



# MERGER CONTROL IN KOREA Vol. 11 - Amendments to the Scope of Merger Notification Exemptions and the Remedy Discussion Procedures to Take Effect in August 2024

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This is an update to [Merger Control in Korea Vol. 10 – KFTC to Expand the Scope of Exemptions from Merger Notifications and Invite Companies to Formally Submit Remedy Proposals and Engage in Remedy Discussions](#) issued on February 21, 2023.

On January 25, 2024, the Korea Fair Trade Commission (the “KFTC”) announced that the amendments to the Monopoly Regulation and Fair Trade Act (the “MRFTA”) that had been proposed in February 2023 have passed the National Assembly’s plenary session that day.

The amendments include two major changes to the Korean merger control regime: (i) expansion of the scope of exemptions from the merger notification requirement and (ii) allowing companies to formally design and propose their own remedy packages to the KFTC and obtain conditional clearance. The two amendments are expected to be officially promulgated pending the Cabinet’s final approval in February 2024 and take effect 6 months from that date, in August 2024.

## 1. Expansion of the Scope of Exemptions from the Merger Notification Requirement

Pursuant to the first of the amendments, the following four types of transactions—which, according to the KFTC, are highly unlikely to raise anticompetitive concerns—will enjoy exemptions from the merger notification requirement: (i) statutory merger or business transfer between a parent and its subsidiary (limited to those cases where the former directly holds more than 50% of the latter’s total issued and outstanding shares), (ii) interlocking directorate of less than one-third of the total number of directors of another company (excluding the representative director), (iii) establishment

of a private equity fund (as defined under Article 9(19) of the Financial Investment Services and Capital Markets Act), and (iv) merger between affiliates where the total assets or revenue of the target entity itself (i.e., without taking into account the corresponding figures of any other affiliates) is lower than KRW 30 billion.

From the KFTC's perspective, the foregoing changes would be of great significance in helping promote both the quality and efficiency of their merger review process. Understandably, against the backdrop of an ever-digitalizing global economy and a rapid rise in the number of multinational mergers, competition authorities around the world are now facing new and difficult challenges on a scale that has not been experienced before. In this context, the KFTC has been compelled to modify their approach to the merger review process, in a way that would allow them to focus their attention and resources on the more complex and competitively significant transactions at the expense of those that would most likely turn out to be innocuous. Considering that the transactions that fall under the four new exemption categories, at least in 2022, accounted for approximately 42% of the total merger notifications filed with the KFTC (431 out of 1,027 filings), the KFTC is hopeful that the amendment would help reduce their caseload to a similar extent, thereby enabling them to "focus and prioritize".

Regarding the point at which the exemptions will apply, it will vary by whether a transaction to be exempt is originally subject to pre-merger notification or post-merger notification. In the case of the former, transactions entered into on or after the effective date of the amendment (i.e., sometime in August 2024) will be exempt, whereas, in the case of the latter, transactions closed on or after the effective date of the amendment will be exempt from the merger notification requirement.

## 2. Allowing Companies to Formally Design and Propose a Remedy Package of Their Own and Obtain Conditional Clearance

Pursuant to the second of the amendments, companies themselves will be given the opportunity to formally design and propose to the KFTC a remedy package of their own that would address anticompetitive concerns raised during the review process. Under the current system, it is the KFTC that comes up with a remedy package, later imposing it on companies as a remedial order.

Should companies decide to exercise the foregoing option, they must submit the proposed remedy package, in writing, within the KFTC's review period (which, by default, lasts for 30 days and may be extended up to 120 days). Following the submission, the KFTC may issue requests for information as necessary to revise and modify the proposed remedies, and the review period will be suspended until the parties fully attend to such requests. Once the authority finds that the remedy package, in its final form, is appropriate and sufficiently addresses their anticompetitive concerns, they will issue conditional clearance.

The necessity of such an amendment stems from the fact that in a competitive environment in which industrial structures are becoming increasingly more complex and the number of global mergers is rising by the year, it has become both inefficient and time-consuming for the KFTC to craft adequate remedial measures alone. In this context, the KFTC is optimistic that the amendment will help pave the way for effective and actionable remedy packages that are designed by the companies themselves and based on their own robust information and data at the market, industry,

and company levels.

Furthermore, given that a similar approach to the remedy procedures has already been adopted by many of the major competition authorities around the world, the KFTC has come to view the amendment as an opportunity to further align the Korean competition legal framework with the global standards.

That said, amendments or enactments of other laws and regulations are expected to follow in connection with the implementation of the two amendments, and the overall impact of these changes on Korea's merger control regime remains to be seen. The KFTC has been directly and indirectly soliciting opinions on the amendments from various industrial circles, many of which Shin & Kim is also taking part in. We will monitor these developments and provide any further updates.

*We will continue to provide updates on Korean merger control issues. Please feel free to contact us at any time should you have any questions concerning Korean merger control regulations.*

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