IN-DEPTH

Cartels And Leniency

SOUTH KOREA

LEXOLOGY

Cartels and Leniency

EDITION 14

Contributing Editors

Romina Polley and **Julian Alexander Sanner**

Cleary Gottlieb Steen & Hamilton LLP

In-Depth: Cartels and Leniency (formerly The Cartels and Leniency Review) provides a practical overview of the laws and policies aimed at combating cartel activity across key jurisdictions worldwide. It addresses major emerging and unsettled issues surrounding unlawful agreements with competitors, and analyses recent enforcement trends and regulatory changes – offering valuable insights to practitioners and corporates alike.

Generated: July 22, 2026

LEXOLOGY

Explore on **Lexology**

South Korea

Changhun Lee, John H Choi, Hyunah Kim and Seungjun Woo
Shin & Kim

Summary

Introduction

In South Korea, the legal framework for addressing cartel conduct is established under the Monopoly Regulation and Fair Trade Act (MRFTA). Although certain types of cartel conduct are also regulated under the Criminal Act and the Framework Act on the Construction Industry, the vast majority are governed by the MRFTA, principally through articles 40 to 44, supplemented by the Enforcement Decree. The Korea Fair Trade Commission (KFTC), as the authority to enforce the MRFTA and is empowered to issue remedial orders, impose surcharges on undertakings found to have engaged in cartel conduct and refer cases to the prosecutors' office for potential criminal proceedings.

Article 40(1) of the MRFTA prohibits agreements between undertakings to engage jointly in conduct that unfairly restricts competition and enumerates nine categories of such conduct, including price-fixing, output restrictions, the allocation of trading areas or counterparties, bid rigging and, since the fully amended MRFTA took effect on 30 December 2021, the exchange of competitively sensitive information.

Enforcement proceeds along two tracks. The KFTC imposes administrative measures, namely remedial orders and surcharges, while criminal punishment is pursued by the prosecutors' office through indictment. For cartel offences under the MRFTA, the prosecutors' office may, in principle, indict only following a criminal referral from the KFTC under the exclusive criminal referral system, subject to certain exceptions. An undertaking may challenge the KFTC's remedial orders or surcharges by filing an administrative lawsuit seeking their cancellation. Such actions fall within the exclusive jurisdiction of the Seoul High Court and proceed through a two-tier system, with final appeals to the Supreme Court. In addition, following recent legislative amendments, parties may now seek constitutional review of final court judgments, including Supreme Court judgments, before the Constitutional Court, potentially adding another layer to the litigation process.

Year in review

The dominant theme of the past year has been an unmistakable hardening of enforcement. The KFTC and the prosecutors' office have concentrated on sectors closely tied to everyday life – such as food, education, construction and energy – and the President has repeatedly stressed that sanctions against cartels must be stronger and swifter, with penalties far exceeding the gains derived from collusion. Under its new chairperson, the KFTC has adopted an increasingly aggressive approach to cartel enforcement, imposing aggregate surcharges totalling 1.69 trillion won (approximately €955 million) in four major cartel cases in the first half of 2026 alone, with surcharge rates reaching as high as 15% of the relevant turnover. In parallel, the prosecutors' office has increasingly conducted its own searches and seizures, and has indicted undertakings together with their current and former executives, even before the KFTC has rendered a decision, securing the necessary referral by exercising its right to request one.

Perhaps the most notable case was the KFTC's decision in January 2026 to sanction four major domestic banks for exchanging competitively sensitive information. The KFTC found that the banks had exchanged information regarding loan-to-value (LTV) ratios – a key determinant of mortgage limits – and imposed aggregate surcharges totalling 272 billion won (approximately €154 million). This marked the first application of the fully amended MRFTA's treatment of information exchange as a form of cartel conduct since that amendment took effect on 30 December 2021. Previously, Korean courts had held that information exchange by itself did not constitute a cartel. The banks argued that LTV ratios were not a key competitive factor, that each had independently determined its own LTV ratios, and that the KFTC had failed to prove any restrictive effect on competition. They have filed administrative lawsuits challenging the KFTC's decision.

The year also brought three notable institutional headlines. First, following the amendments to the Attorney-at-Law Act, attorney–client privilege has been recognised in statute for the first time in South Korea. The amended Act is scheduled to take effect on 20 February 2027, and communications and materials exchanged before that date may also be protected from disclosure. Second, following amendments to the Constitutional Court Act that took effect in March 2026, it has become possible to file a constitutional complaint against a court judgment, including a Supreme Court judgment, creating a further avenue for challenging cartel-related administrative litigation. Third, the KFTC recently amended its regulations to remove the cap on whistleblower rewards (previously set at 3 billion won or approximately €1.7 million) and to permit rewards of up to 10% of the surcharge imposed. This development is likely to strengthen incentives for individuals with knowledge of cartel conduct to report such conduct to the KFTC, thereby increasing the likelihood of detection and investigation.

Enforcement policies and guidance

In addition to the MRFTA and its Enforcement Decree, the KFTC has issued the Guidelines for Review of Cartel Conduct, which provide practical guidance on the application and enforcement of the cartel provisions. The Guidelines set out detailed categories of cartel conduct, together with the applicable standards and illustrative examples for assessing whether particular conduct constitutes an unlawful cartel under the MRFTA.

The KFTC is the primary enforcement authority responsible for determining whether cartel violations have occurred and for imposing administrative sanctions. It may issue remedial orders, impose surcharges and refer cases to the prosecutors' office for potential criminal proceedings.

Regarding remedial orders, the KFTC may order a company to cease the cartel conduct, publicly disclose the fact that it has been subject to a remedial order and take other remedial measures necessary to address the violation. A noteworthy recent development is that the KFTC's Guidelines on Remedial Orders expressly identify, as one form of remedial order in cartel cases, an order requiring each participant to reset its prices independently. The KFTC has stated that it intends to make active use of such price-reset orders where prices have been increased as a result of a cartel, in order to bring about actual price reductions. Consistent with this policy, in April 2026, the KFTC imposed price-reset orders on several printing paper manufacturers as part of its decision sanctioning a cartel in the printing paper industry.

Concerning surcharges for cartel conduct, the MRFTA authorises the KFTC to impose a surcharge of up to 20% of relevant revenue or, where such revenue is difficult to calculate, a fixed surcharge of up to 4 billion won. The MRFTA prescribes only the statutory maximum, while the applicable base rates are set out in the KFTC's Surcharge Guideline. In response to criticism that the lower end of the base-rate range was too low, the KFTC amended the Guideline, effective 30 April 2026, to raise the minimum base rate significantly, among other changes. In particular, whereas conduct classified as a "minor violation" could previously have been subject to a base rate as low as 0.5%, the vised Guideline raises the minimum base rate to 10%.

Cooperation with other jurisdictions

The KFTC actively cooperates with foreign enforcement agencies in the investigation of international cartels. The degree of cooperation varies from case to case, but the KFTC regularly communicates with its foreign counterparts through a range of channels, exchanging views and coordinating investigative and enforcement efforts. South Korea is an active member of the OECD Competition Committee and the International Competition Network, and the KFTC works closely with the competition authorities of the United States, the European Union, Japan and other jurisdictions on international cartel matters.

Korea's approach is nevertheless tempered by a strong regard for the principle of international comity. In the air cargo litigation, the Supreme Court held that the MRFTA applies to foreign conduct only where it has a direct, substantial and reasonably foreseeable effect on the Korean market, cautioning that an overly expansive extraterritorial application of the MRFTA could produce unfair results. The KFTC has likewise invoked the principle of international comity in foreign proceedings, submitting an amicus brief in the United States in *Motorola Mobility v AU Optronics* urging the court to respect that principle. The practical significance of this enforcement cooperation is reflected in the KFTC's enforcement record: from the graphite electrode cartel in 2002 through May 2026, the KFTC sanctioned 31 international cartel cases.

Jurisdictional limitations, affirmative defences and exemptions

Jurisdiction and extraterritorial application

Cartels formed outside Korea may also be regulated by the KFTC under the MRFTA if they affect the Korean market. The MRFTA provides that it applies to conduct occurring outside Korea that has an effect on the Korean market, making domestic effects the statutory basis for its extraterritorial application. The Korean Supreme Court has interpreted this provision as requiring a direct, substantial and reasonably foreseeable effect on the Korean market. Whether this standard is met must be assessed on a case-by-case basis, taking into account the totality of the circumstances, including the nature and purpose of the conduct, the characteristics of relevant goods or services, the structure of the relevant transactions and the nature and extent of the conduct's domestic impact. Accordingly, where an anticompetitive agreement among foreign undertakings encompasses the Korean market, it will generally be regarded, absent exceptional circumstances, as having the requisite domestic effect and may therefore be subject to the MRFTA.

Limitation periods and affirmative defences

The KFTC may not impose remedial orders or surcharges after the applicable limitation period has expired. For cartel conduct, the limitation period is five years from the date on which the KFTC commences an investigation, or if no investigation has been commenced, seven years from the date on which the violation ceased.[1] Where an applicant has filed for leniency specifying the details of the cartel, the date the KFTC commenced its investigation is the date of the leniency filing rather than the date of any subsequent on-site investigation.

During the KFTC's investigation and review, defence counsel may present factual and legal arguments through oral statements or written submissions. The two principal defences raised in cartel cases are that no agreement existed and that the alleged conduct did not have any anticompetitive effect. The latter is related to the KFTC's Guidelines for Review of Cartel Conduct, under which the KFTC will generally terminate its review where the combined market share of the participating undertakings does not exceed 20%, on the basis that any anticompetitive effects are unlikely to arise, or if they do, the effects will be minimal.[2]

Exemptions and authorisation

A cartel may exceptionally be permitted with the KFTC's approval where its purpose is to facilitate industrial restructuring in response to an economic recession, promote research and technological development, rationalise trade terms or improve the competitiveness of small and medium-sized businesses.[3] Statutory exemptions under other individual statutes are also recognised. In a liner shipping case decided in April 2025, the Supreme Court reversed and remanded the Seoul High Court's ruling, which had set aside the KFTC's remedial orders and surcharges on the ground that the Marine Transportation Act conferred exclusive authority over liner shipping freight-rate conduct and that the MRFTA did not apply, irrespective of the exemption requirements under article 58 of the former MRFTA.[4]

Leniency programmes

Development and use of leniency programmes

Leniency is the central pillar of cartel detection in Korea. Because a cartel is by nature secret and difficult to prove from the outside, the leniency system exploits the prisoner's dilemma to weaken trust among participants and induce voluntary reporting. Korea today operates a dual structure: administrative leniency before the KFTC and, since December 2020, criminal leniency before the prosecutors' office.

First introduced into the MRFTA in 1997 and made substantially more attractive by a 2005 amendment that rendered reductions mandatory for qualifying applicants and added the Amnesty Plus mechanism, administrative leniency now functions as the principal detection tool. According to government statistics, of 144 cartel cases during 2022–2024, leniency was applied in 98 (68.1%), and of the aggregate surcharge of 1,302.8 billion won imposed in those cases, approximately 19.8% (258.3 billion won) was reduced through leniency.[5] The statutory basis is article 44 of the MRFTA, under which a person who voluntarily reports a cartel or cooperates by providing evidence may have remedial measures and surcharges reduced or waived and may be exempted from criminal referral; the detailed requirements are set out in the Enforcement Decree of the MRFTA and in the Leniency Notice.

Administrative leniency

The scope of administrative leniency extends to cartels generally, without an express hardcore or softcore distinction. To secure first-priority status, an applicant:

- must be the first to provide, on its own, the evidence necessary to prove the cartel;
- must apply before the KFTC has obtained information or secured sufficient evidence;
- must cooperate in good faith until the conclusion of the proceedings;
- must have ceased its participation; and
- must not have coerced others into the cartel or repeatedly offended.

A qualifying first-priority applicant receives full exemption from the surcharge, exemption from remedial measures and exemption from criminal referral; a second-priority applicant receives a 50% reduction of the surcharge and, in practice, exemption from criminal referral. The duty of good-faith cooperation is a core condition: disclosing the fact of the application to a third party before the KFTC's deliberation, without consent, is treated as a failure to cooperate. Functionally, the supplementation procedure operates as a marker system, allowing an applicant to secure its ranking before assembling complete evidence, with a 15-day supplementation period. An additional 60-day period may be granted at the KFTC case handler's discretion.

Criminal leniency

The Criminal Leniency Guidelines, enacted by the Supreme Prosecutors' Office, allow cartel participants who voluntarily report and cooperate to obtain reductions of, or exemptions from, criminal sanctions. Their eligibility and conditions broadly mirror administrative leniency, but three differences stand out. The scope is limited to hardcore cartels together with certain bid rigging conduct. Individuals may apply independently, in which case they compete with the undertaking for ranking. The protection afforded to a second-priority applicant is materially weaker: only the first-priority applicant is exempt from indictment, while the second-priority applicant receives only a recommended 50% reduction in the sentence sought, which does not bind the court. In addition, no compulsory investigative measures, such as search and seizure, arrest, or detention, may be taken against a first-priority applicant.

Penalties

The MRFTA arms the KFTC with administrative measures and provides, separately, for criminal punishment. On the administrative side, the KFTC may issue remedial orders – requiring the undertaking to cease the conduct, to publicise the fact of the order, and, where appropriate, to reset prices independently – and may impose surcharges of up to 20% of relevant revenue, or a fixed surcharge of up to 4 billion won where revenue is difficult to calculate. These ceilings, doubled from the previous 10% and 2 billion won by the amendment effective 30 December 2021, do not apply to conduct that ended before that date.

On the criminal side, cartel conduct is punishable by imprisonment for up to three years or a fine of up to 200 million won. Both the undertaking and its representatives and employees may be subject to criminal sanctions. Criminal liability is mediated by the exclusive criminal referral system. While prison sentences were historically often suspended, courts have more recently begun to impose actual terms.

'Day one' response

The KFTC may conduct a dawn raid by sending investigating officials to the place of business of a company suspected of participating in a cartel, and frequently does so. A KFTC dawn raid is conducted with the consent of the company and is not a compulsory investigation; it does not require a court warrant. However, if the company, an officer or an employee interferes with the investigation, criminal punishment may be imposed.

Upon the investigating officials' arrival, a company should:

- check the officials' public official identification cards and the notice of investigation, and verify that the stated period, purpose, subject and method match the scope of the search;
- immediately inform in-house and external counsel. On the company's request, counsel must in principle be permitted to participate in the entire investigation process, although counsel may be excluded if the request delays or interferes with the investigation, if counsel responds on the company's behalf or induces specific answers, or if counsel films or records the interrogation, and an urgent investigation may proceed regardless where there is a concern such as destruction of evidence; and
- immediately convene an internal response team composed of legal, compliance and relevant business personnel, escort the investigating officials to a separate room and centralise communications through a designated point of contact.

During the dawn raid, the company should:

- cooperate by allowing access, including to the information processing system. Data should be accessed or copied with the cooperation or in the presence of the person concerned, and the official may collect digital data by determining its scope and printing or imaging it on-site. If an officer or employee requests a copy of the collected data, the official must comply;
-

preserve all documents – officers and employees must not hide, destroy, refuse access to, or forge or falsify materials. Such interference may be referred for prosecution, exposing the relevant employee to up to two years' imprisonment, or the company or employee to a fine of up to 150 million won, while obstruction by assault, abuse or by intentionally obstructing or delaying the officials' entry to the premises carries up to three years' imprisonment or a fine of up to 200 million won, and destruction of cartel-related evidence may separately constitute the offence of evidence destruction (up to five years' imprisonment);

- respond carefully to questions and interviews – the official may interview parties and request statements or confirmation documents, and refusal to cooperate with an interview may attract an administrative fine of up to 100 million won for the company and up to 10 million won for the officer or employee; and
- brief employees in advance on response protocols, including the need to avoid speculative or uncertain statements.

On the same day, immediately after the raid, the company should:

- promptly assess whether to apply for leniency – surcharges may be reduced depending on the degree of cooperation, and leniency determines both administrative reductions and, through the criminal leniency programme, exposure to criminal referral. Because marker priority is decided by order of filing, this assessment must be made immediately;
- request the return or disposal of irrelevant materials submitted during the dawn raid within seven days of submission;
- conduct appropriate follow-up steps after the investigation, including debriefing the response team on how the investigation proceeded, identifying and reviewing the materials taken by the officials, and assessing the need for further internal investigation or supplementation of any leniency application.

Private enforcement

The legal basis for claiming damages for an MRFTA violation is provided by statute, principally the Civil Act and the MRFTA. A violation of competition law is generally treated as a tort, so a victim may claim damages under the Civil Act's general tort provision, proving intent or negligence, damage, unlawfulness and causation. The MRFTA separately provides for damages claims arising from MRFTA violations, and plaintiff standing is not limited to competitors or direct counterparties.

Unlike the administrative limitation period for KFTC measures, a private damages claim is subject to the Civil Act's tort limitation period: three years from the date the victim became aware of both the damage and the perpetrator, or ten years from the date of the tortious act, whichever expires first. Grounds for suspension under the Civil Act apply – such as a demand by way of judicial proceedings, or provisional attachment or disposition – but a KFTC decision is not among them, so the period is not tolled merely because KFTC proceedings are pending.

Although liability is generally limited to damage actually incurred or presumed, under the MRFTA, the court may award damages of up to three times the amount of the actual loss suffered unless the defendant proves the absence of intent or negligence; such damages are regarded as punitive. However, this treble damages regime does not apply to a successful leniency applicant. Instead, a leniency applicant is liable only for the claimant's actual damages.

The current MRFTA also introduces a private person's claim for an injunction, allowing a victim of unfair trade practices (except unfair support) to petition the court directly to prohibit or prevent infringing conduct without going through the KFTC. The system has rarely been invoked to date, and the courts' specific criteria are not yet established.

There is no "discovery" system as in common law. However, the current MRFTA introduces court orders compelling the opposing party to submit materials essential for proving damages or calculating their amount; a court may also ask the KFTC to send records related to the violation, and parties may use the document submission order procedure under the Civil Procedure Act, while a separate provision eases the burden of proving the amount of damages. A perpetrator may assert a passing-on defence; the Supreme Court does not treat passing-on as immediately reducing the victim's harm, but the circumstances of passing-on may be taken into account in limiting the amount of damages.

There is no system in South Korea that allows class or collective action in antitrust litigation. In particular, no US-style opt-out class action exists, and victims must bring claims individually or as joint plaintiffs. A judgment obtained by some victims does not legally bind the others, but in practice, it makes it easier for the remaining victims to pursue separate claims based on that result.

Special considerations

Regarding cartel practice in Korea, the following points warrant particular attention. Each reflects an area where cartel-related risk is increasing, while suggesting practical steps that undertakings should consider in managing the risk.

First, enforcement is expected to intensify not only against traditional forms of cartel conduct, such as price-fixing, but also against newer forms of coordination. The KFTC's sanctioning of the exchange of LTV information among banks marked its first enforcement action involving the exchange of competitively sensitive information, a category of cartel conduct newly introduced when the fully amended MRFTA took effect in 2021. The KFTC is also scheduled to hear additional information-exchange cartel cases. In addition, a recent amendment bill concerning algorithmic collusion has been submitted to the National Assembly. The bill would expand the statutory presumption of agreement to include cases where undertakings jointly use an algorithm that makes decisions based on information necessary for setting prices or other trading terms. The KFTC has also shown significant interest in algorithmic collusion and the potential competition-restricting effects of generative AI, and appears to be moving towards strengthening its monitoring and enforcement framework in this area, including by announcing plans to establish a dedicated unit to address these issues.

Second, leniency has become increasingly important in recent years. Approximately 70% of recent cartel cases sanctioned by the KFTC involved leniency applications. This suggests that, where cartel-related conduct involves multiple undertakings, there is a meaningful likelihood that some participants may apply for leniency. Given that both administrative leniency under the MRFTA and criminal leniency provide benefits only to first- and second-priority applicants, undertakings should assess at an early stage whether to seek leniency. The timing of an application may become even more important if the KFTC follows through with its proposal to cap surcharge reductions at 75%, rather than 100%, for first-priority applicants that apply only after an investigation has begun.

Third, Korea has recently introduced attorney–client privilege, which undertakings may be able to rely on when responding to cartel investigations. In January 2026, the National Assembly passed an amendment to the Attorney-at-Law Act establishing, for the first time, a statutory basis for attorney–client privilege. Under the amendment, both attorneys and clients may refuse to disclose confidential communications made for the purpose of legal assistance and certain litigation materials, subject to exceptions, including client consent, the attorney's complicity in unlawful acts or the attorney's exercise of a right of defence. The amendment will take effect on 20 February 2027, and the newly introduced privilege will also apply to confidential communications, documents and materials created before the effective date, unless an exception applies. The precise contours of the privilege, including its operation in government investigations and litigation, are expected to develop through practice and case law. Undertakings should therefore consider involving counsel at an early stage, so that potentially privileged materials are properly identified and preserved and dawn-raid, internal-investigation and leniency strategies are coordinated from the outset.

Outlook and conclusions

Korean cartel enforcement in the period ahead is likely to be shaped by the following developments: institutional restructuring of criminal enforcement, possible reform of the KFTC's exclusive criminal referral system and a broader strengthening of the cartel enforcement environment.

The first, and most far-reaching, is the abolition of the Prosecutors' Office and the establishment of two new bodies: the Serious Crimes Investigation Agency (SCIA) and the Indictment Office. From 2 October 2026, the SCIA will be responsible for investigation, while the Indictment Office will be responsible for indictment. Cartel investigations are likely to fall within the SCIA's remit.

This institutional separation between investigation and indictment, however, creates uncertainty over the operation of the criminal leniency system. With the SCIA responsible for investigation and the Indictment Office responsible for indictment, it is unclear how applicants will be able to obtain protection comparable to that available under the current regime, where the prosecutors' office handles both functions and can therefore offer protection from indictment. Unless this issue is addressed before the new laws take effect, questions would arise as to the nature and scope of protection available to criminal leniency applicants.

The second development is the proposed reform of the KFTC's exclusive criminal referral system. In particular, in March 2026, the KFTC proposed allowing groups of citizens or undertakings to file criminal complaints directly and expanding the range of agencies entitled to request criminal referrals. While such changes could reduce delays or gaps in criminal enforcement arising from the need to first obtain a referral from the KFTC, they could also weaken incentives to apply for administrative leniency. This is because, if third parties are able to file criminal complaints or other agencies are able to request criminal referrals notwithstanding KFTC leniency, an applicant exempted from criminal referral by the KFTC could still face potential criminal exposure.

The third development is the continued strengthening of the cartel enforcement environment. As discussed above, the surcharge regime has been tightened through revisions to the Surcharge Notice, while constitutional complaints against court judgments have added a further procedural layer to cartel-related litigation. The KFTC has also signalled closer scrutiny of emerging priority areas, including AI-based and algorithmic collusion, digital and platform markets, and bid rigging in public procurement.

Taken together, these developments suggest that Korean cartel enforcement is likely to become more complex and demanding, both institutionally and procedurally. As the enforcement framework evolves, maintaining clarity and predictability – particularly around the operation of administrative and criminal leniency – will be important for both effective cartel detection and deterrence.

Endnotes

1 MRFTA, articles 80(4) and (5). ^ Back to section

2 KFTC's Guidelines for Review of Cartel Conduct, section V.2.A.(2); In practice, this has been rarely used. ^ Back to section

3 MRFTA, article 40(2). ^ Back to section

4 Liner shipping case, Supreme Court Decision 2024Du35446 (24 April 2025). ^ Back to section

5 Board of Audit and Inspection, Regular Audit Report on the Korea Fair Trade Commission, 25 February 2026, p. 11; The aggregate amount of surcharge was 1,302.8 billion won (approximately €738 million) and 258.3 billion won (approximately €146 million) was reduced through leniency. ^ Back to section

SHIN & KIM

[Changhun Lee](#) chlee@shinkim.com
[John H Choi](#) jhchoi@shinkim.com
[Hyunah Kim](#) hahkim@shinkim.com
[Seungjun Woo](#) sjwoo@shinkim.com

Shin & Kim