
CHAMBERS GLOBAL PRACTICE GUIDES

Cartels 2026

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**South Korea: Law and Practice
& Trends and Developments**

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Shin & Kim



SOUTH KOREA

Law and Practice

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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

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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 guidelines for cartels, such as Guidelines for Cartel Review and Guidelines for Leniency Application. The fully amended MRFTA, effective as of 30 December 2021 (the “Amendment”), contains a number of changes regarding cartels. The Amendment includes information exchange as a type of cartel and prohibits an agreement if such an agreement to exchange information between companies restricts competition. See 1.4 “**Cartel Conduct**”. The Amendment also raised the rate of fines for cartels from 10% to 20%. See 1.2 **Regulatory/Enforcement Agencies and Penalties**.

In 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. See 3.1 **Leniency**.

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.

With regard to remedial orders against cartels, under the MRFTA, the KFTC may order a company to cease cartel activities, publicly disclose the fact that it has received a remedial order, and comply with any other necessary remedial orders. The Guidelines on KFTC Remedial Orders stipulate that one type of remedial order the KFTC may impose for cartels is an “order requiring each company to independently reset prices”. In February 2026, the KFTC imposed remedial orders and surcharges on sugar manufacturers for cartel conduct. According to the KFTC’s press release, the KFTC considered imposing a price reset order on the sugar manufacturers but did not do so in this case because the manufacturers had independently lowered prices during the KFTC’s investigation. However, the KFTC stated that when handling future cartel cases, it plans to actively utilise price reset orders to the extent possible where prices have been raised due to a cartel, in order to induce actual price reductions. In fact, in April 2026, the KFTC issued price reset orders to companies involved in a cartel case among printing paper manufacturers. In addition, in April 2026, the KFTC announced policy plans aimed at eradicating repeat cartels, stating that, through amending the MRFTA, it would consider introducing remedial orders requiring the dismissal or suspension of executives at companies involved in cartels, as well as structural

measures to address the underlying business structural issues that lead to repeated cartels.

With regard to surcharges, 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. This represents twice the amount under the previous MRFTA, which provided for a maximum surcharge ratio of up to 10% and a maximum fixed surcharge of KRW2 billion. 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 sets the upper limit for the surcharge rate at 20% but does not specify a lower limit. The KFTC stipulates a lower limit for the base rate in its “Surcharge Guideline”, establishing different ranges for the base rate depending on the severity of the violation. However, criticism has been raised that the lower limit of the base rate is set too low in the current guidelines. In response, on 30 April, 2026, the KFTC revised the Surcharge Guideline. According to the revised Surcharge Guideline, the lower limit for surcharges on violations has been raised. In particular, the lower limit of the base rate for cartels has been significantly increased. For example, whereas previously a specific cartel assessed as “minor violations” could be subject to a 0.5% base rate, under the revised guidelines, the lower limit will be set at 10%. Moreover, the lower limit has been set at 15% for a specific cartel assessed as “serious violations,” and 18% for a specific cartel assessed as “very serious violations.”

Additionally, the revised guidelines strengthen the surcharge multiplier applicable to repeat offenders. Under the current guidelines, where a business has violated the law within the past five years, surcharges may be increased by 10% to 80% taking into account factors such as the number of violations. However, under the revised guidelines, surcharges may be increased by 40–100% based on violations within the past five years. In particular, stricter penalties apply to cartels: where a business has been subject to a surcharge for cartel conduct within the past ten years – even just once – and engages in cartel conduct again, the surcharges may be increased by up to 100%.

In addition, the KFTC plans to narrow the scope for surcharge reductions. Under the current guidelines, a business operator can receive up to 20% in total reductions of surcharges by co-operating with the KFTC’s investigation and deliberation; however, under the revised guidelines, this will be capped at 10%. Furthermore, while a business operator currently qualifies for up to 30% reductions for voluntary rectification, the revised guidelines limit this to 10%. The revised guidelines also eliminate the previous 10% reduction available for violations resulting from minor negligence.

The revised guidelines took effect on 30 April 2026. If a violation ceased before 30 April 2026, the previous guidelines will apply. In other words, if a collusive practice has already ended before 30 April 2026, the higher minimum surcharge rate will not apply.

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 provides that an agreement among companies on cartel conduct is presumed if there is evidence that the companies exchanged information necessary for such conduct. If there is an external conformity in market behaviour, and information necessary to create that external conformity was exchanged, an agreement on price fixing, output restriction, or other cartel conduct is presumed by law.

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).

In February 2026, the KFTC imposed sanctions for the first time under a provision introduced in the amendment that classifies information exchange as a form of cartel conduct. Four major South Korean banks were fined a total of KRW272 billion by the KFTC for allegedly colluding over loan-to-value (LTV) ratios, a key factor in determining mortgage limits. The KFTC determined that the banks exchanged information on LTV ratios and co-ordinated their own LTV ratios accordingly. In contrast, the banks argued that LTV ratios were not key factors, that each bank set its ratios independently, and that the KFTC failed to prove any restrictive effect on competition. The banks filed administrative lawsuits challenging the KFTC's decision.

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.

Meanwhile, bid rigging is regulated not only by the MRFTA but also by the Criminal Act and the Framework Act on the Construction Industry. According to Article 315 of the Criminal Act, anyone who undermines the fairness of a bid through fraud, coercion, or other means shall be punished by imprisonment for up to two years or a fine of up to KRW7 million. Furthermore, pursuant to Article 95 of the Framework Act on the Construction Industry, if bidders collude with each other for the purpose of obtaining improper benefits or obstructing fair price determination in connection with construction project bidding, and submit bids at prices manipulated in advance, they shall be punished by imprisonment for not more than five years or a fine of not more than KRW200 million. Therefore, bid rigging may constitute a violation not only of the MRFTA but also of the Criminal Act and the Framework Act on the Construction Industry.

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.

At a press conference in May 2026, the KFTC chairperson mentioned that the KFTC is considering legislative amendments to extend the statute of limitations for cartel conduct from the current seven years from the date of termination of the violation to ten years.

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 2025 annual statistic report, the KFTC sanctioned 2,025 cartel cases between 1981 and 2025. Among these, price fixing accounted for 777 cases (38.4%), and bid rigging for 987 cases (48.7%). 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 2025 annual statistics report also categorises the initiation of cartel investigations as either to be based on a "report" or "ex officio". In 2023, of 189 initiated cases, 62 were based on reports and 127 ex officio; and in 2024, of 193 cases, 117 were report-based and 76 ex officio; and in 2025, of 233 cases, 104 were report-based and 129 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, 28 out of 45 cases in 2022, 24 out of 47 cases in 2023, and 46 out of 52 cases in 2024 were initiated through leniency.

1.9 Guides Published by Government 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 233 cartel cases in 2025, 104 were based on reports to the KFTC and 129 cases were commenced by the KFTC on its own.

With regard to criminal sanctions for cartels, the prosecutors' offices operate a criminal leniency programme, and may commence investigation of hard-core cartels directly reported to or detected by the prosecutors' office, even without a referral from the KFTC. See **3.1 Leniency**.

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, and the KFTC's dawn raid does not require a court warrant). 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.

Meanwhile, with regard to criminal sanctions against cartels, the prosecutors' office may conduct searches and seizures to secure evidence pursuant to warrants issued by the court. For information on searches and seizures conducted by the prosecutors' office under such warrants, see **2.5 Obtaining Evidence/Testimony** and **3.1 Leniency**. This section focuses on the KFTC's dawn raids.

Procedure of Dawn Raids

Prior to inspecting desks, drawers and other office furnishings at the investigated company, the investigating official should seek co-operation from the person in charge of the division under investigation 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.

Regarding whether the KFTC may conduct on-site inspections at an employee's home, the MRFTA only stipulates that the KFTC may enter a business operator's office or business premises to conduct an investigation; it does not contain any separate provisions regarding whether on-site inspections at private residences are permitted. Meanwhile, the Constitution requires that any search or seizure of a residence be conducted pursuant to a warrant issued by a judge upon the application by a prosecutor. Given that the Constitution strictly protects the freedom of residence, allowing the KFTC to conduct on-site inspections at an employee's home – without a court warrant and based solely on the business operator's consent – would likely violate this constitutional protection and therefore would not be permitted. Indeed, the KFTC's own guidelines for investigative procedures stipulate that on-site inspections must be conducted only at the office or business premises specified in the official investigation notice. If the KFTC needs to obtain data from an employee working from home, it may do so by ordering the business operator to submit the materials.

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.

Moreover, under the MRFTA, if a company refuses, obstructs or evades a KFTC's investigation during a dawn raid through physical assault, verbal abuse, or intentional blocking or delay of access to the premises, the KFTC may file a referral to the prosecutors' office. If the prosecutors' office indicts in connection with this, the court may impose imprisonment for up to three years on the relevant employee, or a fine of up to KRW200 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. Furthermore, acts that obstruct the KFTC's investigation may result in criminal penalties under the MRFTA; see **2.3 Spoliation of Evidence**.

Meanwhile, with regard to criminal sanctions for cartels, the prosecutors' office may conduct searches and seizures to secure evidence pursuant to court-issued warrants. Recently, prosecutors have shown increased use of criminal search authority to secure evidence of collusion through the Criminal Leniency Programme, even in cases where KFTC investigations or deliberations are ongoing. See **3.1 Leniency**.

2.6 Attorney-Client and Other Privileges

In February 2026, the National Assembly passed an amendment to the Attorney-at-Law Act, establishing for the first time a statutory basis for attorney-client privilege in South Korea. Previously, Korean law did not recognise attorney-client privilege, resulting in concerns that communications and documents exchanged between attorneys and clients were subject to seizure during government investigations, potentially infringing upon the constitutional right to legal counsel. The amendments address these concerns.

Under the amended Act, both attorneys and clients (including prospective clients) may refuse to disclose the contents of confidential communications made for the purpose of providing or receiving legal assistance regarding a case or matter. Additionally, a lawyer and a client may refuse to disclose documents or materials prepared by the lawyer for litigation, investigation, or inquiry in connection with a case the lawyer has undertaken. However, such communications, documents, and materials may be disclosed in cases where:

- the client consents to disclosure;
- the attorney acted as an accomplice to the client or is involved in the client's unlawful acts (such as destruction of evidence or harbouring a criminal); or
- disclosure is necessary for the attorney to exercise their right of defence in a dispute between the attorney and the client.

The amendments will take effect on 20 February 2027. Importantly, the privilege applies retroactively to communications, documents, and materials exchanged prior to the effective date, which may not be disclosed absent an applicable exception.

The introduction of attorney-client privilege is expected to strengthen businesses' defence rights during KFTC investigations. However, as the precise contours of the privilege and related legal principles will be developed through implementing regulations and case law, businesses should closely monitor these developments.

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, depending on the degree of co-operation with the investigation. Currently, surcharges can be reduced by up to 20% for co-operation, but under the revised surcharge guidelines, the reduction for co-operation is limited to 10%. 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 2025, the leniency programme was used in 60.1% (576 out of 976) 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% (557 out of 881).

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 "criminal 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, either before the KFTC has commenced an investigation or at a time when the KFTC has not yet obtained information about the cartel or has not secured sufficient evidence to prove it.
- (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.
- (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. The "certain period" requirement refers to cases where the applicant has engaged in cartel conduct again within five years from the date on which a remedial order or surcharge was imposed for a prior cartel violation.

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 applicant must co-operate in good faith until the conclusion of the KFTC review process. The KFTC assesses the applicant's level of co-operation by considering whether the applicant has disclosed all facts related to the cartel without delay, promptly submit-

ted all relevant materials, and responded promptly to the KFTC's requests, as well as whether the applicant has refrained from destroying, tampering with, damaging, or concealing evidence or information related to the cartel. An applicant who discloses the fact of its leniency application to a third party prior to the KFTC's deliberation and without the KFTC's consent is deemed not to have co-operated in good faith. This prohibition does not apply where the applicant is required by law to disclose the application or to notify a foreign competition authority.

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.

Meanwhile, in April 2026, the KFTC announced several policy plans aimed at eradicating repeat cartels, including amending relevant provisions in the MRFTA to reduce the surcharge reduction for leniency applicants to half if the applicant sanctioned for a cartel engages in another cartel within five to ten years.

The KFTC Leniency Programme applies only to business entities and does not contain separate provisions for individual executives and employees. However, in practice, the KFTC generally refrains from referring current or former executives and employees of a leni-

ency applicant to the prosecution for criminal charges, provided the business entity meets the leniency requirements.

Notably, while the KFTC grants full immunity from criminal referral to first- and second-priority applicants for MRFTA cartel violations, this protection does not extend to bid-rigging conduct that violates the Criminal Act or the Framework Act on the Construction Industry. The prosecution may independently indict individuals for such bid-rigging offences without requiring a referral from the KFTC.

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. The application must include information about the applicant, an overview of the cartel conduct, the evidence necessary to prove the cartel and a list of such evidence, a statement that the applicant will co-operate with the KFTC's investigation, and information regarding whether the cartel conduct has ceased. However, if the applicant has a valid reason making it difficult to submit a written application, oral applications are permitted, except by telephone. For oral applications, KFTC officials must question the applicant regarding the information that would otherwise be included in a written application, and must record and preserve the responses.

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. At this time, if materials are submitted regarding cartel conduct that is separate from the cartel covered by the leniency application, the submission is treated as a new leniency application for the separate cartel, rather than as a supplement to the original application.

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 among leniency applicants is determined by the time of KFTC's 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. The KFTC generally holds a hearing on the leniency application which is, in practice, separate from the main collusion case, though typically both hearings occur on the same day. The leniency application hearing is closed. Once that hearing concludes, the KFTC renders a decision on leniency status. The KFTC will deny leniency status where the applicant:

- failed to co-operate fully with the investigation until the conclusion of the KFTC's deliberations, such as by failing to disclose all facts related to the cartel or failing to submit relevant materials;
- intentionally submitted of false information;
- failed to immediately cease the collusive conduct after filing the application, or failed to maintain such cessation;
- coerced other businesses to participate in the cartel or prevented them from ceasing participation; or
- submitted evidence deemed insufficient to prove the existence of the cartel.

If the KFTC issues a decision denying leniency status, the applicant may file an administrative lawsuit against such KFTC decision.

Withdrawal of leniency status

The KFTC may revoke a reduction or exemption of remedial orders or surcharges granted to an applicant with leniency status where the applicant:

- provides statements during a trial that differ from those made during the investigation;
- submitted statements or documents during the investigation later found to be false at trial;
- fails to make statements regarding the facts of the collusive conduct during the trial without justifiable cause;
- fails to appear at the trial without justifiable cause; or
- 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 recent practice, the prosecution has leveraged the Criminal Leniency Programme to secure evidence of cartel conduct in cases concurrently under KFTC investigation or review, and has actively conducted seizures and searches pursuant to criminal procedure. Moreover, in certain cases, the prosecution has requested that the KFTC file a formal complaint prior to the KFTC's issuance of a decision; upon receipt of the complaint, the prosecution proceeded to indict the cartel participants. This represents a departure from prior practice, under which the KFTC would first conclude its deliberations and issue a decision (including, where appropriate, a criminal referral), followed by the prosecution's criminal investigation and pursuit of criminal sanctions.

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. The second-ranked leniency applicant is not entitled to exemption from search and seizure, arrest, detention, or other compulsory investigation measures.

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. Where a company applies for criminal leniency, the application must include the names and other relevant information of current and former executives and employees who wish to receive criminal immunity together with the company.

Furthermore, under the KFTC leniency programme, while first- and second-priority applicants receive immunity from criminal referral for MRFTA violations, they remain subject to prosecution for bid-rigging offences under the Criminal Act or the Framework Act on the Construction Industry. The prosecution may independently indict for such bid-rigging conduct without requiring a referral from the KFTC. In contrast, under the criminal leniency programme, first-priority applicants receive immunity from prosecution for violations of the MRFTA, the Criminal Act, and the Framework Act on the Construction Industry alike.

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. Whether the KFTC grants an exemption or reduction of the surcharge for Conduct A is determined by comparing the scale of Conduct A (the total relevant revenue of the participants involved in the cartel) with the scale of Conduct B. For example, if the scale of Conduct B is less than or equal to that of Conduct A,

the surcharge is reduced by up to 20%; if the scale of Conduct B is four times or more that of Conduct A, the surcharge is waived.

3.3 Whistle-Blowers

Under the MRFTA, a reward system is in place for informants who report violations of the law, including cartel conduct. According to the current guidelines on reward, 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.

On 21 May 2026, the KFTC issued an administrative notice announcing its intention to revise the reward guidelines. Under the proposed revision, the KFTC would abolish the existing fixed cap on whistle-blower rewards – currently set at KRW3 billion for cartel cases – and replace it with a variable cap tied to 10% of the surcharges imposed on the violating parties. According to the press release, the KFTC expects that the enhanced reward structure will incentivise whistle-blowing in cartel matters and strengthen the deterrent effect against cartel conduct more broadly.

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 desig-

nate 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. In exceptional cases where it is necessary to question employees of foreign companies but in-person interviews are not feasible, the KFTC may conduct interviews via video conference.

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 particular, to prevent bid-rigging in the public procurement sector, the KFTC operates the Bid Rigging Indicator Analysis System (BRIAS) and holds regular meetings with national agencies, local governments, public corporations, quasi-governmental agencies, and other public institutions that provide bid information to this system.

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.

South Korea is an active member of the OECD Competition Committee and the International Competition Network (ICN). In addition, the KFTC works closely with competition authorities in the United States, the EU, Japan, and other countries on international cartel cases, exchanging views and co-ordinating case proceedings.

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 objectively 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 Chairperson is obliged to do.

Meanwhile, as mentioned in 3.1 **Leniency**, the prosecutors' office has recently conducted searches and seizures to secure evidence of collusion through the Criminal Leniency Programme even in cases concurrently under investigation or review by the KFTC. Before the KFTC issues a decision, the prosecutors' office requests that the KFTC file a complaint, and once the KFTC does so, the prosecutors' office subsequently indicts the cartel participants.

Laws establishing the Public Prosecution Office and the Serious Crimes Investigation Office are scheduled to take effect on 2 October 2026, fundamentally restructuring South Korea's prosecutorial system. Under the current system, the prosecution exercises both investigative and prosecutorial powers. Once the new laws take effect, prosecutorial functions will be handled by the Public Prosecution Office, while investigative functions will be handled by the Serious Crimes Investigation Office or other appropriate investigative authorities, such as the police. Under the new framework, MRFTA cartel violations constitute "serious crimes" under the relevant legislation, and discussions are underway regarding the criminal investigation procedures for the cartel violations. As these structural changes are expected to necessitate amendments to relevant laws and regulations – including the MRFTA and the Criminal Procedure Act – businesses should closely monitor related developments.

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.

Meanwhile, discussions are underway within the government regarding reforms to the KFTC's exclusive right to make criminal referrals for MRFTA violations.

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. The KFTC's meetings consist of the Plenary Session, composed of all commissioners, and the Chamber, composed

of three commissioners (including one standing commissioner). In cartel cases where the economic impact is significant – namely where the relevant revenue is KRW300 billion or more (or, in bid-rigging cases, where the contract value is KRW300 billion or more in the private sector or KRW150 billion or more in the public sector) – or where deliberation by the Plenary Session is otherwise deemed necessary, the case is deliberated by the Plenary Session; all other cartel cases are deliberated by the Chamber.

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. In cases deliberated by the Plenary Session, the respondent may submit a Response Brief to the Examiner's Report in writing within eight weeks of receiving the examiner's report (or within six weeks in cases deliberated by the Chamber). Where an extension of the submission period is necessary, the respondent must apply for an extension, which will be granted or denied at the discretion of the presiding commissioner.

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 a "decision".

The MRFTA provides for a consent decree mechanism, under which a company may voluntarily remedy conduct at issue for potential MRFTA violations and provide relief to affected consumers. However, the MRFTA does not permit consent decrees for cartel conduct, and the KFTC must proceed with the deliberation process for cartels.

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**.

As mentioned in **4.6 Issuing Criminal Indictments**, the MRFTA provides for criminal punishment of cartels through prosecutorial indictment. 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, the prosecutor general or other agencies may ask the KFTC to file a referral to the prosecutors' office, which the KFTC Chairperson is obliged to do.

Moreover, as mentioned in **3.1 Leniency**, prosecutors have conducted searches and seizures under the Criminal Leniency Programme while KFTC investigations or deliberations were ongoing. In these cases, prosecutors requested KFTC referral before the KFTC issued its decision, and upon receiving the referral, proceeded to indict cartel participants.

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

Where the KFTC has found an illegal cartel and imposed sanctions, courts in subsequent damages litigation typically afford substantial weight to that finding. Courts remain not bound by the KFTC's determination, however.

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.

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 2025, the KFTC referred a total of 274 cartel cases for prosecution, with 16 referrals made in 2025.

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 Programme 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

The KFTC may impose remedial orders and a surcharge on a company that has taken part in a cartel in violation of the MRFTA. A company that has been sanctioned by the KFTC for participating in a cartel may file an administrative 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 usually 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 an 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, in 2025, 13.8% of its decisions (including non-cartel cases) were challenged in court. Between 2001 and 2025, among all lawsuits seeking to cancel KFTC decisions that resulted in final and conclusive judgments (including non-cartel cases), 61.5% were dismissed, 19.3% partially upheld, and 11.0% fully upheld.

With regard to criminal sanctions, as discussed in **4.6 Issuing Criminal Indictments**, the MRFTA provides for criminal punishment for cartels through indictment by the prosecutors' office. The prosecutors' office may indict for violations of the MRFTA, including cartels, only upon KFTC referral. Once criminal charges are filed for a cartel offence, criminal trial proceedings commence. While an administrative lawsuit challenging the KFTC's decision proceeds through two stages – the Seoul High Court and the Supreme Court – criminal cartel proceedings follow the standard three-tier system, with the Supreme Court serving as the court of last resort.

Meanwhile, the Constitutional Court Act, amended on 12 March 2026, came into effect, allowing constitutional complaints to be filed against court rulings, including Supreme Court decisions. Previously, court rulings were excluded from constitutional complaint jurisdiction. Under the amended Act, a constitutional complaint may be filed against a court ruling – including those of the Supreme Court – in the following cases: where the court ruling violates fundamental rights

contrary to a Constitutional Court precedent; where the court ruling violates fundamental rights by failing to follow due process as prescribed by the Constitution and laws; or where the court ruling evidently violates fundamental rights by contravening the Constitution or statutes. If the Constitutional Court sustains the constitutional complaint, it will set aside the court ruling, and the court must retry the case in accordance with the Constitutional Court's decision.

This amendment creates an additional appellate avenue to the Constitutional Court for both administrative lawsuits against KFTC decisions and criminal lawsuits for violations of the MRFTA. In April 2026, the Constitutional Court ruled that a constitutional complaint challenging a Supreme Court decision related to a cartel case met the legal requirements and should be heard by the Constitutional Court's full bench for a decision on the merits. This case marks the first instance in which the Constitutional Court has referred a constitutional complaint regarding a court ruling to its full bench. Future developments will reveal how the Constitutional Court treats cartel-related rulings under this new jurisdiction.

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 and 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 285.3 days from the date of filing. At the Supreme Court level, the average duration is around 123.1 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**.

For damages actions, jurisdiction lies with the court having jurisdiction over the defendant's principal office, the plaintiff's address, or the location where the cartel conduct occurred.

6.2 Collective Action

Cartel victims may file damages lawsuits as co-plaintiffs. However, class actions are not available for cartel damages claims. Although several class action bills proposed by lawmakers are currently pending in the National Assembly, a class action law has not yet been enacted.

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 the assessment of the damages amount, which generally takes six months to one year.

In addition, if the damages lawsuit is filed while an administrative lawsuit is pending at the Seoul High Court, the court hearing the damages action may delay scheduling a hearing – after completing basic procedures – to await the administrative lawsuit's outcome. However, the court may also proceed independently without awaiting the administrative lawsuit's resolution.

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 has 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 2025, the rate of appeal to the appellate court for civil cases in 2024 was around 47.0%, and the rate of appeal to the Supreme Court was around 35.5%.

Meanwhile, as discussed in 5.8 **Judicial Review or Appeal**, the Constitutional Court Act, as amended on 12 March 2026, has come into effect; accordingly, it is now permissible to file constitutional complaints against court rulings, including Supreme Court decisions. In private civil litigation as well, if a court ruling – including a Supreme Court decision – violates fundamental rights by failing to satisfy legal requirements, a constitutional complaint may be filed with the Constitutional Court against that ruling. If the Constitutional Court sustains the constitutional complaint, it will overturn the court ruling, and the court must retry the case in accordance with the Constitutional Court's decision. This amendment creates an additional appellate avenue to the Constitutional Court for private civil litigation as well. Future developments will reveal how the Constitutional Court treats cartel-related rulings under this new jurisdiction.

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. In August 2025, the KFTC issued a Request for Proposals (RFP) regarding the latest systems and enforcement practices of foreign competition authorities. In the RFP, the KFTC referenced Spain's "Bid Rigging Algorithm for Vigilance in Antitrust" and stated that it intends to improve its domestic enforcement system by drawing on such AI-based enforcement systems used by foreign competition authorities.

As mentioned in **2.2 Dawn Raids/Search Warrants**, the KFTC actively employs digital forensics during dawn raids to secure evidence of cartels. In particular, the KFTC significantly expanded its staff in 2026 to strengthen enforcement, with the expanded workforce expected to include a large number of personnel dedicated to digital forensics. Furthermore, the Commission plans to strengthen its investigative capabilities by acquiring additional digital forensics equipment and software.

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 crite-

riterion 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

As of 2026, South Korea is actively investigating and enforcing cartel laws in sectors closely related to daily life, such as food, education, construction, and energy. President Jae-Myung Lee has repeatedly emphasised that enforcement against cartels must be stronger and swifter, with heavy penalties – far exceeding the profits companies gain from collusion. In February 2026, the government announced that multiple agencies, including the KFTC and the prosecutors' office, would conduct joint investigations into sectors suspected of collusion or abuse of market dominance to crack down on unfair trade practices that undermine price stability, with plans to impose swift and strict sanctions.

The KFTC and the prosecutors' office are actively and promptly investigating and sanctioning cartels within their respective jurisdictions. In 2026, the KFTC has already imposed sanctions regarding alleged collusion in the sugar, flour, eggs and pork sectors and plans to decide whether to impose sanctions for alleged collusion involving starch syrup. Following price instability in the energy sector due to recent international developments, the KFTC conducted on-site investigations of oil refiners and others to examine potential collusion.

The prosecutors' office is also actively investigating or prosecuting cases in the food sector, such as flour and sugar, as well as in the energy sector, including oil refiners. In the past, the prosecutors tended to conduct criminal investigations only after the KFTC had investigated, issued a decision, and referred the case to the prosecution. However, as mentioned in **3.1 Leniency**, prosecutors now independently conduct searches and seizures and actively prosecute companies and their current and former executives even while KFTC investigations are ongoing and before decisions are issued.

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. In February 2026, the FSC announced a roadmap for mandatory ESG disclosures, with plans to implement mandatory ESG disclosures for companies above a certain size starting in 2028.

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

As mentioned in 7.4 Focus on Certain Industries/Sectors, as of 2026, Korea is actively investigating and enforcing laws against alleged cartels in sectors closely tied to daily life – including food, education, construction, and energy. President Jae-Myung Lee has repeatedly called for swift and strict enforcement, and both the KFTC and prosecutors are conducting prompt investigations and imposing sanctions within their respective jurisdictions. Enforcement efforts are particularly focused on sectors characterised by oligopolistic structures and the energy sector, where price volatility has intensified due to recent international developments.

In February 2026, the government announced a joint, intensive inspection plan targeting unfair trade practices that undermine price stability. Multiple agencies – including the KFTC and prosecutors – will identify items of concern and conduct co-ordinated investigations where abnormally high prices result from unfair trade practices or monopolistic market structures. The KFTC emphasised that where unfair trade practices – such as price-fixing or abuse of market dominance – are confirmed, the KFTC and prosecutors will co-operate to impose swift and strict sanctions. If necessary, price re-determination orders will be issued to stabilise prices.

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 enforcement practice. The firm has also gained a strong reputation for defending clients in KFTC investigations, including on-site investigations and hearings, and for representing clients in administrative appeals and relevant damages lawsuits. The group has represented numerous foreign clients in KFTC investigations and litigation.

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Introduction

In South 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 cases to the prosecutors' office for potential criminal proceedings. With respect to MRFTA violations arising from cartel conduct, the prosecutors' office can proceed with an indictment only following a criminal referral from the KFTC. Companies may challenge the KFTC's imposition of remedial orders or surcharges by filing an administrative lawsuit seeking cancellation of those actions.

Regulation Trends on Cartels and KFTC Decisions

The KFTC and prosecutors' office are actively investigating and enforcing the law regarding alleged cartels in sectors closely related to daily life, including food, education, construction, and energy. Furthermore, the KFTC revised its surcharge guidelines to significantly raise the minimum surcharge rate for violations of the MRFTA, including cartels, and to narrow the scope within which it can reduce surcharges. Regarding criminal sanctions for cartels, the prosecutors' office has recently been conducting independent searches and seizures even before the KFTC has rendered a decision – despite ongoing KFTC investigations – and has been actively indicting companies and their current and former executives by requesting referrals from the KFTC.

Meanwhile, with the Attorney-at-Law Act being amended in February 2026, the attorney-client privilege has been legally recognised in South Korea for the first time. Consequently, attorneys and clients may refuse to disclose confidential communications regarding legal assistance, as well as documents or materials prepared for litigation or investigations. The amended law is scheduled to take effect on 20 February 2027, and communications, documents, or materials exchanged prior to its implementation may also be withheld from disclosure. The introduction of the attorney-client privilege is expected to better guarantee the right of defense for businesses during KFTC investigations.

Recent major decisions by the KFTC are as follows.

Bank information exchange case

In February 2026, the KFTC imposed sanctions on four major South Korean banks for engaging in information exchange, marking the first application of the fully amended MRFTA – which classifies information exchange as a form of cartel – since the law took effect on 30 December 2021. Previously, Korean courts determined that information exchange itself was not a cartel. Unlike the previous MRFTA, the fully amended MRFTA includes information exchange as a type of cartel and prohibits agreements to exchange information between companies that restrict competition.

The banks were fined a total of KRW272 billion for colluding over loan-to-value (LTV) ratios, a key factor in determining mortgage limits. The KFTC determined

that the four banks exchanged information on LTV ratios, used the exchanged information to coordinate their own LTV ratios, and thereby restricted market competition.

In contrast, the banks argued during the KFTC proceedings that LTV ratios were not key factors, that each bank had set its own ratios independently, and that the KFTC had failed to prove a restrictive effect on competition. According to media reports, the banks filed administrative lawsuits against the KFTC's decision.

Sugar cartel case

In March 2026, the KFTC imposed a total surcharge of approximately KRW408.3 billion, along with remedial orders, on three major sugar companies for colluding on the timing and magnitude of sugar price changes in business-to-business transactions with customers such as food and beverage manufacturers. The KFTC noted that the surcharge was the second largest ever imposed by the KFTC in a cartel case by total surcharge amount.

The KFTC found that the sugar companies reached agreements on eight occasions between February 2021 and April 2025 (six price increases and two price decreases) regarding the timing and magnitude of changes to sugar selling prices in connection with reflecting fluctuations in raw sugar prices in their selling prices. In the press release, the KFTC criticised the sugar companies for engaging in a cartel despite having previously been sanctioned for cartel conduct in 2007, and for maintaining the collusion for more than one year even after the KFTC commenced its investigation. According to the KFTC's press release, the KFTC also considered imposing a price reset order on the sugar companies, but ultimately declined to do so because the companies had independently lowered their prices during the KFTC's investigation. However, the KFTC stated that it plans to actively use price reset orders in future cartel cases to induce actual price reductions. In fact, in April 2026, the KFTC issued price reset orders to companies involved in a cartel case among printing paper manufacturers.

Meanwhile, the prosecutors' office conducted searches and seizures in connection with the sugar compa-

nies' collusion, and based on the results of its investigation, indicted the companies and their current and former executives and employees in November 2025. The prosecutors' office conducted its investigation and requested a referral from the KFTC prior to the KFTC issuing its decision on the cartel, and proceeded to indict on that basis.

Judicial Review Process and Recent Court Rulings

Administrative lawsuits challenging KFTC decisions 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, with cases heard initially by the Seoul High Court and final appeals directed to the Supreme Court.

Meanwhile, with the entry into force of the amended Constitutional Court Act in March 2026, it is now permissible to file constitutional complaints against court rulings, including the Supreme Court ruling. Where a court ruling violates fundamental rights and certain requirements are met, a constitutional complaint may be filed with the Constitutional Court. If the complaint is upheld, the Constitutional Court shall set aside the court ruling, and the court must retry the case in accordance with the Constitutional Court's decision. This can be viewed as creating an additional opportunity to effectively appeal to the Constitutional Court against court rulings in administrative lawsuits challenging KFTC decisions. In April 2026, the Constitutional Court ruled that a constitutional complaint challenging a Supreme Court decision related to a cartel case met the legal requirements and should be heard by the Constitutional Court's full bench for a decision on the merits. This case marks the first instance in which the Constitutional Court has referred a constitutional complaint regarding a court ruling to its full bench.

Notable recent court rulings relating to cartels are as follows.

Liner shipping companies case

In April 2025, the Supreme Court issued a ruling on whether the KFTC has the authority to regulate spe-

cific joint conduct, or more specifically, whether such conduct is exempt from MRFTA application. The Supreme Court reversed and remanded the Seoul High Court's ruling, holding that the Seoul High Court had erred in cancelling the KFTC's remedial orders and surcharges on the ground that the KFTC lacked regulatory authority over the conduct at issue.

The Supreme Court's ruling concerned the KFTC's 2022 decision, in which the KFTC found collusion among numerous Korean and foreign liner shipping companies regarding freight rates on Korea-South-East Asia routes and imposed surcharges. The central issue was whether the joint conduct of liner shipping companies is exempt from antitrust law application. Although the Marine Transportation Act (MTA) permits joint conduct of liner shipping companies in Korea, exempting it from Korean antitrust laws, the KFTC cited procedural defects and applied antitrust laws to such joint conduct.

In the administrative lawsuit, the Seoul High Court cancelled the KFTC's remedial measures and surcharge, finding that the Minister of the Ministry of Oceans and Fisheries (MOF) holds exclusive authority over joint conduct concerning freight rates of liner shipping companies, as stipulated in Article 29 of the MTA, and that the KFTC lacks regulatory authority over such joint conduct. The Seoul High Court further held that the MRFTA does not apply to this case, regardless of whether the requirements for exemption from MRFTA application under Article 58 of the former MRFTA are satisfied.

The Supreme Court, however, reversed and remanded the Seoul High Court's ruling on the grounds that it had erred in its interpretation of the legal principles governing the scope of application of the MRFTA, and that such error had affected the outcome of the judgment. The Supreme Court first established the premise that the MRFTA was enacted to promote fair and free competition across the national economy as a whole, and that it must apply to all industries unless a specific statute expressly provides for an exemption. On this basis, the Supreme Court held that the mere fact that the MTA permits joint conduct of liner shipping companies and sets out the methods and procedures by which the Minister of the MOF may take

necessary measures with respect to such joint conduct does not, in itself, lead to the conclusion that the MRFTA does not apply to the joint conduct at issue or that the KFTC lacks regulatory authority over it.

Currency swap collusion case

In connection with the currency swap collusion case, in August 2023, the Supreme Court reversed and remanded the Seoul High Court's May 2021 ruling (the "1st Seoul High Court Ruling"), which had set aside the KFTC's 2020 decision (the "1st Supreme Court Ruling"). At this stage, the key issue was whether a tender process – a prerequisite for bid rigging – had in fact existed. In October 2024, however, the Seoul High Court on remand set aside the same KFTC 2020 decision on different grounds from those relied upon in the 1st Seoul High Court Ruling (the "2nd Seoul High Court Ruling"). The Supreme Court then reversed and remanded the 2nd Seoul High Court Ruling as well in July 2025 (the "2nd Supreme Court Ruling"). At this stage, the key issue – on the premise that bid rigging had been established – was whether the KFTC's remedial orders violated the principle of proportionality.

In 2020, the KFTC imposed remedial orders on several banks for colluding in a bid for a currency swap deal with a company. Currency swap deals involve converting foreign currency debt into Korean won debt to hedge against potential increases in repayment amounts due to currency fluctuations. In this case, the tenderer had already verbally agreed to enter into currency swap transactions with a specific bank other than the plaintiff prior to the bidding, and the plaintiff participated in the bidding at the agreed interest rate at the request of that other bank. The KFTC issued remedial orders against the plaintiff and the other banks involved, prohibiting future violations and the sharing of price-related information.

In the 1st Seoul High Court Ruling in May 2021, the Seoul High Court revoked the KFTC's 2020 decision, finding that the tenderer verbally agreed to currency swap transactions with a specific bank other than the plaintiff, effectively creating a bilateral contract instead of conducting proper bids. It concluded that since the tenderer did not engage in bidding but merely received proposals from banks to create the appearance of fol-

lowing bid procedures, the bids were inadequate to constitute a genuine tender process capable of being rigged.

In the 1st Supreme Court Ruling of August 2023, however, the Supreme Court reversed and remanded the 1st Seoul High Court Ruling, concluding that a tender process essential for bid rigging had in fact existed. The Supreme Court based this conclusion on the following grounds:

- that, taking into account the tenderer's internal regulations, a genuine tender process could be found to have existed;
- that even if the tenderer had pre-contracted with a specific bank other than the plaintiff, such an agreement would only be binding between those parties and would not affect the actual bidding process; and
- that, in light of the legislative purpose of the MRFTA, the bid rigging in the bids at issue warranted regulation.

In the 2nd Seoul High Court Ruling of October 2024, the Seoul High Court, while acknowledging the existence of bid rigging in this case in accordance with the 1st Supreme Court Ruling, nevertheless set aside the KFTC's decision on the grounds that the remedial orders imposed on the plaintiff violated the principle of proportionality. The court held that, notwithstanding

the minor degree of the plaintiff's legal violation and its limited awareness of the unlawfulness of its conduct, the KFTC had issued the plaintiff the same remedial orders as those imposed on the specific bank that had solicited the plaintiff's participation in the bidding, without considering a warning or corrective recommendation – a course of action the court found to constitute an abuse and excess of discretionary authority in violation of the principle of proportionality.

In the 2nd Supreme Court Ruling of July 2025, however, the Supreme Court reversed and remanded the 2nd Seoul High Court Ruling. The Supreme Court first held that there was a public interest justification for issuing remedial orders to sanction the plaintiff's bid rigging, and that the Seoul High Court had erred in finding that the KFTC had abused or exceeded its discretionary authority, given that the remedial orders could not be regarded as violating the principle of proportionality. The Supreme Court also noted a procedural deficiency: the question of whether the remedial orders violated the principle of proportionality had never been raised as a contested issue between the plaintiff and the KFTC in the proceedings, yet the Seoul High Court had rendered its judgment on that basis without affording the KFTC an opportunity to present its views or exercising its power to seek clarification. On this procedural ground as well, the Supreme Court reversed and remanded the 2nd Seoul High Court Ruling.

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