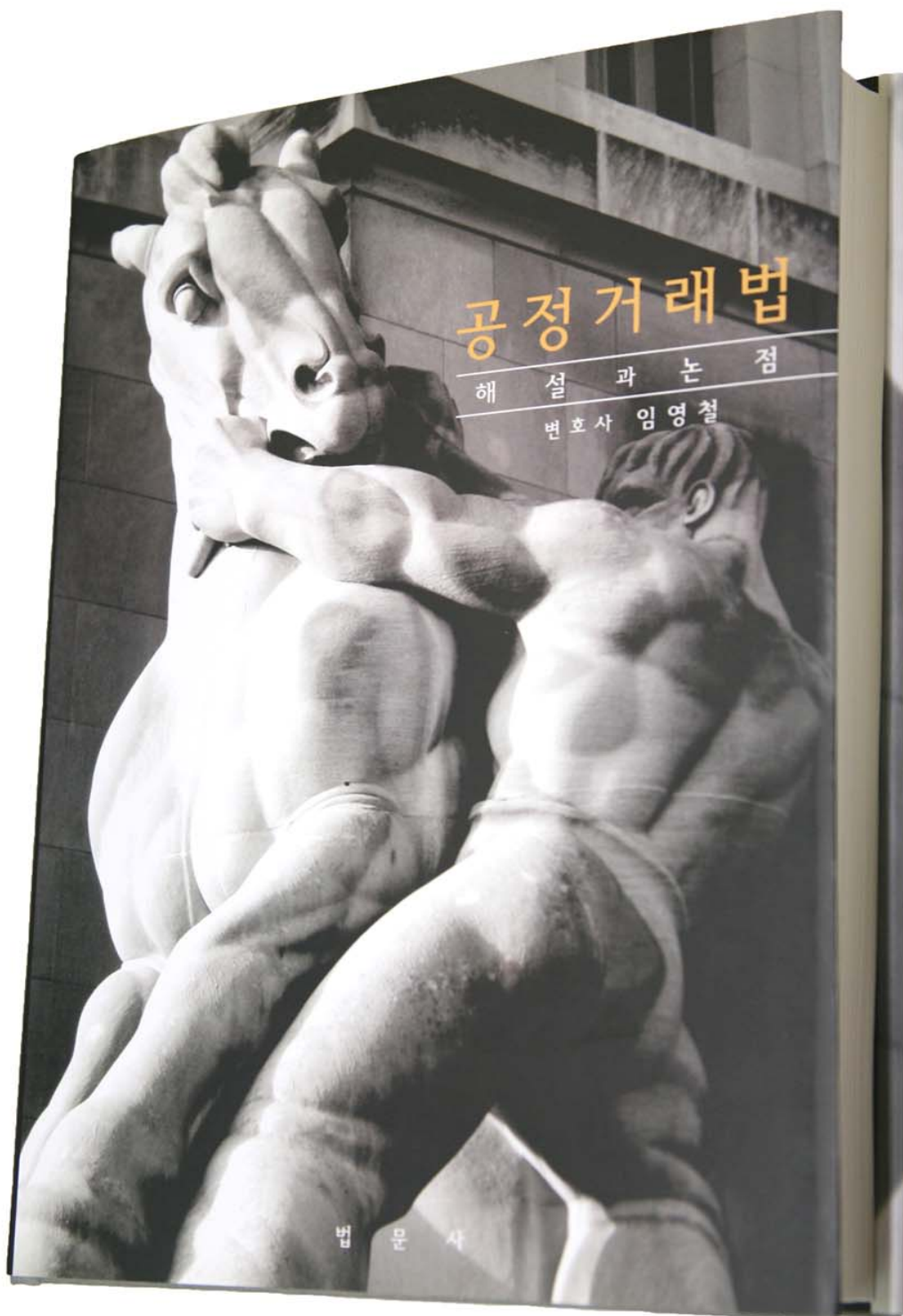






>> 약력

서울민사지방법원 판사
서울고등법원 판사
공정거래위원회
- 법무심의관
- 심판관리관
- 정책국장
- 송무기획단장
- 하도급국장
- 직장협의회가 선정한
'바람직한 公正人像'

Visiting Fellow

- Stanford Law School
- Federal Trade Commission
- Pillsbury Madison & Sutro LLP

변호사(법무법인 세종)

공정거래위원회 혁신관리자문위원

중앙인사위원회 인사정책자문위원

행정자치부 정책자문위원

방송위원회 분쟁조정위원

FOREWORD



You swerve your car to park it alongside a curb. You notice a parking sign that reads "2 HOUR PARKING FROM 8:30 AM TO 5:30 PM." You quickly glance at your watch: it is 6 p.m. Can you legally park your car at such hour of the day and, if so, for how long? Many of our fellow Korean citizens, rooted in the culture where all is prohibited that is not expressly permitted, would typically answer in the negative believing that no parking is permitted at all after the permitted 2-hour parking time. In fact, that was a common response from the Korean diplomatic officials who spent years in the United States. Interestingly, however, many of American counterparts, raised in the culture where all is permitted unless prohibited, would respond that not only is the parking permitted but also 2-hour limit does not apply because it is past 5:30 p.m. One can imagine how such chasmic difference in views would set apart the citizens of two societies in their freedom and dynamism.

A social regime under the "positive system" – a social system of a tight government control over all aspects of the society – is rarely conducive to the freedom and creative ingenuity of its citizens. Such has been the impetus behind the current consensus that the Korean social regime must discard the "positive system" in favor of the "negative system." Following the Asian financial crisis, Booz Allen & Hamilton advised that Korea should abolish all governmental agencies that implement regulatory or promotional policies in its economy, save for its competition agency whose authority and power should be bolstered. As a competition practitioner concurring with that view, I have always felt honor-bound to make a tangible contribution to Korea's competition law regime.

My full-fledged experience in the competition law started in 1996 when I resigned the judgeship of the Seoul High Court to join the Korea Fair Trade Commission – the sole competition authority in Korea – as the Director General of Legal Affairs. My six years with the Korea Fair Trade Commission, during which I had the honor and privilege of serving as the first General Counsel and the Director General of the Competition Policy Bureau as well as the Subcontract Bureau, was the period in which I have constantly surrounded myself with a myriad of questions about the roles of the competition law and the competition agency in search for the answers.

At the time, Korea's competition regime was not well-established. It was still in its incipient stage with a history shorter than two decades. Moreover, the Korean competition regime was the product of a modified adoption of the Japanese competition regime which, in turn, was the product of a modified adoption of the U.S. antitrust regime. Needless to say, such two-step process of modified adoption often led to complications in the enforcement practice. There was also much room for improvement in the procedural aspect of case handling of the Korea Fair Trade Commission considering its monumental responsibility as the sole competition authority in Korea.

My endeavours to change Korea's competition regime started during my service as the General Counsel of the Korea Fair Trade Commission when I first engaged my team of officials to research the substantive and procedural aspects of the foreign competition regimes. These collaborative efforts have produced various comparative legal studies on the foreign competition laws, including the translations of foreign legal books such as "*Comparative*

Legal Commentaries on Japanese and U.S. Antimonopoly Laws", *"Introduction to Holding Companies"*, *"Commentaries on Antimonopoly Law"* and *"Lecture on Antimonopoly Law"*, as well as some of the officers' practice guides such as *"Selected 100 Cases Under Japanese Antimonopoly Law"*, *"Collection of Cases from Japanese Fair Trade Commission"* and *"U.S. Antitrust Law Explained."*

While the efforts were not in vain, we soon realized the need for further practical insights into the case proceedings of the U.S. antitrust authorities. Hence, we solicited expertise of Mr. Se-Hoon Jung, a U.S. attorney with experience in the U.S. Federal Trade Commission, for a comprehensive research on the case proceedings and practices of the U.S. Federal Trade Commission and the U.S. Department of Justice. Mr. Jung's assistance has enabled us to gain valuable practical insights into the actual case proceedings of the U.S. antitrust authorities and to translate the U.S. Federal Trade Commission's Rules of Practice, Operating Manual and Antitrust Handbook, all of which proved to be immensely resourceful.

The officials in the Office of the General Counsel were responsible for addressing the inquiries from the working level officials of other divisions and bureaus within the Korea Fair Trade Commission. Those inquiries concerned legal interpretations of various substantive and procedural aspects of competition law issues related to the actual case handlings. While the responsibility often involved similar issues repeatedly arising in the enforcement practice, however, the accumulation of knowledge was not happening due to poor management of the work products and the turnover frequency in the office. This often caused the administrative inefficiency for the officials who had to re-examine same inquiries from the scratch. To resolve this problem, we implemented an internal office policy of designating a serial number for each incoming inquiry, indicating the name of the responsible official on each response as well as the date of such response. The copies of our responses were then circulated to the respective inquiring bureaus for their record-keeping. The compilations of these responses later led to two sequential editions of *"Competition Law Practitioner's Guides,"* which were then used for the internal use of the Korea Fair Trade Commission. The fact that their names appear on their responses to inquiries promoted the officials' sense of responsibility in their work products.

The contentious nature of the case proceedings also required revisions to afford the defendants their due process rights. These changes had to occur in ways that can elevate the accountability and competence of the reviewing Commissioners and guarantee the defendants' rights to adequate defense. Accordingly, various amendments were made to the internal procedural rules to ensure that each case will be reviewed under the accountability system of designating the Commissioner-in-charge for the case, that each reviewing Commissioner will be given adequate staff support in deciding each case, and that defendants will have guaranteed opportunity to present their defense directly to the reviewing Commissioners without having to resort to the case examiner's assistance. I reminisce this time of my life as being replete with passion and emotional rewards.

It was in 2002 when I finally decided that it was the time to leave the Korea Fair Trade Commission to make a career shift to become a competition defense lawyer. The experience of counseling the defendants has helped me to gain real world perspectives on various competition law issues and their practical implications and also has allowed me to see the issues in ways that I would not have seen from a regulator's perspective. It also helped me to realize the areas where further researches and studies are much needed. Without a doubt, it once again ignited my desire to make further contributions to Korea's competition

law practice.

It was my professional devotion and responsibility to the field of competition law that has motivated me to write this book. This book is a compilation of my past experiences and the answers to my own inquiries during the past decade of my experiences as an officer of the Korea Fair Trade Commission and a competition defense lawyer. While this book may not exhaustively discuss all possible aspects and issues under Korea's competition law, I have designed this book to be accessible by a wide range of readers – whether they may be practicing lawyers in the competition law or others who are simply intrigued by it. The commentaries you find in various parts of this book will address those critical areas of Korea's competition law that are plagued by legislative shortcomings and also shed light on how the problems can be remedied by examining the competition regimes of certain other countries where the antitrust law and its enforcement have enjoyed longer history.

The competition regime – or perhaps more specifically, the competition enforcement practice – is unlike any other regulatory areas that are commonly driven by policy motives and concerns. It is the fiercest multidisciplinary battleground where competing theories and arguments are pitted against one another under the overriding principle of promoting market competition, which the competition authorities themselves, including the Korea Fair Trade Commission, have the duty to pursue in their enforcement practices. It is a regulatory field where policy propaganda has no place. My next ambition is to publish the revised and expanded edition of this book by more thoroughly exploring and organizing the theoretical and academic aspects of all critical antitrust issues.

There are many individuals to whom I am indebted for their contributions to this book. In particular, I owe special gratitude to Mr. Sung Kuk Cho, a professor of law at Chungang University College of Law, whose encouragement and assistance has expedited the publication of this book. I also extend my personal gratitude to Mr. Joo Young Park, a Senior Deputy Director of the Korea Fair Trade Commission, whose outstanding expertise and collaborative efforts has made a solid contribution to this book. There are also many other research fellows whose priceless contributions have made the publication of the book possible. I consider it the greatest fortune of my life to meet and collaborate with all such outstanding individuals and I would be very happy if they feel the same way.

January 2007
Young Chul Yim

TABLE OF CONTENTS

<u>Chapter 1</u>	<u>Origin and Purposes of Competition Law</u>	
Section 1	History of Competition Law System	1
I.	Origin	1
II.	United States	2
III.	Japan	5
IV.	Korea	6
Section 2	Purposes of Competition Law	8
I.	Promotion of Competition	9
1.	Perfect Competition and Effective Competition	9
2.	Free Competition and Fair Competition	11
II.	Purposes Other Than Promotion of Competition	11
1.	Freedom of Trade	12
2.	Protection of Consumers	13
3.	Protection of Small and Medium-Sized Firms	14
III.	Purposes of MRFTA	16
IV.	Concluding Remark	17
 <u>Chapter 2</u>	 <u>Prohibition of Abuse of Market Dominant Position</u>	
Section 1	Concept of Dominant Enterpriser and Regulatory Intent	19
Section 2	Types of Abuse of Market Dominant Position.....	21
I.	Exploitative Abuse	21
II.	Output Control	23
III.	Impeding Other Enterprisers' Business	24
IV.	Exclusionary Abuse	27
V.	Foreclosing Competitors and Harming Consumer Welfare	27
Section 3	Presumption of Market Dominant Position	29
Section 4	Improving Monopolistic/Oligopolistic Market Condition	30
Section 5	Sanctions	31
I.	Correctional Measures	31
II.	Surcharges	33
III.	Criminal Sanctions	34
 <i>Issues:</i>		
1.	Regulatory Intent in Prohibiting Abuse of Market Dominant Position and Problems Under Current Legal System	35
2.	Regulation on Exploitative Abuses by Monopolistic Enterprisers	43

3.	Concept and Finding of Dominant Enterpriser Under MRFTA	47
----	---	----

Chapter 3 Regulation of Business Combinations

Section 1	Overview of Business Combination	51
I.	Purpose of Business Combination	51
II.	Types of Business Combination	53
1.	Levels of Trade of Combining Enterprisers	53
2.	Combining Methodology	54
Section 2	Review of Business Combination	55
I.	Overview	55
II.	Business Combination Review Procedure	57
1.	Review of Applicability of Law	57
2.	Review of Controlling Relationship	60
3.	Definition of Relevant Market	62
4.	Review of Anticompetitiveness	66
5.	Exceptions	74
III.	Prohibition on Business Combinations by Unfair Method	76
1.	Purpose	76
2.	Types of Unfair Business Combination	77
Section 3	Business Combination Report	77
I.	Reporting Criteria (Article 12 of MRFTA)	78
1.	Sizes of Combining Enterprisers	78
2.	Types of Business Combination	79
II.	Exemptions	80
1.	Business Combination for Investment or Support Under Relevant Legislation (Article 12(3) of MRFTA)	80
2.	Prior Consultation Between KFTC and Relevant Administrative Agency (Article 12(4) of MRFTA)	81
III.	Reporting Deadline	81
IV.	Duty Not to Close (Article 12(7) of MRFTA)	82
V.	Voluntary Preliminary Filing (Article 12(8) of MRFTA)	83
Section 4	Sanctions Against Violations	84
I.	Prohibition on Evasion of Law	84
II.	Correctional Measures (Article 16(1) of MRFTA)	84
III.	Suit to Unwind Business Combination (Article 16(2) of MRFTA)	87
IV.	Enforcement Surcharge (Article 17(3) of MRFTA)	88
V.	Criminal Sanctions	88
<i>Issues:</i>		
1.	Correctional Measures on Anticompetitive Business Combinations	89
2.	Anticompetitiveness of Conglomerate Mergers and Currently Effective Business	

	Combination Review Standard	97
3.	Commentary on KFTC's Decision on Business Combination Between Hite Brewery Company Limited and Jinro	103
4.	Concerned Parties' Method of Contesting KFTC Decision on Business Combination	113
5.	SSNIP Test and Critical Loss Analysis	123
6.	Comparison of Pre-Closing Merger Filings in Korea and US	131

Chapter 4 Restriction on Concentration of Economic Power

Section 1	Meaning and Harm of Concentration of Economic Power	145
I.	Meaning and Current Status of Concentration of Economic Power	145
1.	Concentration in General Economy	146
2.	Concentration in Industries	146
3.	Concentration in Ownership	147
II.	History and Characteristics of Concentration in Korean Economy	148
III.	Regulation and Harmful Effects of Economic Concentration	150
Section 2	Holding Company	152
I.	Overview	152
II.	Concept and Elements of Holding Company	153
1.	Stock or Equity Ownership	154
2.	Control of Domestic Company	154
3.	Primary Business	155
4.	Total Asset Threshold	156
III.	Report of Establishment of (Conversion into) Holding Company	156
IV.	Restricted Conducts of Holding Company (Article 8-2(2) of MRFTA)	157
1.	Debt Ratio (Article 8-2(2)(1) of MRFTA)	157
2.	Minimum Shareholdings in Subsidiaries (Article 8-2(2)(2) of MRFTA)	157
3.	No Shareholding in Other Companies (Article 8-2(2)(3) of MRFTA)	159
4.	Financial and General Holding Company (Article 8-2(1)(4) & (5) of MRFTA)	160
5.	Reporting Obligation (Article 8-2(5) of MRFTA)	161
V.	Restricted Conducts of Subsidiary (Article 8-2(3) of MRFTA)	161
1.	No Shareholding in Domestic Affiliates (Article 8-2(3)(2) of MRFTA)	161
2.	Minimum Shareholding in 2 nd -Tier Subsidiary (Article 8-2(3)(1) of MRFTA)	163
VI.	Restriction on 2 nd -Tier Subsidiary (Article 8-2(4) of MRFTA)	164
VII.	Restriction on Establishment of Subsidiary by Debt-Guarantee Restriction Conglomerate Group (Article 8-3 of MRFTA)	164
VIII.	Sanctions Against Violations	165
1.	Prohibition on Evasion of Law	165

	2.	Correctional Measures	165
	3.	Suit to Unwind Business Combination	165
	4.	Surcharges	166
	5.	Criminal Sanctions	167
Section 3		Conglomerate Groups	167
I.		Concept of Conglomerate Groups and Designated Conglomerate Groups	167
	1.	Concept of Conglomerate Groups	167
	2.	Designation of Conglomerate Groups	169
	3.	Inclusion/Exclusion of Affiliates; Exceptional Exclusion from Conglomerate Group; Exemption from Designation	171
II.		Cross-Shareholding Restriction	183
	1.	Regulatory Target and Provisions	183
	2.	Exceptions	184
	3.	Sanctions Against Violations	184
	4.	Prohibition on Small and Medium Sized Firm Investment Company's Share Acquisition in Domestic Affiliates	185
III.		Total Investment Amount Restriction	187
	1.	Regulatory Target and Provisions	187
	2.	Exemptions and Exceptions	188
	3.	Sanctions Against Violations	196
IV.		Debt-Guarantee Restriction	199
	1.	Regulatory Target and Provisions	199
	2.	Exemptions and Exceptions	200
	3.	Sanctions Against Violations	202
V.		Restriction on Voting Rights of Financial and Insurance Companies	202
	1.	Overview	202
	2.	Exceptions	203
	3.	Sanctions Against Violations	204
VI.		Other Regulations on Conglomerate Groups Under MRFTA	204
	1.	Notification and Board Resolution on Internal Dealings	204
	2.	Notification of Non-Listed Companies	204
VII.		Reporting Obligation, Document Request, Prohibition on Evasion of Law	207

Chapter 5 Unfair Concerted Actions

Section 1		Meaning of Unfair Concerted Actions	209
I.		Concept	209
II.		Grounds for Regulating Unfair Concerted Actions	210
III.		Historical Changes in Regulations on Unfair Concerted Actions	210
Section 2		Elements of Unfair Concerted Actions (Article 19(1) of MRFTA)	211
I.		Participants: Two or More Enterprisers	212
II.		Agreement	213
	1.	Concept and Scope of Agreement	213

	2. Method of Proving Agreement	215
III.	Anticompetitiveness	219
Section 3	Types of Unfair Concerted Actions	222
I.	Price-Fixing (Article 19(1)(1) of MRFTA)	222
	1. Concept	222
	2. Specific Types	224
	3. Cases	224
II.	Fixing of Trade Terms (Article 19(1)(2) of MRFTA)	225
	1. Concept	225
	2. Specific Types	225
	3. Cases	226
III.	Supply Restriction (Article 19(1)(3) of MRFTA)	226
	1. Concept	226
	2. Specific Types	226
	3. Cases	227
IV.	Division of Markets (Article 19(1)(4) of MRFTA)	228
	1. Concept	228
	2. Specific Types	228
	3. Cases	228
V.	Business Facility Restriction (Article 19(1)(5) of MRFTA)	229
	1. Concept	229
	2. Specific Types	230
VI.	Product Standard/Size Restriction (Article 19(1)(6) of MRFTA)	230
	1. Concept	230
	2. Specific Types	230
	3. Cases	231
VII.	Business Management (Article 19(1)(7) of MRFTA)	231
	1. Concept	231
	2. Specific Types	232
	3. Cases	233
VIII.	Other Managerial Interference (Article 19(1)(8) of MRFTA)	233
	1. Concept	233
	2. Specific Types	234
Section 4	Approval of Concerted Actions (Article 19(2) of MRFTA)	236
I.	Approval Requirements	236
	1. Industry Rationalization	236
	2. R&D and Technology Development	237
	3. Overcoming Economic Downturn	237
	4. Industrial Reorganization	238
	5. Rationalization of Trade Terms	238
	6. Improving Competitiveness of Small and Medium Sized Firms	238
II.	Disqualifying Criteria in Approval of Concerted Actions	239
III.	Approval Procedures	239

Section 5	Mechanism for Detecting Unfair Concerted Actions	240
I.	Awards for Reporting Unfair Concerted Actions	240
II.	Leniency Program	241
1.	Overview	241
2.	Leniency Program	242
3.	Confidentiality	248
Section 6	Trade Customs Conducive to Cartels	248
I.	Standardization of Trade Terms	249
II.	Lowest Price Guarantee	249
Section 7	Effects of Unfair Concerted Actions and Sanctions	250
I.	Legal Effects of Unfair Concerted Actions	250
II.	Sanctions Against Violations	250
1.	Correctional Measures	250
2.	Prohibition from Bid Participation	250
3.	Surcharge	251
4.	Criminal Sanctions	254
<i>Issues:</i>		
1.	Presumed Consent in Unfair Concerted Actions and Related Issues	255
2.	Measuring the Period of Unfair Concerted Action	272
3.	Gravity of Cartels and Level of Sanctions	282
4.	Limits of Leniency Programs and Conditions for its Success	292
 <u>Chapter 6</u>	 <u>Unfair Trade Practice</u>	
Section 1	Overview of Unfair Trade Practice	296
I.	Legislative History	296
II.	Regulatory System	298
III.	Criteria in Finding an Unfair Trade Practice	299
1.	"Likelihood of Impeding Fair Trade" and "Anticompetitiveness"	300
2.	"Likely to Impede Fair Trade" and "Unfairly"	302
3.	"Unfairly" and "Without Justification"	303
Section 2	General Categories of Unfair Trade Practice	305
I.	Refusal to Deal (first half of Article 23(1)(1) of MRFTA)	305
1.	Group Boycott	306
2.	Unilateral Refusal to Deal	308
II.	Discriminatory Treatment (latter half of Article 23(1)(1) of MRFTA)	309
1.	Discriminatory Pricing	309
2.	Discriminatory Trading Terms	312
3.	Discrimination Favoring Affiliates	313
4.	Group Discrimination	316
III.	Foreclosure of Competitors (Article 23(1)(2) of MRFTA)	316
1.	Unfair Predatory Pricing	317

	2. Unfair High Price Purchase	322
IV.	Unfair Customer Inducement (first half of Article 23(1)(3) of MRFTA)	323
	1. Customer Inducement via Unfair Benefits	324
	2. Customer Inducement via Deceit/Fraud	326
	3. Other Unfair Customer Inducement	328
V.	Coercive Dealing (latter half of Article 23(1)(3) of MRFTA)	329
	1. Tie-in Sale	330
	2. Employee Sale	332
	3. Other Coercive Dealing	335
VI.	Abuse of Superior Trading Position (Article 23(1)(4) of MRFTA)	337
	1. Coercive Sale	339
	2. Coercively Extracting Economic Benefits	340
	3. Imposing Sales Target	341
	4. Imposing Detriments	342
	5. Managerial Interference	345
VII.	Exclusive Dealing (first half of Article 23(1)(5) of MRFTA)	346
	1. Exclusive Dealing	348
	2. Restraint on Areas or Counterparties of Trading	351
VIII.	Managerial Interference (latter half of Article 23(1)(5) of MRFTA)	354
	1. Unfair Use of Technology	355
	2. Unfair Inducement/Hiring of Workforce	356
	3. Interfering with Trading Counterparties' Dealings with Others	357
	4. Other Managerial Interference	358
IX.	Unfair Cash/Asset/Workforce Support (Article 23(1)(7) of MRFTA)	359
	1. Types of Unfair Support	360
	2. Elements of Unfair Support	362
	3. Board Resolution and Public Notification on Inter-Affiliate Trade	370
Section 3	Special Categories of Unfair Trade Practice	372
I.	Unfair Trade Practice via Consumer Gifts Offering	372
	1. Overview	372
	2. Concepts and Types of Consumer Gifts	372
	3. Prohibited Conducts	374
II.	Unfair Trade Practices of Large Retailers	378
	1. Overview	378
	2. Concepts (Article 2 of Retailer Notification)	379
	3. Prohibited Conducts	379
III.	Unfair Trade Practice of Impeding Parallel Imports	383
	1. Overview	383
	2. Prohibited Conducts	384
IV.	Unfair Trade Practice of Newspaper Publishers	387
	1. Overview	387
	2. Concepts (Article 2 of Newspaper Notification)	387
	3. Prohibited Conducts	388
	4. Enterprisers Associations' Fair Competition Agreement	392

Section 4	Sanctions Against Violations	392
<u>Chapter 7</u>	<u>Prohibited Conducts of Enterprisers' Associations</u>	
Section 1	Concept of Enterprisers' Associations and Regulatory Background	395
I.	Concept of Enterprisers' Associations	395
II.	Regulatory Background	396
Section 2	Prohibited Conducts of Enterprisers' Associations	397
I.	Unfairly Restraining Competition	397
II.	Limiting Number of Enterprisers	402
III.	Restraining Business Activities of its Members	404
IV.	Causing or Aiding Unfair Trade Practice or Resale Price Maintenance	407
Section 3	Other Related Matters	410
I.	Enterprisers Association Conduct Guidelines	410
II.	Exceptions to Prohibited Conducts of Enterprisers Association	410
III.	Sanctions against Violations	411
<u>Chapter 8</u>	<u>Resale Price Maintenance</u>	
Section 1	Meaning of Resale Price Maintenance	412
I.	Concept	412
II.	Motives Behind Resale Price Maintenance	413
1.	Prevention of Free-Rider Problem	413
2.	Prevention of Harm to Product Image	413
3.	Secure Profits for Distributors	413
4.	Sales Promotion	414
Section 2	Regulations on Resale Price Maintenance	414
I.	Development of US Case Law	414
II.	Regulation of Resale Price Maintenance Under MRFTA	417
1.	Principles	417
2.	Exceptions	418
Section 3	Conducts Similar to Resale Price Maintenance	420
I.	Consignment Sales Agreement	420
II.	Unilateral Refusal to Deal	422
Section 4	Sanctions Against Resale Price Maintenance	422
<u>Chapter 9</u>	<u>Prohibition of Unfair International Contracts</u>	

Section 1	Concept of Unfair International Contract and Regulatory Intent	424
Section 2	Types of Unfair International Contract	426
I.	Industrial Property Rights / Copyrights / Know-How Transfer Contract	427
II.	Franchise Contract	429
III.	Joint R&D Contract	431
IV.	Import Agency Contract	431
V.	Joint Venture Contract	433
Section 3	Review of International Contracts	433
Section 4	Sanctions Against Execution of Unfair International Contracts	434

Chapter 10 Korea Fair Trade Commission

Section 1	Characteristics of Korea Fair Trade Commission	436
I.	Independent Regulatory Agency	436
II.	Quasi-Judicial Agency	438
Section 2	Organization and Composition of Korea Fair Trade Commission	440
I.	Establishment and Authority	440
II.	Composition	441
III.	Meetings	443
IV.	Secretariat	446
<i>Issues:</i>		
1.	Independence of KFTC – Principles and Purposes of its Organization	449
2.	Harmonization of Constitutional Due Process and Independent Regulatory Body	453

Chapter 11 Case Proceeding

Section 1	Suspicion of Illegality	465
I.	Legal Characteristics of Complaint	465
II.	Discretionary Processing of Reported Illegality	467
Section 2	Investigation	469
I.	KFTC Investigatory Power	470
II.	Post-Investigation Process	473
Section 3	Case Review	477
I.	Introduction	477
II.	Details on Case Review Process	478
1.	Examiner's Report (Internal Submission and Delivery to Defendants)	478
2.	Designation of Commissioner-in-charge and Initial Review	479
3.	Request for Perusal/Copying of Attachments to Examiner's Report	479
4.	Pre-Hearing Process	480
5.	Submission for Hearing	481

	6. Hearing Proceeding	482
Section 4	Decision	485
I.	Introduction	485
II.	Legal Effects of KFTC Decision	486
	1. Binding as Administrative Disposition	486
	2. Perpetually Binding	487
Section 5	Contesting KFTC Decision	488
I.	Appeal	488
	1. Characteristics of Appeals System	488
	2. Subject of Appeal	489
	3. Filing of Appeal and KFTC Decision on Appeal	490
	4. Stay of Execution	491
II.	Administrative Action	492
Section 6	Surcharges	495
I.	Legal Characteristics of Surcharges Under MRFTA	495
II.	Imposition and Collection of Surcharges	497
	1. General Guidelines on Imposition of Surcharges	497
	2. Special Guidelines re Corporate Divestiture and Merger	499
	3. Installment Payment and Extension on Payment of Surcharges	500
	4. Late Payment Surcharges; Defaults; Refunds	501
Section 7	Compensatory Damages	503
I.	Overview	503
II.	Elements of Compensatory Damage Claim Under MRFTA	504
	1. Party	504
	2. Illegality	504
	3. Sustaining of Damages and Damages Amount	506
	4. Cause-Effect Relationship	507
	5. Intentional Misconduct/Negligence	508
	6. Non-Requirement of Correctional Measure	509
	7. Statute of Limitation	509
	8. Antitrust Damage Claim vis-à-vis Civil Tort Damage Claim	509
III.	Forwarding of Case Records	510
Section 8	Sanctions	510
I.	Criminal Sanctions	510
	1. Criminal Sanctions Under MRFTA	510
	2. Penalty Against Employer and Employee	512
	3. Exclusive Authority to Bring Criminal Accusation	514
II.	Penalties	516
<i>Issues:</i>		
	1. KFTC's Exclusive Right to Bring Criminal Accusation Under MRFTA	517
	2. Strengthening KFTC's Investigatory Authority	528

3.	Desirable Framework for KFTC Evidentiary Investigations	535
----	---	-----

Chapter 12 Exemptions

Section 1	Exemptions	539
I.	Introduction	539
II.	Subjects of Exemptions	540
1.	Conducts Justified Under Relevant Laws	540
2.	Exercise of Intangible Property Rights	541
3.	Conducts of Certain Qualifying Associations	542
Section 2	Supplemental Provisions	543
I.	Confidentiality Duty	543
II.	Prior Consultation re Enactment of Anticompetitive Legislations	543
III.	Inter-Agency Cooperative Enforcement	544
IV.	Delegation of Authority	544

Thesis:

Constitutional Assessment of Prohibition of Unfair Support

Table of Cases	585
----------------------	-----

Index	589
-------------	-----