

KOREA

(1998)

Contents

I. Changes to Korean competition laws and policies

1. The 7th revision of the Monopoly Regulation & Fair Trade Act and its enforcement decree
2. The enactment of the Omnibus Cartel Repeal Act
3. The enactment of the Advertisement Act
4. The 4th revision of the Subcontracting Transactions Act
5. The list of guidelines and notifications enacted, revised, or abolished

II. Korea Fair Trade Commission's Advocacy Role

1. Providing prior consultation to other ministries in their legislative attempts that may impair competition
2. Implementation of regulatory reforms

III. Enforcement of the Competition Laws

1. Promoting competition in the monopolistic market
2. Undue Collaborative Acts
3. Anti-competitive Activities of Trade Associations
4. Merger & Acquisition
5. Creating an environment conducive to corporate restructuring
6. Unfair Business Practices
7. Unfair Subcontracting Practices
8. Unfair Adhesion Contract

IV. Budget and Manpower of the KFTC

COMPETITION LAW AND POLICY IN KOREA

I. Changes to Korean competition laws and policies

1. The 7th revision of the MRFTA (revised on 2.5, 1998 and implemented on 4.1, 1999) and its enforcement decree

1. The 7th revision of the MRFTA is designed to improve and redress institutional shortcomings in the MRFTA and to facilitate corporate restructuring.

First, the scope of application of the MRFTA is extended to all enterprises. The exceptions to a few industries, such as agriculture, fishery, forestry and mining, were abolished. Thus, in principle, the MRFTA applies to all industries with no exception(Article 2-1). In the past, any corporation engaging in a financial or an insurance business was exempt from the provisions of prohibiting the abuse of market-dominant positions. However, such exemption is abolished(Article 2-7).

2. Under the previous MRFTA, only two kinds of holding company were allowed to be established. The one was a holding company to operate a foreign investment project pursuant to the Foreign Capital Inducement Act and has been approved by the KFTC in accordance with the Presidential Decree. The other was a holding company which will be established in accordance with an individual law. Accordingly, the establishment of a holding company was in fact almost out of the question. In order to accelerate corporate restructuring and spin-off of non-core businesses and to create more favourable conditions for foreign investment, the 7th amendment of the MRFTA in February 1999 allows the establishment of holding companies under the following conditions.

Any holding company must:

- have a debt to equity ratio of less than 100 per cent;
- own a majority share of its subsidiaries (30 percent for listed companies);
- not include the subsidiary companies of its subsidiaries;
- eliminate any debt guarantees between subsidiary companies (however, this is limited to holding companies that include affiliates of the top thirty chaebols);
- not have both financial and non-financial enterprises as its subsidiaries.

3. Merger review system was amended to regulate anti-competitive business combinations more effectively. Concerns have been raised that the exception provision on business combinations for the purpose of achieving industrial rationalisation or strengthening international competitiveness might be abused. Thus, the provision has been deleted. Instead, provisions for balancing the benefits of efficiency against the anti-competitive effects of the proposed merger, and for a merger involving a failing company were added. Specific conditions were stipulated for those exceptions.

4. The *ex-ante* designation and notification of market dominating was abolished and converted to the *ex-post* facto assessment system, thus enterprises with market dominant power are judged by their actual market power in the relevant market if only a violation is reported (Article 4). In addition, the KFTC will survey market structure for the purpose of establishing and enforcing competition in the monopolistic and oligopolistic market.(Article 3-3 is newly incorporated).

5. Regulation of cartels is reinforced. Prior to the revision, Article 19--the clause governing horizontal agreements--reads, "No enterprise shall agree with other enterprises by contract, agreement, resolution or any other means, to jointly engage in any of the acts listed in the items below which substantially restrict competition in a particular field of trade." Following the revision, however, the clause reads, "which unjustifiably restricts competition...." This revision is a policy shift from the application of the "rule of reason" in regulating cartels to virtual *per se* treatment.

6. Regarding exemption for publications from the prohibition of resale price maintenance, the exemption covered all of literary works under the Copyright Act(literary works, academic accomplishments, and artistic creations etc.), but the exemption has been reduced to the printed publications (including electronic publications) in March this year. (Revision of Article 43 of Enforcement Decree of the MRFTA)

Summary of the 7th revision of the MRFTA

Items	Prior to the revision	After the revision
The scope of the enterprises in the application of the MRFTA (Art. 2-1)	MRFTA was applied to twelve types of business and industries out of seventeen types under the Korean Standard Industrial Classification.	MRFTA is applied to all types of enterprises without any exception.
Regulation on the abuse of market-dominant position (Art. 2-7, 3, 4)	<p>The KFTC ex-ante designated market-dominant enterprise which supplies the same or similar goods or services whose market share falls under any of the following categories.</p> <ul style="list-style-type: none"> - one enterprise which holds a fifty percent or greater share of the market, or - three or fewer enterprises which collectively hold a seventy-five percent or greater share of the market <p>Financial businesses were exempted from the clause.</p>	<p>The ex-ante designation system is replaced by ex-post assessment system. However, a violator may be presumed to have market power if it falls under any of the following categories.</p> <ul style="list-style-type: none"> - one enterprise which holds a fifty percent or greater share of the market, or - three or fewer enterprises which collectively hold a seventy-five percent or greater share of the market <p>The exemption for corporation engaging in financial businesses is abolished.</p>
Holding companies (Art. 8, 8-2, 8-3)	<p>The establishment of or conversion into a holding company was prohibited, whereas exceptions were allowed for the following cases;</p> <ul style="list-style-type: none"> - established in accordance with the Laws, or - established to operate a foreign investment project and has been approved by the KFTC 	<p>The establishment of or conversion into a holding company is allowed subject to the following conditions.</p> <ul style="list-style-type: none"> - have a debt to equity ratio of less than 100 per cent; - own a majority share of its subsidiaries; - not include the subsidiary companies of its subsidiaries; - eliminate any debt guarantees between subsidiary companies (however, this is limited to holding companies that include affiliates of the top thirty chaebols); - not have both financial and non-financial enterprises as its subsidiaries.

COMPETITION LAW AND POLICY IN KOREA

Items	Prior to the revision	After the revision
<p>Merger review system(Art. 7, 12)</p>	<p>Types of business consolidations which were subject to review by the KFTC were (1) stock acquisitions, (2) business transfers, (3) mergers, (4) interlocking directorate, and (5) participating in the establishment of a new corporation.</p> <p>Anti-competitive business combination might be approved by the KFTC, if it was for the purpose of achieving industrial rationalisation or strengthening international competitiveness.</p>	<p>The types of business consolidations which is subject to review by the KFTC is narrowed : "interlocking directorate" is changed to "interlocking directorate in a large enterprise", and "participating in the establishment of a new corporation" is changed to "establishment of a joint venture."</p> <p>Exception for the purpose of achieving industrial rationalisation or strengthening international competitiveness is abolished. Two exceptions were newly introduced. Merger and acquisitions may be allowed if the benefits of efficiency outweigh the losses stemming from competition restraint or if it is a merger involving falling company.</p>
<p>Regulation on undue collaborations (Art. 19)</p>	<p>Prior to the revision, it was recognised that the "rule of reason" was applied to cartels.</p>	<p>The clause is revised to apply virtual <i>per se</i> treatment to hard-core cartels.</p>

2. The Enactment of the Omnibus Cartel Repeal Act(Enacted on 1.6, 1999; Implemented on 2.5, 1999)

(1) The Objective

7. The Omnibus Cartel Repeal Act is enacted to enhance consumer's welfare and encourage competition in markets by abolishing or diminishing concerted activities which have so far been granted exemptions from the MRFTA by sectoral legislation.

(2) Description of the Act and Its Anticipated Effects***Abolition of control on professional service fees***

8. Previously, fees for professional service, including those for lawyers and certified public accountants (CPAs), were determined by the trade associations and approved by the relevant ministries. As a result, the fees for a number of professional services tended to be fixed at a certain level. Some of the professionals whose service fee fixing shall be prohibited under the newly enacted Omnibus Cartel Repeal Act include lawyers, customs brokers, licensed tax accountants, CPAs, administrative scriveners, patent lawyers, certified labour services, veterinarians and architects (Lawyers' cartels will be abolished in January 2000).

Revision of insurance premium fixing

9. It has been customary in the insurance industry for the insurance companies to jointly set the insurance premiums based on the premium rates established by the Insurance Development Institute (IDI). The rates established by the IDI incorporated not only the net premiums but also the loading premiums (equivalent to 20 to 60 percent of insurance premium), reflecting the operational costs and profits of the involved companies. Beginning in 2000, however, the IDI will only set forth the net premium, while each insurance company will determine the loading premium, paving the road for more flexibility in price-setting based on the business performance of each company.

Reduction of the number of products subject to group negotiation contracts for SMEs

10. Presently, when the government and public enterprises wish to purchase products identified by the Small and Medium Business Administration, they are obligated to engage in group negotiations with the Co-operatives of SMEs, rather than abiding by the general principle of open bidding. Each co-operative has the authority to determine the price of its products and the amount to be allocated to each member company. In effect, this insulated the member companies from open competition and deprived them of the incentive to strengthen their competitiveness. At the same time, the public organisations were wasting their budget. By revising the relevant law, however, the government intends to cut the number of products subject to mandatory group negotiations by 20 percent each year between 1999 and 2001. (Based on 1998 figures, the total number of products was 258; by 2001, it is expected to fall to 103). Such efforts will contribute greatly to bolstering the competitiveness of the SMEs and cutting down expenditures of the public organisations.

Streamlining of the MOCIE co-ordination directive aimed at maintaining export or import orders

11. In the past, Commerce, Industry and Energy (MOCIE) was authorised to restrict domestic bidding participation or co-ordinate export/import prices (referred to as "co-ordination directive") either when deemed necessary to comply with trade agreements or when domestic companies participate in overseas international bids. However, the revision of the relevant law has the effect of limiting co-ordination directives to situations in which they are required to comply with inter-governmental agreements or to export military equipment.

Abolition of MOCT co-ordination in bidding competition for overseas projects

12. Previously, the Minister of Construction and Transportation (MOCT) was authorised to handpick a potentially successful domestic bidder for offshore construction projects or select construction companies and assist them in making inroads into other countries or regions. Such authority was granted when deemed necessary to prevent overheated competition among bidders that may drag down the bidding price. The abolition of such co-ordinating rights, however, is expected to eliminate potential trade disputes and give companies with competitive edge the opportunity to penetrate overseas markets.

Abolition of territorial allocation in the supply of unsterilised rice wine

13. In the past, the supply of unsterilised rice wine was restricted to the administrative districts of cities or counties in which the breweries were located. This had the effect of allowing a handful of rice wine brewers to enjoy monopolistic/oligopolistic market power in a given area. Consequently, high quality rice wine that was produced in neighbouring cities or counties could not gain access to nearby distribution networks. Beginning in 2001, such restriction will be lifted, enabling consumers to enjoy quality rice wine of their choice at any place.

3. The Enactment of the Advertisement Act(Enacted on 2.5, 1999, Implemented on 7.1, 1999)

The Objective

14. For many years, the KFTC has spared no effort in regulating false advertisements and representations as a type of unfair trade practices with a view to ensuring fair competition. However, these efforts may seem to have been falling short of effectively addressing consumer issues with the development of information-society and the changes in socio-economic environment. Recognising this, the KFTC enacted the Advertisement Act to reinforce the regulation of undue methods of advertisement. The purpose of the Act is to prevent false or misleading representations and advertisements that may deceive or mislead consumers and to provide consumers with fair and useful information, thereby contribute to ensuring fair competition and protecting consumers. (Article 1)

Description of the Act and Its Anticipated Effects

15. The Act covers four types of undue representations and advertisements which are prohibited; false or exaggerating, deceiving, unduly comparative, and slanderous representations and advertisements. The KFTC may designate critical information that need to be informed to consumers should be included in representation and advertisements. (Article 4) When the KFTC intends to publish the list of critical information, it shall consult in advance with the heads of relevant agencies and hear the testimony at a hearing of the concerned trade association and consumer group.

16. Enterprises shall verify the truthfulness of their representations and advertisements when they allege factual issues on the goods or services.(Article 5) The KFTC may request in writing enterprises to submit relevant documents when it regards necessary the verification of representations and advertisements and the requested enterprises shall submit the verifying documents. When the KFTC regards it necessary to keep consumers from getting false idea about the product or to protect fair competition, it may make the documents available to the general public in due course.

17. The KFTC may issue a temporary cease order against representations and advertisements when there is a substantial likelihood of inflicting irrevocable damage on consumers or competing enterprise. To enhance competition by way of advertisements, it is prohibited for trade association to restrict representations and advertisements unless it is authorised by a law or approved.

4. The revision of Subcontract Transactions Act (Revised on 1.26, 1999; Implemented on 4.1, 1999)

18. Since the economic crisis 1997, the settlement by note has become very problematic as the settlement-by-note increased, maturity date of note was getting longer, and notes receivable were turning bad, increasing the risk of chain bankruptcy. For a fundamental reform of subcontract payment settlement, the 4th revision of "Subcontract Transactions Act" took effect as of April 1, 1999. Under the revised Act, contractors when making subcontract payment to subcontractors must pay more than the amount that they received from principals. Also, in case contract payment is made by note, contractors must not issue notes with the maturity exceeding the maturity date of the notes that they received from principals. Thanks to the revised Act, cash settlement ratio is expected to increase and the maturity of notes be shortened, and the financial crunch of SMEs will be eased while the chain bankruptcy gets less likely.

5. Guidelines and Notifications that are Enacted or Revised

Enactment(4)

- Guidelines on the Review of Merger & Acquisition(6.15, 1998)
- Guidelines on Advertisement(9.7, 1998)
- Guideline on imposition of surcharge for violation of "Policy to Restrict Economic Concentration"(7.13. 1998)
- Notification on overdue interest rate for arrears in advance payment. (1.13. 1998)

Revision(7)

- Notification on the Types of and Criteria for Unfair Business Practices of Large Retail Stores(5.12. 1998)
- Notification on the Types of and Criteria for Unfair Business Practices Relating to the Offering of Gifts(12.12. 1998)
- Notification on Types of Unfair Trade Conduct in Parallel imports(12.31. 1998)
- Notification on the Criteria for Unfair Business Practices Relating to the Franchise Arrangement(12.31. 1998)
- Guideline on Environment-related Labelling and Advertisements.(12.31. 1998)
- Regulations and procedures on the Operation of the Commission, and Investigation and Adjudication. (4.23, 8.1, 12.31. 1998)
- Notification on Discount Rate of Subcontract Settlement Payment by Note (5.12, 12.29. 1998)

Abolition (6)

- Guideline on Merger Review(6.15. 1998)
- Notification on the Types of and Criteria for Special Unfair Business Practices Relating to Bidding in Public Construction Works(12.24. 1998)
- Notification on the Types of and Criteria for Unfair Business Practices Relating to the Newspaper Publishing Business(12.24. 1998)
- Notification on the Types of and Criteria for Unfair Business Practices Relating to the Business of Selling Study Materials.(12.24. 1998)
- Notification on the Types of and Criteria for Unfair Business Practices Relating to Special Discount Sales(12.24. 1998)
- Notification on the types of and Criteria for Unfair Business Practices Relating to Environment-related Labelling and Advertisement (12.31. 1998)

II. KFTC's Advocacy Role

1. Providing prior consultation to other ministries in their legislative attempts that may impair competition

19. In 1998, government ministries sought prior consultation with the KFTC on a total of 563 laws and regulations, marking an increase of 155 cases from 408 cases in 1997. Of the total 563 cases for which consultations were sought the KFTC made recommendations in 173 cases or 30.7 percent and the KFTC's recommendations were reflected in 106 cases or 73.4 percent.

Statistics on Consultation and Recommendations by the KFTC
(unit: case)

Classification	Act	Enforcement Decree	Enforcement Regulation	Total
Reflected	81 (32)	28 (46)	18(28)	127 (106)
KFTC makes recommendations Not reflected	19 (16)	12 (6)	15 (11)	36 (33)
Subtotal	100 (48)	40 (52)	33(39)	173 (139)
KFTC agrees to the original draft	167 (46)	127 (116)	96(107)	390(269)
Total	267(94)	167(168)	129(146)	563(408)

() reflects the corresponding figures for 1997.

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

- Financial Sector : In the process of enacting the "Law on Stock Investment Firm", the clause reading that "the commission fee between the shareholder and the mutual fund must be determined by the Financial Supervisory Commission" was deleted to enable the contracting parties to determine the commission rate for themselves.

COMPETITION LAW AND POLICY IN KOREA

- Electronic Commerce Sector : In enacting "The Basic Law on Electronic Commerce", regulations which implicitly blocked market entry by cyber-mall operators and other unnecessary rules were deleted to promote e-commerce based on market principles.
- Industrial Policy : In enacting of the "Industrial Development Act" to replace the old one, regulations considered either running counter to the MRFTA or excessive were deleted or revised.
- Maritime Transportation Sector: In the process of revising the "Maritime Transportation Act", KFTC's opinions were significantly incorporated, i.e., when companies open branches at home and abroad alike, they no longer need to file a report on it; when companies enter into the transportation contract, they have only to report this with no need to get a license for it; strict qualification requirements for maritime transportation business were eased.
- Agricultural Sector : The "Act on Distribution and Price Stabilisation of Agricultural & Fishery Products" was revised to prevent excessive governmental intervention and develop diverse distribution channels. Under the Act, the government is no longer able to issue the directive of output restriction and price fixing as for agricultural products and from now on agricultural products can be distributed through a number of channels without being limited to wholesale markets and co-operative's joint markets as they used to be.

2. Implementation of regulatory reforms

21. We already informed in the 1997 annual report that the Regulatory Reform Committee was established with a view to pursue the nation-wide regulatory reform in April of that year. Since then, the KFTC has promoted competition in conjunction with the regulatory reform efforts by 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).

22. In 1998, the Task Force proceeded with reforming entry barriers, price restriction and business activity restriction in major sectors such as distribution, transportation, and construction which were under heavy regulations and were considered to have significant ripple effect on the nation's economy. In the efforts of the Regulatory Reform Committee scrapping 50 percent of regulations, the KFTC played a key role in deregulating economic sector, thus finalising as much as 104 reform plans for 9 major sectors e.g. distribution, aviation, maritime transportation, port facilities, construction, brewery, environment, professional occupations, export/import restriction, and quality confirmation. Achievements of such reform efforts include:

- eliminating suggested retail prices, to discourage resale price maintenance;
- eliminating mandatory membership and membership fees to trade associations;
- liberalising domestic air fares, for both scheduled and charter service;
- deregulating fees for telecommunication services, and changing the approval system to a reporting system(except for local telephone service)
- reducing entry restrictions in the sale of electric power, so private generators can enter through simple registration, rather than licensing, and have more opportunities for direct supply to end users.

23. In less than two years, the Task Force achieved substantial results in regulatory reform and was dissolved at the end of 1998. Following the dissolution of the Task Force, the regulatory reform efforts is

COMPETITION LAW AND POLICY IN KOREA

integrated into one channel, the Regulatory Reform Committee, chaired by the Prime Minister. The KFTC, by nature, is an organisation that can implement competition promotion policies from an objective, third-party position, and competition advocacy is one of its basic missions. Therefore, the KFTC will continue to enforce policies and measures aimed at introducing and extending competition throughout the nation in close co-operation with the Regulatory Reform Committee. To that end, the chairman of the KFTC is participating in the meetings of Regulatory Reform Committee as a member and state the views of the competition authority. Moreover, the KFTC plans to formulate competition promotion policies pertaining to regulated industries and refer them to the Regulatory Reform Committee. Furthermore, the KFTC intends to monitor the sectors in which free competition has been introduced as a result of regulatory reform, making sure that they are operating by strict market principles and that anti-competitive activities by private parties are not taking place.

III. Enforcement of the Competition Law

1. Promoting competition in the monopolistic market

24. With the revision of the MRFTA, the designating enterprises with market dominant power is shifted from 'ex-ante' to 'ex-post facto' system. The Fair Trade Commission designated 324 businesses in 129 goods and services as enterprises with market power as of 1999 (based on the criteria mentioned in the 1998 annual report). Compared to the year of 1997, 12 goods and services and 58 enterprises were newly designated as thereof, while 11 goods and services and 45 enterprises were removed. Such *ex-ante* designation of enterprises with market power had some effects in preventing possible abuse of their dominant position. However, it costs much and moreover has a major weakness in accurately measuring the enterprises' market dominant power since the economic figures were compiled a year before the actual designation. Considering this, the KFTC revised the act to shift it to the *ex-post facto* designation, which took effect starting April 1, 1999.

Changes in the market concentration of market-dominant products

(unit: product)

Year	Total number of items	Products with one enterprise with market power 1)	Products with two enterprise with market power 2)	Products with three enterprise with market power(90% or more) 3)
1998	128	21	44	63 (23)
1999	129	24	39	66 (25)

- 1) One enterprise which holds a fifty per cent or greater share of the market
- 2) Two enterprises which collectively hold a seventy-five per cent or greater share of the market.
- 3) Three enterprises which collectively hold a seventy-five per cent or greater share of the market.

25. The table shows the corrective measures taken against abuse of dominance. Surcharge of 1.3 billion Korean Won(hereinafter referred to as "Won") was imposed against three cases of output restriction.

Corrective measures on cases of abuse of dominance
(unit : case)

Classification	Total	'81-'93	'94	'95	'96	'97	'98
Total	31	19	1	3	1	2	5
Type of abuse of dominance	Price abuse	3	3	-	-	-	-
	Control of ex-factory volume	3	-	-	-	-	3
	Interference with other business	20	14	1	1	1	2
	Interference in market entry	2	2	-	-	-	-
	Other acts likely to restrain	3	-	-	2	-	-
Type of corrective measure	Corrective order	19	11	1	1	1	4
	Recommendation for correction	5	3	-	2	-	-
	Warning	7	5	-	-	-	1

26. 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 in '97 and '98>

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. - Restriction on entry into blast furnace market are eased; Separating 2 plants of POSCO is under consideration.
5 steel-related goods	- Manufacturers of scrap iron are banned from forcing exclusive trade requirements upon dealers - Monopolistic distribution by POSCO is no longer possible.
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

2. Undue Collaborative Acts

27. The Fair Trade Commission took corrective measures on a total of 37 cases of undue collaborative acts in 1998. Out of the 37 cases the KFTC issued orders for correction as to 32 cases, recommendations for correction as to 2 cases, and warning as to 3 cases. Surcharges of 32 billion Won were imposed against 19 cases. To categorise uncovered violations in types, price fixing topped the list with 33 case(89.2 percent) and restriction of territory of trade or customers and establishment of joint corporation accounted for 2 and 2 cases respectively.

Corrective measures for different types of collaborative acts
(unit: case)

Type	'81 ~ '93	'94	'95	'96	'97	'98	계
Pricefixing	56	13	20	27	14	33	163
Collusion on terms of sales	8	1	1	1	1	-	12
Restriction of business activities	1	1	-	3	2	2	9
Output restriction	17	2	1	-	1	-	21
Restriction of territory of trade or customers	16	2	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	107	19	26	36	22	37	247

For '81 '92, corrective measures, warning are not included.

3. Anti-competitive Activities of Trade Associations

28. In 1998 the KFTC took corrective measures against 101 cases of violations by trade associations. KFTC issued order for correction as for 77 cases, recommendation for correction as for 3 cases and warnings for 18 cases, and referred 3 cases to criminal prosecution. To categorise violations in types, restriction of competition in a given area of trade topped the list with 49 cases, accounting for 49 percent, and next on the list was restriction of business activities or the nature of business of other companies with 41 cases.

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

Classification	1981	1993	1994	1995	1996	1997	1998
Anti-competitive practices		141	43	30	46	38	49
Restriction of the number of member corporations		25	4	1	1	1	3
Restriction of business activities or the nature of the businesses		52	5	5	15	13	41
Unfair business practice & Resale price maintenance							
Total		254	56	40	66	54	101

4. Merger & Acquisition

29. With the ease of M&A related regulations in 1998, such as revision of "Foreign Investment Promotion Act" and "Stock Exchange Act", the number of M&A rose to 486, an increase of 16.3 percent from the year before when 418 M&As was made. Particularly M&A by foreign firms showed a sharp rise, resulting in a massive influx of foreign capital. M&A by foreign firms in 1998 numbered 132, accounting for 27.2 percent of M&As, marking 594.7 percent increase from the year before when mere 19 M&A cases were reported. Thanks to this, a total of \$ 7.4 billion worth of foreign capital was attracted, 777.8 percent increase from \$ 43 million in 1997. This sharp increase in inflow of foreign capital is attributable to the stepped-up efforts by enterprises to induce overseas investment following the financial crisis that hit the national economy in late 1997.

30. The favoured types of M&A have also shown a change in pattern. Business consolidation by mergers and take-over of business rose in number while stock acquisition and establishing of a new company decreased. This change in trends can be explained in that enterprises preferred mergers and business take-over as means to spin-off failing affiliates.

Trends in Business Combinations by Year
(unit : case, %)

	94	%	95	%	96	%	97	%	98	%
Establishment of a new company	55	(28.2)	121	(37.2)	130	(33.1)	163	(39.0)	130	(26.7)
Stock acquisition	77	(39.5)	142	(43.7)	159	(40.5)	130	(31.1)	92	(18.9)
Merger	48	(24.6)	48	(14.8)	63	(16.0)	75	(17.9)	151	(31.1)
Interlocking directorate	2	(1.0)	4	(1.2)	16	(4.0)	27	(6.5)	32	(6.6)
Take-over of business	13	(6.7)	10	(3.1)	25	(6.4)	23	(5.5)	81	(16.7)
Total	195	(100)	325	(100)	393	(100)	418	(100)	418	(100)

31. Out of the 486 business combinations the KFTC handled in 1998, 30 cases violated the relevant provisions. The KFTC issued warning against 26 cases for violating the provisions as to reporting of business combinations and disapproved 3 cases out of the review prior to the official reporting, and granted exception for one case.

Result of Business Combination Review
(unit : case)

Year	81~89	90~94	95	96	97	98	누계
Corrective order		2	-	-	1	-	3
Exception		-	3	-	-	1	5
Warning		291	90	23	35	46	511

5. Creating environment conducive to corporate restructuring

32. In the past, no corporation belonging to a top thirty business group shall cause the total balance of debt guarantees issued in favour of domestic affiliated corporation to exceed one hundred per cent of its shareholder's equity with the exception for debt guarantees which were undertaken according to rationalisation plans under the Industrial Development Act and were regarded necessary to enhance the international competitiveness of a corporation. However, given the fact that one of the major causes of the financial crisis was the excessive business expansion of the top thirty business groups through debt guarantees for its affiliated corporations, any corporation belonging to a top thirty business group will no longer be able to provide debt guarantees for its domestic affiliated corporations. In addition, corporations belonging to any of business groups designated as top thirty business group subject to limitations on debt guarantees in 1997 and again in 1998 are required to remove their debt guarantees by March 31, 2000.

33. In 1998, KFTC monitored cross-debt guarantees between chaebol affiliated companies. Upon 22 firms whose debt guarantees exceeded the legally-permitted ceiling (or 100 percent of equity capital as of the end of March, 1998), corrective orders and surcharges of 3.95 billion Won were imposed. The amount of debt-guarantees were significantly reduced from 33.6 trillion Won as of April 1997 down to 12.3 trillion Won as of the end of December 1998. In addition, KFTC carried out 3 rounds of investigation upon large scale business groups to cut large conglomerates off from undue intra-group transactions. Particularly, KFTC conducted two rounds of investigation against the top 5 conglomerates and uncovered a total of 5.519 trillion Won worth of undue internal trade upon which surcharges of 91.4 billion Won were imposed.

6. Unfair Business Practices

34. In 1998, a total of 986 cases of unfair business practices were reported to the KFTC which marked a 12.8 percent increase from 874 cases in 1997. To divide the reported cases into different categories, wrongful representation and advertising topped the list(268 cases), followed by abuse of dominance(216 cases), refusal to deal(96 cases), and undue luring of customers(81 cases). The KFTC took various corrective measures against these cases. Corrective measures were ordered against 229 cases in 1998, including 29 cases that were ordered to pay surcharges along with such corrective measures, which is more than 129 percent(or 129 cases) increase from the preceding year when KFTC issued corrective measures upon 100 cases including 3 cases of concurrent imposition of surcharges. It issued recommendation for correction against 7 cases, warning for 162 cases and referred 5 cases to criminal prosecution. Regarding resale price maintenance, the KFTC referred one case to criminal prosecution while imposing surcharge, issued corrective orders upon 6 cases, and gave warning upon 1 case out of 10 cases which were reported to the KFTC. 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)

Type	Year	`97		`98년	
		Reports filed	Cases Processed	Reports filed	Cases Processed
Refusal to deal		98	126	121	96
Discriminatory treatment		70	25	12	59
Exclusion of competitors		12	15	19	16
Unfair luring of customers		134	135	74	81
- by offering of gifts		50	79	37	28
- by special discount sales		14	14	-	-
- by other methods		70	42	37	53
Dealing by coercion		12	16	17	15
Transaction based on restrictive conditions		38	39	32	22
Abuse of dominance		208	270	263	216
Interference in the business of others		26	24	23	27
Undue advertisement		265	339	372	268
Undue subsidisation		1	1	43	29
Resale price maintenance		10	7	10	14
Total		874	997	986	843

7. Unfair Subcontracting Practices

35. In 1998, the KFTC took corrective measures on a total of 579 unfair subcontract transactions which is a 8 percent increase from 534 cases of the previous year.

36. Out of the unfair subcontract practices, default of subcontract payment and default on note discount constituted a large part of such unfair practices with 321 and 118 cases respectively. Of these unfair subcontract cases, 26 were referred to criminal prosecution, 126 were subject to correction order, 1 to correction recommendation, 245 to warning and 181 cases were settled by the Dispute Settlement Committee.

8. Unfair Adhesion Contract

37. In 1998, the KFTC reviewed a total of 646 contracts which is a substantial increase from 350 contracts of the previous year. Out of the 646 contracts submitted for review, 538 or 83.3 percent were reviewed upon request by an interested party and 92 contracts were reviewed on KFTC's initiative and 16 upon request by consumer groups. Real estate contracts, insurance policies accounted for the majority, followed by contracts related to individual professional services and by wholesale and resale transactions. The KFTC issued correction order against 56 cases, correction recommendation against 43 cases and correction request against 5 cases, and dismissed 542 cases.

COMPETITION LAW AND POLICY IN KOREA

Budget and Manpower of the KFTC

38. 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.

39. The total number of employees is 404 as of August 24th 1999 and the number of each blocks as follows:

- Commission, including staffs but excluding non-standing commissioners(18), General Affairs Div.(26), Inspection Officer(9), Public Relations Officer(8)
- Director General for Planning & Management(27) : Planning & Budget officer(10), Administration and Legal Affairs officer(17)
- General Counsel(32) : Assistant General Counsel Div. (15), Assistant General Counsel Div. (8), Assistant General Counsel Div. (9),
- Competition Policy Bureau(34) : Competition Policy Div.(10), Competition & Deregulation Div.(9), International Affairs Div.(7), Multilateral Co-operation Div.(8)
- Monopoly Regulation Bureau(39) : Monopoly Regulation Policy Div.(12), Enterprise Group Div.(10), Merger Review Div.(9), Monopoly Watch Div.(8)
- Competition Bureau(41) : Unfair Trade Practice Regulation Div.(11), Special Unfair Trade Practice Regulation Div.(11), Cartel Div.(9), Trade Association Div.(10)
- Consumer Protection Bureau(39) : Consumer Protection Planning Div.(12), Advertisements Div.(9), Adhesion Contract Regulation Div.(10), Adhesion Contract Review Div.(8)
- Subcontract Bureau(29) : Subcontract Planning Div.(11), Subcontract Div. (10), Subcontract Div. (8)
- Investigation Bureau(32) : Investigation Planning Div.(13), Investigation Div. (10), Investigation Div. (9)
- Regional Offices(73) : Pusan Offices(20), Kwangju Offices(18), Taejeon Offices(18), Taegu Offices(17)

COMPETITION LAW AND POLICY IN KOREA

	Person-years	Share of employment	Budget expenditure (100 million Won)	Share of expenditure
1998	432	-	160	-
1997	403	0.070	184	0.029
1996	381	0.067	146	0.029
1995	341	0.059	105	0.024
1994	279	0.049	80	0.022
1993	254	0.044	64	0.021

Current Composition of KFTC Personnel
(unit: person)

Classi- fication Year	Persons in charge of the enforcement of the FTA or other related work																T O f f i c i a l	Total
	Persons with undergraduate or higher education																	
	Economics			Law			Business Administration			Public Administration			Others			O t h e r s		
	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)	-	46 (3)	40	-	5	77 (+2)	28 (1)	75 (6)	432 (4)
As of 12. 31, 97 (Variation)	11	29	33	1	11	30	1	11	30	-	49	40	-	5	75	29	81	436