

Antitrust Litigation 2026

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South Korea: Law and Practice

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SOUTH KOREA

Law and Practice

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Shin & Kim has one of the largest teams of antitrust specialists in South Korea, with more than 70 dedicated experts, including a former Korea Fair Trade Commission (KFTC) chairperson, 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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1. Introduction

1.1 Current Framework for Private Antitrust Litigation

Three Types of Antitrust Litigation

Antitrust litigation in South Korea can largely be classified into three types. The first occurs when the Korea Fair Trade Commission (KFTC), the agency which regulates violation of the Monopoly Regulation and Fair Trade Act (MRFTA) in South Korea, imposes measures such as remedies or a surcharge on a violator of the MRFTA, in which case the violator may file an administrative lawsuit against the KFTC for cancellation of the measures (“Administrative Lawsuit Against the KFTC”). The second type of litigation is a civil lawsuit in which a victim of a violation of the MRFTA seeks damages against the violator, who is the perpetrator (“Antitrust Damages Lawsuit”). The third type is a criminal lawsuit against a violator of the MRFTA after investigation by the investigating agency and filing of charges (“Antitrust Criminal Lawsuit”).

Most Important or Novel Antitrust Cases

Naver Shopping self-preferencing case

In January 2021, the KFTC found that Naver, the operator of Korea’s leading web portal service, had modified the search algorithm used by its comparison-shopping service, Naver Shopping, in a manner that favoured merchants participating in its own open-market platform. The KFTC imposed remedial orders and an administrative surcharge of approximately KRW26.6 billion. It concluded that Naver’s conduct constituted unlawful self-preferencing, amounting to

both an abuse of market dominance and an unfair trade practice under the MRFTA. In December 2022, the Seoul High Court upheld the KFTC’s decision.

In October 2025, however, the Supreme Court reversed the Seoul High Court’s judgment and remanded the case for further proceedings. The Supreme Court held that a platform operator’s status as a dominant undertaking does not, by itself, give rise to a general duty to treat competing products or services equally. The Court further held that Naver’s changes to the comparison shopping search algorithm cannot, without more, be presumed to be anti-competitive merely because the case involved a so-called “leveraging” theory (ie, that the conduct in the comparison shopping market allegedly affected competition in the neighbouring open-market platform market). Rather, the Court emphasised that adjusting and refining search algorithms may constitute ordinary commercial conduct and a legitimate form of competition on the merits.

This decision represents the Supreme Court’s first ruling addressing self-preferencing by a digital platform. It is expected to serve as the leading precedent in determining the legality of various forms of self-preferencing by platform operators under Korean competition law.

Kakao Mobility franchise taxi self-preferencing case

Kakao Mobility, a leading provider in Korea’s ride-hailing app market, operates the smartphone-based

platform Kakao T, which connects passengers with taxi drivers. The KFTC found that Kakao Mobility had configured and operated the dispatch algorithm used by the Kakao T platform in a manner that favoured its affiliated (franchise) taxis over unaffiliated (non-franchise) taxis when assigning ride requests. The KFTC concluded that this conduct constituted unlawful discriminatory treatment and imposed remedial orders together with an administrative surcharge of approximately KRW27.1 billion.

In May 2025, however, the Seoul High Court reversed the KFTC's decision in its entirety and ruled in favour of Kakao Mobility. The court held that franchise taxis and non-franchise taxis could not be regarded as trading counterparts in equivalent positions and, therefore, prioritising franchise taxis in ride dispatch did not constitute unlawful discriminatory treatment in transaction terms. The KFTC has appealed the Seoul High Court's judgment, and the case is currently pending before the Korean Supreme Court.

1.2 Recent Developments

Recent Developments in Antitrust Litigation

The MRFTA was wholly amended, which took effect on 30 December 2021. The wholly amended MRFTA presently in effect (the current MRFTA) contains several changes and brought many changes to the three types of antitrust litigation outlined below.

Administrative Lawsuit Against the KFTC

In relation to the Administrative Lawsuit Against the KFTC, the area often at issue in South Korea is the administrative lawsuit regarding collusion.

Under the MRFTA, collusion requires an "agreement", and the previous version of the MRFTA did not include a specific provision regarding information exchange. The current MRFTA includes information exchange that substantially restricts competition as a type of collusion, and when external conformity of actions, such as a joint increase in price and information exchange, is found, an "agreement" is presumed by law.

As an enforcement action against the exchange of competitively sensitive information, the KFTC found in February 2026 that four commercial banks had unlawfully exchanged information regarding their

loan-to-value (LTV) ratios used in mortgage lending. The KFTC concluded that the information exchange constituted an unlawful cartel under the MRFTA and imposed remedial orders together with an administrative surcharge totalling approximately KRW272 billion. The banks have challenged the KFTC's decision by filing administrative appeals with the Seoul High Court, where the cases are currently pending. This case is particularly significant because it is the first enforcement action applying the newly introduced prohibition on information exchange cartels under the current MRFTA.

Antitrust Damages Lawsuit

Recently, in cases where a violation of the MRFTA has been found, damages lawsuits have been brought more actively. The KFTC has concentrated on sectors closely tied to people's livelihoods – such as food, education and construction – and has adopted an increasingly aggressive approach to cartel enforcement, imposing aggregate surcharges totalling KRW1.69 trillion (approximately USD1.16 billion) in four major cartel cases during the first half of 2026 alone. Following these enforcement actions, civil damages claims brought by small businesses and consumers allegedly harmed by the cartels are now being actively pursued.

In an Antitrust Damages Lawsuit, it was difficult for the victims to prove the amount of damages incurred due to the violation of the MRFTA. The current MRFTA introduces a new system of court orders to submit materials. Under this court order system, pursuant to a party's request in an Antitrust Damages Lawsuit, the perpetrator can be ordered to submit materials necessary to prove damage or calculate the amount of damages. This is expected to alleviate some of the burden of proving damages.

Antitrust Criminal Lawsuit

Criminal litigation was previously conducted pursuant to the KFTC's referral of the violator for criminal prosecution after finding a violation of the MRFTA. It seems that, recently, the number of criminal litigation cases being pursued by investigating agencies, separate from the KFTC's referral, is increasing. Investigating agencies are pursuing violators based on other laws that allow punishment of some violations of

the MRFTA without the KFTC's referral, such as the Criminal Act and the Framework Act on the Construction Industry. In cases where the Prosecutor's Office receives a self-report about cartels under the criminal leniency programme, it typically transfers the cases to the KFTC. However, there have been recent instances where the Prosecutor's Office initiated its own investigation and later requested a referral to the KFTC.

In addition, there is a provision in the MRFTA that, even if the KFTC determines that the requirements of referral for criminal prosecution have not been met, if there is a request from the chairperson of the Board of Audit and Inspection, a minister of the Ministry of SMEs and Start-Ups (MSS), or an administrator of the Public Procurement Service (PPS) to the KFTC to make a referral, the chairperson of the KFTC must refer the matter for criminal prosecution. In recent years particularly, there have been an increasing number of cases where the minister of the MSS requested criminal referrals. Thus, the provision of the MRFTA limits the KFTC's exercise of the right to refer or not refer a case for criminal prosecution. According to the MOU between the KFTC, MSS, and PPS, the minister of the MSS and the administrator of the PPS are required to request a referral to the KFTC within four months after receiving the relevant decisions from the KFTC.

Regarding the Antitrust Criminal Lawsuit, the current MRFTA removed the criminal punishment provision for certain conduct where there have been no cases of criminal punishment, and such punishment would not be in accordance with the legal system. Such conduct includes that relating to M&A, some unfair trade practices (including refusal to deal, discriminatory treatment, exclusion of competitors, and conditional transactions), and resale price maintenance. As a result, these types of MRFTA violations are no longer subject to criminal litigation.

Other Developments

Private person's injunction claim system

The current MRFTA introduces a new system for a private person's claim for an injunction. This system allows the victim of unfair trade practices (except for unfair support) to petition the court directly for prohibition or prevention of infringing conduct without going

through the KFTC. Since the current MRFTA recognises a victim's right to injunctive relief, a victim can now request the suspension or prevention of unfair trade practice without having to wait for the KFTC's measures, so that infringement can be stopped promptly or so that damages can be prevented in advance.

Note that the MRFTA's private prohibitory injunction system and provisional disposition effected to protect the right to injunctive relief has only rarely been invoked to date, and thus the court's specific judgement criteria for the application factors have not been clearly established. Hence, when filing a lawsuit for prohibitory injunction in the future, it is essential to take heed of the specific judgement criteria used by the court.

Introduction of procedural mechanism for challenging court judgments through constitutional appeal

On 27 February 2026, the Korean National Assembly passed amendments introducing a constitutional complaint mechanism against court judgments. Previously, court judgments were expressly excluded from the scope of constitutional complaints. The amended legislation now permits constitutional complaints against final and binding court judgments, with the aim of addressing gaps in the protection of constitutional rights.

A complaint may be brought only after ordinary remedies have been exhausted and within 30 days after the judgment becomes final. The availability of such constitutional complaints, however, is limited to cases where: (i) a court judgment infringes a fundamental right by departing from the established jurisprudence of the Constitutional Court; (ii) a court judgment infringes a fundamental right because it was rendered without complying with constitutionally or statutorily required due process; or (iii) a court judgment clearly violates the Constitution or applicable laws, resulting in a manifest infringement of a fundamental right.

Where the Constitutional Court upholds a constitutional complaint, the challenged judgment is automatically vacated, and the case must be reheard by the relevant court in accordance with the Constitutional Court's decision. The amendments also expressly

introduce a preliminary injunction mechanism, allowing the Constitutional Court to suspend the effect of the challenged exercise of public authority pending its final decision.

The first case referred to the Constitutional Court's full bench for a merits review following the introduction of this new procedural mechanism concerns a Supreme Court judgment upholding a KFTC's decision. In that case, the KFTC imposed remedial orders and administrative surcharges on Green Cross Corporation, a Korean pharmaceutical company, after finding that it had engaged in bid rigging in vaccine procurement tenders. While the Supreme Court ultimately upheld the legality of the KFTC's decision, the parallel criminal proceedings reached the opposite conclusion, finding that the alleged bid-rigging conduct did not restrict competition and acquitting Green Cross of the criminal charges. Green Cross subsequently filed a constitutional complaint, arguing that the Supreme Court judgment affirming the KFTC's decision violated its constitutional rights and seeking to have that judgment reversed.

The introduction of this mechanism allows parties to challenge even final court judgments on constitutional grounds. As a result, future litigation is expected to involve not only disputes over facts and statutory interpretation, but also increasingly sophisticated constitutional arguments, particularly those concerning the protection of fundamental rights.

2. Private Antitrust Claims: Basis and Procedure

2.1 Statutory Basis

The legal basis for claiming damages due to violation of the MRFTA is provided in the law. The representative laws are the Civil Act and the MRFTA.

Claiming Under the Civil Act

The Civil Act has a provision on claiming damages for general torts, and the requirements for claiming damages for tort under the Civil Act are as follows:

- There is intent or negligence in the perpetrator's conduct.

- There is damage to the victim.
- The perpetrator's conduct is unlawful.
- There is a causal relationship between the perpetrator's conduct and the damage to the victim.

Violation of competition law, including violation of the MRFTA, is generally considered a tort, so a victim of the tort can claim damages based on the Civil Act. However, in order for the tort to be established, all four of the requirements above must be met, and the victim must prove the facts meeting the requirements.

Claiming Under the MRFTA

Meanwhile, the MRFTA has a provision for claiming damages caused by violations of the MRFTA, separate from the Civil Act. The requirements for claiming damages under the MRFTA are as follows:

- The perpetrator (business entity or business entities' organisation under the MRFTA) violates a provision of the MRFTA.
- There is damage to the victim.
- There is a causal relationship between the perpetrator's violation of the MRFTA and the damage to the victim.
- There is intent or negligence in the perpetrator's conduct.

There is no significant difference between the requirements under the MRFTA and those under the Civil Act. However, in contrast to the need for the victim to prove the intent or negligence of the perpetrator in the case of a claim for damages under the Civil Act, the MRFTA provides that the perpetrator needs to prove that there is no intent or negligence.

2.2 Courts

The Antitrust Damages Lawsuits and Antitrust Criminal Lawsuits go through a three-tiered court system (district courts, high courts and the Supreme Court), as is generally the case. The introduction of a procedural mechanism for seeking constitutional review of court judgments, discussed in **1.2 Recent Developments**, potentially adds another layer to the litigation process.

2.3 Impact of Competition Authorities

The national competition authority in South Korea is the KFTC. The KFTC's decisions are not binding on the court, which can review the validity of the KFTC's decisions in full, find different facts from those found by the KFTC, and make different legal determinations.

In the case of an Antitrust Damages Lawsuit, the victim proceeds by filing a lawsuit against the perpetrator, and there is no statutory basis for the KFTC to impose damages measures directly on the perpetrator or intervene in the damages process carried out by the victim. The MRFTA provides that the court in charge of an Antitrust Damages Lawsuit may make a request to the KFTC to send records related to the violation of the MRFTA. While factual findings by foreign NCAs can serve as persuasive evidence in civil antitrust litigation, the court may ultimately disregard them if other evidence presented in the same case undermines their probative value.

2.4 Proof

Administrative Lawsuit Against the KFTC

In the case of an Administrative Lawsuit Against the KFTC, the KFTC bears the burden of claiming and proving that there has been a violation of the MRFTA and that the measures imposed by the KFTC are appropriate. The party subject to the measures bears the burden of claiming and proving that there is justification for the violation of the MRFTA. The court determines whether the KFTC has deviated from or abused its discretion by reviewing whether there are errors in the findings of fact that were the bases for the measures and whether the general principles of administrative laws, such as the principles of proportionality and impartiality, have been followed.

For example, in the case of the KFTC's surcharge imposition, the court considers that the KFTC has discretion to determine whether to impose a surcharge and the amount of that surcharge. The court believes that the "Notice on Standard for Imposing Surcharge" ("Surcharge Notice") is only an internal standard within the KFTC and the KFTC's measures are not immediately unlawful simply because the Surcharge Notice was not followed. However, if the KFTC has repeatedly imposed measures pursuant to the Surcharge Notice so that it has become an administrative prac-

tice, then the court has determined that measures contrary to such administrative practice are unlawful. The fact that such administrative practice has been established must also be claimed and proved by the party subject to the measures.

As to the applicable standard of proof, the Supreme Court has held that, although proof of facts in an administrative lawsuit against the KFTC does not require the degree of certainty demanded by the natural sciences or the absence of any conceivable doubt, it does require a high degree of probability that the relevant fact existed, based on a comprehensive assessment of all the evidence in accordance with the rules of experience, unless there are special circumstances, such that an ordinary person would have no reasonable doubt as to the existence of that fact.

Antitrust Damages Lawsuit

In the case of an Antitrust Damages Lawsuit, if the victim has filed a damages lawsuit based on the provisions of the MRFTA, the victim bears the burden of asserting and proving that they incurred damage and the extent of the damage (amount of damages). The perpetrator bears the burden of asserting and proving that there was no intent or negligence regarding the violation of the MRFTA and that there are circumstances under which the victim's claimed amount of damages should be limited. That is, a perpetrator whose conduct violates the MRFTA is presumed to have acted intentionally or negligently. On the other hand, if the victim has filed a damages lawsuit based on a provision of the Civil Act, the victim must prove the perpetrator's intent or negligence.

The victim must also prove the specific amount of damages. The most problematic issue in this regard is calculating the amount of damages caused by collusion. The court deducts the estimated price that the victim would have borne had there been no collusion (hypothetical competitive price) from the actual price where there was collusion. In order to calculate the hypothetical competitive price, special appraisal methods such as an econometrics analysis are used. Appraisal according to the econometrics analysis method is usually carried out by academic experts. The court generally accepts the amount of damages calculated from the appraisal result as long as there is

no clear error. Accordingly, the victim usually proves the amount of damages from collusion by making a request to the court for such an appraisal and reviewing the result.

However, a victim who has difficulty bearing the cost of the appraisal or who wants to end the lawsuit quickly may instead prove the amount of damages without undergoing the appraisal method described, such as by using the amount of damages calculated in similar cases. In this situation, the court alleviates the burden on the victim of proving the amount of damages by recognising the amount, based on the provision that eases the burden of proving damages under the MRFTA.

Provision that eases the burden of proving damages

The MRFTA provides that where it is recognised that the victim incurred damage due to the violation of the MRFTA, but it is extremely difficult to prove the precise amount of damages due to the nature of the facts, the court may recognise a reasonable amount of damages based on the gist of the overall arguments and the results of evidence examination. As a result, the burden on victims to prove a specific amount of damages has been alleviated, and the court has been granted discretion in calculating the amount of damages.

If the fact that damage was incurred due to tort is recognised, the court must encourage proof by vigorously exercising its right to seek clarification, even if a party's argument and proof of the amount of damages is lacking, and, in some cases, determine the amount of damages based on its authority.

The Supreme Court has determined that the method of calculating damage from collusion is not limited to an econometrics model, and as long as they are reasonable and objective, various methods may be considered to calculate the amount of damages, such as:

- statistical data on excess prices due to collusion;
- the amount of damages found in similar cases;
- the size of profits gained by a business entity from the violation;
- comparing the supply price of business entities that participated in the collusion during the collu-

sion period with those of the entities that did not; and

- making certain adjustments to the result of one party's calculation of the amount of damages.

Antitrust Criminal Lawsuit

In the case of an Antitrust Criminal Lawsuit, the prosecutor bears the burden of proving the facts necessary for maintaining the charges, such as the fact that the defendant has violated the MRFTA and should be subject to criminal punishment accordingly.

With regard to the degree of proof in an Antitrust Criminal Lawsuit, the Supreme Court has determined that for guilt to be found in a criminal trial, it must be based on evidence that has the power to prove that the charges are true beyond reasonable doubt on the part of the judge. The Supreme Court also determines that reasonable doubt does not include all doubts and distrust but rather means a rational question about the probability of facts. It is considered that conceptual suspicion or suspicion based on abstract possibility is not included in reasonable doubt.

Meanwhile, although factual findings by the KFTC can serve as persuasive evidence in antitrust criminal lawsuits, the court may ultimately disregard them if other evidence presented in the same case undermines their probative value.

2.5 Pass-On Defence

Although Korean courts have expressly rejected the pass-on defence as a formal legal defence, they have, in practice, achieved a similar result by taking pass-on considerations into account when determining the scope of liability. For example, in the flour cartel litigation, the Court held that a downstream price increase does not ordinarily establish that the purchaser's loss was reduced, absent special circumstances directly linking the overcharge to the downstream price, such as an automatic pricing formula and no change in sales volume. However, based on the principle of equity, the court reduced the amount of damages payable by the defendants to reflect the plaintiffs' pass-on of the overcharge. The burden of proving both the existence and the amount of any pass-on rests with the defendants.

3. Limitation Periods and the Duration of Litigation

3.1 Statute of Limitations

Administrative Lawsuit Against the KFTC

A company must file a lawsuit with the Seoul High Court against the disposition of the KFTC within 30 days from the date the company was notified of the KFTC's disposition. If the company has filed an objection to the disposition by the KFTC, the company must also file a lawsuit with the Seoul High Court within 30 days from the date of receipt of the original copy of the KFTC's decision regarding the objection. An Administrative Lawsuit Against the KFTC will be dismissed after the 30-day period.

Antitrust Damages Lawsuit

The MRFTA does not contain a separate statute of limitations applicable to damages claims. Accordingly, under the Korean Civil Act, a claim for damages is time-barred upon the earlier of (i) three years from the date on which the victim became aware of both the damage and the identity of the tortfeasor, or (ii) ten years from the date on which the tortious act was committed.

Victims of MRFTA violations must, in principle, file a lawsuit with the court within the above period, unless a ground for suspension of the statute of limitations provided by the Civil Act is recognised. Under the Civil Act, reasons for suspension of the statute of limitations include demand by way of judicial proceedings, provisional attachment or disposition, etc. The KFTC's decision, however, is not included among the reasons.

3.2 Typical Length of Private Antitrust Litigation

Administrative Lawsuit Against the KFTC

In general, it takes about six months for the first hearing to be held after a complaint is filed, but the time it takes for the court to announce its judgment after the first hearing varies from case to case. At the Seoul High Court level, it usually ends within two years, but at the Supreme Court level, it can take as little as four months and as long as several years.

An Administrative Lawsuit Against the KFTC is only possible after the KFTC's investigation has been com-

pleted and measures have been imposed, so it is not possible for the court proceeding to be suspended or postponed according to the KFTC's investigation.

Antitrust Damages Lawsuit

An Antitrust Damages Lawsuit basically proceeds irrespective of the investigation by the KFTC but, in practice, a victim often waits for the result of the KFTC's investigation and files the lawsuit according to its results. Even if the victim files a lawsuit before the KFTC's investigation results are released, the court may postpone or suspend the court proceeding until the KFTC's investigation results are available. If an Administrative Lawsuit Against the KFTC is filed regarding a violation of the MRFTA, whether there was a violation of the MRFTA is a preliminary question in the damages lawsuit, so in many cases, the court in charge of the damages lawsuit proceeds at full pace with the case after the results of the administrative lawsuit have been confirmed.

The parties may ask the court to postpone or suspend the court proceeding until the results of the KFTC's investigation or related administrative lawsuit are available. However, a legal right to proceed as above is not recognised, and the court may decide whether to proceed with the court proceeding regardless of the views of the parties.

Accordingly, in the case of an Antitrust Damages Lawsuit, much time is spent waiting for the result of the related administrative lawsuit. In order to calculate the amount of damages, an additional six months to one year is required during the appraisal process.

4. Class and Collective Actions

4.1 Statutory Basis

South Korea has no general class-action or representative collective-damages mechanism for MRFTA claims. Limited collective mechanisms exist outside the MRFTA: securities class actions are confined to specified capital-markets claims, while qualifying consumer organisations may seek injunctive relief under the Framework Act on Consumers, not damages.

However, in the case of an Antitrust Damages Lawsuit, victims can file a lawsuit as joint plaintiffs. While the result of the damages lawsuit filed by some of the victims is not legally binding on the rest of the victims, it does have an impact on them. Thus, the victims who have not filed a lawsuit can proceed more easily by filing a separate damages lawsuit based on the result of the initial lawsuit.

4.2 Opting In or Out

There is no system in South Korea that allows class/collective action in antitrust litigation. See 4.1 **Statutory Basis**.

4.3 Direct/Indirect Purchasers

Both direct purchasers who purchased a product directly from the business entity that colluded or otherwise violated the MRFTA, and indirect purchasers who purchased the product from that direct purchaser or a product using such products as raw materials, may, in principle, file a damages lawsuit against the business entity.

Although it is not specified in the Civil Act and the MRFTA whether an indirect purchaser may file a damages lawsuit against the business entity, the Supreme Court generally takes the view that violation of the MRFTA constitutes a tort under the Civil Act so that pursuant to general legal principles of tort under the Civil Act, if there is a substantial causal relationship between the business entity's violation of the MRFTA and an indirect purchaser's damages, the indirect purchaser may also claim damages.

4.4 Class Certification

There is no system in South Korea that allows class/collective action in antitrust litigation. See 4.1 **Statutory Basis**.

5. Choice of Jurisdiction

5.1 Rules on Jurisdiction and Applicable Law Jurisdiction

In the case of an Administrative Lawsuit Against the KFTC, the MRFTA specially provides that the Seoul High Court has exclusive jurisdiction of the first instance, and accordingly, an Administrative Lawsuit

Against the KFTC goes through a two-tiered court system of the Seoul High Court and the Supreme Court.

An Antitrust Damages Lawsuit is a civil lawsuit, and jurisdiction is determined according to the provisions of the Civil Procedure Act. Under the Civil Procedure Act, the court in charge of the following has jurisdiction over the case:

- if the defendant is a person, the place of domicile (if the person has no domicile in South Korea or the person's domicile is unknown, then the person's place of residence, and if the place of residence is unfixed or unknown, then the place of the last domicile); and
- if the defendant is a corporation or other association or foundation, the place of principal office or place of business (if there is no such office or place of business, then the domicile of the main person in charge).

If jurisdiction is recognised for multiple courts in different regions for a single case, a plaintiff may file a lawsuit with any of them. Furthermore, even if a plaintiff files a lawsuit in a court that does not have jurisdiction, jurisdiction is recognised if there is an agreement between the plaintiff and the defendant, or if the defendant responds to the pleading without an objection.

In the case of an Antitrust Criminal Lawsuit, jurisdiction is determined according to the provisions of the Criminal Procedure Act. The Criminal Procedure Act basically provides that the court with jurisdiction is the court in charge in the place where the offence took place, the place of the defendant's domicile, the place of the defendant's residence, or the defendant's present location.

Applicable Law

In an Administrative Lawsuit Against the KFTC, since the issue is whether the KFTC's measures based on the MRFTA are lawful, the MRFTA applies in terms of substance. In terms of procedure, the MRFTA, the Administrative Litigation Act, and the Civil Procedure Act apply, among other pieces of legislation.

In an Antitrust Damages Lawsuit, in terms of substance, the Civil Act and the MRFTA apply, and the victim may choose the law that is the basis for the claim in filing the lawsuit. In terms of procedure, the Civil Procedure Act applies.

In an Antitrust Criminal Lawsuit, various laws such as the Criminal Act and MRFTA can be applied, and procedurally, the Criminal Procedure Act is applicable.

6. Disclosure/Discovery

6.1 Disclosure/Discovery Procedure

In South Korean law, there is no “discovery” system as in common law. However, the current MRFTA introduces court orders that can compel the opposing party to submit materials essential for proving damages or calculating the amount of damages. In addition, in the course of proceeding with a lawsuit, the parties to the lawsuit may follow the procedure for getting the opponent or a third party to submit documents via court in accordance with the Civil Procedure Act.

Requirements and Procedure for Court Orders to Submit Materials

Under the system for court orders to submit materials introduced in the current MRFTA, in lawsuits for damages due to collusion, unfair trade practices (excluding unfair support), and collusion by business entities’ organisations, a party may ask the court to issue an order to submit materials necessary for proof of damage or calculation of the amount of damages. Upon a party’s request, the court can order the other party to submit the relevant materials (except for material related to leniency). The system requires a party’s request, and the target of the court’s order to submit materials is the other party. This is distinct from a document submission order under the Civil Procedure Act, which can also be issued to a third party in possession of the document.

Even if a party asks the court to order submission of materials, if the holder of the materials has justifiable grounds for refusing to submit the materials, the court cannot order submission of the materials. If the holder of the materials claims there is a justifiable ground for refusing to submit the materials, the court can order

presentation of the materials in order to determine whether the claim is appropriate. In this case, the court should not allow others to view the materials. However, even if the materials to be submitted pursuant to the court order are business secrets, the current MRFTA does not consider this as a justifiable ground for refusing to submit if that submission is necessary for proof of damage or calculation of the amount of damages. In this case, the court must designate the scope or persons who can access the materials within the purpose of the court order.

If the other party fails to comply with the court order to submit materials without justifiable grounds, the court may recognise the party’s assertion as to the content in the materials to be true.

Requirements and Procedure for a Document Submission Order Petition

Under the Civil Procedure Act, a court may order a party or third party to produce a document where: (i) the holder has referred to it in the proceedings; (ii) the applicant has a private-law right to demand delivery or inspection; or (iii) the document was prepared for the applicant’s benefit or concerns the legal relationship between the applicant and the holder. The Act also imposes a broader production duty, subject to specified exceptions.

The principal exceptions cover documents containing protected official secrets; material that may expose the holder or specified relatives to criminal prosecution, conviction or disgrace; protected professional, technical or trade secrets; documents prepared solely for the holder’s own use, subject to statutory qualifications; and public-duty documents held by a current or former public official.

On an application for a document-production order, the court hears the holder’s position on possession and any asserted ground for refusal. If necessary, the court may inspect the document privately to decide whether an exception applies.

If a party fails without justification to comply with a production order, or destroys or makes the document unusable to prevent its use, the court may treat the opposing party’s allegations about the document’s

contents as true. Different procedural consequences apply where a non-party fails to comply.

6.2 Legal Professional Privilege

Historically, attorney-client privilege (ACP) has not been recognised under Korean law. However, that changed in January 2026, when the National Assembly passed amendments to the Attorney-at-Law Act formally recognising ACP for the first time. Under the amended Act, clients (including prospective clients) and their attorneys are, in principle, entitled to withhold from investigative authorities and third parties confidential communications exchanged for the purpose of obtaining or providing legal advice, as well as documents and materials (including electronic records) prepared in connection with legal representation during investigations or regulatory proceedings.

This protection is subject to limited exceptions. In particular, ACP would not apply where (i) the client consents to disclosure, (ii) a major public interests require disclosure, such as where the attorney has participated in the client's criminal conduct, including the destruction of evidence or the harbouring of offenders, (iii) disclosure is necessary for the lawyer to exercise or defend the lawyer's rights in a dispute with the client; or (iv) another statute specially provides otherwise.

Although the newly introduced ACP will take effect on 20 February 2027, it will have retroactive application to attorney-client communications and documents or materials (including electronic materials) made, exchanged, or created before its effective date.

6.3 Leniency and Settlement Agreements

In principle, the MRFTA stipulates that the KFTC and its officials may not provide information or data regarding leniency applicants to others unrelated to the handling of the case. However, should the leniency applicant consent, or if it is necessary in order to file or carry out a lawsuit related to the case, such information or data can be provided to others.

The KFTC publicly discloses the terms of its settlement decisions. However, a settlement decision does not constitute a formal admission by either the KFTC or the relevant undertaking that the conduct in ques-

tion violated the MRFTA. Accordingly, no person may rely solely on the existence or contents of a settlement decision to assert that an undertaking's conduct constituted a violation of the MRFTA.

7. Witness and Expert Opinions

7.1 Witness Procedure

A court can admit facts based on a witness statement. A witness statement can be made both orally and in writing. In principle, a witness statement is subject to cross-examination, but cross-examination is not conducted in exceptional cases where a witness submits a written affidavit. A court sometimes only requires a written affidavit from a witness when the case does not concern factual grounds that need to be verified through cross-examination. It is sufficient for a witness to make a statement, and they do not bear the burden of providing evidence to support the authenticity of the statement.

7.2 Expert Witness Role and Procedure

Expert witnesses are often utilised where one of the issues in a lawsuit requires special learning and experience. The procedure for the expert witness statement is the same as for the general witness statement. The expert witness statement can be made both orally and in writing, and is subject to cross-examination in principle.

A party does not need to obtain court approval to submit expert statements in writing, but they must obtain court approval if they conduct an interrogation of the expert in court or if they request an expert's appraisal. Courts do not require experts to produce joint statements in advance of a trial indicating the areas in which they agree or disagree.

In addition to receiving expert opinions or questioning experts as witnesses to investigate expert evidence, courts can also adopt other measures such as requesting experts to appraise the issues of the trial, or follow the process of simultaneously seeking opinions from multiple experts.

8. Damages

8.1 Damages: Assessment, Passing On and Interest

Assessment of Damages

In an Antitrust Damages Lawsuit, the amount of damages is calculated based on the actual amount of injury or estimated amount of injury sustained by the victim. Regarding some violations, such as collusive acts, a provision established in 2018 renders a perpetrator liable for compensation of damages for an amount not exceeding three times the damages incurred by the victims. Compensation for damages in accordance with this provision is regarded as punitive damages.

When the court determines the amount of compensation in accordance with the provision above, certain factors should be taken into account, including:

- intent or degree of recognition of the concern that damage will arise;
- the extent of damage caused by the violation;
- the economic gain the perpetrator has acquired from the violation;
- the fines and surcharge for the violation;
- the duration and frequency of the violation;
- the financial condition of the business entity; and
- the extent of efforts the business entity or business entities' organisation has made to remedy the damages.

Interest

Interest and damages for delay are distinguished from one another by law, and while compensation does not accrue interest, damages for delay do. The court views that in the case of liability for damages arising from tort, in principle, the damages for delay accrue from the time the liability is established. In the case of a violation of the MRFTA, which is a form of tort, the damages for delay, in principle, also accrue from the time the liability is established. Accordingly, the victim can claim damages for delay incurred during the period from the time the liability for damages arising from the MRFTA violation is established until the actual payment of all damages, including before and after the trial, unless extraordinary circumstances exist.

Damages for delay are generally calculated by applying an interest rate of 5% per year, which is the statutory interest rate under the Civil Act, to the compensation for damages. However, depending on the result of a damages lawsuit, the rate of 12% per year stipulated in the Act on Special Cases Concerning Expedition of Legal Proceedings can be applied. In short, the damages for delay are calculated at a rate of 5% per year from the time the liability is incurred, and are calculated at an annual rate of 12% at some point after the victim files the lawsuit for damages.

9. Liability and Contribution

9.1 Joint and Several Liability

In a case where several people commit a violation of the MRFTA and thereby inflict damage on a victim, the violators become jointly liable for the damages to the victim. As a result, the violators are obliged to compensate the victims for all the damages until the victims' damages are compensated in full.

Participants in a cartel may be subject to treble damages (ie, three times the amount of actual damages). However, an exception applies to a leniency applicant or a party that has co-operated with the KFTC's investigation or adjudicative proceedings, such as by providing new evidence of unlawful coordinated conduct. Such a party would be jointly liable only up to the amount of the victim's actual damages and would not be subject to treble damages.

9.2 Contribution

Where a victim prevails in a damages lawsuit against multiple violators, the violator who has compensated the damages suffered by the victim can file a civil lawsuit against the other violators, claiming compensation for the portion of the damages paid beyond their liability. In this case, with respect to the criteria for determining whether the violator has paid compensation beyond their liability to the victim, the Supreme Court suggests using "the degree of wrongdoing of the joint tortfeasor in the joint illegal acts" as a criterion.

10. Other Remedies

10.1 Injunctions

Administrative Lawsuit Against the KFTC

Filing a cancellation action does not itself stay the effect or enforcement of a KFTC disposition. In the case of an Administrative Lawsuit Against the KFTC, the business entity may petition for suspension of the enforcement of a disposition on the ground that there is a risk of irreparable damage due to the disposition of the KFTC, while claiming cancellation of the disposition on the ground that the disposition is unlawful. The court may decide to suspend the enforcement of the disposition before its judgment on the case on the merits on petition by that business entity or on its own official authority.

Antitrust Damages Lawsuit

In the case of an Antitrust Damages Lawsuit, the court's role becomes limited to the extent of ordering the perpetrator to monetarily compensate for the damages, and deciding whether it will accept the victim's request for provisional seizure for effective recovery of damages.

In order for the victim to request seizure by rendering the right to claim damages arising from the MRFTA violation as a right to preservation, there must be a serious concern that it may not be possible to enforce the award without the seizure, even if the victim prevails in the damages lawsuit. The fact that there is a concern that it will be very difficult or impossible to enforce the award will be acknowledged depending on whether the level of situation that provides for the court's presumption of certainty, if not its confidence, has been shown.

When the victim requests the seizure, the court usually decides whether to accept the request without notifying the perpetrator. There are no additional steps that the victim must take in order to have the court decide to accept the request without notifying the perpetrator. The court's decision can be made within one month from the time the request is made.

On the other hand, if the victim has obtained a decision approving the seizure but lost in the main case, the perpetrator can request the cancellation of the

seizure on the grounds that they have prevailed in the main case, and the victim could be liable for damages if they have inflicted damages on the perpetrator by the decision that approved the seizure.

10.2 Alternative Dispute Resolution

In the case of an Antitrust Damages Lawsuit, the parties can resolve the case in accordance with alternative dispute resolution procedures by going through procedures such as reconciliation and mediation both inside and outside the lawsuit. Particularly for a case regarding damages caused by collusion, it takes a considerable amount of time and money to calculate the appropriate amount of damages. Resolving the case through alternative dispute resolution procedures can be effective for all the parties concerned. However, to do so is not mandated.

11. Funding and Costs

11.1 Litigation Funding

There is no regulation in South Korea that limits or guarantees litigation funding in relation to litigation procedures.

11.2 Costs

Dividing Litigation Costs

In filing a suit, the plaintiff pays a certain amount of the litigation costs in accordance with the relevant laws and regulations. When the court makes a decision, it rules on which party should ultimately bear the litigation costs incurred in the course of the trial and the ratio of litigation costs the respective parties must bear. Litigation costs are, in principle, to be borne by the losing party, and in the case of partial victory, the ratio of the litigation costs is usually determined according to the percentage of victory between the parties. The specific amount of litigation costs to be borne by the parties will be determined through a separate trial process known as the procedure for confirming litigation costs, and the parties will go through the process of paying the confirmed litigation costs to the other party afterwards.

Attorneys' Fees

Attorneys' fees are also a type of litigation cost, but the full amount of attorneys' fees is not included in

the litigation costs the parties will actually pay. The Supreme Court rules about calculating and including attorneys' fees in litigation costs stipulate that the lesser of the amounts calculated, based on a certain standard prepared according to the value of the litigation and the actual amount of attorneys' compensation paid, is included in the litigation costs to be borne by the parties. In most cases, the prevailing party receives a refund that is less than the amount the party actually spent on attorneys' fees.

Collateral

According to the Civil Procedure Act, if the court finds that the provision of collateral for litigation costs is necessary, as the plaintiff does not have an address, office, or a place of business in South Korea, or when it is obvious that the plaintiff's claim is unreasonable, upon request of the defendant, the court may order the plaintiff to provide collateral for litigation costs.

12. Appeals

12.1 Basis of Appeal

Administrative Lawsuit Against the KFTC

In the case of an Administrative Lawsuit Against the KFTC, the losing party can file a final appeal with the Supreme Court within two weeks after they receive the service of the Seoul High Court's decision. Unlike general cases, the Seoul High Court becomes the court of first instance for an Administrative Lawsuit Against the KFTC, and thus, the Administrative Lawsuit Against the KFTC actually operates as a two-tiered court system. In order to appeal to the Supreme Court, the appellant must file a petition of final appeal with the Seoul High Court, which may or may not state the grounds for appeal. If the appellant submits the petition without stating the grounds for the final appeal, the appellant must submit the grounds for appeal to the Supreme Court within 20 days from the date of receiving notice that the Supreme Court has received the record of the lawsuit from the Seoul High Court. If the appellant does not submit the grounds for appeal within that period, the Supreme Court will dismiss the final appeal.

Since the Supreme Court operates as a court that addresses questions of law, grounds for appeal that

can be claimed are limited, in principle, to grounds that the judgment of the Seoul High Court is incorrect from a legal perspective. A statement that the Seoul High Court has incorrectly admitted the facts cannot be provided as grounds for appeal.

The Supreme Court will dismiss the final appeal if it determines that the grounds for appeal cannot be admitted. If it determines that the grounds for appeal can be admitted, the Supreme Court will reverse the ruling of the Seoul High Court and, in principle, remand the case to the Seoul High Court to reconsider the case.

Antitrust Damages Lawsuit

In the case of an Antitrust Damages Lawsuit, the district court becomes the court of first instance, and the party that loses in the first instance trial can appeal by filing a petition of appeal with the court of first instance, while the party that loses in the appeal can file a petition of final appeal with the Court of Appeal. A petition of appeal and final appeal must be filed within two weeks from receiving the original copy of the decision from the court.

However, even where a petition of appeal is filed with the court, an appellant who had failed to state the grounds for the appeal in the petition of appeal must submit a brief stating the grounds for appeal within 40 days (with a one-time opportunity to request a one-month extension) of receiving the notice of receipt of the record of appeal. If the brief stating the grounds for appeal is not submitted within this period, the appellate court must dismiss the appeal.

The Court of Appeal will dismiss the appeal if it decides that the judgment of the first instance court is valid. If it decides that the judgment of the first instance court is wrong, it will reverse the judgment and rule on the case on its own.

Appeals to the Supreme Court are governed by separate rules. If the petition of final appeal does not state the grounds for appeal, the appellant must file a statement of grounds within 20 days after receiving notice that the Supreme Court has received the record. A final appeal generally lies only on questions of law.

Antitrust Criminal Lawsuit

In the case of an Antitrust Criminal Lawsuit, a party that objects to the judgment of the first instance court or the Court of Appeal must file a petition of appeal or final appeal within seven days from when the court gives the decision, and must submit the grounds for appeal within 20 days from when the party received the notice from the Court of Appeal or final appeal that the record of the lawsuit had been sent.

In addition, the National Assembly of South Korea is once again deliberating the introduction of a class action system. Although past efforts to enact class action legislation have repeatedly failed, the issue has re-emerged as a matter of public interest in the wake of recent incidents involving large-scale consumer harm – such as a major hacking incident affecting a leading telecommunications provider’s cellular network.

13. Looking Forward

13.1 Legislative Trends and Other Developments

Recently, the KFTC has taken a stringent approach to cartel enforcement, uncovering a series of major cartel cases – including those involving the flour and paper industries – and imposing administrative fines amounting to hundreds of billions of Korean won. As a result, companies should be prepared for a significant increase in follow-on civil damages actions brought forth based on the KFTC’s decisions.

If enacted, the new system is expected to trigger a sharp rise in competition-related damages lawsuits. Consumers would gain a more effective means of redress. Conversely, businesses would face increased pressure to manage not only KFTC enforcement risks, but also the growing threat of class actions.

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