

**KOREA**

*2001*

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### Introduction

1. This annual report concerns the competition laws and policies of Korea from January to December 2001.

2. 2001 was very meaningful since it was the 20th anniversary of Korea's competition law, the Monopoly Regulation and Fair Trade Act (MRFTA). The birth of the MRFTA meant a paradigm shift in Korea's economic regime from government-led growth strategies and industrial policies to market-oriented policies.

3. For two decades, the Korea Fair Trade Commission (KFTC) has striven to diffuse competition principles in a vacuum of competition which was once the Korean economy. It was the first to take on a policy direction towards deregulation in the mid 1980s and became a leading advocate of competition by tearing down the old regulations from the days of government fostered growth. The KFTC has sought to make the Korean economy more competition friendly through market reform measures and merger reviews. In the last 20 years, it identified and corrected a total of 332 cartels, set a framework of market rules and established business practices with greater fairness. The KFTC was also the first to attempt institutional reform to counter the excess political and social influence of the so-called '*chaebol*' which had accumulated since the mid-1980s. The KFTC has also recognised the importance of, and undertook reforms to protect, consumer rights which had been relatively neglected by the supply-oriented approach during the period of rapid economic growth.

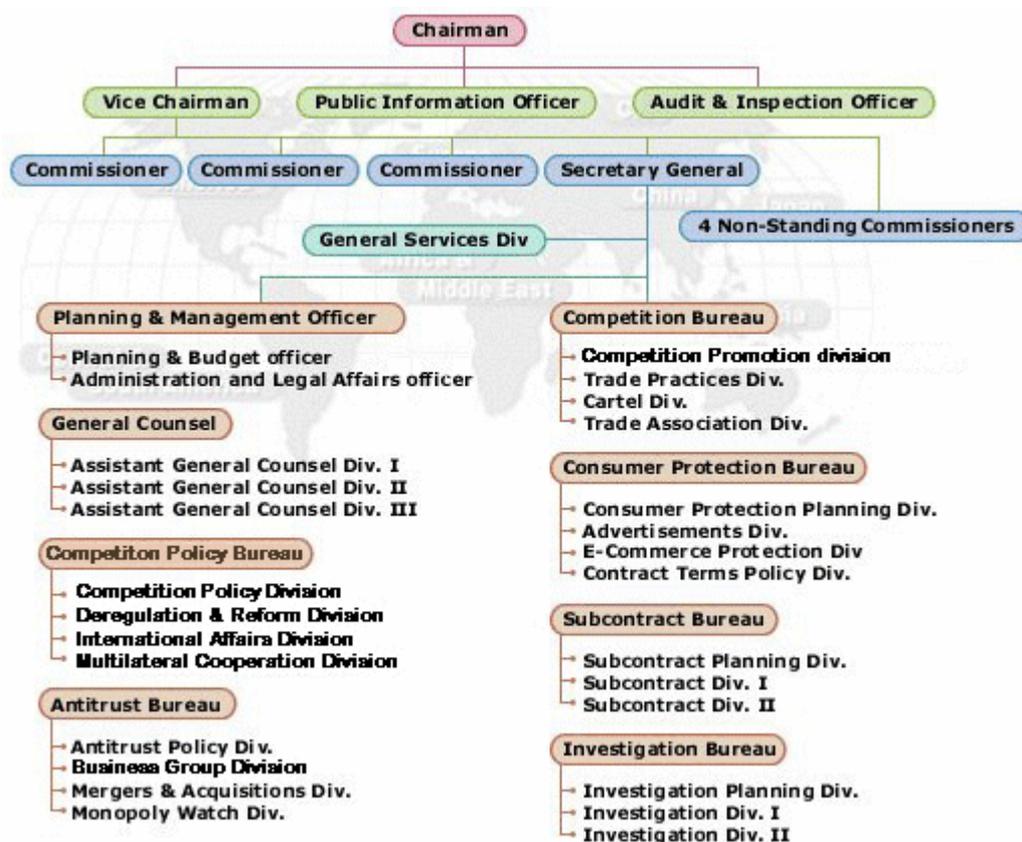
4. Due to these efforts, the underlying tone of economic management is changing from one based on government protection and support to a framework based on market principles. When Korea's competition law was first introduced, the concept 'competition' was unfamiliar to many in Korea, but now, people are not only accustomed to the promotion of competition but recognise it as a determinant factor in governmental and corporate decision-making.

5. With the 20<sup>th</sup> anniversary of the MRFTA, the KFTC marked the momentous year by reviewing its past achievements and set a turning point to develop and implement more sophisticated competition policy.

6. Moving away from the previous case-by-case, piecemeal approach, the KFTC launched the so-called 'Clear Market Project' for more comprehensive reforms on unnecessary regulations, monopolistic/oligopolistic market structure and unfair trade practices.

7. The KFTC also introduced compliance programs in businesses in order to create a culture of voluntary compliance with competition laws.

8. With the aim of seeking future competition policy tasks and direction in the age of globalisation, the KFTC invited representatives from the OECD, EU and other competition authorities as well as competition law experts from all over the world for the ‘Seoul Competition Forum 2001’.



## 1. The Korea Fair Trade Commission

### 1.1 Organisation

9. The KFTC is a ministerial level central administrative organisation under the authority of the Prime Minister and functions as a quasi-judiciary body. It not only establishes and implements competition policy, but also ruling and processing cases in competition law. As an independent ministerial level government body, the KFTC can fulfil its role without interference or instruction by any other government organisation.

10. The KFTC consists of a committee, the decision-making body, and a secretariat, a working body. The committee has 9 members, who deliberate and make decisions on competition and consumer protection issues. The committee Chairman and Vice-Chairman are recommended by the Prime Minister and appointed by the President to serve a term of 3 years. The secretariat is directly involved in drafting and promoting competition policies or investigating antitrust issues, presenting them to the committee and taking steps according to committee decisions.

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11. The KFTC is committed to four main mandates: promoting competition, strengthening consumers' sovereignty, creating a competitive environment for SMEs and restraining concentration of economic power. To this end, the Commission enforces 9 laws including the MRFTA.

### **1.2 Function**

#### *1.2.1 Promoting Competition*

12. The KFTC seeks to facilitate a competitive market environment by eliminating barriers to market entry, reforming anti-competitive practices which limit business activities and regulating anti-competitive business mergers.

13. It seeks to firmly establish a fair competition order in the market by banning various unfair business practices such as cartels and abuse of market dominance.

14. The KFTC acts as a competition advocate to diffuse competition principles in government so that all government bodies recognise competition as a crucial factor in policy decision-making.

#### *1.2.2 Strengthening Consumers' Sovereignty*

15. The KFTC protects consumer from unfair adhesion contracts by correcting those that put consumers at a gross disadvantage and by distributing standardised adhesion contracts.

16. False and exaggerated representation and advertisement are corrected and disclosure of information essential to consumer choice is required by the KFTC to assist consumers in making informed decisions.

17. The KFTC also seeks to prevent consumer damages from certain business practices such as instalment transactions, door-to-door sales and electronic commerce.

#### *1.2.3 Securing a Competitive Environment for SMEs*

18. The KFTC secures a firm basis of development for small and medium sized subcontractors by correcting various unfair practices likely to be inflicted by large companies in subcontracting processes – i.e. payment and receipt of goods.

19. The KFTC also corrects the unfair practices of large distribution companies and franchisers, toward small and medium sized stores, suppliers or franchisees, in abuse of their dominant market positions.

#### *1.2.4 Restraining Concentration of Economic Power*

20. The KFTC seeks to address problems arising from the expansion-oriented corporate governance of large businesses by banning cross-equity holding and cross-debt guarantees among affiliates of large business groups, controlling undue subsidies between affiliates and setting a ceiling on total amount of equity investment.

### **1.3 Case Proceedings**

21. There are two stages of case proceedings by the KFTC; examination and deliberation.

#### **1.3.1 Examination**

22. When a possible competition law violation is reported or suspected, the competent bureau or district office launches an examination into the issue. The examination process includes investigation of relevant documents, taking statements from related parties, consultation with experts, conducting legal reviews, etc. The concerned parties are given opportunities to voice their opinions fully, and confidentiality of any business information is guaranteed. If the examiner (head of the relevant division or district office) decides legal measures are required, he/she makes an examination report and presents it to the committee. The report is also sent to the examinee, who is given an opportunity to submit any objections or comments on the report.

#### **1.3.2 Deliberation**

23. After the examiner presents the issue before the committee, committee members review the report and any opinions put forth by the examinee. The examinee is notified of the date, hour and venue of the legal proceedings. The deliberation process involves through review of investigation findings in the order of; the examiner's statement, examinee's statement, investigation into evidence, examiner's final opinion, and examinee's final statement. The examinee may express his/her opinion directly or indirectly through an attorney during this process. Through this procedure, the committee makes a final decision as to whether any laws have been violated. If a violation is duly recognised, the KFTC will impose corrective measures such as fines or a cease and desist order while subjecting some cases to prosecution. The committee decision is composed in the form of a written resolution and is sent to relevant parties.

### **1.4 Laws Enforced by the KFTC**

#### **1.4.1 Monopoly Regulation and Fair Trade Act**

24. As Korea's general competition law, the MRFTA aims to promote creative business activities and protect consumers by facilitating fair and free competition in the market. It encompasses all traditional issues of competition policies, i.e. anti-competitive mergers, cartels, resale price maintenance, monopolisation, attempt to monopolise, exclusion, exclusive transactions, etc., which are subject to general competition laws in other countries as well. In addition, this law addresses unfair trade practices, undue subsidies / debt guarantees / equity investment among affiliates of large business groups. It also gives KFTC the right to investigate into possible law violations, including rights to site investigation, to order report and submission of information, to maintain custody of materials, etc.

#### **1.4.2 Omnibus Cartel Repeal Act**

25. This law, legislated in February 1999, abolished fee (commission) cartels in 9 certified professions, including lawyers, accountants, customs officers, tax accountants, patent lawyers, architects and veterinarians. It also improved the collective optional contract system for SME products. Overall, the Omnibus Carte Repeal Act improved around 20 regulations which previously impeded market competition.

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### *1.4.3 Adhesion Contract Act*

26. The objective of this law lies in regulating unfair one-way contracts, written and circulated by businesses, which precludes consumers' right to choose the terms of transaction. To this end, it mandates businesses to issue and explain contracts to consumers, and invalidates clauses that unduly infringe on consumers' rights.

### *1.4.4 Fair Labelling and Advertising Act*

27. This law aims to provide accurate information to consumers, thus helping them make informed choices. It demands false or exaggerated representations/advertisements, which may mislead consumers, be temporarily stopped or corrected. It also requires disclosure of all information essential to consumer decisions. In addition, it may order submission of evidential materials regarding fact-related representation/advertisements.

### *1.4.5 Door-to-Door sales, etc. Act*

28. Door-to-door sales and pyramid sales are the most common types of transactions that inflict damages on consumers through refusal of contract withdrawal, etc. This law, thus, aims to protect consumers' interests and to secure smooth flow of goods and services. It mandates pyramid businesses to purchase consumer compensation insurance or to subscribe to a co-operative; to notify salespersons of prohibited illegal activities; and to allow unconditional withdrawal of contract within 14 day of purchase.

### *1.4.6 Instalment Transactions Act*

29. To protect consumers' interests in instalment transactions, this law recognises consumers' right to withdraw contracts within 7 days of purchase, and mandates businesses to issue notice in advance of 14 days or more when contracts are terminated due to consumer's default. It also invalidates contract clauses that put consumers at a disadvantage.

### *1.4.7 Fair Subcontract Transactions Act*

30. This law aims to establish fair subcontracting practices in the market and ultimately to create competitive environment for small-medium sized subcontractors. To this end, it prohibits undue reduction of payment on subcontract, undue refusal / return of goods by large companies, while mandating subcontract payments to be made within 60 days – with interest to be paid after the set period. It contains various regulations that protect subcontractors from various unfair actions of large companies in the transaction processes.

### *1.4.8 Fair Franchise Transactions Act*

31. This law aims to establish a fair trade system among franchise businesses and to ensure mutually beneficial and balanced development of franchisees and franchisers as equals. To this end, the law bans various unfair transactions in franchise operations and defines basic rules between franchisers and franchisees; it mandates provision / updating / correction of information by franchisers, bans false or exaggerated information, obligates parties to return franchise fees under certain conditions, and mandates the issuance of franchise contracts.

## 1.5 *Human and Financial Resources*

32. As of the end of 2001, the KFTC has a total number of 416 staff.

### < Total Number of Staff & Budget Spending >

	Staff (Persons)*	Budget Spending (Won 100 million)
2001	416	220
2000	401	193
1999	402	172
1998	410	160
1997	403	184
1996	381	146
1995	341	105
1994	279	80
1993	254	64

\* These indicate the number of office staff. Including non-office staff, the total number for 2001 stands at 449.

33. Examined in terms of undergraduate majors, 84 members (19%) out of the 449 total majored in government administration, 76 (17%) in economics, 67 (15%), including 10 certified lawyers, in law, 41(9%) in business administration and 181 in other various fields. At present, the KFTC is in need of more economics and law experts and economic analysts to achieve greater in-depth analysis of economic and legal issues in dealing with anti-competitive cases. The KFTC also sees the need to expand its budget and staff since the sharply rising demand for competition law enforcement is putting excess strain on staff.

## 2. **Amendments to the MRFTA**

### 2.1 *Amendments in 2001*

#### 2.1.1 *Background*

34. The amendment of the MRFTA on January 16, 2001 was carried out in order to supplement effective corporate restructuring of the past and promote the sophisticated development of Korea's fair trade system.

35. The amendment relaxed the previous stringent conditions for establishing a holding company so that they could be utilised to facilitate a smoother restructuring process.

36. Amendments in the MRFTA extended deadlines for financial transaction information requests in order to increase effectiveness in investigating unjust internal transactions. They also supplemented existing investigative tools by applying the leniency program to parties who co-operate in the KFTC's cartel investigations and not just the whistleblowers.

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### *2.1.2 Main Contents of Amendments*

37. First of all, the amendment relaxed the legal conditions for establishing a holding company so that they could be utilised to facilitate a smoother restructuring process. The amendment lowered shareholding obligations of holding companies, i.e. all listed companies, to 30% of the affiliate company's public offerings regardless of the time of company listing.

38. They enable easier flow and supply of venture capital by lowering shareholding obligations to 20% for venture holding companies maintaining venture affiliates.

39. In order to facilitate corporate restructuring, the legal mandate to restrain business activities, such as a ceiling on debt/equity ratios, will be suspended for a limited period even when to a holding company is established or transferred by corporate separation and not investment in kind.

40. Amendments in the MRFTA extended the deadlines for financial transaction information requests in order to increase effectiveness in investigating unjust internal transactions. The deadline of February 2001 was extended for 3 more years.

41. The leniency program was also extended to include not only whistleblowers but also parties who co-operate with KFTC cartel investigations. Parties who co-operate with cartel investigations are qualified to receive reduced corrective measures and fines along with the individuals or groups that report the cartel.

42. The amendments are also aimed at enhancing the effectiveness of case investigations. To do this, a provision included the maximum limit on fines imposed on parties rejecting or interfering with investigations.

43. Amendments also included a provision for reimbursing interest surcharges on penalty fines. For fairness in line with the principle of imposing surcharges for overdue fines, the provision for surcharge reimbursement establishes a legal basis for added interest on fines repaid when courts accept an appeal or objection raised by the charged parties.

44. In addition, amended laws enable the competition authority to gain information from the National Tax Service when it is required in collecting overdue fines.

## **3. Legal Violations Correction**

### *3.1 Overview on KFTC's correction of Legal Violations*

#### *3.1.1 Processed Cases by type of Legal Measure*

45. The total number of cases dealt by the KFTC in 2001 was 3,924. Categorised by the type of measures taken, 23 cases were referred to prosecution, 346 correction order issued, 84 corrective recommendations made and 3,467 warnings issued.

46. Reviewing these types in detail, the first 23 prosecution referrals remained at a level similar to the previous year. This shows that, as in 2000, the KFTC has been carrying out its responsibilities consistently and strictly against violations with significant impact on the market order and the national economy.

47. Among the 23 cases, 6 were against undue subsidies, 4 against cartels, 2 against concentration of economic power, 1 against undue activities by a trade association and 9 against other anti-competitive practices.

48. Secondly, the number of corrective measure (346) was down by approximately 21.5% from 2000. The apparent decrease owes much to the shift in KFTC policy from the piecemeal approach of the past to the more thorough market reforms that focus on the comprehensive identification, investigation and correction of unfair institutions or behaviour harming the market order.

49. Thirdly, the number of fines imposed in anti-competition cases rose 44.9% from the previous year to 71. However, the total amount of fines went down by Won 63.2 billion to Won 160.2 billion from 2000. Behind this decrease lies a sharp fall in fines against cartels compared with the previous year (from Won 196.7 billion to Won 26.7 billion). The majority of cartel cases in 2001 were of relatively smaller scale and impact than those in 2000.

50. Fourth, the number of corrective measures taken against unfair standard contract provisions in violation of standard contract laws went up by 35 from 2000 to 84 in 2001. The increase is mostly due to the KFTC's proactive efforts in investigating detected and reported cases on disadvantageous standard contract provision unfairly damaging a large number of general consumers.

51. Fifth, warnings are issued when consequences of a competition law violation are incidental, when the violation was corrected during the examination or deliberation process or when there is no real benefit in imposing a corrective measure. A total of 3,467 warnings were issued in 2001, up 216% of 1,096 in 2000. This reflects the considerable increase in identified unfair business practices in subcontracting from 839 in 2000 to 3,079 in 2001. In order to establish fair and sound subcontracting practices at an early stage, the KFTC significantly increased the number of written investigations aimed at protecting SMEs and issued warnings against those businesses that corrected their practices voluntarily.

**< Cases by Type of Imposed Measures >  
(KFTC warnings and above, Cases)**

	81~90	91~95	96	97	98	99	2000	2001	Total
Referred to Prosecution (Fines)	22 (-)	70 (2)	16 (1)	35 (-)	37 (5)	11 (-)	22 (3)	23 (9)	236 (20)
Corrective Orders (Fines)	735 (1)	957 (151)	250 (21)	221 (10)	533 (64)	617 (101)	441 (47)	346 (73)	4,100 (467)
Corrective Recommendations (Requests)	628 (7)	414 (12)	179 (4)	329 (10)	57 (5)	149 (4)	35 (-)	84 (4)	1,856 (47)
Warnings 1)	3,646	2,546	619	734	648	485	1,096	3,467	13,241
Total	5,031	3,987	1,068	1,329	1,280	1,266	1,594	3,924	19,480

1) Data include cases dealt by the Subcontract Dispute Arbitration Association.

### 3.1.2 by Type of Violation

52. When the 3,924 anti-competition cases of 2001 are categorised according to the type of unfair practice, they include 3,130 unfair subcontracting practices (79.8%), 488 unfair business practices (12.4%),

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100 cases of unfair standard contracts (2.5%) and 88 undue activities by trade associations (2.2%). The sharp increase in the number of unfair subcontract cases (258%) is a result of the KFTC's comprehensive written investigations conducted on 25,000 business in 2001. These efforts are rooted in the KFTC's goal of firmly establishing a sound subcontract order for the protection of SMEs.

### < Cases by Type of Violation > (KFTC Warnings and above, Cases)

	94	95	96	97	98	99	2000	2001
Abuse of Market Dominance	1	3	1	2	5	2	-	4
Anti-Competitive Mergers and Acquisitions 1)	13	23	36	47	29	19	43	46
Concentration of Economic Power	8	3	14	6	11	38	19	15
Cartels	19	26	36	22	37	34	47	43
Unfair Activities by Trade Associations	56	40	66	53	101	93	117	88
Unfair Business Practices	337	353	339	510	404	514	432	488
Unfair International Contracts 2)	55	40	26	3	1	-	-	-
Sub-Total	489	488	518	643	588	700	658	684
Unfair Standard Contracts	72	51	56	152	112	255	56	100
Unfair Subcontract Practices 3)	224	387	494	534	580	311	874	3,130
Total	785	926	1,068	1,329	1,280	1,266	1,594	3,924

1) Most cases were violations of deadlines for M&A notification to the KFTC.

2) Unfair international contract cases are included in the data up to 1996 but not from 1997 onwards.

3) Data include cases dealt by the Subcontract Dispute Arbitration Association.

## 3.2 Cartels

### 3.2.1 Overview

53. In 2001, the KFTC identified and corrected 43 cartels cases (issued warnings and above). Among these, 31 cases (72.1%) are price maintenance and control cartels. The remaining 12 cases include 4 cases of manipulating business conditions, 4 cases of limiting business territory and clients, 2 cases of establishing joint companies and 2 cases of limiting business activities and content. This shows a trend towards more diversity in the types of cartel violations.

54. Examined in terms of the enforcement measures, the KFTC referred to prosecution and imposed corrective orders (including 8 fines) in the 33 cases identified and corrected in 2001. Warnings were issued in the other 10 cases.

55. From the establishment of the MRFTA in 1981 to 2001, there was a total of 374 identified cases of cartels which resulted in KFTC penalties of warnings and above (data up to 1992 includes correction recommendations and above). According to the type of KFTC measures, these consist of 11 referrals to

prosecution, 204 correction orders (including 84 penalty fines), 44 correction recommendations and 115 warnings.

### 3.2.2 *Case*

#### 3.2.2.1 Damage Insurance Company Cartel

56. 11 damage insurance companies including Dongyang Insurance Co., Ltd. collectively collaborated to determine and impose controlled auto-insurance rates. Furthermore, the insurance rate cartel imposed a special 10% premium on each of the four groups (groups A to D) in contracts for which liability took effect on November 1, 1999. In addition, the cartel members rigged the bid for Korea Power Company's (KEPCO) automobile insurance contract in July 15, 2000.

57. On April 1, 2000, however, the Financial Supervisory Service (FSS) decided to maintain rates for automobile insurance from the previous year because an increase in liability insurance rates was planned for August 2000 in an amendment of the Automobile Damage Compensation Guarantee Act in April 2000.

58. Subsequently, the FSS's administrative guidance to damage insurance companies had, in effect, suspended measures to liberalise the charging of additional insurance fees. Furthermore, even after the Insurance Development Institute reported an average increase in net insurance fees of 5.4% in August 1, 2000, the FSS has approved only 70% of the suggested increased, an average 3.8%, and induced damage insurance companies to compensate by cutting operation costs through administrative guidance.

#### 3.2.2.2 Determining Illegality

59. The KFTC found supporting evidence enabling them to presume the existence of a cartel between the 11 damage insurance companies. After due investigation, the KFTC ruled that the insurance companies made prior agreements and decisions on automobile insurance rates and special premiums and that these practices unjustly limited competition by determining, maintaining or changing prices.

60. Even if the 11 cartel participants had determined their insurance rates in direct or indirect consideration of the FSS's guidance, the guidance of the FSS can not be regarded as a legal basis for anti-competitive collaboration since those recommendations are intended for voluntary acceptance by the discretion of individual companies.

#### 3.2.2.3 Corrective Measures and Their Impact

61. Taking account of the seriousness of the violations, the KFTC ordered the correction of the cartel's insurance price decisions, increases and bid rigging for KEPCO's automobile insurance contract on April 1, 2000. In addition to the correction order, however, a fine of roughly won 5.1 billion was imposed for having collaborated to decide insurance prices. The fine was imposed particularly because the cartel had agreed to maintain their rate increases above 3.8% which constitutes an anti-competitive collaboration in defiance of the official liberalisation measures implemented in the industry.

62. The KFTC's correction and fine of these 11 insurance price cartel participants aim to facilitate fair and free competition in the automobile insurance market by inducing companies to make independent decisions in accordance with the liberalisation measures in the industry.

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63. These decisions clearly denote the KFTC's intentions of penalising any anti-competitive collaboration, unless clearly recognised and accepted by written laws, even if a sectoral regulator provides administrative guidance to those firms.

### **3.3 *Crackdown on International Cartels***

#### *3.3.1 Overview*

64. In 2001, the KFTC conducted investigations into the international graphite electrode cartel. This meant identifying anti-competitive violations of 6 graphite electrode manufacturers from Japan, the U.S. and Germany. This investigation was the first of its kind as the Korean authority applied its competition law to the anti-competitive activities of companies that had a significant impact on domestic markets. It also displayed the KFTC's determination in enforcing competition law even against foreign anti-competitive practices so long as it is necessary to protect Korean businesses or consumers.

#### *3.3.2 Case*

##### *3.3.2.1 Details of the International Graphite Electrode Cartel Case*

65. Representatives of 6 graphite electrode manufacturers, estimated to produce around 80% of the world's graphite electrodes, gathered in London's Skyline Hotel on May 21, 1992 to establish the so-called 'London Principle'. Subsequently, these 6 companies held 'Top Guy Meetings' and 'Working Level Meetings' to collaborate on output, production and cartel issues.

66. According to the 'London Principle' and through further meeting discussions, the 6 cartel members agreed to respect each other's 'home market' by matching any price increases made by a cartel member located in that country. For 'non-home markets' where no cartel participants were present (i.e. all of Asia excepting Japan), the cartel established a detailed agreement on sales prices.

67. The cartel agreements also stipulated a 'no rebate, no discount' rule and members discussed market sharing for sales mainly in Asia. Members also agreed to charge a premium for large-sized graphite electrodes (28~30 inches) and agreed not to export to any of the members' own countries.

68. As a means of limiting competition, the international cartel decided to limit the transfer of any developments in graphite electrode manufacturing to the cartel members so as to exclude any new market entrants.

69. The cartels members also made a clear effort to conceal their illegal activities by destroying relevant documents and using nicknames in the meetings, e.g. 'Pinot' for UCAR International, 'BMW' for SGL Carbon and 'Cold' for a Japanese manufacturer.

70. Since Korea does not have any domestic graphite electrode manufacturers, it has to rely on imports to fulfil its demand and 90% of this is supplied by members of the international cartel. As such, Korea sustained considerable losses as a result of the graphite electrode cartel. In other words, the cartel participants sold graphite electrode cartels with a total value of roughly USD 553 million in Korean

markets at a price determined within the cartel. Investigations revealed that the price per ton in 1997 (USD 3,356) went up by 48.9% from the price in 1992 (USD 2,255 per ton).

### 3.3.2.2 Case Background

71. Before the international graphite electrode case, the KFTC had been relatively passive in applying its competition law on the anti-competitive activities of foreign firms. With the opening up of the Korean economy, however, the number of anti-competitive violations by overseas businesses was increasing. This induced continued, growing support in the academic and judicial arena in favour of investigation and control of foreign anti-competitive behaviour in order to prevent damages to other businesses and consumers.

72. Accordingly, the KFTC produced a report in March 1998 entitled “Measures against Abuse of Market Dominant Behaviour by Multinational Businesses” and, thus, announced its intention of applying Korean competition law to foreign businesses. This report established a clear plan to achieve law enforcement on foreign businesses.

73. Especially during the 4<sup>th</sup> Annual Korea-U.S. Competition Policy Consultation Meeting in Washington D.C. (September 1999), the KFTC clearly expressed its plans to apply Korean competition law on any mergers and acquisitions by foreign firms that have an impact on Korean markets.

74. On the basis of these planning and research results and because the international graphite electrode cartel was likely to have a direct effect on the import-dependent graphite electrodes market in Korea, KFTC investigations targeted the international graphite electrode cartel as one previously identified and penalised by other competition authorities.

### 3.3.2.3 Investigation Methods and Procedures

75. Since the international graphite electrode cartel had already been investigated and penalised by the U.S., Canadian and Japanese competition authorities, the KFTC based its investigation on earlier their earlier findings and concentrated on uncovering the damages done on the Korean market.

76. In order to do so, the KFTC conducted written investigations on the 6 cartel participants on two occasions. The relevant parties submitted the necessary information according to the requests of the KFTC. In particular, UCAR International pro-actively co-operated with KFTC investigations and provided conclusive evidence against the cartel.

77. The KFTC also received helpful investigation materials from the U.S. and EU competition authorities while simultaneously investigating import price trends for graphite electrodes by Korea’s electric mill companies.

78. As a results of these procedures, the KFTC was able to reveal that the Korean market suffered direct financial damages as a result of the cartel’s sales in Korean markets according to their collectively determined prices.

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### 3.3.2.4 Co-operation with Other Competition Authorities

79. The KFTC conducted its investigation in accordance with the 'OECD Recommendation Concerning Co-operation between Member Countries on Anti-Competitive Practices Affecting International Trade' (1995) and, therefore, notified the relevant U.S., German and Japanese competition authorities when it launched the investigation.

### 3.3.2.5 Case Assessment

80. The measures taken by the KFTC were the first ever sanctions imposed on an international cartel by application of Korean competition law on foreign businesses. These steps not only manifest the KFTC's determination to pro- actively protect domestic consumers against the anti-competitive practices of overseas businesses, but is also expected to provide a learning experience to raise awareness on competition law among domestic firms and prevent them from participating in cartels.

81. Characteristically, international cartels are known to impact developed and developing countries alike, but sanctions have commonly been imposed only in the former and very rarely are international cartels penalised in developing countries.

82. As such, the KFTC's actions against the international cartel will act as a warning sign against any foreign businesses that have, or is planning to, participate in cartels.

## 3.4 *Abuse of Market Dominant Position*

### 3.4.1 *Overview*

83. A 'market dominant firm' refers to any seller or buyer in a given area of trade which holds enough influence to determine, maintain, or alter price, volume, quality and other terms of trade either on its own or with other businesses.

84. Previously, a market dominant firm was designated in each industry or market every year. After 1999, the prior designation system was abandoned and a business was recognised as dominant or otherwise on a case-by-case basis. Exceptions apply, however, when the top company holds 50% or more of the market share or when the top 3 firms hold a total of 75% or more of the market share. In such instances, the relevant firms are presumed to be market dominant.

85. Since a market dominant company exerts enough influence to determine, maintain or alter price, volume, quality and other terms of trade, they receive stricter sanctions when they abuse their dominant positions.

86. The market dominant positions are defined in Korean competition law as follows:

- unreasonably fixing, maintaining or altering the price of goods or services;
- unreasonable control over the sale of goods or the rendering of services;
- unreasonable interference in the business activities of other business;

- unreasonable interference in the entry of new competitors; or
- engaging in unreasonable transactions to eliminate competitors or cause harm to consumer interests.

87. In March 2001, the KFTC defined the behaviour of a firm that restricts access to its networks or key facilities, such as electricity or telecommunications, as an abuse of market dominant position. In the MRFTA, this behaviour is clearly recognised as an abuse of market dominance which interferes with the activities of other businesses and obstructs the entry of new competitors. Accordingly, the monopolistic or oligopolistic abuse of essential facilities is dealt with a heavy violation.

88. The KFTC took measures against a total of 4 cases in abuse of market dominant positions. In these 4 cases, the KFTC imposed fines (along with a correction order) in 2 cases, issued just a correction order in 1 case and gave 1 warning.

### 3.4.2 *Case*

#### 3.4.2.1 Credit Card Company Cartel

89. In this cartel case, LG Capital, Samsung Card, BC Card and 12 of BC's member banks raised their cash loan service fees and arrears rates sharply between January and February 1998. They further increased or made incremental reductions to maintain their high rates even though loan interests continued to drop.

#### 3.4.2.2 Determining Illegality

90. First, in the market for credit cards, the cartel members' market shares comprised; 35% for BC and its member banks, 18.8% for LG Capital and 17% for Samsung Card (a total of 70.8%). Especially in cash loan services, their combined market share was significantly high at 72.3%.

91. Second, until 1995, credit card companies operated within a government permit system, there had been no new market entrants and the market retained a stable structure while some businesses had been corrected for cartel activities.

92. Third, since the majority of credit card holders had no alternative sources of loans, except bank loans for example, it was common for cardholders to attain emergency funds from cash loans on credit cards. As a result, demand elasticity according to changes in cash loan service fees remained low and, therefore, the companies in question were regarded as market dominant businesses.

93. Although cash loan service fees should be adjusted according to changes in factors such as supply costs, arrears rates, bad debt ratios, marketing costs and suitable interest rates, and despite significant reductions in several of these factors in the last quarter of 2000, credit card companies continued to raise fees, or reduce them only slightly, to maintain high cash loan service fees. Consequently, in 2000, BC's net profits increased 4.9 times, LG Capital's 9.96 times and Samsung Card's 32.3 times their net profits in 1998. As such, the practices of the charged firms were recognised as an act of unfair price maintenance and ruled to be anti-competitive.

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### 3.4.2.3 Corrective Measures and Their Impact

94. The KFTC ordered the credit card companies to lower their cash loan service fees, instalment service fees and arrears rates within 2 months with due consideration of changes in supply interest rates, arrears rates and bad debt ratio.

95. BC Card and its 12 member banks were fined Won 2.99 billion, LG Capital Won 531 million and Samsung Card Won 520 million; a total of Won 4.04 billion won.

96. This case was identified as the first since the KFTC extended its market reform measures against monopolistic and oligopolistic structures to the financial sector because KFTC market reform efforts had previously been focussed on manufacturing. It was the first after the cartel case against 3 confectionery companies that were penalised for conspiring to manipulate prices in 1992.

## 3.5 *Mergers & Acquisitions*

### 3.5.1 *Overview*

97. Mergers & acquisitions (M&A) refer to the human, material and organisation combination of corporations where the independent right of an individual company to make business decisions is either lost or combined. Depending on the relationship between the products or services of the combining companies, business combinations are categorised as vertical, horizontal or conglomerate mergers.

98. While business M&A reinforce corporate competitiveness by enhancing corporate productivity and efficient resource distribution through innovating management and governance, they can also have negative effects such as monopoly/oligopoly formation and concentration of economic power.

99. M&A can strengthen market dominance by reducing the number of competitors in the market and the dominant companies have the potential to use their market position to establish monopolistic/oligopolistic prices and harm consumers. This is the reason that most countries have legal codes on anti-competitive M&A. Most countries use regulations to facilitate the positive effects and prohibit any possible anti-competitive behaviour. Like many other competition laws, Korea's MRFTA also included regulations on unfair or anti-competitive M&A since its establishment in 1981.

100. Under Korean competition law, there are a number of business activities that constitute a form of M&A; merger with another corporation, acquisition of another company's shares, participation in the establishment of a new company, take-over of another company and establishment of interlocking directorates by a large business group - i.e. a corporation with assets or total sales exceeding Won 2 trillion. Corporations are required to report to the KFTC within a given period of time when they undertake mergers or acquisitions under certain conditions.

101. The KFTC imposes various corrective measures such as divestiture, employee resignation or business take-over in order to remedy anti-competitive factors identified in the KFTC's merger reviews process. However, exceptions apply to business combinations with efficiency enhancing effects greater than possible anti-competitive harms and to failing companies or companies that can not be redeemed without a merger.

102. The total number of M&A in 2001 was 644 which was 8.4% lower than the 703 cases in 2000. The main reason for this decrease is considered to be the slowdown in the Korean IT industry. In 2001 there were 162 M&A in the IT industry, down by 94 cases (or 36.7%) from the 256 cases in 2000.

103. In comparison to 2000, the M&A activities of 2001 have a lower ratio of conglomerate mergers (between different types of business) and a higher ratio of vertical mergers (between companies linked in a business chain). The main cause behind the decrease in conglomerate mergers lies in the sharp downturn of investment in new fields compared to 1999 and 2000 when mergers between existing companies were highly active in the IT industry. 2001 saw a 36.7% fall in the number of mergers in the information, communications and broadcast sector.

104. The rise in vertical mergers was caused by greater efforts towards integration for restructuring and cost reduction in the distribution, components and supply industry. Vertical mergers among distribution companies and component manufacturers composed approximately 65% of the total number of vertical mergers.

105. Examining the different forms of business combinations, the number of interlocking directorates rose sharply compared to 2000 while there were a significantly smaller number of newly established companies or take-overs. The high increase in the establishment of interlocking directorates by large business groups can be explained by trends toward strengthening joint business operations and extending managerial participation in new companies, e.g. increasing management in IT companies where corporations have already invested. On the other hand, the fall in the number of newly established companies and take-overs reflect the low investment trends of economic recession.

106. According to the type of business, M&A activity went down in manufacturing and service sectors overall.

107. In the manufacturing sector, the decrease was a moderate 1 % overall with a 57.7% increase in the mechanics, assembly, and metals industry which includes 19 M&A cases in the automobile parts industry for 2000. The sliding trend in service sector M&A was so sharp, however, that the number of cases went down 11.1% despite the increase in restructuring activities by failing financial institutions.

108. The number of M&A by foreign parties also went down in 2001. The KFTC handled 102 cases in 2001, down 10.5% from 114 in 2000. The overall scale of those M&A was also down by 38% from USD 2.5 billion in 2000 to USD 1.55 billion in 2001.

109. The main reason for the decrease lies in the significant drop in M&A by Japanese businesses (from 20 in 2000 to 9 in 2001) due to growing financial difficulty.

110. M&A by the top 30 large business groups totalled 168 in 2001, down 69 or 29.1% from a total of 237 in 2000. Although M&A by the top 30 large business groups had taken up 33.7% of total M&A in 2000, the ratio went down 7.6% to 26.1% of total M&A in 2001. Among these business combinations, the affiliates of the top 30 groups undertook 46 M&A in 2001 as compared to 67 in 2000 but its ratio remained at a similar level of 27.4% in 2001 as compared to 28.3% in 2000.

111. To reviewed different merger types in close detail, the number of conglomerate mergers in 2001 went down by 29.2% to 136 from 192 in 2000, but its ratio to vertical mergers went up slightly from 7.6% to 11.3%. This is due to lower investment caused by deteriorating economic circumstances and implementation of the ceiling on total equity investment. In addition, the change is partly caused by stronger efforts toward restructuring such as greater forward and backward integration in response to economic slowdown.

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112. The number of newly established companies went down by 60.8% to 20 in 2001 from 51 in the previous year and interlocking directorates went up 7.1% from 65 in 2000 to 70 in 2001. On the whole, this is because the top 30 large business groups have not invested to establish new companies while they have attempted to take greater control over their investments in existing IT companies and reinforce joint operations by establishing interlocking directorates.

113. Of the 644 M&A reported to the KFTC in 2001, the KFTC conducted full reviews of 314 cases (48.8%) and summary reviews of 330 cases (51.2).

114. In these cases, the KFTC ordered corrective measures in 3 cases (including 2 cases of voluntary correction or withdrawal) e.g. its ruling on SK's share acquisition of Korea's major piping company. It also imposed fines in 44 violations of M&A notification regulations which totalled USD 184 million.

115. Summary Review: M&A review process for business combination presumed to have little anti-competitive effects such as mergers between affiliates of a business group or conglomerate merger by businesses other than large business groups.

### 3.5.2 Case

#### 3.5.2.1 Business Combination between SK Co., Ltd. & Daehan Piping Co., Ltd.

116. In accordance with its privatisation policy on Daehan Piping Co., Ltd. (DOPCO), the Korean government sold its holdings to 5 of the other oil companies controlled DOPCO shares. SK established a contract to acquire 17.74% shares of DOPCO in addition to its existing 16.30% and reported its share acquisition and interlocking directorate with DOPCO to the KFTC on February 7, 2001.

#### 3.5.2.2 Market Definition and Environment

117. The market in question was a primary piping service for oil transport (from oil refineries to gas stations) in which competition could readily be restrained. The local market was defined as the area where the oil pipes could carry serviced fuels.

118. While different services for shipping oil products such as tankers, trucks, etc., do exist, they differ considerably in terms of shipping method, safety and costs and since oil pipes have characteristics of public shipping service and key facility, they are not readily substituted by other services.

119. Furthermore, the oil pipe services as a means of distribution was a monopoly held by DOPCO while SK, LG, Hyundai –Inchon Oil, S-Oil and some other were competing in the domestic market for oil products.

#### 3.5.2.3 Identification of Competition Restraints

120. This case concerned the vertical merger between the oil producer and supplier SK and DOPCO, the state-owned oil distributor hold a monopoly on oil piping. DOPCO maintained a monopoly over the primary oil product distribution market while SK held the largest share of the oil shipping market (35.4%), being the 1<sup>st</sup> of the 3 top companies holding 83.5% market share. As such, the acquisition qualified as an anti-competitive business combination under Korea's M&A review guidelines.

121. Since oil product piping facilities require large amounts of capital in initial investment and pipelines connect the oil refineries and the main consumer locations, the possibility of new market entry is very low.

122. Bearing all these conditions in mind, the acquisitions and control of DOPCO by SK would effectively limit competition in the primary oil product distribution market as well as the consumer market.

#### 3.5.2.4 Corrective Measures

123. In the case of SK's acquisition of DOPCO, the KFTC included provisions in DOPCO's company statutes which banned SK from any anti-competitive behaviour such as refusing oil shipping requests of a piping company and limiting the volume. The KFTC provided company statutes with a basis for establishing and running a consultation committee to discuss and decide issues arising in pipe use.

#### 3.5.2.5 Significance of KFTC Measures

124. This is a prime example of a vertical business combinations where the KFTC reviewed the integration of oil product distribution and its shipping. After examination, the KFTC determined that the said combination of the two functions would limit competition and, therefore, imposed appropriate contract conditions to prevent any anti-competitive behaviour.

### 3.6 *Unfair Business Practices*

#### 3.6.1 *Overview*

125. 'Unfair business practices' refers to any acts which are likely to impede fair trade. These include the following:

- Unreasonable refusal to transact with or discriminate against a certain partner;
- unreasonable exclusion of competitors;
- unreasonably luring or coercing customers away from competitors;
- unreasonable manipulation of one's bargaining position to one's own benefit;
- unreasonable restriction or imposition of terms and conditions favourable to one's own business;
- unreasonable disruption of other business activities;
- unreasonable subsidies or support for 'specially related persons' or affiliate corporations;
- other activities which might hamper fair trade.

126. If the KFTC deems necessary, it may stipulate and make notification of details on certain types of unfair business practices or guidelines to be applied to particular market areas or behaviour. In this case,

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the KFTC must make prior consultation with the relevant government bodies and give due consideration of their recommendations.

127. Examples of special notifications for application in particular areas include 'Notification on Criteria for Unfair Business Practices Relating to Franchise Business' and 'Notification on the Types of and Criteria for Special Unfair Business Practices Relating to Large Retail Store Business'.

128. Examples of special notification for application to particular behaviour include 'Notification on the Type of and Criteria for Unfair Business Practices Relating to the Offering of Gifts' and 'Types of Unfair Trade Conducts Regarding Parallel Import'.

129. Although unfair labelling and advertisement was categorised as an unfair business practice, it was excluded as a type of unfair business practice with the legislation and enactment of the 'Fair Labelling and Advertising Laws'.

130. If the KFTC identifies an unfair business practice, it can order corrective measures against it, e.g. cease and desist order, deletion of a contract provision, public announcement of the legal violation and other necessary measures. In terms of fines, the KFTC may impose up to 2% of a company's sales amount or Won 500 million. Depending on the severity of the violation, it may also refer the case to the court prosecutor or simply request that the charged party compensate for damages inflicted to other parties.

131. There was a slight increase in the number of cases on unfair business practices in 2001 compared to the previous year. The KFTC recognised a total of 808 cases in 2001, up 8 cases or 1% from the 800 cases of unfair business practices in 2000. The number of registered cases, however, went up by 84 or 11.3% from 741 cases in 2000 to 825 cases in 2001.

132. According to the type of KFTC measures in 2001, 7 cases were referred to prosecution, corrective orders issued in 187 cases (including 38 fines charged) and warnings given in 294 cases. Among these, corrective orders were down 77 cases or 29.1% than the 264 corrective orders (including 25 fines) 2000 while the number of warnings was down by 128 or 75% from the previous year.

133. The rise in the number of KFTC warnings, as opposed to harsher penalties since 1999, signifies greater corporate awareness of competition law and, consequently, the voluntary recognition and correction of their unfair business practices.

### 3.6.2 Case

#### 3.6.2.1 Unfair Refusal of Transaction by Korea Telecommunications Co., Ltd.

134. In accordance with Korea Telecommunications' (KT) 'Agreement on Telephone Directory Publication' (December 26, 1998) with the Korea Telephone Directory Company (KTDC), the residential and commercial directories were released as KT publications while the industry directories were released as KTDC publications. As KTDC's 2<sup>nd</sup> largest shareholder, KT exercised much influence over the publication of industry directories.

135. In October 1999, KTDC recognised the need to include and integrate users of Hanaro Telecommunications Inc. (HTI) into their directory to provide more comprehensive information services and requested that KT review the possibility of including HTI users in their industry directories.

136. In response to this, KT stated that the November 1999 directory should list and publish only KT users separately and that combined directory publication is an issue for the two companies, KT and HTI, to negotiate.

137. At the request of HTI, KT and HTI held negotiations in January and May 2000 on the integrated listing of both their customers in the residential and commercial directories published by the KTDC.

138. HTI requested that HTI user numbers be listed in order of the Korean alphabet along without distinguishing their service providers and that the directories should be published in the names of both KT and HTI. KT rejected this request saying that HTI users should be listed separately and that listing in alphabetical order without distinguishing service providers is impossible. With KT's refusal, the KTDC was unable to publish a combined directory listing HTI users as HTI users.

### 3.6.2.2 Determining Illegality

139. In the urban telephone market, identification of different service users in a telephone directory is essential to the telephone service provider using the directory. Particularly if a new market entrant hold only a small market share, it is crucial that a telephone directory provides the service of informing them on the status of different telecommunications service users and help them identify their own users. This acts as a key factor of competition within urban telephone markets.

140. In this specific case, HTI held only 1.8% market share which made it unrealistic and inappropriate, in terms of use value, to publish a directory of only HTI users. Therefore, it was crucial that they have their users be listed alongside KT users in a combined directory.

141. Under these conditions, KT's in refusing to allow a company with which it is highly interdependent, i.e. KTDC, to include HTI users in KTDC's independently published telephone directory is clearly an unfair business practice which limits the business of a competitor.

### 3.6.2.3 Corrective Measures and Their Significance

142. The KFTC ruled that KT should not reject the publication of a combined directory with users of a competing service provider, either in their own residential and commercial directories or in the industry directories of the KTDC. Consequently, HTI users were listed together with KT users in the residential, commercial and industry directories and consumer welfare was enhanced for users of telephone directories.

### 3.6.2.4 Unfair Business Practices by the Large Scale Retail Store "Magnet"

143. In operating its large scale discount store, the main office of the large scale retail discount store Magnet, owned by Lotte Shopping Co., Ltd., used its position in the market and unjustly altered a supplier's transaction conditions for their advantage. Between November 20, 1999 and November 1, 2000, Magnet established a promotion subsidy agreement, separate from its existing supply contract, stipulating that 1~4% would be deducted from about 215 of Magnet's purchase payments to its suppliers. As a result, a total of Won 4.16 billion was deducted as market promotion subsidies from January 1, 2000 to September 30, 2000.

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### 3.6.2.5 Determining Illegality

144. The KFTC ruled that, by arranging a new agreement during an existing contract term and by deducting Won 4.16 billion as sales promotion subsidies, Magnet clearly disadvantaged suppliers in violation of Article 11 of the ‘Notification on the Types of and Criteria for Special Unfair Business Practices Relating to Large Retail Store Business’.

145. The KFTC decided that Lotte Shopping had unreasonably manipulated contract conditions by establishing a new agreement while a contract was still valid and issued a corrective order for Lotte shopping to cease behavior which would disadvantage suppliers.

146. The KFTC was, therefore, able to stop a larger company from dictating contract conditions onto smaller suppliers and imposing various operation costs on the latter by using its dominant position in the market.

## 3.7 Trade Associations

### 3.7.1 Overview

147. The MRFTA defines a “Trade Association” as any combination or federation of enterprises, regardless of the structure, formed by two or more enterprises for the purpose of enhancing their common interests. The KFTC investigates undue collaborative acts or unfair business practices by these trade associations.

148. In 2001, the KFTC took 88 corrective measures (1 referred to prosecution, 57 corrective orders, 30 warnings). Compared to year 2000, the number of corrective measures has decreased but the number of fines has increased sharply in 2001. This resulted from the KFTC’s progressive policies toward trade associations’ unfair business practices.

### 3.7.2 Case

#### 3.7.2.1 Korea Baseball Organisation (KBO)’s prohibited activities

149. KBO laid out and operated a rule in relation to the operation of professional baseball, and imposed the rule on each professional baseball team and player. The contents of the rule were as follows:

150. Player Reservation System: A baseball team may hold a player for contract renewal in the following year. The team has the right to sign that player on from Nov. 11<sup>th</sup> to Jan. 31 for two more years. During the retention period, the players of a team are prohibited from signing any other contracts or acting for any other teams.

151. One-sided Trade System: With the agreement of a player, a team can transfer that player from one team to another.

152. Free Agent System: To be a free agent, a baseball player must have played in the league for more than 10 regular seasons.

153. The KFTC saw these KBO practices as unduly restraining business-related activities of member enterprises. In this case, the point at issue was whether KBO can be regarded as a trade association or not. KBO argued that no single team could operate professional baseball, and that professional baseball could be considered as a single entity as in an U.S. case.

154. Against the KBO's argue, the KFTC maintained that whether an organisation is a trade association or not should be decided in individual cases and the KBO could not be regarded as 'a single entity'.

155. The KFTC ordered KBO to suspend the above acts and to modify or delete the related clauses. The case is significant in that the KFTC has applied competition law in the human resources contract. Also, through promulgating the fair and free competition between professional baseball players, the case contributed to the development of the Korean professional baseball league and to the protection of professional baseball viewers' welfare.

### **3.8 *Unfair Clauses in Adhesion Contracts***

#### *3.8.1 Overview*

156. The KFTC has implemented the Adhesion Contract Act to prevent enterprises from preparing and using adhesion contracts containing unfair terms and conditions through the abuse of their negotiating position and by establishing a sound framework for business transactions through the regulation of adhesion contracts containing unfair terms and conditions.

157. If an enterprise breaches the law, the KFTC may order or recommend it to take such measures as are necessary to correct the breach, including but not limited to, deleting or revising the pertinent clause in the adhesion contract.

158. If the KFTC deems it necessary for the purpose of rendering an order or a recommendation for correction, or if it receives a petition from consumers, the KFTC may conduct an investigation in order to determine whether a given adhesion contract violates the law. Since the enforcement of the Adhesion Contract Act, the KFTC investigated about 4,500 cases, on 500 cases of which it ordered or recommended correcting the breach.

159. Any person who has a legal interest in a clause in an adhesion contract may file a petition with the KFTC to request that the KFTC determine whether or not a given clause is in violation of the law. Until 2001, there have been 4,458 petitions for review of adhesion contracts. On 920 cases of those, the KFTC has ordered or recommended the correction of the corresponding breaches. Of those the KFTC made 271 orders (29.5%), 603 recommendations (65.5%), and informed administrative agencies of 46 violations (5.0 %) and requested to take measures necessary to correct them. Of those, 274 corrective measures were made in housing and house renting industry (29.8%), 167 corrective measures in finance and insurance industry (18.2%).

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### 3.9 *Unfair Subcontract Practices*

#### 3.9.1 *Overview*

160. 99.7% of South Korean enterprises are of small and medium sizes, according to the ‘Report of Korea National Statistical Office on basic statistics of Korean enterprises’. 72.8% of these small and medium size enterprises depend on subcontracts for business. It means that the industry structure of Korea is rooted in subcontract businesses. In this regard, it is one of our main tasks to set up a fair subcontract rule.

161. The KFTC has endeavoured to promote a fair subcontract system and to protect small and medium size enterprises. The KFTC revised the Fair Subcontract Transactions Act (FSTA) in 2001 to promote fairer subcontract practices. It also enlarged the number of target companies to submit survey papers about their subcontract practices.

162. The number of corrective measures, to rectify the subcontract law violations, issued by the KFTC in year 2001, was 3,130. This is much more than the 876 cases in 2000. The 3,130 corrective measures are categorised into 51 corrective orders, 71 mediations, and 3,008 warnings.

163. The KFTC has initiated large-scale investigations every year in order to eradicate unfair subcontracting transactions. In 2001, the investigation was done against 8,000 big corporations and 17,000 small firms (subcontractors).

164. The probe into principals revealed the following characteristics.

165. While the instances of law violation by large contractors have gone down, 71.1% are still breaching the relevant law (81.9% in 2000). Increasingly, cash and cash equivalents are replacing notes in the payment of subcontract transactions. In 2001, for the first time, cash and cash equivalents were used more than notes in settlements (64.3%).

166. Among the types of the breaches of the Fair Subcontract Transactions Act, those related to payments topped the list with 47.7%, followed by documents-related violations of 22.2%, such as the failure to deliver written contract, etc. Among the contractors (5,649 corporations) that engage in subcontract transactions, 71.1% are suspected of violating the Act, representing a gradual improvement from the year 2000 (81.9%).

167. Large scale written fact-finding investigations carried out for three successive years have enhanced the businesses’ awareness on compliance with the law, showing that such probes has a preventive effect. Types of law violations show similarity with those of the previous year, most of them related to subcontract payments and document. Instances of breaches concerning payments have significantly decreased compared to the previous year.

168. The investigation in 2001 shows that 64.3% of subcontract payments is made with cash and cash equivalents. Cash and cash equivalents have replaced notes in the payment of subcontract transactions. It is presumed that the sharp rise in the payments of cash and cash equivalents significantly eased the problem of liquidity shortage of small and medium sized subcontractors.

169. Corporations that failed to meet the required cash payment ratio, below the ratio of cash received from original contractors went down by 2.0% from 2000, making a slight improvement. Compared to

2000, the portion of corporations, which made payments after the legally specified date (60 days after the acceptance of subject matters), decreased by 8.0%, helping to ease subcontractors' cash shortage.

170. In order to resolve problems arising from note settlement, "Corporate Purchase Card" and "Corporate Purchase Loan" were introduced in November 1999 and May 2000, respectively. 22.4% of those investigated were making settlements with these cash equivalents.

171. Instances of prior agreements using cash and cash equivalents are on the sharp rise. In the first quarter of this year alone, the above mentioned cash equivalents amounted to 9.8 trillion won (Purchase Card: 5.5 trillion won, Purchaser financing: 4.3 trillion won), benefiting 120,000 small suppliers.

172. The KFTC revised the Standards for Assessment of Surcharges on May 17, 2001 in order to increase the ratio of settlement with cash and cash equivalents. Under the amended Standards, when more than 80% of settlement are made with cash, up to 50% of surcharges assessed can be reduced.