

# NEWSLETTER

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Antitrust & Competition Group

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## The KFTC Rules that the Practice of Tying Patented LNG Technology with Engineering Assistance Services is Illegal

On November 25, 2020, the Korea Fair Trade Commission (the **KFTC**) imposed a fine of USD 11 million on Gaztransport & Technigaz (**GTT**), a multinational engineering company headquartered in France, for abusing its market dominance in liquefied natural gas (**LNG**) container tank technologies (the **LNG Technology**). Although **GTT** argued that the tying<sup>1</sup> of its patented **LNG Technology** together with its container tank engineering assistance services (the **Engineering Services**) is inseparable, the **KFTC** determined that this tying is illegal. The **KFTC** decision reaffirms the principle that there are limits to the activities of a market dominant patent holder.<sup>2</sup> This case is summarized in greater detail below.

8 Korean shipbuilders, including Daewoo Shipbuilding & Marine Engineering (**DSME**), Hyundai Heavy Industries (**HHI**), Samsung Heavy Industries (**SHI**) and Hanjin Heavy Industries & Construction (**HHIC**), heavily relied on **GTT**'s patented **LNG Technology** which condenses large volumes of natural gas into liquid, up to 1/600<sup>th</sup> of its size, for easier transportation. In licensing the use of **GTT**'s patented **LNG Technology** to these 8 Korean shipbuilders, **GTT** tied its **Engineering Services** as a packaged offer. The shipbuilders, however, repeatedly asked **GTT** to sell the **Engineering Services** separately when later necessary for them. **GTT** turned down these requests and continued to tie the **Engineering Services** together with the licensing of the **LNG Technology**. As a result, the **KFTC** investigated **GTT**'s practice for abuse of market dominant position.

After concluding its investigation, the **KFTC** found **GTT** to be in violation of the Monopoly Regulation Fair Trade Act (**MRFTA**) which prohibits a market dominant player from interfering in the business activities of other enterprises such as through the conduct of tying goods and services. The **KFTC** explained

① Tying is the practice of selling goods and services packaged together for sale to consumers.  
② At the end of 2018, **GTT**'s global market share in the licensing of **LNG Technology** was around 95%

that tying the patented LNG Technology with the Engineering Services is against market principles such as a consumer's right to choose and free competition. In addition to the illegal tying, the KFTC found that GTT abused its superior bargaining power by securing the contractual right to terminate the contract when a shipbuilder disputes the validity of GTT's patent rights. This contractual right then unreasonably compelled shipbuilders to pay GTT royalties for GTT's expired patents. Thus, the KFTC ordered GTT to revise the contracts by removing such illegal provisions.

In response, GTT has indicated that GTT is preparing to appeal the KFTC decision as the LNG Technology licensed without the Engineering Services would be detrimental to the LNG carrier industry.

Although the KFTC decision may likely be reviewed on appeal as GTT has indicated, this decision is nonetheless noteworthy as it reaffirms the importance of the KFTC decision in 2006 against Microsoft for illegal tying by a market dominant player; in fact, the KFTC in this decision referred directly to the Microsoft case. Accordingly, given the KFTC's reaffirmed position against illegal tying of goods and services by a market dominant player, companies with a larger market share should be mindful of the potential risks of tying and bundling goods and services and be prepared with legitimate and justifiable grounds for engaging in such business activities. Also, for your reference, the KFTC decision is likely to influence the anti-competitive effect analysis for the pending antitrust clearance of the HHI and DSME merger. Experts have indicated that this decision may facilitate the antitrust clearances pending worldwide for this merger.

We hope the foregoing is helpful. If there are any questions and/or legal assistance is required, please contact Lee & Ko's Antitrust and Competition Group.

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