

Recent Changes to Cartel Leniency Program in Korea

The main antitrust laws in Korea are the Monopoly Regulation and Fair Trade Act (MRFTA), the Enforcement Decree of the MRFTA (Enforcement Decree) and the notifications issued by the Korea Fair Trade Commission (KFTC) pursuant to the relevant enabling clauses in the Enforcement Decree.

Similar to antitrust laws in other jurisdictions, the Korean antitrust laws regulate traditional anti-competitive behaviors such as abuse of market dominance, cartels and anti-competitive business combinations, with the KFTC acting as the sole antitrust agency in charge of developing competition policy and enforcing the MRFTA.

The discussion below will focus on key developments and changes to the cartel leniency program in Korea in recent years.

Leniency

The KFTC has a history of aggressively targeting cartels. Not surprisingly, such level of activism has resulted in massive administrative surcharges and frequent case referrals by the KFTC to the prosecutors' office for criminal prosecution.

Leniency programs are a very effective means of detecting and deterring cartels, and for this reason, they are widely used in many jurisdictions. Under the current leniency program in Korea, a cartel participant that is the first to apply for leniency can receive full immunity from surcharges and/or corrective measures as well as criminal prosecution, and the second to apply for leniency can receive a 50 percent reduction in surcharges and full immunity from criminal prosecution.

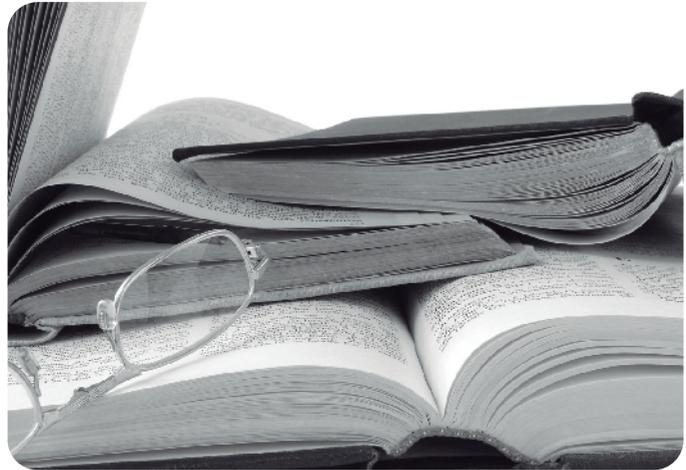
Amendments to the KFTC's Notification on Implementation of Cartel Leniency Program

The KFTC's Notification on Implementation of Cartel Leniency Program (Notification) sets out procedural and substantive elements of the leniency application process and benefits of leniency, among other related matters. So far, there have been two important amendments to this Notification and the most notable changes are as follows.

1. First Amendment (July, 2011)

First, the KFTC can revoke a leniency applicant's status even after an applicant qualifies for such status. Prior to the amendment, the confirmation by the KFTC's Secretary General of an applicant's status could not be revoked by the KFTC. This amendment, however, has empowered the KFTC to revoke the confirmation given by the Secretary General.

Second, the scope of the evidentiary materials that can be submitted as part of a leniency application has been broadened to include any evidentiary materials "that can evidence the unreasonable concerted act in question when viewed comprehensively in light of the relevant facts." To the extent there were companies that opted against leniency filings



because of a lack of evidentiary materials, this amendment is expected to create an incentive to apply for leniency.

Third, an applicant can submit evidentiary materials even after the expiration of the 75-day supplementary period following the initial filing of its leniency application. This amendment stemmed from criticisms on the inadequacy of the 75-day period in the cases of international cartels and other cases where the process of collecting, translating and/or submitting massive amounts of documents is overly time consuming.

2. Second Amendment (January, 2012)

Pursuant to the amendment to the Enforcement Decree of the MRFTA near the end of 2011, the KFTC's Notification was revised to prohibit repeat offenders who previously engaged in cartels from receiving additional leniency benefits within a specified period.

The amendment to the KFTC's Notification provides that a leniency applicant would not be eligible for leniency if:

- (i) within five years after the initial imposition of corrective measures and surcharges, it violates such corrective measures; or
- (ii) after having been granted leniency for its previous participation in a cartel, it engages in another cartel within five years.

Prior to the amendment, a cartel participant had "unlimited" opportunities to obtain a reduction in or exemption from surcharges through the leniency program. Now, a repeat offender cannot obtain additional leniency benefits within five years from the date of its initial leniency application. Thus, it has become more important for companies to strengthen their internal compliance procedures to prevent and avoid cartel activities well in advance.

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