

MERGER CONTROL IN KOREA Vol. 02 - Introduction of New “Size-of-Transaction” Test Confirmed

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On December 9, 2020, a bill for the MRFTA (“**Monopoly Regulation and Fair Trade Act**”) amendment was passed at the National Assembly (hereinafter the “**Amendment**”). As a full amendment of the MRFTA, the Amendment introduces a new size-of-transaction test for merger control in Korea. Discussions on the size-of-transaction have been taking place since 2018, and the bill has only finally passed the National Assembly.

The size-of-transaction test consists of the following two tests: (i) the total value of the consideration paid for the transaction must be equal to or greater than the applicable threshold to be prescribed by Presidential Decree (“**Transaction Value Test**”); and (ii) the purchaser must have engaged in business activities in Korea of a substantial level to be prescribed by Presidential Decree (“**Korean Activities Test**”).

While the specific criteria are to be provided by Presidential Decree, according to what we know so far, in reference to the rules of other jurisdictions such as Germany, the Korea Fair Trade Commission (“**KFTC**”) is considering setting the threshold for the “Transaction Value Test” at approximately KRW 600 billion or more (more than EUR 454 million) and the threshold for the “Korean Activities Test” as having provided products or services to more than 1 million people per month in the Korean market in the past three years or leased Korean R&D facilities (or used researchers at such facilities) in the past three years and where the related budget exceeds KRW 30 billion per year. The KFTC has stated that these details would be set through further policy research.

The size-of-transaction-based threshold shall apply to merger notifications filed whose statutory review clock commences on a date after the Amendment comes into effect. For reference, in light of the fact that the effective date of the Amendment is one year after the promulgation, the Amendment is expected to come into effect around the end of 2021 at the earliest. Before the Amendment comes into effect, the details of Presidential Decree will have to be set, at which point we will provide another update.

We will continue providing updates on Korean merger control issues. Please feel free to contact us anytime should you have any questions concerning Korean merger control.

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