

NEWSLETTER

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Antitrust & Competition Group

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Supreme Court of Korea Affirms Abuse of Dominance for Tying Patent Licenses and Engineering Services in the Shipbuilding Industry

1. Case Overview

Lee & Ko's Antitrust & Competition Group successfully represented three major Korean shipbuilding companies in the court action involving Gaztransport & Technigaz SA (GTT), the exclusive holder of key patents in technology for manufacturing/constructing membrane storage tanks used on liquefied natural gas carriers (LNG Carrier). On April 14, 2023, the Supreme Court of Korea affirmed the sanctions imposed by the Korea Fair Trade Commission (KFTC) on GTT for abuse of dominance and unfair trade practices in violation of the Monopoly Regulation and Fair Trade Act (MRFTA) for its conduct of tying the sale of its patent licenses to its engineering services. The main facts of the case are as follows:

Plaintiff

GTT, the exclusive holder of key technology patents for manufacturing/constructing membrane-type storage tanks used on LNG Carriers.

Defendant

KFTC

Third-party participants for Defendant

three major Korean shipbuilding companies (**Major Shipbuilders**)

Conduct

GTT forced the Major Shipbuilders and other Korean shipbuilders (collectively, **Korean Shipbuilders**) to enter into contracts tying additional engineering services to licenses for key technology used in manufacturing/constructing membrane storage tanks used on LNG Carriers.

KFTC Decision

GTT was determined to have violated the MRFTA by tying engineering services into contracts for the licenses of key technology used in manufacturing/constructing membrane storage tanks for LNG Carriers and was issued corrective orders and an administrative fine of KRW 12.5 billion for abuse of dominance (i.e., interference with business activities by imposing unfair disadvantages) and unfair trade practices (i.e., tying).

2. Key Issues and Court Decision

■ Key Issues

GTT sought to cancel the KFTC's decision by arguing the following key issues: (1) whether GTT's tying was a legitimate exercise of its patent rights and thereby conduct excluded from the application of the MRFTA, (2) whether GTT's patent licenses and engineering services are separate products, (3) whether GTT restricted competition by unfairly forcing Korean Shipbuilders to purchase its engineering services, and (4) whether the KFTC's corrective orders violate GTT's freedom to contract.

■ Lee & Ko Arguments

Lee & Ko actively presented the opinions of the Major Shipbuilders as interested third-parties and third-party participants throughout the KFTC investigation, including during the final deliberation stage, and in this court action.

Lee & Ko effectively argued that: (1) GTT's actions were aimed at maintaining its dominant position in the technology patent and engineering services markets for manufacturing/constructing membrane storage tanks used on LNG Carriers, and such actions cannot be regarded as the legitimate exercise of intellectual property rights; (2) in consideration of neighboring markets and GTT's past trade practices, its patent license and engineering services can be sold separately; (3) even though Major Shipbuilders have the ability to perform all or part of the engineering services independently because of their experience in shipbuilding, GTT restricted new entrants in the engineering services market by tying the patent licenses to the engineering services; and (4) as the purpose of the KFTC's corrective orders is not to prohibit GTT from offering its engineering services, but to provide consumers with the right to choose their engineering service provider, the KFTC's decision is sound based on the principles of market competition.

Lee & Ko's Antitrust & Competition Group and Intellectual Property Practice Group closely cooperated in presenting the Major Shipbuilders' arguments, including a technical analysis of patents and technology detailing GTT's patent abuse, and a legal analysis of Korean and foreign competition laws on tying which serves as the basis for determining the illegality of the conduct at issue.

■ Court Decision

The Seoul High Court concluded that GTT's "licensing patents for membrane storage tanks" and forcing the purchase of "engineering services" not included in the patent license are not a legitimate exercise of GTT's intellectual property rights. The Seoul High Court also determined that GTT, a business with a dominant market position in "technology patents for LNG Carrier membrane storage tanks" and "related engineering services market," forced Korean Shipbuilders to use GTT's engineering services, which is a product separate from the patent licenses for membrane storage tanks. As such, the conduct was recognized as an abuse of dominance and unfair trade practice as the conduct restricts competition by preventing new market entrants and providing unfair disadvantages to Korean Shipbuilders. The Seoul High Court ruled that GTT is prohibited from tying its engineering services to its patent licenses for manufacturing/constructing membrane storage tanks and upheld the KFTC's corrective order for negotiations on the modification of the contacts between GTT and Korean Shipbuilders (Seoul

The Supreme Court of Korea was asked to review the Seoul High Court's decision. Upon review, the Court affirmed the decision in its entirety (Supreme Court of Korea, 2023Du30147, 2023. 4. 13.). With Lee & Ko's effective arguments, the Major Shipbuilders were able to persuade the Court successfully to affirm the decisions of the lower court and the KFTC to ensure that their right to choose counterparties in the engineering services market is protected and preserved.

3. Implications of the Court Decision

With the Supreme Court of Korea rejecting GTT's request to cancel the KFTC's decision, for the first time since the Microsoft abuse of dominance case for tying in 2006, the KFTC once again found tying in the patent license market by a market dominant player to constitute a violation under the MRFTA.

This outcome is expected to ease the conditions for new entrants in the engineering services market, such as Major Shipbuilders, and to promote competition in a market that has long been dominated by one company.

The Supreme Court of Korea's final decision is expected to create increased options for both domestic and foreign shipbuilders in choosing a company to provide engineering services in implementing technology related to LNG Carriers. Further, in separating transactions for patent licenses for manufacturing/constructing membrane storage tanks from engineering services, the KRW 10 - 20 billion in patent licenses (royalties) paid per LNG Carrier by shipbuilders will be reduced significantly.

Lee & Ko's Antitrust & Competition Group works closely with the Intellectual Property Group to provide comprehensive services in responding to intellectual property rights cases, including KFTC investigations/deliberations, follow-up administrative, civil and criminal litigation, and other related consultations. If you require assistance with similar or other antitrust and competition law matters, please contact Lee & Ko's Antitrust & Competition Group.

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