



# MERGER CONTROL IN KOREA Vol. 05 - Details of New “Size-of-Transaction” Test Effective December 30, 2021

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This is an update to [Merger Control in Korea Vol. 02 - Introduction of New “Size-of-Transaction” Test Confirmed](#) issued on December 14, 2020.

On June 3, 2021, the Korea Fair Trade Commission (the “KFTC”) announced the proposed amendment to the Enforcement Decree of the Monopoly Regulation and Fair Trade Act (the “Amended Enforcement Decree”). The Amended Enforcement Decree provides further details and guidelines on the Monopoly Regulation and Fair Trade Act which was amended last December (the “Amended MRFTA”).

The Amended MRFTA introduced a new size-of-transaction test which will apply in addition to the existing size-of-parties test. The new size-of-transaction test consists of (i) the transaction value test and (ii) the Korean activities test. The Amended Enforcement Decree provides the specific thresholds for these tests.

Under the Amended Enforcement Decree, a merger notification would be required with respect to a transaction if (i) the transaction value is KRW 600 billion (approximately USD 540 million/EUR 442 million) or more and (ii) (x) the target has sold or provided products or services to at least 1 million people per month in the Korean market during the immediately preceding three years; (y) the target has either leased research and development facilities or used R&D personnel in Korea and has had an annual R&D budget of at least KRW 30 billion (approximately USD 27 million/EUR 22 million) for the Korean market during the immediately preceding three years; or (z) the transaction involves facts that are in effect equivalent to (x) or (y), the details of which are to be announced by the KFTC .

The new size-of-transaction-based thresholds are significant in that the acquisition of a target which does not yet have significant assets or turnover (e.g., killer acquisitions involving smaller but promising start-ups in various industries, including ICT and pharmaceutical) could be caught under the new Korean merger control if the transaction satisfies the foregoing thresholds. Please note that the Korean nexus test (i.e., requiring each of the parties to a foreign-to-foreign merger to have an annual Korean turnover of at least KRW 30 billion), which was a part of the size-of-parties test, does not apply to the new size-of-transaction test.

The new thresholds will go into effect on December 30, 2021 and will apply to all transactions executed after that date in the case of pre-merger filing (which is required if either party has worldwide assets or annual turnover of at least KRW 2 trillion) and all transactions whose closing date falls after that date in the case of post-merger filing.

The KFTC may issue additional KFTC announcements regarding the matters which are the subject of the Amended Enforcement Decree as well as guidelines on the specific meaning of each element of the size-of-transaction test. We will closely monitor the development and provide another update.

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

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