

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN KOREA**

-- 1999 --

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### Summary

1. In 1999, the Korea Fair Trade Commission (KFTC) put forth continuous efforts to correct institutions and practices with a view to spreading market principles throughout the economy, building on the endeavours of the past 19 years.

2. First, from the broad perspective, it improved anti-competitive laws and institutions and corrected unfair trade practices of corporations in order to put in place a framework for competition. It vigorously played the competition advocacy role. Article 63 of the Monopoly Regulation and Fair Trade Act (MRFTA) makes it mandatory for government agencies to hold consultations with the KFTC prior to enacting or amending laws and regulations that may hamper competition. With this authority, the KFTC blocked the introduction and maintenance of government's market protection measures pursuant to relevant laws. At the same time, the commission reformed anti-competitive regulations, such as entry controls, that remained in the economy. In addition, it put forward and came through pro-competitive measures in the process of the privatisation of State-owned Enterprises.

3. In the sectors with entrenched monopolistic market structures that enable enterprises to easily obtain dominance, the KFTC took various steps to improve such situations, constantly transforming the market structure into a pro-competitive one.

4. It placed a high priority on monitoring and correcting anti-competitive conducts of corporations which significantly affect competition and consumers, such as price fixing or bid rigging in public construction projects, and allocated law enforcement resources accordingly.

5. In addition, in the corporate sector, it made extensive efforts to create a climate conducive to corporate structural reforms which allow companies to secure transparent and effective governance and operate based on the principle of competition. Cross debt payment guarantees among affiliates of top 30 chaebols, which triggered the chain corporate bankruptcies and eventually the foreign exchange crisis, were completely cleared off. Improvements in institutions as well as corporate conducts were also made in order to root out undue intra-group transactions that undermined the exit of marginal corporations from the market and weakened core competencies of business groups.

6. Meanwhile, the KFTC also laid a groundwork for consumers to make rational choices, thereby shifting the role of consumers from "the protected" to "the spearhead in promoting market principles" who prompt competition among corporations and determine the fate of companies. Institutional changes were made in order to facilitate the provision of information to consumers critical for making choices and to effectively regulate undue labels and advertisements.

### **I. Changes to Korea's competition laws and policies**

#### ***1. The 8th revision of the Monopoly Regulation & Fair Trade Act(revised on 12.28, 1999, took effect on 4.1, 2000) and its Enforcement Decree***

1. The 8th revision of the MRFTA is designed to facilitate corporate restructuring, by re-instituting the ceiling on total amount of equity investments of chaebol affiliates and redressing institutional shortcomings under the MRFTA against undue intra-group transactions.

2. In 1998, the KFTC abolished the limit on investments by chaebol affiliates into other firms to address the problem of reverse discrimination against local companies following the permission of hostile

M&As by foreigners. After the elimination of investments ceiling amount, the total investment amounts and inside equity ownership involving the top 30 business groups recorded a sharp increase (from 17.7 trillion Won in 1998 to 29.9 trillion Won in April 1999). Since the onset of the crisis, the top 30 business groups, particularly the top 5, have carried out large-scale capital increase with consideration in order to improve their financial standing and reduce debt ratio. Affiliates within the same business groups vigorously took part in these recapitalization efforts. Affiliates' investments into other affiliates create watered capital, and recent circular investments among affiliates resulted in the formation of such watered capital, lowering debt ratio only in nominal terms. Furthermore, they deepened the ownership structure allowing single persons to control large number of affiliates only with a small stake. At the same time, circular investments hampered the liquidation of ailing affiliates and undermined the soundness of healthy ones. In order to address these problems, the KFTC re-introduced the ceiling on investments in Dec. 1999. Companies belonging to large-scale business groups (except financial institutions, insurers and holding companies) cannot acquire or own shares of other domestic firms in excess of 25 percent of their net assets (capital stock less contributions to affiliates). The ceiling will enter into effect on April 1, 2001, with one-year grace period. In order to prevent such limit from posing an obstacle to the attraction of foreign investment or technology co-operation with Small-and-Medium sized Enterprises (SMEs), however, the Enforcement Decree of the MRFTA set forth specific exemptions (Articles 10 and 14 of the MRFTA and Article 17-2 of the Enforcement Decree).

3. The KFTC also put in place institutional mechanism to prevent chaebol's undue subsidisations to their affiliates and brought up the maximum amount of surcharges. The amendment makes it mandatory for large-scale intra-group transactions involving cash, securities, etc. exceeding the designated amount, conducted by firms belonging to the top 10 conglomerates in terms of total assets, to be subject to the resolution of the board of directors and to the public disclosure (Article 11-3 of the MRFTA and Article 17-8 of its Enforcement Decree). In addition, under the revised MRFTA, the ceiling on surcharges assessed against undue subsidisations was raised from 2 percent to 5 percent of turnover (Article 54 of the MRFTA).

#### **Box 1. Measures for corporate restructuring and the KFTC's role**

1. Since the foreign exchange crisis of 1997, the Korean government has proceeded corporate restructuring under the "five plus three formula", which was agreed between the political and business circles in Jan. 1998 that put in place the institutional framework for corporate restructuring.

2. First, measures have been taken to improve laws and regulations for the purpose of enhancing corporate managerial transparency. For example, the top 30 business groups are required to compile combined financial statements from the fiscal year 1999. In Dec. 1998, corporate accounting standards were amended to meet international standards. Also, punishments were toughened against window-dressing accounting, false public disclosure, and sub-standard audits. These measures are aimed at enabling market participants to correctly assess the value of corporations.

Second, in order to address *chaebols'* monopoly of capital and to prevent them from collectively becoming unsound, *chaebol* have been banned from extending fresh debt payment guarantee to their affiliates since 1998. Outstanding guarantees must be removed by the end of March 2000.

Third, the top 30 business groups and their major creditor banks were induced to enter into capital structure improvement agreements, to reduce corporate debt ratio to below 200 percent, for the top 5 chaebols by the end of 1999.

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Fourth, *chaebol's* undue subsidisation has been prohibited, since it disperses managerial resources of sound affiliates and delays the liquidation of failing firms. This is aimed at strengthening corporate core competence. Since May 1998, four rounds of investigations have been conducted into undue subsidisation, which yielded 164 million dollars in surcharge.

Fifth, corporate governance has been improved in order to place more accountability on controlling shareholders and managers. For example, outside directors were appointed; minority shareholders were given more rights; and the notion of *de facto* director was adopted with regard to controlling shareholders.

3. In Aug. 1999, three additional tasks were identified to complement the reform process.

First, taxation and, in particular, tax collection regime have been strengthened to prevent out-of-law inheritance and donation within *chaebol* families.

Second, in order to fend off *chaebol's* monopoly of financial market, governance of non-bank financial institutions has been improved. Non-bank financial institutions must appoint half of the board members from outside. Limit on capital investment into their own affiliates was also lowered.

Third, the ceiling on total amount of equity investment of *chaebol* affiliates has been put in place, effective from April 2001. This is designed to prevent the distortion of corporate governance stemming from the complex web of share holding among *chaebol* affiliates.

4. Among these measures, eliminating cross debt guarantees among affiliates of *chaebol*, preventing undue subsidisation and curbing web-like cross equity investment are planned and pursued by the Korea Fair Trade Commission.

*Chaebols* constitute a unique socio-economic characteristic of the Korean economy, that differ from conglomerates in other countries. Competitive market conditions cannot be created without solving *chaebol* problems. Given this, *chaebol* issues have inevitably drawn the enforcement attention of the KFTC. The Korean economy is characterised by monopolistic or oligopolistic market structure dominated by *chaebol* and lack of monitoring mechanism against corporate decision-making. As of 1996, 73 percent of the Korean markets were highly concentrated, with the combined market shares of the three biggest firms exceeding 50 percent.

*Chaebols* monopolise the production factor market through circular investments, cross-debt guarantees and undue subsidisations within the group, resulting in the distorted allocation of resources such as capital and labour. These are monopoly problems at the national economy level, obstructing the proper functioning of the market mechanism; insulating group members from market competition, resulting in an external diseconomy, and shifting the risks to minority shareholders, independent firms and the economy at large.

This was manifested in the economic crisis that erupted in late 1997 when highly-leveraged business expansion by *chaebols* brought about a massive amount of bad loans, prompting the banking mess. Consequently, the final burden had to be borne by taxpayers. In this context, competition authorities' intervention aims to redress such diseconomy and to build up the "infrastructure" to make market competition work properly.

In addition, the alliance among chaebol affiliated firms through circular investments, cross-debt guarantees and undue subsidisations creates an "entrenchment effects". Beneficiaries of equity investments, subsidisations or loan guarantees from their sister companies block the entry of new competitors and squeeze rivals out of the market. Statistics over the past 5 years show that 130 to 160 product markets are either monopolistic or oligopolistic every year, with the top 30 chaebols dominating roughly 70 percent of the products concerned. Furthermore, failing firms can manage to stay afloat through the subsidisations from their healthy affiliates. In this regard, the chaebol policy based on Korea's competition law aims to establish a pro-competitive market structure by preventing/reducing such entrenchment effects.

## 2. *Notifications that are Enacted or Amended*

4. It has already been informed that the KFTC enacted the Fair Labelling and Advertising Act (FLAA: promulgated on Feb. 5, 1999 and took effect on July 1, 1999) designed to enable consumers an easier access to information necessary for making choices. Under the Act, the KFTC must publish the list of information deemed critical for consumers, and enterprises must include in their advertisements and labels these types of information. As a concrete step, the Notification on Important Contents in Labels or Advertisements was enforced in Oct. 1999.

5. In addition, the KFTC enacted the Guidelines for Consumer Protection in the Context of Electronic Transactions became effective in Jan. 2000, taking reference from the OECD Guidelines. The purpose of this legislation is to prevent consumer injury that may arise with the growth of e-commerce.

## II. KFTC's Advocacy Role

### 1. *Prior consultation with other government ministries in their legislative attempts that may impair competition*

6. In 1999, government ministries sought prior consultation with the KFTC on a total of 561 laws and regulations, marking a similar level of the previous year. Of the total 561 cases, the KFTC made recommendations in 72 cases or 12.0 percent and the KFTC's recommendations were reflected in 64 cases or 88.0 percent.

### <Statistics on Consultation and Recommendations by the KFTC>

(unit: No. of case)

		Act	Enforcement Decree	Enforcement Regulation	Total
KFTC's recommendations	Reflected	27 (81)	18 (28)	19(18)	64 (127)
	Not reflected	2 (19)	3 (12)	3 (15)	8 (36)
	Subtotal	29 (100)	21 (40)	22(33)	72 (173)
KFTC's acceptance of the original draft		92 (167)	199 (127)	198(96)	489(390)
Total		121 (267)	220(167)	220(129)	561(563)

; ( ) reflects the corresponding figures for 1998.

Note: 216 cases for 1998 that were subject to comprehensive overhaul under regulatory reforms were excluded.

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The substantial decrease in the number of KFTC's recommendations compared to those of 1997 and 1998 signifies that other government agencies have made efforts themselves to improve provisions that may give rise to anti-competitive concerns in their legislative attempts, thanks to the enhanced awareness on the prior consultation requirement and acknowledgement throughout the administration. This reduced the room for KFTC's intervention. Meanwhile, the high acceptance rate of KFTC recommendations means that the opinions put forth by the KFTC are in line with the government's policy direction toward regulatory reforms and the promotion of competition and transparency. This can also be translated that other government agencies give serious thoughts about the opinions of the KFTC, since the Commission has actively voiced its views in the vice-ministerial and cabinet meetings.

7. Followings are major cases of legislative moves redressed by the KFTC.

- Small venture firms : The original amendment draft of Electronic Signature Act set forth the capital of 10 billion Won or more as the criteria for official certificate agencies. The KFTC recommended the change in the phrase to "the capital of 10 billion Won or more, or financial institution's guarantee on capital and liability for damages", expanding the scope of such criteria and thereby loosening the entry requirement.
- Culture : The proposed revision of the Patent Act permitted the organisations designated by the Minister of Culture and Tourism to claim compensation charges, from importers/distributors and manufacturers/distributors of digital recording/ taping equipment or media, for the use of copies for private purposes. This provision was repealed to remove the possibility of undermining the competitiveness of digital industries.
- Agricultural Finance : The original bill of the Federation of Farmers' Co-operatives Act (Act) included the provision treating the federation and the business of the central co-operative as the "federation" pursuant to the Act instead of "transactions by enterprise" governed by the MRFTA. Following the recommendation of the KFTC, such provision was deleted, preventing the federation and central co-operative from being outside the reach of the MRFTA.
- Foreign Sector: In the process of amending the Enforcement Decree of Foreign Migration Act, the provision excluding non-profit organisations from the entities entitled to registration for arranging migration procedures was removed. This led to the elimination of entry barrier.
- Agricultural Sector : The provision expanding group negotiation contracts between the manufacturer and the government, local autonomous bodies, public entities or government-invested organisations, for the purpose of promoting sales of items produced in agricultural and industrial complexes, was omitted from the amendment draft of the Overhaul of Agricultural and Fishery Towns Act. This step enhanced competitiveness in terms of price and quality of the products concerned.
- Local Autonomous Bodies : In the process of revising the Enforcement Decree of the Local Finance Act, the provision stipulating that the proceeds from selling off public asset by head of local autonomous body shall be allocated to acquire new asset similar to the old one was dropped. This staved off the possibility of restraining the autonomy of local governments through an internal administrative regulation.

## 2. *Implementation of regulatory reforms*

8. We already informed in the 1998 annual report that the government established the Regulatory Reform Committee in April 1998, with a view to pursue the nation-wide regulatory reform in a short time span. Since then, the KFTC has promoted competition in conjunction with the regulatory reform efforts of the Committee. The Commission identifies anti-competitive regulations, devises plans for improvement

and refer them to the Committee. Two subcommittees were established under the Regulatory Reform Committee-- the Administrative Reform Committee and the Economic Reform Committee --and the KFTC took charge of operating the latter. Hence, in order to assist the efforts of the Committee and deal with other related matters, the KFTC established a Task Force for Regulatory Reform (comprising 25 members).

9. In 1999, the KFTC achieved the improvements of anti-competitive regulations involving the entry into major industries and imports-exports and other related industries. The examples of improved entry regulation include; the elimination of the limit on providing more than one service in the construction industry by 2002; the deletion of the capital requirement and the loosened criteria for technology personnel (from 10 to 5) in the registration of engineering businesses; abolition of the capital requirement for multi-modal transportation arrangement businesses; and the eased criteria for the registration of road freight carriers and automobile rental businesses. With respect to regulations on imports, exports, and related industries, the requirements on personnel, facilities and equipment in agricultural chemical manufacturing and import were either repealed or loosened; several import prohibitions on ingredients for oriental medicines were abolished, and; the quality inspection system for the manufacturers and importers of oil products was improved to designate organisations meeting certain criteria and internationally accredited institutions as inspection agencies.

10. The KFTC also checked the status of areas where cartels were repealed with the enactment of the Omnibus Cartel Repeal Act on April 1, 1999, surveyed the level of remunerations for professionals and published the results. The enforcement of the Omnibus Cartel Repeal Act led to the elimination of 20 cartels, such as those fixing fees for professionals. However, the KFTC, figuring that enterprises accustomed to "fixed prices" may continue to secretly engage in cartels, carried out comprehensive investigations. These resulted in the detection and correction of cartels formed by 4 trade associations such as Korean Institute of Certified Public Accountants and the overhaul of related regulations such as the by-laws of nine trade associations including the Korea Customs Brokers Association that failed to change internal rules with respect to repealed cartels. The KFTC plans to continue monitoring and raise awareness until pro-competitive environment firmly takes hold in these sectors.

11. The Commission also initiated two rounds of investigations into the level of remunerations for 8 professionals including lawyers, certified tax accountants, and administrative scribes, utilising consumer groups, etc. These probes revealed that the level of service fees remained stable (there was no sharp price hike, as was feared by some, after the elimination of the criteria for fee fixing) and price discriminations were prominent, professional by professional and service by service, based on competition. The KFTC plans to make constant endeavours to provide information on the level of service fees of professionals, to ensure the voluntary determination of price and rational choice of consumers.

12. Besides, the KFTC took step to prevent the privatisation of SOEs from shifting the monopoly from the public to private sector. Its opinions for boosting competition, by allowing the competition in the introduction and wholesale of gas and sharing the acquisition bases and main distribution pipelines, were reflected in the plan for restructuring in natural gas industry (privatisation plan for KOGAS), which was approved by the Committee on Privatisation of SOEs in Dec. 1999.

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### *Outline of the Korean Natural Gas Industry Restructuring Plan >*

#### Import and wholesale businesses

13. Korea Gas Corporation (KOGAS) will spin off the import and wholesale divisions in 2001 into three subsidiaries, based on the long-term purchasing agreements of LNG to Korea. Two subsidiaries are to be sold off to private investors by the end of 2002, while one subsidiary will remain under KOGAS' control until its sell-off. The sell-off date will be decided later for the one remaining subsidiary. The purchasing agreements of LNG will be grouped in order to support a fair and transparent competition among the three companies for imports and wholesales. To that end, an independent regulatory body will be established and the current regulatory structure will be redefined and reinforced to accommodate the plan. To the private participants of the sell-off, priorities will be given to the choice of the subsidiaries. On the premise that purchasers of the contract undertake any liabilities including those arising from the take-or-pay provision of the long-term import contracts and default provision for LNG vessels, the government is to devise an appropriate measure to provide necessary support. OA will be adopted for all facilities of KOGAS (the terminals and the transmission network). By the end of 2002, the government will sell off its stake in KOGAS, while holding a portion of the shares in consideration of the public nature of the company. In 2001, LNG imports by the consumers for self-use will be allowed.

#### ***Retail business***

14. In 2000, competition over the construction of distribution facilities will be introduced. Any certified companies will be allowed to construct and operate distribution facilities in the unserved area. At first, competition between two or three retail suppliers will be promoted. Competition in the gas retail sector will be introduced through several phases after competition successfully takes hold in the wholesale business. The first phase: permission of competitive supply to large customers by retailers and wholesalers. The second phase: split of city gas supply businesses into facility operation and sales business. The third phase: allow competition in the gas supply to smaller customers. The gas supply service by LNG tank lorry will be introduced to the areas where distribution network is not established.

#### **Box2. KFTC's Competition Advocacy Role**

1. Competition advocacy refers to all the efforts aimed at establishing the principles of market economy in the government decision-making, enforcement, and deregulation processes. This includes urging public enterprises and corporations under privatisation to undertake restructuring in a pro-competitive direction and eliminating economic regulations that reduce consumer welfare.

In order to play an effective competition advocacy role, the competition authorities should be equipped with relevant power and resources. In addition, it should be able to take part in the government decision-making process in a timely fashion.

2. In this light, the Korea Fair Trade Commission (KFTC) possesses not only common tools necessary for a competition advocate but also other effective instruments that cannot be found in other countries.

First, the most important authority entitled to the KFTC is its power to have prior consultation with relevant government agencies concerning legislations.



- Article 63 of the Monopoly Regulation and Fair Trade Act : When the head of a pertinent administrative agency intends to enact or amend any Acts or decrees, issue an authorisation or take other measures that contain anti-competitive elements, he/she shall seek consultation with the KFTC in advance.

As such, Korea's general competition law uniquely stipulates the competition advocacy role of the competition authorities. Such role is deemed one of the core functions of the KFTC.

Second, the Chairman of the KFTC can sit and voice his opinion on the Cabinet meeting. Policies, once formulated, are difficult to correct. In this regard, the KFTC Chairman has the views of the competition agency reflected in the policy-making by attending and expressing his opinions at the Cabinet meeting.

3. Based on the power and tools set forth under statutes, the KFTC has vigorously pursued the role of competition advocacy, with successful results.

With respect to the legislation-related prior consultation, in the recent three years, the KFTC has put forth its opinions in 403 cases (31.9 percent) in the 1264 law enactments and revisions requested from relevant government agencies. It has been able to reflect its views in 310 cases (76.9 percent). As such, it has been able to fend off the introduction and amendment of anti-competitive legislations, achieving, in effect, regulatory reforms.

The followings are some major achievements of the KFTC as a competition advocate.

- a) Since 1997, it has taken measures to improve institutions and practices that lead to monopoly and oligopoly in 20 items including automobile, steel, and tire that have entrenched monopolistic or oligopolistic market structures.
- b) In Feb. 1999, the Omnibus Cartel Repeal Act was enacted. This resulted in the elimination or improvement of 20 cartels including those that set remunerations for 9 professional occupations including lawyers and those that were subject to group negotiations with small and medium-sized enterprises (SMEs).
- c) The KFTC also has a keen interest in the privatisation of State Owned Enterprises (SOEs). Privatising backbone industries that operated under state monopoly could produce private instead of state monopoly. In recognition of this possibility, the KFTC has actively pursued pro-competitive policies including deregulation.

The OECD Reviews of Regulatory Reform in Korea evaluated that the KFTC has played a crucial role in ensuring two essential principles of reform: increasing reliance on markets and increasing openness.

4. The experience of the KFTC as a competition advocate has two implications.

First, it is highly likely that countries that pursue economic policy focused on industrial policy, including Korea that adopted government-driven growth strategy in the past, can breed anti-competitive governmental regulations. These countries, thus, are required to make efforts for a market economy to take hold from the initial stage of development. This could be achieved through the introduction of competition policy and active competition advocacy role of the competition authorities. Second, it is pivotal to grant effective and powerful authority to competition agencies for them to serve as competition advocates.

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### III. Enforcement of the Competition Law

#### 1. The assessment of Actions taken by the KFTC in 1999

15. Among 2,583 cases, (cases deferred from the previous year: 675, reported cases: 1,432, investigations on authority: 476) the KFTC addressed 2,139 cases. Since 1997, it has annually dealt with 2000 cases on average.

< Cases addressed by the KFTC, by year >

(Unit : Number of Cases)

Year	1995	1996	1997	1998	1999
Matters opened	<b>1,242</b>	<b>1,945</b>	<b>1,861</b>	<b>2,321</b>	<b>1,908</b>
Investigation on	818	1,476	1,539	1,819	1,432
	424	469	322	502	476
<sup>1)</sup> Matters Closed	<b>1,115</b>	<b>1,536</b>	<b>2,154</b>	<b>2,127</b>	<b>2,139</b>
Pending	<b>231</b>	<b>640</b>	<b>347</b>	<b>530</b>	<b>454</b>

Note: 1) Matters closed refer to the number of cases opened in the concerned year and the number of cases pending as of the previous year deducted by the number of cases pending in the concerned year.

16. By type of illegal conducts, 514 out of 1,262 cases involved unfair trade practices, followed by 311 cases of unfair subcontracting and 255 cases of unfair standard contracts. However, the KFTC placed priority and allocated enforcement resources mostly on monitoring and correcting anti-competitive corporate conducts that had greater injurious impact on competition and consumers, such as price fixing or bid rigging in public construction projects.

17. The 25 percent increase in unfair trade practices compared to the previous year was attributable to the fact that the number of undue labelling and advertising cases went up by 190, following the active business activities as the economy posted a recovery from the foreign exchange crisis of 1997. In contrast, cases related to unfair subcontracting, which had been on the rise since 1994, marked a dramatic decrease in 1999 (45.0 percent), resulting from change in investigative method (large-scale paper-based fact-finding probes on authority) and the sluggish construction market. The KFTC dealt with 255 cases relating to unfair standard contracts, up by 143 from 1998. This rise stemmed from the massive fact-finding investigations into standard contracts on lease transaction and franchise in 1999, which uncovered various law breaches.

18. As for the violations of regulation on business combinations, the KFTC handled 15 cases, a 48.2 percent decrease from the previous year. Most cases involved the breaches of the reporting obligation by merging firms. In the area of unfair international contracts, the amendment of MRFTA in April 1995 replaced the reporting requirement with the voluntary review request. Since then, review cases have decreased constantly. In 1999, there was no request for examination. Nevertheless, inquiries or consultations through the Internet or telephone are on the rise. Besides, prohibited acts of trade associations, undue concerted acts, abuse of dominance showed a tendency for decline. This seems to stem from KFTC's toughened enforcement against law violations in the process of economic reforms undertaken after the foreign exchange crisis.

## &lt; Matters closed by type of illegal acts &gt;

Type of Illegal Act	Year					
	94	95	96	97	98	99
Abuse of dominance	1	3	1	2	5	2
Violations of business combination regulation <sup>1)</sup>	13	23	36	47	29	15
Violation of Provisions Curbing Concentration of Economic Power	8	3	14	6	11	38
Undue concerted act	19	26	36	22	37	34
Prohibited acts of trade associations	56	40	66	53	101	93
Unfair trade practices	337	353	339	509	403	514
(Undue intra-group transactions)	(45)	(16)	(6)	(8)	(55)	
(Market dominant enterprise)	(16)	(67)	(33)	(44)	(8)	
Unfair international contracts <sup>2)</sup>	55	40	26	2	1	-
Sub-total	489	488	518	641	587	696
Unfair adhesion contract	72	51	56	152	112	255
Unfair subcontracting <sup>3)</sup>	224	387	494	534	582	311
Total	785	926	1,068	1,327	1,281	1,262

Notes 1) The cases mostly involve the breaching of the deadline for M&A reporting.

2) The number until 1996 included cases of modified international contracts.

3) Cases include the mediations by Subcontract Dispute Co-ordination Committee

19. Measures taken by the KFTC consist of 617 corrective orders(48.9 percent), 153 recommendations for correction(12.1 percent), 481 warnings (38.1 percent), and 11 referred to criminal prosecutions.

**< Measures Taken by Type of Illegal Conducts >**

(measures heavier than warning, no.)

Type	Year								
	81<92	93	94	95	96	97	98	99	⊗
Prosecution (surcharge)	39 (-)	7 (-)	13 (-)	33 (2)	16 (1)	35 (-)	37 (5)	11 (-)	191 (8)
corrective order (surcharge)	1,067 (11)	219 (24)	207 (68)	199 (48)	250 (21)	221 (9)	532 (62)	617 (101)	3,312 (344)
recommendation for correction(request for correction)	747 (9)	61 (3)	113 (5)	122 (3)	183 (4)	339 (10)	62 (5)	153 (4)	1,780 (43)
warning <sup>1)</sup>	4,672	496	452	572	619	732	650	481	8,674
Total	6,525	783	785	926	1,068	1,327	1,281	1,262	13,957

Note 1) Cases include the mediations by Subcontract Dispute Co-ordination Committee

**2. Promoting competition in the monopolistic market**

20. KFTC pursued reforming of monopolistic and oligopolistic market structure. KFTC, in the amendment of the MRFTA in December 1996, has provided institutional framework to introduce and reinforce competition in the markets which had been monopolistic or oligopolistic for a considerable period of time. At the end of the year, KFTC selected 20 goods or so including automobile, tire and steel as "priority items" to be redressed. In 1997, competition was enhanced in five monopolistic/oligopolistic markets, including automobile, tire and flat glass, and in 1998, KFTC restructured five markets relating to steel and beer markets, during which it imposed surcharges of 16.3 billion Won against uncovered collaborative and other unfair trade practices

**< Major Achievements of KFTC's Efforts to Restructure Monopolistic/Oligopolistic Markets during 1997 and 2000 >**

Market	Improvements
3 automobile-related goods	- Automakers are prohibited from forcing parts suppliers to exclusively transact with them - Part suppliers can sell repair parts, which were used to be sold only by automakers.
Tire	- Automakers are required to provide an open bidding in purchasing tire. - Manufacturers' recommended consumer price and export licensing system are scrapped.
5 steel-related goods	- Restriction on entry into blast furnace market are eased; Separating 2 plants of POSCO is under consideration. - Manufacturers of scrap iron are banned from forcing exclusive trade requirements upon dealers
Beer	- Requirements for brewery facilities are eased; Liquor sellers no longer need to report their liquor sales price; and other anti-competitive regulations are abolished

21. We already informed in the 1998 annual report that the designating enterprises with market dominant power is shifted from 'ex-ante' to 'ex-post facto' system with the revision of the MRFTA. The table shows the corrective measures taken against abuse of dominance.

**< Corrective measures on cases of abuse of dominance >**

(unit : case)

Classification		Total	'81□ '94	'95	'96	'97	'98	'99
Total		33	20	3	1	2	5	2
Type of abuse of dominance	Price abuse	3	3	-	-	-	-	
	Control of ex-factory volume	3	-	-	-	-	3	
	Interference with other business							
	Interference in market entry	21	15	1	1	2	1	1
	Other acts likely to restrain competition	2	2	-	-	-	-	
		4	-	2	-	-	1	1
Type of corrective measure	Corrective order	20	12	1	1	1	4	1
	Recommendation for correction	5	3	2	-	-	-	
	Warning	8	5	-	-	1	1	1

**3. Undue Collaborative Acts**

22. The Fair Trade Commission took corrective measures on a total of 34 cases of undue collaborative acts in 1999. All of them were deemed to orders for correction by the KFTC. Surcharges were imposed against 15 cases. To categorise uncovered violations in types, price fixing topped the list with 29 case(85.3 percent) and restriction of territory of trade or customers for 5 cases.

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< Corrective measures for different types of collaborative acts □

(unit: case)

Type	'81 ~ '94	'95	'96	'97	'98	'99	⊗
Price fixing	69	20	27	14	33	29	192
Collusion on terms of sales	9	1	1	1	-	-	12
Restriction of business activities	2	-	3	2	2	5	14
Output restriction	19	1	-	1	-	-	21
Restriction of territory of trade or customers	18	2	3	3	2	-	28
Restriction of the types of the goods	8	1	-	-	-	-	9
Establishment of a joint corporation	1	1	2	1	-	-	5
Total	126	26	36	22	37	34	281

Note) For '81<'92, corrective measures and warning are not included.

23. In 1999, the KFTC set up a regular information gathering system in April last year, with eight big principal institutions including the Supply Administration. This measure is aimed at eradicating bid riggings in public construction projects. Based on acquired bidding information, investigations were launched into five large construction tenders, which led to the imposition of surcharges totalling 10.5 billion Won against 28 enterprises. In line with these efforts, the KFTC toughened its monitoring on price collusion of manufactured goods. For example, it discovered quantity and price collusion by eight companies and trade associations related with manufacturing of air conditioner and washing machine. Consequently, 26.6 billion Won in surcharges was slapped. Another 1.1 billion in surcharges was imposed on three beer brewers which engaged in concerted act of fixing the rate and time of beer price hike according to types and standards.

**4. Merger & Aquisition**

24. With the process of corporate restructuring and new entry into the IT industry resulted from the recovery of the economy, the number of M&A rose to 557, an increase of 14.6 percent from the year before when 486 M&As was made. M&A by foreign firms in 1999 numbered 168, accounting for 30.2 percent of M&As, marking 27.3 percent increase from the year before. Thanks to this, a total of \$ 8.7 billion worth of foreign capital was attracted, 17.6 percent increase from \$ 7.4 billion in 1998.

	'98	'99
M&As (No.)	486	557(14.6%)
M&A by foreigners (No.)	132	168(27.3%)
Amount of Foreign Investments (in \$100 million)	74.0	87.0(17.6%)

25. The favoured types of M&A have also shown a change in pattern. Stock acquisition and take-over of business rose in number while business consolidation by mergers and establishing of a new company decreased.

**< Trends in Business Combinations by Year >**

(unit : case, %)

	95	%	96	%	97	%	98	%	99	%
Establishment of a new company	121	(37.2)	130	(33.1)	163	(39.0)	130	(26.7)	113	(20.3)
Stock acquisition	142	(43.7)	159	(40.5)	130	(31.1)	92	(18.9)	146	(26.2)
Merger	48	(14.8)	63	(16.0)	75	(17.9)	151	(31.1)	145	(26.0)
Interlocking directorate	4	(1.2)	16	(4.0)	27	(6.5)	32	(6.6)	42	(7.6)
Take-over of business	10	(3.1)	25	(6.4)	23	(5.5)	81	(16.7)	111	(19.9)
Total	325	(100)	393	(100)	418	(100)	481	(100)	557	(100)

26. Out of the 557 business combinations the KFTC handled in 1999, 22 cases violated the relevant provisions. The KFTC issued warning against 13 cases for violating the provisions as to reporting of business combinations and disapproved 2 cases out of the review prior to the official reporting, and granted exception for 3 case.

**< Result of Business Combination Review >**

(unit : case)

Year	81□ 89	90□ 94	95	96	97	98	99	Total
Corrective order	2	-	-	1	-	3	2	8
Exception	-	3	-	-	1	1	3	8
Warning	291	90	23	35	46	26	13	524
Surcharge	-	-	-	-	-	-	4	4

Note: Warning is related to the cases for violating the provisions as to reporting of business combinations.

**5. Unfair Business Practices**

27. In 1999, a total of 907 cases of unfair business practices were reported to the KFTC which marked a 7.1 percent decrease from 986 cases in 1998. To divide the reported cases into different categories, wrongful representation and advertising topped the list(458 cases), followed by abuse of dominance(167 cases), refusal to deal(116 cases), and undue luring of customers(72 cases). The KFTC took various corrective measures against these cases. Corrective measures were ordered against 352 cases in 1999, including 57 cases that were ordered to pay surcharges along with such corrective measures. It

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issued warning for 151 cases and referred 1 cases to criminal prosecution. Regarding resale price maintenance, the KFTC issued corrective orders upon 10 cases. In disciplining unlawful activities during 1998, KFTC employed stronger measures than ever before like high surcharges along with other corrective measures upon violators, signalling KFTC's firm resolution to fight against anti-competitive activities.

### < Types of Unfair Business Practices Reported and Processed >

(unit : case)

Year	'98		'99	
	Reports filed	Cases Processed	Reports filed	Cases Processed
Refusal to deal	121	96	102	116
Discriminatory treatment	12	59	12	12
Exclusion of competitors	19	16	23	24
Unfair luring of customers	74	81	50	72
- by offering of gifts	37	28	26	36
- by special discount sales	-	-	-	-
- by other methods	37	53	24	36
Dealing by coercion	17	15	27	28
Transaction based on restrictive conditions	32	22	9	8
Abuse of dominance	263	216	135	167
Interference in the business of others	23	27	15	17
Undue advertisement	372	268	475	458
Undue subsidisation	43	29	59	66
Resale price maintenance	10	14		
Total	986	843	907	968

## 6. Unfair Subcontracting Practices

28. 71.4 percent of SMEs in Korea engage in subcontract transactions. As such, establishing fair competition in subcontracting constitutes an important part of sharpening SME's competitive edge. In 1999, the KFTC carried out large-scale investigations on its own initiative to improve unfair subcontracting trade practices, by introducing paper-based probes into fact-finding for the first time.

29. In 1999, the KFTC took corrective measures on a total of 314 unfair subcontract transactions which is a 45.8 percent decrease from 579 cases of the previous year.

30. Out of the unfair subcontract practices, default of subcontract payment and default on note discount constituted a large part of such unfair practices with 199 and 65 cases respectively. Of these unfair subcontract cases, 8 were referred to criminal prosecution, 35 were subject to correction order, 147 to warning and 124 cases were settled by the Dispute Settlement Committee.

## 7. Unfair Adhesion Contracts

31. In 1999, the KFTC reviewed a total of 748 contracts, marking an 1.6 percent increase from 646 contracts of the previous year. Out of the 748 contracts submitted for review, 626 or 83.7 percent were



reviewed upon request by an interested party and 98 contracts were reviewed on KFTC's initiative and 24 upon request by consumer groups. The KFTC issued correction order against 95 cases, correction recommendation against 149 cases and correction request against 4 cases.

32. Moving beyond the correction of individual unfair standard contracts, the Commission also took steps to prevent consumer injuries, by recognising and circulating contracts that serve as standards in certain area of trade. Corrective measures against unfair contracts can only provide remedies to injuries of individual cases, while the circulation of standardised contracts can offer a wider consumer protection, since these contracts cover the whole transaction area concerned. In 1999, the KFTC reviewed and circulated standardised contracts involving tourism, gift certificate, and e-commerce, thereby preventing possible consumer injuries in these fields.

#### 8. *Anti-competitive Activities of Trade Associations*

33. In 1999, the KFTC took corrective measures against 93 cases of violations by trade associations. KFTC issued order for correction as for 80 cases, warnings for 12 cases, and referred 1 cases to criminal prosecution. To categorise violations in types, restriction of competition in a given area of trade topped the list with 71 cases, accounting for 76 percent, and next on the list was restriction of business activities or the nature of business of other companies with 14 cases.

#### < Types and number of violations by trade associations > (unit : case)

Classification	1981<19 94	1995	1996	1997	1998	1999
Anti-competitive practices	184	30	46	38	49	71
Restriction of the number of member corporations	29	1	1	1	3	1
Restriction of business activities or the nature of the businesses	57	5	15	13	41	14
Unfair business practice & Resale price maintenance	39	3	4	2	8	7
Unfair Advertising	-	1	-	-	-	-
Total	310	40	66	54	101	93

#### IV. **Budget and Manpower of the KFTC**

34. Beginning in the 1990's, the government of the Republic of Korea increasingly placed priority upon on competition policy, and the continued increase in budget and the number of employees bears testimony to this fact.

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	person-years	budget expenditure(100 million Won)
1999	429	170
1998	432	160
1997	403	184
1996	381	146
1995	341	105
1994	279	80
1993	254	64

The total number of employees is 429 as of Dec. 1999 and the number of each blocks as follows:

- Commission, including staffs but excluding non-standing commissioners(18), General Affairs Div.(24), Inspection Officer(6), Public Relations Officer(6)
- Director General for Planning & Management(27) : Planning & Budget officer(10), Administration and Legal Affairs officer(17)
- General Counsel(28) : Assistant General Counsel Div.  $\bar{1}$ (12), Assistant General Counsel Div.  $\alpha$ (8), Assistant General Counsel Div.  $\beta$ (8),
- Competition Policy Bureau(34) : Competition Policy Div.(10), Competition & Deregulation Div.(9), International Affairs Div.(8), Multilateral Co-operation Div.(7)
- Monopoly Regulation Bureau(39) : Monopoly Regulation Policy Div.(12), Enterprise Group Div.(10), Merger Review Div.(9), Monopoly Watch Div.(8)
- Competition Bureau(39) : Unfair Trade Practice Regulation Div.(12), Special Unfair Trade Practice Regulation Div.(9), Cartel Div.(9), Trade Association Div.(9)
- Consumer Protection Bureau(37) : Consumer Protection Planning Div.(12), Advertisements Div.(9), Adhesion Contract Regulation Div.(8), Electronic Commerce Div.(8)
- Subcontract Bureau(29) : Subcontract Planning Div.(11), Subcontract Div.  $\bar{9}$ , Subcontract Div.  $\alpha$ (9)
- Investigation Bureau(31) : Investigation Planning Div.(13), Investigation Div.  $\bar{9}$ , Investigation Div.  $\alpha$ (9)
- Regional Offices(75) : Pusan Offices(20), Kwangju Offices(19), Taejeon Offices(18), Taegu Offices(18)

35. Currently, the KFTC is organised into functional bureaux, consisting of the Fair Trade Policy Bureau, Antitrust Bureau, Competition Bureau, Consumer Protection Bureau, Subcontract Bureau, and Investigation Bureau. Such functional organisation makes it difficult to come up with proper improvement plans, such as the institutional improvement through a close monitoring of each industry, reorganisation of market structure, and correction of anti-competitive conducts. Thus, the KFTC has been working on measures to reorganise the organisation around each industry, or the existing organisation to specialise in certain industry, in order to understand the market situation in a timely fashion.

36. Concerning the personnel of the KFTC, among 432 staff, 99(23 percent) hold master's degrees and Ph. Ds. Looking at their major, those majored in economics are 77(18 percent), law 48(11 percent), management 40(9 percent), and public administration 87(20 percent). This reveals that economics and law graduates are relatively in short supply. The KFTC thus believes that further expansion of personnel in these fields, as well as economic analysts, are necessary.

**<Current Composition of KFTC Personnel>**

(unit: person)

Classi- fication	Persons in charge of the enforcement of the FTA or other related work																O t h e r s	T o t a l	Total
	Persons with undergraduate or higher education																		
	Economics			Law			Business Administration			Public Administration			Others						
Year	Ph.D.	M.A.	B.A.	Ph.D.	M.A.	B.A.	Ph.D.	M.A.	B.A.	Ph.D.	M.A.	B.A.	Ph.D.	M.A.	B.A.	Ph.D.	M.A.	B.A.	
As of 12. 31, 98 (Variation)	10 (≥1)	29	37 (+4)	1	11	30	0 (≥1)	12 (+1)	31 (+1)	0	46 (≥3)	40	0	5	77 (+2)	28 (≥1)	75 (≥6)	432 (≥4)	
As of 10. 12, 2000 (Variation)	11 (+1)	25 (≥4)	41 (+4)	1	9 (≥2)	38 (+8)	0	11 (≥1)	29 (≥2)	0	36 (≥10)	51 (+11)	0	6 (+1)	78 (+1)	28	67 (≥8)	431 (≥1)	