



MERGER CONTROL IN KOREA Vol. 13 - KFTC to Bring “Acquihires” Within the Scope of Merger Review

2026.05.29

In May 2026, Chairperson Biung-ghi Ju of the Korea Fair Trade Commission (the “KFTC”) announced that the Commission plans to amend its Merger Notification Guidelines (the “**Notification Guidelines**”) to bring acquihires within the scope of reportable business combinations. The KFTC is expected to prepare the proposed amendment, solicit stakeholder comments, and implement the revised guidelines over the course of this year.

1. Acquiiring and Competition Concerns

“Acquihire,” a portmanteau of “acquire” and “hire,” refers broadly to transactions in which a company obtains key talent and technology from another company, often a startup—whether through outright acquisition of the target primarily for its human capital rather than its products or business lines, or through arrangements falling short of full acquisition, such as hiring a startup’s key personnel coupled with licensing of the target’s technology without acquiring the target itself (often known as a “reverse acquihire”).

While acquiiring may serve legitimate business ends (e.g., the efficient redeployment of talent and technology), it can also raise material concerns from a competition-law perspective. By enabling large, dominant firms to absorb the core competitive capabilities of nascent or potential rivals, acquiiring may stifle innovation and competition while further entrenching incumbent market power.

Like other competition authorities, the KFTC has been examining the anticompetitive potential of acquihires and similar arrangements for some time,¹ and is now seeking to bring such transactions under closer scrutiny through the proposed amendment to the Notification Guidelines.²

2. The KFTC's Proposed Amendment

Under Korea's competition law, the Monopoly Regulation and Fair Trade Act (the "MRFTA"), reportable business combinations fall into five enumerated categories: share acquisition, interlocking directorship, statutory merger, business transfer, and establishment of a joint venture.

As the merger-control regime currently stands, however, acquihires often do not fit neatly into these categories. The closest candidate would be a business transfer—which refers to the transfer of all or a material part of a target company's business itself or the fixed operating assets used directly for that business—but the object of the transfer must be capable, in substance, of operating as an independent business unit. This would ordinarily be a difficult standard to satisfy through personnel-based arrangements alone.

The KFTC's proposed amendment to the Notification Guidelines appears intended to address this regulatory gap. According to reports, the Commission is seeking to treat transactions involving the organized transfer of key personnel as reportable business combinations where they have an effect comparable to a business transfer. The KFTC, however, has not released further details on the criteria for making such a determination.

3. Questions of Implementation

As the KFTC prepares the proposed amendment to the Notification Guidelines, several questions related to implementation will be worth monitoring as the relevant details take shape.

First, it remains to be seen whether acquihires can be brought within the scope of reportable business combinations through an amendment to the Notification Guidelines alone. "Business transfer" and its related concepts (such as the acquisition of fixed operating assets or the entrustment of management) are expressly grounded in the MRFTA. Accordingly, the extent to which a subordinate rule may attribute a "business-transfer effect" to transactions not originally contemplated by the statute remains open to question.

Second, determining the transfer price in an acquihire transaction may pose practical challenges. Under the Notification Guidelines, a business transfer is reportable only where the transfer price is at least KRW 10 billion, or represents at least 10% of the transferor's total assets. However, because the value of an acquihire transaction is often distributed across employment, licensing, and other commercial arrangements, the transfer price can be difficult to ascertain. The proposed amendment may therefore need to clarify how the transfer-price requirement applies in this context.

Finally, even if acquihires were deemed to constitute a business transfer and the relevant transfer price clearly determined, the existing filing thresholds may still limit the reach of the proposed amendment.

This is particularly relevant for acquihires involving startups and venture companies (which Chairperson Ju identified as a key focus of the initiative), as such targets will often lack the assets, revenues, or transaction value needed to trigger either: (i) the default **Size-of-Parties threshold**, which requires target-side worldwide assets or turnover of at least KRW 30 billion; or (ii) the alternative **Size-of-Transaction threshold**, which requires transaction value (based on the transfer

price in the case of business transfers) of at least KRW 600 billion. While some acquirers will be large enough to satisfy these thresholds, the key question will be whether and how the proposed amendment could apply to smaller transactions that might otherwise escape review. Conversely, some acquirers—depending on their structure—may nonetheless trigger notification requirements and should be carefully reviewed by counsel.

* * *

Shin & Kim will continue to monitor developments relating to the proposed amendment to the Notification Guidelines, including its implications for deal structuring and regulatory strategy.

In particular, we will closely assess how the filing criteria are drafted and finalized, especially in light of Korea's experience with the Size-of-Transaction threshold, which was introduced in 2021 to supplement the default Size-of-Parties threshold but has rarely been invoked to date. It remains to be seen whether the acquirer amendment will be used with meaningful frequency, or whether its practical reach will likewise be limited. For further discussion of the Size-of-Transaction threshold, please refer to our prior newsletters, *Merger Control in Korea* [Vol. 05](#) and [Vol. 06](#).

Please feel free to contact us at any time should you have any questions concerning Korean merger control regulations.

¹ Notably, in its December 2024 policy report, Generative AI and Competition, the Commission specifically identified personnel-hiring and licensing arrangements (referring in this connection to the 2024 Microsoft–Inflection AI deal) as examples of non-traditional business combinations that may warrant merger review.

² Other major competition authorities have similarly recognized the competitive implications of acquiring and are beginning to consider ways to subject such transactions to merger review. For example, in the United States, the Federal Trade Commission has indicated that acquiring has become a “big enough deal” to warrant closer scrutiny and the possible issuance of additional guidelines. Moreover, in the European Union, competition officials have already started to encourage Member States to refer below-threshold acquirer transactions to the European Commission for review. Bloomberg Podcasts, [FTC Will Review Acquirers Says Chair Ferguson](#), YouTube (Jan. 16, 2026); Jody Godoy, “[Acquirers, often used by Big Tech, are a 'red flag,' DOJ antitrust head says](#),” Reuters (Mar. 19, 2026); Foo Yun Chee, “[Big Tech's acquirer deals face regulatory scrutiny, outgoing EU antitrust official says](#),” Reuters (Aug. 1, 2025).

Key Contacts

John H. Choi

Senior Foreign Attorney / Chair of Global Cases and Investigations

+82-2-316-4232

jhchoi@shinkim.com

Sangdon Lee

Partner

+82-2-316-4638

sdlee@shinkim.com

Hyunah Kim

Senior Foreign Attorney

+82-2-316-1797

James Jungbok Lee

Foreign Attorney

+82-2-316-4390

hahkim@shinkim.com

jblee@shinkim.com

Copyright SHIN & KIM LLC. All rights reserved.