This case offers important implications on several levels. First, it demonstrates the imposition of powerful remedies following a sophisticated analysis. The KFTC conducted rigorous analysis extending beyond passenger transport to encompass cargo operations,

aircraft maintenance and ground handling services, examining vertical and conglomerate effects across all operational dimensions. The resulting remedy architecture – combining structural and behavioural measures across 40 routes – reflects the KFTC's commitment to thorough economic analysis and granular remedy design. Second, it highlights the complexity of multi-jurisdictional coordination and regulatory flexibility. The parties navigated merger review across 14 jurisdictions, confronting significant challenges arising from divergent enforcement approaches, procedural timelines and substantive requirements across authorities. The KFTC demonstrated pragmatic flexibility in addressing these coordination complexities, notably by recognising pre-closing entry by replacement airlines as satisfying remedy implementation. Lastly, it demonstrates that the KFTC's oversight extends far beyond the remedy imposition stage into compliance monitoring. Commencing full-scale implementation monitoring immediately after the closing, the KFTC identified violations of fare increase restrictions by Asiana Airlines and imposed severe sanctions: a 12.1 billion won penalty surcharge and corporate criminal referral. This action sends an unequivocal signal that complex remedy packages require sustained, expert-driven monitoring for effective implementation and that the KFTC possesses both the institutional capability and unwavering commitment to maintain intensive oversight throughout the full 10-year remedy term.

OTHER RECENT PRACTICES AND TRENDS

In the past, there was a view that the KFTC was less rigorous in its analysis of anticompetitive effects and the imposition of remedies compared to other competition authorities. However, the KFTC's efforts to actively reflect trends such as the expansion of the digital economy, the increase in complex global transactions and the diversification of competition issues are emerging as new standard practices. Apart from the cases mentioned above, other practices and trends confirmed through recent remedy cases are summarised below.

GROWING TRENDS TO ESTABLISH A MONITORING TRUSTEE

Recent cases confirm a growing trend for the KFTC to require the establishment of a monitoring trustee (or similar oversight body) to thoroughly manage and monitor the implementation of remedies. In the past, the monitoring of merger remedy implementation in Korea primarily relied on the KFTC or the voluntary reporting of the merging parties. However, as the complexity of remedies increases and more cases require technical expertise, the need for a more specialised and independent monitoring system has emerged.

Indeed, the KFTC has required a monitoring trustee in only 12 cases since 2000. However, half of these cases (six out of 12 cases) involved remedies imposed within the past five years (since 2020), as shown in the list below. Considering this growing practice, it is expected that the KFTC will more actively utilise monitoring trustees going forward.

- *Gmarket/Auction–Alibaba JV Establishment* (2025);
- *Kakao/Kakao Entertainment–SM Entertainment Share Acquisition* (2024);
- *Korean Air–Asiana Airlines*[11] *Share Acquisition* (2024);
- *Broadcom–VMware Share Acquisition* (2023);
- *Delivery Hero SE–Woowa Brothers Share Acquisition* (2021); and
- *Borealis AG–DYM Solution Share Acquisition* (2020).

However, unlike monitoring trustees in other jurisdictions, which utilise third-party independent firms, in Korea, individual experts form a monitoring trustee. Consequently, their substantive authority is more limited and there are constraints on their active engagement compared to monitoring trustees in other jurisdictions. It remains to be seen how the KFTC will utilise monitoring trustees going forward.

EXPANSION OF THE CONDITION ALLOWING RE-REVIEW OF WHETHER TO EXTEND THE REMEDY PERIOD

Traditionally, merger remedies in South Korea had a fixed duration (typically three to five years) and were automatically terminated upon expiration. However, due to rapid changes in the market environment and the fluidity of the competitive landscape, a concern has emerged that the actual effectiveness of the remedy – whether it is effective in preventing the deterioration of the competitive landscape during the set period – should be more closely examined. To address this concern, in recent remedy cases, the KFTC has started to include clauses that allow for the re-review of whether to extend the remedy period.

Since 2011, there have been only three cases where the KFTC has included clauses for re-reviewing whether to extend the remedy period in its corrective orders. Notably, these three cases are all recent remedy cases that happened after 2023:

- *Gmarket/Auction–Alibaba JV Establishment* (2025);
- *HD Hyundai Heavy Industries–STX Engine Share Acquisition* (2024); and
- *Hanwha Aerospace/Hanwha Systems–Daewoo Shipbuilding & Marine Engineering Share Acquisition* (2023).

A significant point is that these clauses regarding re-review to extend the remedy period do not set a limit on the extension period. This clause is typically reflected with language such as: 'This corrective order is valid for [*] years from the date of issuance of the corrective order, and the KFTC may extend the corrective order by reviewing changes in market conditions during the period of remedy application.' If the KFTC decides to extend the remedy period, the clause does not specify a maximum duration for the extension. The KFTC's rationale is that since the transactions subject to the re-examination of remedy extension involve markets with high potential for dynamic change, it should be possible to select an extension period appropriate to the market conditions at the time the extension is decided, rather than setting a limit on the extension period at the current time. It is expected that the KFTC will continue to secure discretionary authority regarding the extension of remedies in the future.

Since there are currently no precedents where the KFTC has actually re-examined the extension of a remedy period, future trends will need to be monitored to determine the criteria the KFTC will use to decide whether to extend a remedy period.

CONCLUSION

Recent merger remedy cases reviewed by the KFTC demonstrate a marked sophistication in its analytical capabilities, reflecting both the complexities of the digital economy and the realities of cross-border transactions. Notably, the KFTC has moved beyond traditional market share-centric analysis to establish a comprehensive analytical framework that incorporates data integration effects, platform economy network effects and the distinctive characteristics of technology-intensive markets. Against this backdrop, the voluntary remedy proposal system has emerged as a pivotal mechanism for transaction parties. As evidenced

in the *Gmarket/Auction–Alibaba* and *Synopsys–Ansys* cases, this system enables material acceleration of review timelines – typically reducing the process by one to three months. The system has proven particularly valuable in complex global transactions where competitive concerns are foreseeable, allowing merging parties to establish a constructive dialogue with the KFTC and achieve greater regulatory certainty.

A critical consideration for merging parties is the KFTC's unprecedented assertive posture during the remedy implementation monitoring phase. Through mandatory establishment of monitoring trustees with independent experts specialised in certain fields and structured periodic reporting requirements, the KFTC ensures rigorous compliance with complex remedy packages. The 12.1 billion won fine and corporate criminal referral in the ***Korean Air–Asiana Airlines*** case serve as an unequivocal signal that remedy violations will trigger substantial sanctions. Furthermore, the increase in the use of provisions allowing for remedy extension underscores the KFTC's commitment to maintaining dynamic oversight capabilities responsive to evolving market conditions.

Moving forward, parties to a merger should prioritise the strategic deployment of the voluntary remedy proposal system. Early identification of the KFTC's competitive concerns through proactive engagement can materially reduce regulatory uncertainty while generating meaningful time and cost efficiencies. Especially with the KFTC's strengthened international coordination capabilities, the voluntary submission of remedies in Korea for transactions that require multi-jurisdictional merger filings may serve as an advantageous strategic anchor point. Such an approach has the potential to positively influence review dynamics across other competition authorities, establishing a foundation for coordinated global clearance strategies.

ENDNOTES

[1] Merger Review Trends and Key Characteristics in 2024, KFTC, February 2025.

[2] id.

[3] Guidelines for Notification of Business Combination (Merger Filing Guidelines) (2025), p. 3, KFTC M&A Division and International M&A Division.

[4] Merger Remedy Imposition Criteria, IV. 1. A.

[5] Merger Remedy Imposition Criteria, II. 3.

[6] Merger Remedy Imposition Criteria, II. 10.

[7] Merger Remedy Imposition Criteria, IV. 1. A.

[8] Detailed Operational Guidelines on the Voluntary Merger Remedy Proposal System, Article 10, Paragraph 1.

[9] Merger Review Trends and Key Characteristics in 2024, KFTC, February 2025.

[10] KT Skylife submitted a merger filing to the KFTC on 6 November 2020, for the acquisition of 100 per cent of the shares of Hyundai HCN. Subsequently, KT Studio Genie was assigned buyer status for the said share acquisition from KT Skylife and submitted an additional filing on 12 July 2021. Based on the filing submitted with KT Studio Genie as the notifying party, the review took a total of 79 days.

[11] The KFTC's conditional clearance of the Korean Air–Asiana Airlines share acquisition was originally granted in 2022, but as the closing took place in November 2024, some modifications to the corrective orders were made in 2024. The monitoring trustee was also formed in 2024.

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