

NEWSLETTER

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Antitrust & Competition Group

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MRFTA Amendments on Expansion of Merger Notification Exemptions and Introduction of Commitment Procedures for Merger Control

On January 25, 2024, the Korea Fair Trade Commission (KFTC) proposed amendments (**Amendments**) to the Monopoly Regulation and Fair Trade Act (**MRFTA**) were approved by the National Assembly of Korea.

The Amendments include (i) merger notification exemptions for transactions deemed not to raise any anticompetitive concerns, (ii) implementation of commitment procedure to enhance the efficiency and effectiveness of merger reviews, and (iii) introduction of an electronic information processing system for the submission, delivery and notification of electronic documents during the KFTC deliberation procedure.

The Amendments now will be sent to be promulgated by the President of Korea. Amendments (i) and (ii) above will be effective from 6 months thereafter and amendment (iii) will be effective from 3 years thereafter. As for amendment (i), however, notification of the business combination subject to merger notification based on the currently existing filing thresholds (prior to amendment (i) taking effect) will be required.

Certain details of the Amendments are set forth as follows:

1. Merger Notification Exemptions (Amendments for MRFTA Articles 9 and 11)

- To reduce the notification burden for companies, transactions involving (i) the establishment of PEF, (ii) mergers/business transfers between parent and affiliate companies, (iii) interlocking directorates that involve less than 1/3 of board members, and (iv) mergers between affiliate companies, where the merged entity's total assets and worldwide turnover are less than KRW30 billion, are exempt from merger notification.

Merger Type	Details on Amendments
<p>Establishment of PEF (Amendment for MRFTA Article 11 (3) 4)</p>	<ul style="list-style-type: none"> ■ Establishment of a PEF refers to investment where the investor will be the largest shareholder of the PEF. (Capital Markets and Financial Investment Business Act) ■ If establishment of a PEF does not have a substantial effect on the market, there is exemption from merger notification. ■ However, when an established PEF engages in M&As and the filing thresholds are met, merger notification is still required.
<p>Mergers/business transfers between parent and affiliate companies (Amendment for MRFTA Article 11 (1) 4)</p>	<ul style="list-style-type: none"> ■ As a merger or business transfer between the parent company and a subsidiary* under the Commercial Code is unlikely to cause new anticompetitive concerns, such transaction will be exempt from merger notification. <p><i>* Company with shares exceeding 50% of the total number of issued shares of another company (Article 342-2 (1) of the Commercial Code)</i></p>
<p>Interlocking directorates (Amendment for MRFTA Article 11 (1) 3b)</p>	<ul style="list-style-type: none"> ■ An interlocking directorate involving less than 1/3 of directors of the counterparty company will be exempt from merger notification as there will be difficulty in the interlocking directorate having influence on major decisions of the counterparty company. However, merger filing is still required if the representative director of the counterparty company is one of the interlocking directorates.
<p>Mergers between affiliates with respective values less than KRW 30 billion (Amendment for MRFTA Article 9 (5) proviso)</p>	<ul style="list-style-type: none"> ■ Prior to the Amendments, in case of a statutory merger and consolidation between affiliates, the assets and the worldwide sales of the counterparty company to be merged or consolidated were included. <p><i>* Only business combinations with assets or sales of KRW300 billion for one company and KRW30 billion for the other company are subject to merger notification.</i></p> <ul style="list-style-type: none"> ■ Because there may then be double-counting of the assets and sales of the merged/consolidated entity, the Amendments provide that the assets and sales of the merged entity will be calculated on a non-consolidated basis (and not on a consolidated basis).

2. Introduction of Commitment Procedure for Merger Control (Amendments for MRFTA Articles 13-2 and 14 (2))

- Prior to the Amendments, the KFTC imposes remedies on transactions that may have an anticompetitive effect by determining its own remedies based on the limited information received from the transacting parties, such as information included in the merger filing and unofficially submitted remedies, among others.
- Under the Amendments, the transacting parties, which have considerably more information than the KFTC on relevant markets and the viability of implementing remedies, may officially submit proposed remedies to resolve anticompetitive concerns.

- Most major competition authorities including the US Department of Justice and Federal Trade Commission, the European Commission and the Competition and Markets Authority, have already implemented systems that allow the proposal of remedies by the parties in their merger control regimes. Having been ratified by the National Assembly, the KFTC expects to enhance the consistency of its domestic and foreign merger reviews by allowing the transacting parties to propose officially remedies in transactions raising anticompetitive concerns.
- It is anticipated that the KFTC will notify further the details on the method and procedures for submission.

MRFTA Amendment	Details on Amendment
Article 13-2 (1) and (2)	<ul style="list-style-type: none"> ■ The transacting parties may officially submit in writing the necessary remedies to the KFTC during the merger review period to resolve anticompetitive concerns.
Article 13-2 (3)	<ul style="list-style-type: none"> ■ The KFTC may request the transacting parties to revise the proposed remedies if they (i) fail to resolve anticompetitive concerns or (ii) cannot be implemented within an appropriate period of time.
Article 14 (2)	<ul style="list-style-type: none"> ■ The KFTC may consider the proposed remedies when determining the appropriate remedies to be imposed.

3. Introduction of Electronic Information Processing System for Submission and Delivery of Electronic Documents (Article 98-2 of the MRFTA)

- During the KFTC's deliberation procedures, hard copies of documents are exchanged between the KFTC and the party; this is an inconvenience for the party and creates administrative inefficiencies for the KFTC.
- The Amendments will allow the submission, delivery and notification of documents through an electronic information system managed and operated by the KFTC (without requiring an in-person visit to the KFTC).

MRFTA Amendment	Details on Amendment
Article 98-2 (1)	<ul style="list-style-type: none"> ■ A party to a case may submit the required documents for the KFTC's deliberation through the electronic information processing system.
Article 98-2 (3) and (4)	<ul style="list-style-type: none"> ■ The KFTC may use the electronic information processing system to deliver written decisions and other necessary documents for deliberation if examinees or other parties agree. ■ The delivery of documents will be registered in the electronic information processing system and the parties will be notified of the document (by email, etc.).
Articles 98-2 (5)	<ul style="list-style-type: none"> ■ If the party agrees to electronic delivery or notification and does not confirm receipt of the document registered in the system, the party will be deemed to have been notified after a designated period has passed (14 days for KFTC written decisions and 7 days for other documents).

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