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MERGER CONTROL IN KOREA Vol. 9 - KFTC to Create International M&A Division

2022.11.23

The Korea Fair Trade Commission (the "**KFTC**") recently released its plan to establish a new division dedicated to reviewing cross-border M&As (the "**International M&A Division**"). The timeline for implementing the plan is not yet determined as the KFTC has to go through several procedural steps to implement the plan, including consultations with other governmental departments. However, if everything proceeds smoothly, the International M&A Division could be established as early as this year.

The KFTC's proposal to establish the International M&A Division is largely driven by a surge of M&A cases handled by the KFTC. The number of global M&As reviewed by the KFTC has more than tripled in the last 12 years, from 53 in 2009 to 180 in 2021. If we look at both local and global M&As reviewed by the KFTC, on average, the KFTC reviewed 823 M&As per year for the last five years. This is an exceptionally high number considering that on average, the European Commission ("**EC**") reviewed 388 M&As per year, which is less than half of what the KFTC reviewed. If we look at last year alone, the number of M&As reviewed by the KFTC is even higher at 1,113. Considering that currently, there are only eight case handlers within the M&A Division excluding directors, it means, on average, one case handler in the M&A Division reviewed 139 M&As in one year. With the proposed reorganization of the M&A Division, we expect this case overload to be resolved or at least mitigated.

Another reason that is thought to have brought about the KFTC's proposal is a growing number of large-scale global M&As led by Korean companies across various sectors. There have been criticisms that the KFTC has not taken the lead in reviewing such transactions although such M&As are led by Korean companies. For example, recently, Hyundai Heavy Industries' proposed acquisition of Daewoo Shipbuilding & Marine Engineering fell through after theEC blocked the deal. Despite the merger being between Korean companies, EU, and not the KFTC, was the first to complete its review of the merger. Some criticized that the KFTC let its review process end with the parties' withdrawal of their filing following the EC's decision. With the dedicated division, we expect to see a more swift and effective merger review by the KFTC and closer collaboration with foreign competition authorities, which is particularly essential in M&As subject to multijurisdictional review.

Overall, with the division dedicated to handling global M&As, we expect the KFTC to request more information from the parties and collaborate more frequently and closely with other competition authorities in its review of global M&As with competitive concerns. For such M&As, it will be important for the parties to be fully prepared for a more in-depth review by the division. In the case of global M&As without competitive concerns, we expect a swifter review and clearance by the KFTC, given the anticipated increase in number of dedicated case handlers and the expanded application of simplified review process to foreign M&As with no impact on the Korean market (see Merger Control in Korea Vol. 07 and Merger Control in Korea Vol. 08).

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

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