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The International Comparative Legal Guide to:

Merger Control 2018

14th Edition

A practical cross-border insight into merger control issues

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the fourteenth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Three general chapters. These chapters are designed to provide readers with an overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control laws and regulations in 44 jurisdictions.

All chapters are written by leading merger control lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Nigel Parr of Ashurst LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The Korea Fair Trade Commission ("**KFTC**") is the authority that enforces the Monopoly Regulation and Fair Trade Act of Korea ("**MRFTA**"). The KFTC's responsibility includes merger control.

The KFTC's Mergers and Acquisitions Division ("**M&A Division**") is in charge of reviewing mergers. Merger notifications are submitted to the M&A Division. For a merger where there is no concern of anti-competitiveness, the M&A Division makes the final decision about whether to grant clearance or prohibit the merger.

For a merger where the M&A Division determines there is a concern of anti-competitiveness, nine Commissioners of the KFTC, including the Chairman and Vice Chairman, decide on the clearance, including imposition of remedial orders.

1.2 What is the merger legislation?

Articles 7 and 12 of the MRFTA address "business combination". The Enforcement Decree of the MRFTA contains provisions that supplement the MRFTA.

In addition, the KFTC, as the enforcement authority of the MRFTA, provides the following guidelines and standards for merger control.

- Guidelines for Notification of Business Combination.
- Guidelines for Review of Business Combination.
- Guidelines for Imposition of Administrative Fine for Violation of Business Combination Notification Provisions.
- Guidelines for Remedies on Business Combination.
- Standard for Imposing Surcharge to Compel Compliance with Remedies on Business Combination.

1.3 Is there any other relevant legislation for foreign mergers?

Pursuant to the Foreign Exchange Transaction Act and the Foreign Investment Promotion Act, a notification obligation may arise when a foreign company acquires an interest in a Korean company.

1.4 Is there any other relevant legislation for mergers in particular sectors?

Pursuant to the Telecommunications Business Act, the Act on Structural Improvement of Financial Industry, and the Financial Holding Companies Act, for a merger in the telecommunications sector or the finance sector, there are cases where a notification must be submitted to the Korea Communication Commission or the Financial Supervisory Commission for review.

In the review process, the Korea Communication Commission and the Financial Supervisory Commission must consult with the KFTC regarding whether the merger restricts competition. If the relevant organisation has consulted with the KFTC, a separate notification to the KFTC is not required.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

Under Article 7(1) of the MRFTA, the following types of transactions constitute business combinations that are subject to notification:

- acquisition of 20% or more (or 15% or more in the case of domestic listed companies) of the total voting shares of another company;
- acquisition of additional shares by a shareholder who already owns 20% or more (or 15% or more in the case of domestic listed companies) of the total voting shares of another company and becomes the largest shareholder of such company through the acquisition;
- participation as the largest shareholder in the establishment of a new joint venture company;
- acquisition of all or a material part of the target company's business or fixed assets;
- statutory merger with another company; and
- interlocking directorate, that is, a director or an employee of one company concurrently holds a position as a registered director of another company (interlocking directorate between affiliates are excluded).

Meanwhile, control is not a factor that is considered in determining whether a notification is required (see answer to question 2.2 below). However, control is a factor that is considered in determining whether anti-competitiveness exists. That is, a business combination that does not involve acquisition of control in principle is assumed as not anticompetitive, and a simplified review process applies (see answer to question 3.9 below).

In a share acquisition transaction, acquisition of 50% or more of shares is presumed as acquiring control, and even where there is acquisition of less than 50% of shares, if substantive influence can

be exercised over the management of the target company, then it can be presumed as having acquired control.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Yes. Acquisition of a minority shareholding will constitute a "business combination" if it falls under the definition of business combination under the MRFTA.

2.3 Are joint ventures subject to merger control?

Yes, establishment of a joint venture company is subject to merger control if the thresholds in the MRFTA are met.

2.4 What are the jurisdictional thresholds for application of merger control?

A transaction is subject to notification if it is a business combination explained in the answer to question 2.1 above and meets the following threshold: a party to the transaction has total global assets or total global turnover (including those of its affiliates) equal to or greater than KRW 200 billion (approximately EUR 156 million, USD 172 million) during the immediately preceding business year, and the other party to the transaction has total global assets or total global turnover (including those of its affiliates) equal to or greater than KRW 20 billion (approximately EUR 15.6 million, USD 17.2 million) during the immediately preceding business year.

The total assets or total turnover is calculated by adding the total assets or total turnover of companies that maintain the status of an affiliate before and after the transaction. However, in a business transfer, when calculating the total assets or total turnover of the company that is transferring the assets, the total assets or total turnover of an affiliate is not added.

In the case of a foreign-to-foreign merger or Korean-to-foreign merger, the following requirement must additionally be met (it does not apply to a foreign company's acquisition of a Korean company): The Korean turnover of each of the two foreign companies in a foreign-to-foreign merger and the Korean turnover of the target foreign company in a Korean-to-foreign merger (including turnover of affiliates) is equal to or greater than KRW 20 billion (approximately EUR 15.6 million, USD 17.2 million).

According to the amendment to the Enforcement Decree of the MRFTA set to become effective October 19, 2017, the assets and turnover thresholds (including the threshold for Korean turnover) have been increased from KRW 200 billion and KRW 20 billion to KRW 300 billion (approximately EUR 234 million, USD 259 million) and KRW 30 billion (approximately EUR 23.4 million, USD 25.9 million) respectively. If the amendment takes effect as planned, the new thresholds will apply to transactions for which definitive agreements are entered into on or after October 19, 2017.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes. Regardless of whether there is substantive overlap, if the thresholds in the answer to question 2.4 above are met, then the transaction is subject to notification. The absence of a substantive overlap is a factor that is considered when making a determination about anti-competiveness.

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

Even foreign-to-foreign transactions are subject to notification when the thresholds in the MRFTA are met. For specific notification thresholds applied in foreign-to-foreign transactions, see the answer to question 2.4 above.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

Even if the jurisdictional thresholds in the answer to question 2.4 above are met, there are cases where there is an exemption from the notification obligation under the MRFTA. However, because such exemptions are related to business combinations of special companies that have been established pursuant to the laws of Korea, the possibility of those exemptions applying to foreign-to-foreign mergers or foreign-to-Korean mergers is low. Therefore, those exemptions are not discussed here.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

In principle, for a merger that takes place in stages, a determination about whether there is a notification obligation must be made for each transaction in the series.

However, (i) where there is a resale immediately after the acquisition of the shares or a resale during the notification period, or (ii) where two or more mergers arise from one agreement, it is possible to submit a notification for only the main transaction. In these cases, the whole transaction must be specifically explained in detail in the notification.

Accordingly, there is a need to review whether a notification is needed for each stage of the transaction in advance when structuring a transaction that takes place in stages.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Where the thresholds are met, notification is compulsory.

Pre-closing notification is required where one or more of the parties to the merger are large scale corporations with total global assets or total global turnover (including those of its affiliates) equal to or greater than KRW 2 trillion (approximately EUR 1,558 million, USD 1,725 million) as of the immediately preceding business year. In this case, the transaction may not be closed without the approval of the KFTC, but there is no deadline for the pre-closing notification itself (e.g., there is no requirement that the pre-closing notification be submitted within a certain period of signing the agreement).

In the case of a transaction that is subject to post-closing notification, the MRFTA requires the notification within 30 days from the closing date.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

There is no mechanism through which a transaction that is subject to pre-closing notification can be completed without the KFTC's approval.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

An administrative fine of up to KRW 100 million (approximately EUR 78 thousand, USD 86 thousand) may be imposed if there is a failure to file or if there are misrepresentations in a required notification. The Guidelines for Imposition of Administrative Fine for Violation of Business Combination Report Provisions addresses the calculation mechanism for an administrative fine in detail.

If the business combination for which a notification was filed is found to be anticompetitive under the MRFTA, the KFTC may require disposal of shares, etc., even after the closing of the transaction.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

The KFTC has taken a negative position regarding carving out the local transaction and completing the rest of the transactions.

3.5 At what stage in the transaction timetable can the notification be filed?

In the case of a pre-closing notification, the notification can be filed after the execution of the binding transaction agreement.

Regarding this, a voluntary pre-merger notification can be filed before a binding transaction agreement is concluded if the parties can demonstrate to the KFTC their intention to enter into an agreement, for example, based on a memorandum of understanding, a letter of intent or a draft of transaction agreement. A voluntary pre-merger notification is not a formal merger filing but a request to the KFTC to conduct a preliminary review of the proposed transaction in advance. In other words, even if a voluntary pre-merger notification was submitted to the KFTC and the KFTC issued a preliminary clearance, a formal filing needs to be submitted again after the parties enter into a definitive transaction agreement. The main advantages of obtaining the KFTC's preliminary clearance through the voluntary pre-merger notification would be (i) obtaining a certain level of assurance in advance that the proposed transaction would not be subject to any major antitrust issues or restrictions in Korea and (ii) obtaining the KFTC's official clearance on an expedited basis (generally within two weeks) with respect to the formal filing subsequently submitted after signing of a definitive agreement.

In the case of a post-closing notification, the MRFTA requires the post-closing notification to be filed within 30 days from the closing date.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The initial review period is 30 calendar days from the date of filing the notification, but the KFTC may extend it by an additional 90 calendar days, if necessary. Even in a case where there is no restriction of competition, it is not rare for the case handler to extend the review period for reasons unrelated to anticompetitive effect, such as the case handler's workload, etc. When the review period is extended, the KFTC simply gives a notice of extension without issuing any formal decision.

If the KFTC issues a request for additional information, the review period will be suspended until the submission of all requested information.

If the M&A Division determines there is no anti-competitiveness after review, it will issue the notice of approval within the review period, and the review process ends.

If the M&A Division determines after its review that anti-competitiveness exists and plans to prohibit the transaction or issue an order with a behavioural or structural remedy, the M&A Division will prepare an Examiner's Report based on its review and submit the issue to the Commission. The parties can submit opinions regarding the Examiner's Report. The Commission will hold a hearing and deliberate before making an ultimate decision and notifying the parties.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

Yes. In the case of a pre-closing notification, closing the transaction before the KFTC's clearance is prohibited. Even if the 30-day review period above in the answer to question 3.6 passes, it is not regarded as automatic clearance, and the parties may not close the transaction before the KFTC grants clearance.

If there is closing before the KFTC's clearance, the risks explained in the answer to question 3.3 apply.

3.8 Where notification is required, is there a prescribed format?

A notification must be submitted in accordance with the prescribed format for each type of merger. The prescribed formats are attached to the Guidelines for Notification of Business Combination as annexes. The party with the notification obligation must follow the prescribed format when submitting the notification with the required information and relevant documents (e.g., copy of the agreements, minutes of the meeting, certificate of incorporation, business/financial report, etc.).

3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

According to the Guidelines for Review of Business Combination, a transaction may qualify for simplified review in case of (i) an intragroup transaction, (ii) a transaction which does not involve acquisition of control, (iii) a conglomerate merger of companies with total assets or total turnover of less than KRW 2 trillion (approximately EUR 1,558 million, USD 1,725 million), or (iv) a conglomerate merger which does not involve any overlap or relevance among the respective products of the parties. A merger qualified for simplified review will be granted clearance from the KFTC within 15 days from the date of the merger filing in principle.

According to the Guidelines for Notification of Business Combination, the simplified notification form may be used in

the following circumstances: (i) an intragroup transaction; (ii) interlocking directorate where the number of interlocking directors in the counterpart company is less than one third of the total number of directors in the counterpart company (provided, however, this does not apply where the representative director concurrently holds office in the counterpart company); and (iii) establishment of special investment purpose vehicle of a special type under Korean law. There is a need to note that the subjects to which the simplified review process above applies and the subjects that may use the simplified notification form differ slightly.

Meanwhile, it is possible to shorten the review period by reporting to the KFTC before signing the transaction agreement through the voluntary pre-merger notification (see the answer to question 3.5 above).

If the reason is explained well to the KFTC why closing is absolutely necessary by a certain time, there are cases where the KFTC respects this and processes the case quickly, but this method is not always effective.

3.10 Who is responsible for making the notification?

The acquiring company is responsible for submitting the notification to the KFTC. However, please note that if a transaction vehicle is used, the substantive acquiring company does not bear the notification obligation, and the transaction vehicle, which is the direct acquiring entity, bears the notification obligation.

When a joint venture company is established, the largest shareholder is responsible for submitting the notification.

3.11 Are there any fees in relation to merger control?

There are no fees for filing the notification.

3.12 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

In an acquisition of shares through a public offer, even if one of the parties to the transaction is a large scale corporation with total global assets or total global turnover (including those of its affiliates) equal to or greater that KRW 2 trillion (approximately EUR 1,558 million, USD 1,725 million) as of the immediate preceding business year, the transaction is subject to post-closing notification. This exception does not apply to all public offers under foreign laws, and the exception applies only to a public offer that is recognised as being similar to a tender offer under Korean law.

3.13 Will the notification be published?

The KFTC does not publish all or a part of the notification.

If the transaction is prohibited or if the KFTC imposes remedies, then the KFTC decision regarding the notification is published. Even if the KFTC issues an unconditional clearance, there are cases where the KFTC will distribute a press release regarding the KFTC's clearance, which happens rarely in a case where the transaction is very important in the Korean markets.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

According to Article 7(4) of the MRFTA, a horizontal merger between competitors is presumed to be anticompetitive when all of the following conditions are met: (i) the combined entity has a market share of 50% or more (or the top three market players, including the combined entity, have an aggregate market share of 75% or more); (ii) the collective market share of the combined entity is the largest in the relevant market; and (iii) the market share difference between the combined entity and the second largest company in the of market share is equal to or greater than 25% of the collective market share of the combined entity. If a merger is presumed to be anticompetitive because the conditions above are met, the relevant parties must argue that the merger will actually not be anticompetitive. If the KFTC does not accept such argument, the KFTC will likely prohibit the merger or will impose remedial measures on the parties.

Pursuant to the Guidelines for Review of Business Combination, a horizontal merger between competitors is presumed not to be anticompetitive in the following cases: (i) the Herfindahl-Hirschman Index ("**HHI**") of the relevant market is less than 1,200; (ii) the HHI of the relevant market is more than 1,200 and less than 2,500 and an increase in such HHI as result of the proposed merger is less than 250; or (iii) the HHI of the relevant market is more than 2,500 and the increase in such HHI as result of the proposed merger is less than 150. If a merger falls under a "safe harbour" based on its HHI value, the likelihood that the KFTC will end its review without raising any particular issues with respect to anti-competitiveness is significantly high.

If whether a merger will be anticompetitive cannot be clearly determined based on the two types of analysis above, the KFTC will then review and determine whether a contemplated transaction is anti-competitive based primarily on the following factors: (1) whether the combined entity can unilaterally increase prices ("Unilateral Effects"); and (2) whether a possibility that concerted practices may occur will increase after the closing of the transaction ("Coordinated Effects"). The possibility that the KFTC will find that the transaction is anticompetitive will be lower if the entry barrier for new market players is low, there are markets for similar or adjacent products, or if the buyer has a strong bargaining power.

Whether a merger is presumed to be anticompetitive under Article 7(4) of the MRFTA may be determined upon commencement of the merger review by the KFTC. However, other factors will need to be evaluated to determine whether a merger will be anticompetitive. Thus, the presumption of anti-competitiveness above may be rebutted if it can be proved that the contemplated transaction does not give rise to Unilateral Effects and Coordinated Effects in the relevant markets. The KFTC is known to have accepted such a rebuttal in a number of cases.

4.2 To what extent are efficiency considerations taken into account?

Even if anti-competitiveness is recognised, if the party to the transaction proves that the efficiency enhancing effect is greater than anticompetitive harm, the merger may be permitted exceptionally. However, there are almost no cases where the KFTC permitted an anticompetitive business combination exceptionally on grounds that there was an efficiency enhancing effect.

4.3 Are non-competition issues taken into account in assessing the merger?

The KFTC does not consider non-competition issues and public interest when assessing mergers. The KFTC's review is generally based on objective standards, and an important factor considered by the KFTC is the likelihood of the transaction having an anti-competitive effect on the relevant market in Korea. The KFTC decision is generally not influenced by politics, but the KFTC does try to protect small and medium sized local enterprises and consumers. In addition, our understanding is that the KFTC reviews foreign mergers that have a major effect on Korea's industry more thoroughly.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

When the KFTC recognises that it is necessary, it can consider the opinions of interested parties. In the case of a merger that has anti-competitiveness concerns, the KFTC often inquires about opinions of third parties (i.e., competitors, customers, suppliers, and experts), and the KFTC generally respects these opinions. In addition, as part of the review, the KFTC sometimes has such third parties attend a hearing and present their opinions at the hearing.

4.5 What information gathering powers does the merger authority enjoy in relation to the scrutiny of a merger?

If the notification or its attachments are incomplete or inadequate, the KFTC can order supplementation of materials within a certain period of time. If the relevant party does not submit the materials without good reason or submits false materials, an administrative fine of up to KRW 100 million (approximately EUR 77,900, USD 86,228) may be imposed. Furthermore, until the KFTC receives the supplemented materials, the review period is suspended. Therefore, through the provision above, the KFTC may directly and indirectly compel submission of necessary materials.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

There is no specific provision in the MRFTA, but even if the relevant party has not made a request, the KFTC considers the notification and submitted documents as business secrets and does not disclose them publicly. Even if the KFTC decision is published because the transaction is prohibited or subject to remedies, all sensitive information is deleted if there is a request from the relevant party before the KFTC decision is disclosed publicly.

If an interested party requests access or copying of materials, the KFTC provides the materials when there is consent from the relevant party or when the KFTC acknowledges that access and copying is highly necessary in terms of public interest.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Please refer to the explanation about the regulatory process in the answer to question 3.6. The KFTC will issue a written notice of its decision. Unless the merger is prohibited or cleared with conditions, the KFTC does not publish or publicly announce the notice of clearance in principle.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Yes. It is possible, and from our experience, the parties can propose and negotiate the remedies at any time before the KFTC holds a hearing and makes its decision. The KFTC will review the proposed remedies submitted by the notifying parties, and if the KFTC determines they are insufficient for eliminating all of the concerns regarding competition, the KFTC may request the parties to revise or supplement the proposed remedies. This is not an official process, and it happens through unofficial negotiation between the parties and the M&A Division.

In addition, the MRFTA officially provides for the consent decree process. Under the consent decree process, the parties can submit proposed remedies to the KFTC for the voluntary resolution of anti-competitiveness, and when the KFTC determines the proposed remedies are adequate, the KFTC can make a decision that is the same as the consent decree applicant's proposed remedies or revise the remedies by discussing with the consent decree applicant.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

In foreign-to-foreign mergers, the KFTC has imposed both behavioural and structural remedies. The KFTC imposes remedies in foreign-to-foreign mergers applying the same standard used for other mergers.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

The parties may submit proposed remedies or an application for commencement of the consent decree process before the KFTC hold a hearing and makes a decision. It is possible to discuss the remedies even after the case handler presents a negative opinion regarding the merger (see the answer to question 5.2).

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

Yes. Regarding the divestment remedy, the Guidelines for Remedies on Business Combination specifically addresses the assets that are subject to divestment, the buyer in the divestment transaction, the divestment agreement, the time period for performing the divestment remedy, and the accompanying obligations, etc.

Particularly, when the parties that receive the divestiture order select the buyer in the divestment transaction, they should reach an agreement with the KFTC in advance. The time period for performing the divestment remedy is, in principle, within three to six months, but it can be extended one time when necessary for an additional three to six months. To receive such an extension, a party must prove that it tried its best to divest within the initial period.

5.6 Can the parties complete the merger before the remedies have been complied with?

Yes. Under the MRFTA, the KFTC cannot impose the so-called "fix-it-first" remedy or the "up-front buyer" remedy. That is, the KFTC can only order the divestment of assets within a certain period of time from the date that the remedies are imposed (see the answer to question 5.5 above), and the KFTC cannot demand that divestment be completed or that the transaction agreement for divestment be executed before the KFTC approves the transaction.

5.7 How are any negotiated remedies enforced?

The KFTC can have the parties report performance of the remedies, and the KFTC can take necessary measures to check whether the remedies are being performed, such as issuing a request for information and conducting on-site investigations.

In case the remedies are not performed within the time period given, a charge to compel performance may be imposed that does not exceed 0.003% of the total transaction amount for every day there is delay.

5.8 Will a clearance decision cover ancillary restrictions?

There are no provisions on this issue under the MRFTA, and there are no KFTC precedents. Accordingly, even if the restrictions are directly related to and necessary for the business combination, a clearance decision for the business combination does not mean approval of the restrictions as lawful. Accordingly, the possibility cannot be completely excluded that a department other than the KFTC's M&A Division (e.g., Cartel Division) will raise an issue later regarding whether the ancillary restrictions are lawful.

5.9 Can a decision on merger clearance be appealed?

One way the parties can appeal the KFTC decision is by requesting reconsideration by the KFTC under Article 53 of the MRFTA. The KFTC will hold a hearing again, but the realistic possibility of the KFTC reversing its previous decision is not high.

Another way the parties can appeal the KFTC decision is to appeal the KFTC decision to the Seoul High Court.

In principle, a third party cannot appeal to the KFTC or the Seoul High Court. However, according to a recent decision by the Constitutional Court of Korea, if a third party wishes to argue about the KFTC's decision, the third party may submit a constitutional complaint to the Constitutional Court of Korea.

5.10 What is the time limit for any appeal?

If the party appealing the KFTC decision appeals to the KFTC itself, that appeal must be filed within 30 days of receiving notice of the KFTC's measures. If the party appealing the KFTC decision submits a complaint to the Seoul High Court, the complaint must be filed within 30 days of receipt of the notice of the KFTC's measures or receipt of the official copy of the KFTC's decision after reconsideration by the KFTC regarding the appeal.

5.11 Is there a time limit for enforcement of merger control legislation?

Even if the business combination notification obligation was not carried out, the KFTC may not impose an administrative fine if five years has passed from the date of the violation.

Even if a merger is later determined to be anticompetitive, if seven years has passed from the closing date, then the KFTC may no longer impose remedial measures.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

The KFTC has been actively cooperating with foreign competition authorities in reviewing business combinations of global companies. Most recently in April 2017, the KFTC imposed structural remedies on the merger between The Dow Chemical Company and E. I. du Pont de Nemours and Company through discussions with competition authorities in the US, Japan, and others.

6.2 Are there any proposals for reform of the merger control regime in your jurisdiction?

As explained in the answer to question 2.4, according to the amendment to the Enforcement Decree of the MRFTA that is expected to become effective October 19, 2017, the assets and turnover thresholds (including the threshold for Korean turnover) have been increased from KRW 200 billion and KRW 20 billion to KRW 300 billion and KRW 30 billion respectively.

The National Assembly of Korea is reviewing a proposed amendment to the MRFTA, which would provide an exemption from the merger notification obligation for certain types of mergers with relatively low likelihood of raising concerns about anti-competitiveness. For example, the proposed amendment would exempt from the merger notification requirement under the MRFTA a merger involving interlocking directorate of less than one-third of the total number of directors of the target company, the establishment of a private equity fund and acquisition of the stakes of a private equity fund.

6.3 Please identify the date as at which your answers are up to date.

September 29, 2017.

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John H. Choi has been at the forefront of many of the leading antitrust cases, including major international cartel cases and abuse of market dominance cases. Mr. Choi was also an adjunct professor of law at Seoul National University, College of Law, Korea's top undergraduate school of law, and has been ranked by *Chambers Asia* as band 1 and *The Legal 500 Asia*. Mr. Choi has been a non-government advisor for International Competition Network.

Mr. Choi's recent notable speaking engagements include speaking at the ICN 2016 annual meeting on Refusal to Supply; speaking at the 2016 International Bar Association Annual Conference on IP and Antitrust; speaking at the ICN 2015 annual meeting on Making Efficiency Assessments More Effective; lecturing at Korea University on conglomerate mergers; speaking at various GCR conferences; speaking at ECCK luncheon on "Competition Law 2015 – Panorama of antitrust enforcement in Europe and Korea"; and presenting on the US and EU Enforcement Practices at a cartel workshop hosted by the KFTC. Mr. Choi has also been a prolific writer.

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Sangdon Lee has significant experience in various antitrust fields, including cartel and merger control. He has represented Linde, Trafigura, Macquarie, Goldman Sachs, Samsung, Google, Cargolux, ORIX, SK Telecom, SKC, Allergan, Activision-Blizzard and Oriental Brewery in numerous antitrust cases. Notably, he acted for Google as lead counsel when Google successfully obtained unconditional clearance from the Korea Fair Trade Commission to acquire Motorola Mobility.

Mr. Lee has been involved in approximately 50 to 60 merger filing cases each year. Considering the average merger filing cases handled by the KFTC handles per year is approximately 600, he is considered one of the top ranked antitrust lawyers with the highest track record in advising clients on merger filings in Korea.

Mr. Lee has recently published numerous articles on merger control issues in the academic journals widely known and highly regarded among the Korean legal academics and professional practitioners.

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