

**GCP**

THE ONLINE MAGAZINE FOR GLOBAL COMPETITION POLICY

# **Recent Enforcement of Cartel Regulations in Korea**

---

**Joseph Seon Hur & Paul S. Rhee**

Yoon Yang Kim Shin & Yu

## Recent Enforcement of Cartel Regulations in Korea

Joseph Seon Hur & Paul S. Rhee \*

### I. THE KFTC'S FIRST PRIORITIES WHEN ENFORCING CARTEL REGULATIONS

As a result of its rapid development during the last five to six years, the Korea Fair Trade Commission (“KFTC”) has been highly assessed and recognized by international antitrust practitioners.<sup>1</sup> Its mission is to enforce the Monopoly Regulation and Fair Trade Act (“MRFTA”). The KFTC was established at a relatively early stage of Korean economic growth (1980) as a competition law enforcement agency. Until recently, the KFTC had focused most of its resources on ex ante regulation of “chaebol” (i.e., large business groups) in addition to areas that involve unfair trade and subcontracting practices disputes between companies. However, starting in 2000 the KFTC has been successful in reforming the MRFTA and its practices.

First, the KFTC augmented its investigation capabilities and sanctions concerning anti-cartel regulations, which were thought to have been somewhat ignored. Then in 2005, it reinvigorated the Corporate Leniency Program, which had been an unused policy. Consequently, the KFTC has successfully promoted market competition by

---

\* Joseph Seon Hur is a Senior Consultant at Yoon Yang Kim Shin & Yu in Seoul, Korea and a former Secretary General of the Korea Fair Trade Commission. He can be reached by email at [josehur@yoonyang.com](mailto:josehur@yoonyang.com). Paul S. Rhee is the Senior Foreign Counsel/Partner in the antitrust practice group of Yoon Yang Kim Shin & Yu in Seoul, Korea. He can be reached by email at [psrhee@yoonyang.com](mailto:psrhee@yoonyang.com).

<sup>1</sup> Korea is the country that most actively enforces antitrust law in Asia. In 2007, Global Competition Review ranked the KFTC 10<sup>th</sup> in its assessment of global competition authorities.

encouraging Korean companies to voluntarily comply with the MRFTA and has enabled consumers to enjoy the fruits and advantages of a free market economy.

In addition, the KFTC has actively enforced its competition policy by regulating antitrust violations involving foreign companies. The KFTC investigated and sanctioned the Graphite Electrode Cartel and the International Vitamin Cartel by applying the MRFTA extraterritorially for the first time in Asia.<sup>2</sup> Currently, the KFTC is very active in investigating and sanctioning international cartels with the help of its Corporate Leniency Program. And early this year, the KFTC established an International Cartel Division within the Cartel Bureau to exclusively investigate international cartels.

The Seoul High Court reviews the KFTC's decisions if defendants appeal. The Seoul High Court makes its ruling by applying reasonable legal principles pursuant to relevant laws and regulations and focuses on prior decisions of the KFTC.

## **II. REVISION OF THE CORPORATE LENIENCY PROGRAM**

The Corporate Leniency Program, which was substantially revised and enhanced in 2005, provides significant assistance to the KFTC's cartel investigations. Through the first six months of 2008, a total of 30 leniency applications have been filed. Most investigations concerning international cartels have been initiated through the filing of leniency applications under the Corporate Leniency Program.

---

<sup>2</sup> Joseph Seon Hur, *Extraterritorial Application of Korean Competition Law*, REGENT J. INT'L L (April, 2008).

**Number of Leniency Filings and Amount of Administrative Fines Following  
Leniency Filings**

(USD Million)

| <b>Year</b>  | <b>1999</b> | <b>2000</b> | <b>2001</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> |
|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Cases</b> | 1           | 1           | -           | 2           | 1           | 2           | 7           | 7           | 9           |
| <b>Fines</b> | .314        | .043        | -           | 1.2         | 3.4         | -           | 173.6       | 54.9        | 221.3       |

As of November 2007, the Corporate Leniency Program was revised and now grants an automatic 50% reduction (instead of 30% as previously provided) in administrative fines to the second-ranked leniency applicant while the first-ranked leniency applicant will automatically receive full amnesty from any administrative fines or corrective measures. Also, companies responsible for coercing the formation or continuation of cartels cannot benefit under the Corporate Leniency Program.

With its revision, the Corporate Leniency Program now provides clearer standards for the “sincere cooperation” which is a prerequisite to a leniency application: The applicant shall state all known facts regarding the concerned cartel without hesitation, as follows:

- the applicant shall promptly submit all materials, which is in its possession or can be obtained, related to the concerned cartel;
- the applicant shall render immediate cooperation upon the KFTC’s request that is necessary for fact-finding;
- each and every employee of the applicant shall cooperate with the KFTC’s

- investigation;
- the applicant shall not deliberately destroy, manipulate, damage, or hide evidence and information related to the concerned cartel; and
  - the applicant shall not disclose its involvement in a cartel and its leniency application to a third party without KFTC's prior consent.

Additionally, the requirement for a written application has been eliminated allowing the option of an oral leniency application. Further, the Corporate Leniency Program provides stronger confidentiality protection for leniency applicants. More specifically, the KFTC has agreed not to disclose the identity of the leniency applicant and the contents of the application without the prior consent of the applicant unless it is necessary for judicial review.

### **III. CHANGES TO ADMINISTRATIVE FINES**

Basic administrative fines levied for cartel-type violations of the MRFTA were increased from up to 5% to 10% of the “relevant turnover.” There was some confusion as to the cases falling under this newly enacted standard because of the simultaneous introduction of a new program called Amnesty Plus under the MRFTA.<sup>3</sup> Further revision of the relevant regulations clarified the matter, agreeing to apply the previous standard to cartel cases terminated before November 4, 2007, and the revised standard (up to 10% of basic administrative fines and Amnesty Plus) to those terminated thereafter. Also, the statutory maximum administrative fine for a cartel participant was changed to 10% of the

---

<sup>3</sup> The Amnesty Plus program is applied to a company currently under investigation for participating in one cartel if the company decides to voluntarily report a second cartel in which it is also participates. Besides such company having full amnesty for the second cartel, it will receive substantial reductions or elimination of administrative fines for the first cartel depending on the size of the relevant turnover of the second cartel.

“relevant turnover,” which was intended to impose heavier fines proportionately for long-term illegal conduct.

#### **IV. CASES**

The KFTC has maintained its strong enforcement policy against cartels since 2000. The KFTC prosecuted 46 cartel cases in 2005 and 2006 and 44 cartel cases in 2007, imposing appropriate sanctions upon the perpetrators. More than 75% of these cases were considered to be ‘hard core cartels’ such as those involving price-fixing.

In Korea, criminal sanctions imposed on cartel participants (both the company and involved officer or employee) can be prison terms up to 3 years and/or fines up to USD 200,000. In principle, except for first and second-ranked leniency applicants, the KFTC should refer all cartel cases to the Prosecutors’ Office to initiate criminal proceedings against the perpetrators although, in practice, only those perpetrators (usually only the company itself) involved in hard core cartels have been referred to the Prosecutors’ Office by the KFTC. The Korean courts have imposed criminal fines against individual violators but individuals have only been given suspended prison sentences or probation. Also, as the chart below demonstrates, the amount of administrative fines rose to USD 307 million in 2007, clearly showing that the KFTC is firmly determined to combat cartels.

**Table 2) Administrative Fines for Cartels Imposed by KFTC**

(USD Million,  
rounded)

| <b>Year</b>          | <b>'88<br/>~<br/>95</b> | <b>'96</b> | <b>'97</b> | <b>'98</b> | <b>'99</b> | <b>'00</b> | <b>'01</b> | <b>'02</b> | <b>'03</b> | <b>'04</b> | <b>'05</b> | <b>'06</b> | <b>'07</b> | <b>Total</b> |
|----------------------|-------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|--------------|
| Number of Cases      | 11                      | 13         | 6          | 19         | 15         | 12         | 8          | 14         | 9          | 12         | 21         | 27         | 24         | 191          |
| Number of Defendants |                         |            |            |            |            |            |            |            | 56         | 77         | 116        | 114        | 107        |              |
| Amount               | 5                       | 15         | 1          | 32         | 36         | 199        | 27         | 51         | 109        | 29         | 249        | 111        | 308        | 1169         |

The following are recent cartel cases:

- price-fixing by three sugar manufacturers (USD 51.1 million aggregate fines);
- price-fixing by ten liability insurers of insurance premiums (USD 50.8 million aggregate fines);
- price-fixing by four petrochemical companies (USD 50.8 million aggregate fines);
- bid-rigging by six construction companies for a Seoul subway construction project (USD 22.1 million aggregate fines);
- cartel concerning price and trade terms by three laundry and dishwashing detergent manufacturers (USD 41.0 million aggregate fines);
- price-fixing by three mobile telecommunications service providers (USD 1.7 million aggregate fines);
- price-fixing by two telephone companies (USD 115 million aggregate fines).

With respect to international cases, KFTC cartel investigations currently in

progress include those concerned with air cargo, SRAM, LCD/CRT, and marine hose.