NEWSLETTER

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Antitrust & Competition Group

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Proposed Amendment of the Monopoly Regulation and Fair Trade Act

KFTC Proposes Expansion of Merger Notification Exemptions and Introduction of Commitment Procedures for Merger Control

The Korea Fair Trade Commission (**KFTC**) issued an advance notice with respect to proposed revisions to the Monopoly Regulation and Fair Trade Act (**MRFTA**) which includes inter alia (i) expansion of merger notification exemptions and (ii) introduction of commitment procedures for merger control (the **Proposed Revisions**). There will be a public notice period until March 27, 2023 for the KFTC to obtain and gather comments on the Proposed Revisions.

After gathering feedback from the public, the KFTC plans to finalize and submit the Proposed Revisions to the National Assembly for final consideration during the first half of 2023.

Following are certain details of the Proposed Revisions:

1. Expansion of Merger Notification Exemption

To reduce the notification burden of companies, three types of transactions which are deemed not to raise any anti-competitive concern will be exempt from merger notification.

- **Intra-group transaction**: Currently, asset/business transfer, statutory merger and consolidation between affiliates are subject to merger notification if the size-of-parties test is met. The Proposed Revisions will exempt a transaction between two transacting companies where one company already has sole control over the other company through a direct shareholding of at least 50%. In addition, currently in the case of statutory merger and consolidation between affiliates, when calculating the asset and the worldwide sales of the counterparty company which will be merged or consolidated, the asset and the worldwide sales of the affiliates were included. However, to prevent double-counting, only the asset and worldwide sales of the counterparty company will be taken into account, not including those of the affiliates, under the Proposed Revisions.

- **Establishment of PEF**: Under the Proposed Revisions, the establishment of a PEF will be exempt from merger notification as such establishment does not affect competition in the relevant markets. However, acquisition of companies by a PEF will remain subject to merger notification even after the Proposed Revisions take effect.

- **Interlocking directorate**: The Proposed Revisions will exempt interlocking directorate of less than 1/3 of directors of the counterparty company as a company will not have control over the counterparty company through such interlocking directorate. However, interlocking directorate will remain subject to merger filing under the Proposed Revisions if the representative director of the counterparty company is one of the interlocking directorates.

2. Introduction of Commitment Procedure for Merger Control

- To enable swift and effective review of anti-competitive M&As, under the Proposed Revisions, a company may submit officially the proposed remedy to the KFTC to address the anti-competitive concern, and the KFTC may approve conditionally the transaction if the proposed remedy sufficiently addresses the anti-competitive concern raised by said transaction.

- To ensure implementation of the remedy, under the Proposed Revisions, the KFTC is authorized to withdraw the conditional approval and impose a corrective order if a company obtains conditional approval by wrongful means or fails to implement the remedy.

- Once the Proposed Revisions are passed by the National Assembly, the KFTC plans to enact sub-regulations such as KFTC guidelines to establish swift and simple procedures to be applied to the process for conditional approval.

3. Conclusion

The KFTC has explained that the goal of the Proposed Revisions is to reduce the notification burden of companies and enhance effectiveness of merger review by aligning with global standards. It is expected that by introducing the commitment procedures, the KFTC merger review process may be expedited for anti-competitive M&As. Under the current system, a company should complete the KFTC's deliberation process such as issuance of examiner's report and convening of commission hearing which may take place several months after the KFTC's merger review division has completed its review; the closing of a transaction is permitted only after completing the deliberation process and receiving the KFTC's official decision.

However, if the commitment procedures take effect, it is anticipated that the deliberation process may be shortened. In that regard, if a proposed remedy is submitted during the early stages of the review process, there may result in a shortening of the review timeline. To assess the real impact of the foregoing change, the detailed procedures for conditional approval to be enacted by the KFTC in the future will need to be reviewed.

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