

January 19, 2015

New Amendments to KFTC's Leniency Program

On January 1, 2015, the Korea Fair Trade Commission ("KFTC") announced amendments to the "Public Notification on Implementation of the Leniency Program for Leniency Applicants for Collusions, etc." ("Public Notification"). According to the KFTC, the Public Notification was amended to address problems found in the course of implementing the leniency program and to reflect the recent court rulings and the amended provisions of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act ("the Enforcement Decree"). The details of the three amendments are as follows:

1. Abolition of tentative approval of leniency status

Before the amendment, the Secretary General of the KFTC tentatively confirmed the leniency status before the final confirmation by the Commissioners. The amendment abolished the tentative approval of leniency status. The KFTC explained that the tentative leniency status caused some applicants to be less cooperative in the subsequent investigation process.

2. Revision of evidence necessary to prove collusion

The previous Public Notification provided that the evidence necessary to prove collusion in leniency applications is "direct evidence" or "narrative evidence with supporting materials". The amendment revised the supporting material requirement for the narrative evidence, and leniency applicants can now use narrative evidence that sufficiently prove the facts, even without supporting materials. This amendment was made to reflect the Korean Supreme Court's recent ruling that the evidence necessary to prove collusion in leniency applications should include "simple narrative evidence".

3. New standards for mitigation of remedial measures for 2nd ranked leniency applicants

The Enforcement Decree has been revised with respect to mitigation of remedial measures for 2nd ranked leniency applicants, and the KFTC amended the Public Notification to include two specific standards for the implementation. First, if one party had already applied for leniency, the other applicant may not benefit from leniency in two-party cartels. Whether the cartel had only two participants is determined on the date on which the cartel stops. Second, leniency applicants may not benefit from leniency if a certain participant has already applied for leniency or is otherwise cooperating with the KFTC and more than two years had passed from application for leniency or cooperation. The two-year clock begins to run from the date on which the application for leniency or cooperation is filed with the KFTC.

These amendments will apply to leniency applications filed after January 2, 2015. The KFTC expects that through these amendments, there will be greater transparency and consistency in the leniency program.

Should you have any questions regarding any of the foregoing, please contact us at any time.

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