Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Korea

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For Korea, 2024 was a tumultuous year, even setting aside the president's unexpected self-coup and martial law incident (luckily, short-lived as a mere midwinter night's dream). Discussions around platform regulation were more intense than ever, and urgent debates emerged regarding the role of competition law and policy in the AI sector (which seems to be the next big issue). Beyond policy discussions, the Korea Fair Trade Commission (KFTC) remained as active as ever on the enforcement side. According to the KFTC's announcement, the agency handled a total of 5,837 cases over the past 2.5 years (from May 10, 2022, to November 5, 2024), imposing cumulative fines amounting to 1.1557 trillion KRW.

Notably, the courts also played a prominent role in competition law this year. In particular, the Seoul High Court—which serves as the appellate court for public competition enforcement cases—rendered several noteworthy decisions, sparking a range of debates. In addition, the prosecution authority maintained its involvement in competition enforcement, even in abuse cases, signalling its continued commitment to the criminal enforcement of competition law.

In this post, I will highlight (selected) key developments in Korea's competition law and policy during 2024.

Digital Platform Competition Regulation: It Ain't Over till It's Over

First and foremost, it is noteworthy that in 2024, the KFTC scrapped its plan to introduce comprehensive platform regulation modelled after the EU's Digital Markets Act (DMA) or Section 19a of Germany's competition law, characterized by a designation process and the imposition of *ex-ante* obligations. The announcement was made on September 9th, following almost four years of attempts to introduce *ex-ante* platform regulation—initially proposed as the Online Platform Fairness Act and later as the Platform Competition Promotion Act. As I discussed elsewhere, this shift was a desirable one. This is particularly true considering that the KFTC's legislative initiatives and efforts were not grounded in firm evidence of market failure in Korea's platform economy or the insufficiency of existing tools, but were instead driven by top-level policymakers who appeared to be overly influenced by the EU's regulatory actions. Indeed, in Korea's competition law community, none of the notable voices has expressed support for the push for platform regulation (see also, Professor Dae Sik Hong's comments).

However, this shift was not a complete reversal. While abandoning its pursuit of a new enactment, the authority instead proposed amendments to Korea's competition law, the Monopoly Regulation and Fair Trade Act (MRFTA), to introduce some shortcuts, including legal presumptions on dominance and anti-competitiveness. Specifically, the agency proposed establishing legal presumptions of dominance for certain types of digital platforms (*i.e.*, online intermediaries, search engines, online video content service providers, social networks, operating system providers, and online advertising platforms) whose market share and number of users exceed specific quantitative thresholds (such as a single firm with at least 60 per cent market share and 10 million users, or the top two to three firms collectively holding at least 85 per cent, with each having at least 20 million users). Under the bill, platforms meeting the thresholds and thus presumed to be dominant would be prohibited from engaging in self-preferencing, tying, restrictions on multi-homing, and parity practices. Justifications—including pro-competitive effects—would be allowed. Additionally, it was suggested to introduce an interim measure system.

And one more thing. Alongside the amendment proposal, the KFTC slipped in another legislative plan to amend the Large Retail Business Act—a retail-sector-specific regulation targeting traditional retailers—to extend its regulatory scope to online intermediation services. The plan was explained as a measure to address late payment issues in Platform-to-Business relations. However, the scope of the amendments in the final bill, released in October seemed, in my view, to be far broader than that issue, appearing that the KFTC is seeking a bypass to regulate e-commerce platforms.

Further details on the two legislative proposals can be found in my previous presentation slide no. 21-22.

For some, these two alternative proposals raised doubts about whether the KFTC, the "competition" authority, truly abandoned its regulation plans. That said, I observed that the official step back (away from the stringent regulation option characterized by *ex-ante* designation and *per se* prohibitions) was nonetheless a noteworthy development. Considering the strong political pressure exerted by interest groups in favour of regulation, the KFTC's updated plans could be praised as a compromise between pro-regulation and pro-market arguments. Back in November, it was reasonable to expect that strict platform regulation (without regarding existing tools and market status in Korea) would not be introduced within a predictable timeframe.

However, everyone was wrong. It ain't over till it's over. That was the case only until the Korean President's self-coup, *i.e.*, the martial law incident, in December, followed by the subsequent impeachment drama that is now underway. Amid the political turmoil and power shifts, it is becoming increasingly likely that one of the more than a dozen legislative bills introduced by the opposition party politicians—even including those featuring *ex-ante* designation and collective bargaining rights for businesses on platforms—could be enacted. In fact, before the self-coup incident, regulatory proposals put forward by politicians generally deserved little attention due to their poor quality, but now that the executive branch is failing to fulfil its role, the situation has dramatically changed.

In 2025, it is crucial to keep a close eye on how debates over platform competition regulation unfold, depending on the outcomes of the upcoming presidential election and changes in the political environment.

KFTC's Generative AI and Competition Policy Report

As seen above, from the very first initiative to the updated proposals in 2024, it has taken almost four years of discussions on platform competition regulation, and it remains an ongoing issue. Surprisingly, however, over this long period, the KFTC has not published a single policy report (other than external, government-commissioned reports) presenting the nature of the problems, the lack of tools to address them, and the necessity of regulatory measures, specifically within Korea. In this context, in my view, it was no surprise that the government's push for platform competition regulation encountered intense backlash, generating substantial societal and administrative costs without yielding any tangible results.

The KFTC, especially high-level officials, seems to have learned a valuable lesson from this experience: To accomplish anything in this modern, liberal, and democratic country, it must first explain to the public—including consumers, businesses, and even other government agencies—what it aims to do and why, in a clear and detailed manner, and make every effort to build a society-wide consensus, as other agencies (such as the Japan Fair Trade Commission (JFTC), the Australian Competition and Consumer Commission, the Competition and Markets Authority, the European Commission, and the Federal Trade Commission) do—instead of dropping a bombshell by suddenly announcing its plan for new regulations, with press releases.

The first (and, as I have noted elsewhere, commendable) fruit of this learning was the *Generative AI and Competition* report, published on December 17th (which was then followed by the second report, *E-Commerce Market Study*, as I noted elsewhere).

Of course, this was not the KFTC's very first action on AI-related competition issues. In February, for instance, it was reported that the agency received an external report it had commissioned, highlighting NVIDIA's enduring dominance in the GPU market and the high entry barriers in the EDA software market, where firms like Synopsys hold oligopolistic positions. This report may now serve as a reference for the KFTC's ongoing in-depth review of the Synopsys and Ansys deal.

However, it was just an external report where the authority limited its involvement. In contrast, the *Generative AI and Competition* policy report marks the first time the agency has transparently articulated its perspective and stance on a specific competition issue (generative AI, in this case). I believe this represents one of the most encouraging developments of Korea's competition policy in 2024.

Key takeaways from the KFTC's report are summarized here.

Despite the significance of the report from a policy-making perspective, it is true that the report has not yet made a tangible impact on businesses or academia. It may be because the report emphasizes the need for ongoing, vigilant monitoring rather than identifying any imminent competition concerns that necessitate enforcement actions. For some, this may be somewhat disappointing but, in my think, this appears to stem from the fact that the competitive mechanism is (anyhow) functioning in AI-related sectors. Following this, I believe that the study's findings drawing relatively moderate conclusions are not necessarily a bad outcome—though, of course, updates may be needed.

From a technical perspective, however, I must express some regret that the report was written and published solely in Korean, despite the AI issue's cross-border nature. While one might argue that Korea is a non-English-speaking country, it cannot be overlooked that other reports such as the

Autoridade da Concorrência's Issues Paper (November 2023), the Autorité de la Concurrence's Opinion (June 2024), and the JFTC's Discussion Paper (Oct 2024) were all released with official English versions. This may represent an area for potential improvement in 2025.

Competition Law Enforcement Overview

Let us shift our focus from policy to enforcement. As noted above, in 2024, the KFTC, courts, and even the prosecution authority were as active as ever. The KFTC, while sharpening its teeth against information exchange practices amid handling the *Four Banks' LTV* case, issued several sanction decisions, including *Kakao Mobility I* and *II*, as well as *Coupang*. The appellate court conducted rigorous jurisdictional reviews, particularly in cartel cases such as *Evergreen*, *Duck Processing Cartel*, and *Law Talk*, seemingly resisting the KFTC's interventions in regulated sectors. Meanwhile, the Supreme Court finalized several cases, including *Daewoong Pharma* and *Siemens*, establishing notable precedents. Additionally, it was observed that many infringement decisions led to criminal enforcement actions, with some resulting in guilty verdicts.

In the following, developments in collusion and abuse will be examined, followed by a brief overview of merger control issues and a concise discussion of trends in criminal enforcement actions.

First Test of the Information Exchange Provision: *Four Banks' LTV Cartel* Case

The case worth noting first is the KFTC's inaugural use of the newly introduced information exchange provision, Article 40(1), no. 9, MRFTA, to address the alleged collusion among the four largest domestic banks. This case, I think, is likely to affect the effectiveness of cartel enforcement in Korea in the future.

This case dates back to 2022. That year saw a sharp rise in benchmark interest rates, driven by the transition of COVID-19 into an endemic phase and inflation fueled by Russia's invasion of Ukraine. During this period, large banks experienced surging profits, while the public faced economic hardship. This disparity sparked widespread criticism of the banking industry's oligopoly, and it was further amplified by politicians, including the president, who fueled public outrage.

Against this backdrop, alongside policy actions (e.g., government approval for new commercial bank entries), the KFTC initiated its enforcement action against the existing major banks in 2023.

In February 2023 (and again in June with a more narrowly targeted scope), the KFTC conducted on-site inspections of large banks, and this culminated in the issuance of its statement of objections (SO) to four banks in January 2024. Reportedly, in the SO, the KFTC alleged that the four banks colluded by sharing competitively sensitive information used in risk assessments for mortgage loans. (Specifically, the shared information is the Loan-to-Value (LTV) ratio—a metric used to determine the maximum loan amount based on the collateral value (typically real estate in Korea).) The case handler argued that this information exchange caused the banks to coordinate their reduction of mortgage loans and as a result, consumers were pushed toward higher-interest unsecured loans. However, it is noteworthy that the investigators failed to find direct evidence of

agreements in this case, and so they relied on the newly introduced prohibition on information sharing, Article 40(1), no. 9–instead of the prohibitions of fixing prices or trading conditions under Article 40(1), no 1 or no 2.

The final decision in this case was originally expected in 2024, but somewhat unexpectedly, the Commission decided in November 2024 to re-examine the case. To me personally, this cautious approach came as a (mild) surprise. Because, among other reasons, the information shared in the Korean case was neither publicly available nor non-strategic, leading me to anticipate a relatively straightforward conclusion under the newly introduced Article 40(1), no. 9—much like the EU's top court recently confirmed that such information sharing could constitute a by-object restriction (C-298/22). Yet, the KFTC chose to adopt a more cautious stance than I had expected. Why did the Commission take such a measured approach?

This postponement may be attributable to the political push that pressured the competition authority to pursue the investigation too hastily. It may not be entirely incorrect. But, from a legal perspective, the Commission's prudence invites more nuanced interpretations.

Among others, it should be noted that the KFTC went through a bitter defeat regarding information exchange before the courts in 2015.

Before the 2020 amendment, information exchanges were regarded as constituting an implicit agreement (formerly Article 19, now Article 40 of the MRFAT). However, this interpretation was challenged by the Supreme Court in the 2015 *Ramyun Cartel* case (2013Du25924). In this case, the KFTC had sanctioned the ramyun producers based on the allegation that they had shared sensitive information, although no explicit evidence of agreements was presented. The Supreme Court overturned the agency's decision, pointing out that it failed to prove the existence of an anti-competitive "agreement" as clearly required by law. (This strict stance likely stemmed from the absence of flexible legal terms like "concerted practices" in the MRFTA, and the potential for criminal liability.) The Court's rejection of the relaxed interpretation of the "agreement" prompted discussions about amending the MRFTA. Consequently, the 2020 amendment introduced a specific provision clearly and directly prohibiting anti-competitive information exchange.

Considering this history, it is highly probable that the KFTC may have viewed this case as a watershed moment where it can either maximize or undermine the effectiveness of the information exchange provision and, by extension, Korea's cartel enforcement framework. That is, the KFTC's prudence in delaying the final verdict seems to reflect its determination to establish a strong precedent for controlling implicit cartels.

The verdict, expected in 2025, and its consequences, are likely to shape the future of cartel enforcement, particularly in concentrated sectors like finance and banking, warranting close attention.

Sectoral Exemptions/Exceptions by the High Court's Interpretations

In the area of collusion involving decisions by associations, while the enforcer's role is significant, I found the more noteworthy developments, whether good or not, in 2024 came from the Seoul High Court.

What particularly stood out to me were rulings from Administrative Divisions 3, presided over by Chief Judge Joon-young Jung, and 7, with Chief Judge Dae-Woong Kim presiding, where naked cartels, such as fixing prices and limiting production, were exempted or excepted from the application of competition law. Despite the seemingly elegant language in these judgments, which ostensibly endorsed the principles of a market economy, I found that they, actually, eroded competition policy's foundational role in the market system. To me, such judicial activism seemed very intriguing.

Below, I will review three cases that were hotly debated in Korea in 2024: the *Evergreen* case (by Administrative Division 7), the *Duck Processing Cartel* case, and the *Law Talk* case (both handled by Administrative Division 3).

Evergreen: Exclusive Authority of the Shipping Sector Regulator?

The *Evergreen* case was ruled on February 1st, 2024 (Case No. 2022Nu43742) by Administrative Division 7. The facts of this case were relatively straightforward. A total of 23 international liner shipping companies, including Evergreen, and an association colluded to fix freight service prices on the Korea-Southeast Asia routes from the early 2000s to 2018. These agreements were sanctioned by the KFTC in 2022 with total fines of 96.43 billion KRW on all (including 3.399 billion KRW on Evergreen) (Decision No. 2022-090).

It was not the facts, but the complex legal architecture that made the case complicated. Article 29 of the (antiquated, in my view) Marine Transportation Act (MTA) allowed liner shipping operators to engage in cooperative practices, including price-setting (despite the contemporary trend of abolishing competition exemptions for such practices, driven by updated economic evaluations). And, it imposed some obligations on the shipping companies such as reporting the agreements to the Minister of Oceans and Fisheries (MOF) (Article 29(2)) and consulting (or negotiating) with shippers prior to making the report (Article 29(6)). If freight rate agreements were found to unjustly restrict competition, the MOF was authorized to take corrective measures and notify the KFTC of the matter (Article 29(5)(3)). Were these provisions designed to exclude the application of competition law or to shield such practices from intervention by the competition authority? In my view, this remained unstipulated. No law explicitly excluded competition enforcement or granted the MOF exclusive authority over shipping cartels. Only in principle, Korea's competition regime did not provide any sectoral exemptions, but included an exception under Article 116 (formerly Article 58), rendering the law inapplicable to any legitimate act done in accordance with other rules. Nothing more. (All the provisions above remain as of the time of writing.)

Against this legal backdrop, a critical question arose: Does shipping collusion violate the MRFTA, or not? Can the KFTC sanction shipping cartels (especially when the MOF has failed to act)?

Under the settled case law of the Korean Supreme Court, the typical approach to answering such a question has been to determine whether the conduct in question qualifies as an *exception* by being 'legitimately done in accordance with other rules' as provided in Article 116 under the MRFTA, which has been interpreted to apply only to reasonable and necessary conduct performed within the scope explicitly recognized by other rules specifying exceptions to free competition (as well reiterated in the *Evergreen* decision on page 10).

However, in this case, the High Court adopted a novel framework (while appearing to formally

follow the precedents). Simply put, setting details aside, the court interpreted Article 29 of the MTA itself as *exempting* shipping cartels from the application of competition law. On this basis, the court concluded that the agreements at issue were carved out from the jurisdiction of competition law and the authority of the KFTC. Particularly, what struck me as notable was the court's ruling that freight rate agreements, like those in this case, are *exempt* from competition law (MRFTA), even if the conduct in question did not qualify as being 'legitimately done in accordance with' the sectoral regulation. Addressing such issues would fall under the *exclusive* purview of the sectoral regulator (MOF), not the KFTC, said the Administrative Division 7 (on pages 15-16, *Evergreen*). To reiterate, (if my Korean hasn't gotten too rusty) the issue of whether institutional powers are strictly separated as a matter of organizational design was not written in the law.

It is true that the Korean shipping cartel regulation (MOF) had distinct features compared to regulatory frameworks in other sectors (although these features appear to merely reflect an outdated framework that has failed to keep pace with the evolving economic assessment of shipping cartels). Nevertheless, deriving such an *exemption* for an entire category of cartels by interpretation struck me (and likely other scholars) as, arguably, highly unprecedented. It remains to be seen whether the *Evergreen*'s exemption approach, encroaching on matters of organizational design that should be decided by the executive and legislative branches, addressing matters of organizational design that should be decided by the executive and legislative branches, will ultimately be accepted by the Supreme Court.

Duck Processing Cartel: "Constitutionally protected organization" Immunity?

The next is the *Duck Processing Cartel* case (Case No. 2022Nu61146, dated September 26, 2024).

As in *Evergreen*, the facts were quite simple. Several duck meat producers engaged in collusive practices through their association, including agreements to reduce production, in 2012 and 2016. (In addition, the KFTC alleged price-fixing practices through information exchanges, but these claims were dismissed, primarily due to a lack of direct evidence.) According to a relevant sectoral regulation (*i.e.*, Article 5(1) of the Act on Livestock Farm Alliance Systems), collective production controls were allowed, subject to legal requirements including stakeholder consultation and public disclosure. However, as recognized in the High Court's decision, the agreements at issue did not follow these required legal procedures and were thus illegitimate. The KFTC sanctioned these agreements, imposing corrective orders and fines (Decision No. 2022-216, dated August 24, 2022).

The complexity of this case stemmed from the analysis of anti-competitiveness. Regarding the production-limiting agreements, there was no question about the existence of agreements and their illegitimacy under the sectoral rule (*i.e.*, they did not qualify for exceptions under Article 116 (then Article 58) of the MRFTA, as explained above). The High Court endorsed the KFTC's findings in this regard.

However, when assessing the illegality of the conduct, the High Court, Administrative Division 3, adopted an intriguing approach, ruling that the agreements were not illegal as they did not 'unjustly' restrict competition.

It is not unprecedented for Korean courts to overturn the KFTC's findings on anti-competitiveness by emphasizing the 'unjust' element in Article 40(1) (formerly Article 19(1)) of the

MRFTA—stating, “No business entity shall agree to engage in any of the following conduct that [unjustly] restricts competition jointly with other business entities”—such rulings have been exceedingly rare. To the best of my knowledge, the exception has only been used in extremely exceptional cases, such as freighter strikes (Case No. 2007Du26117) (in the distant past and which drew severe criticism) or political situations akin to the Noerr–Pennington doctrine (Case No. 2016Du36345). In this case, the conduct, beyond what was permitted by law, neither included any circumstances or benefits that could offset a reduction in consumer welfare nor had any political purpose (but an anti-competitive one).

Nevertheless, the High Court, Administrative Division 3, citing Article 123(4)-(5) of the Constitution, which emphasizes the state’s duty to protect farmers and fisheries’ interests and foster their voluntary organizations, declared that the association of duck meat producers qualified as a *constitutionally protected organization*. Based on this reasoning, it ruled that the production-limiting agreements through the association did not constitute an ‘unjust’ restriction of competition. Interestingly, the High Court also referenced antitrust exemptions under Section 1 of the Capper–Volstead Act, Article 2(1) of EU Regulation No. 1184/2006, and Section 28 of the German Competition Act (GWB) to justify its judgment.

In my view, the High Court’s reasoning raised several concerns. First, even if competition law can have multiple objectives, and protecting farmers may be a reasonable outcome, the approach of directly incorporating a constitutional principle as a standard for assessing anti-competitiveness seemed very precarious. Furthermore, it was doubtful how effective the *legislative* references from the US and Europe, as cited, are in supporting the *interpretation* of the Korean judicial body.

More fundamentally, the Court expressed concern, in its decision, that ‘if excessive supply in a competitive market drives prices too low, producers who cannot cover their production costs will exit the market, leaving only a few producers capable of sustaining production costs, which could result in monopolization or increased reliance on imports as the number of suppliers dwindles.’

This concern itself raises further serious concerns. As seen above, an existing regulation already reflects this intent, and the conduct in this case exceeded its legitimate scope. Moreover, the exit of inefficient businesses is precisely what the market and competition law are designed to achieve. Actually, the real issue Korea now faces is not the lack of legal protection, but the low productivity and inefficient distribution systems in the agricultural and fisheries sectors (albeit not specific to ducks or poultry), which require significant improvement, as noted in a recent Bank of Korea report. Given this, it seems difficult to justify the High Court’s approach, which effectively permits collusion exploiting consumers (even if only in the short term, as the Court said) to prevent the exit of inefficient producers.

Fortunately, not all divisions of the Seoul High Court adopted such an antagonistic stance toward competition policy. A silver lining was found in a different division, Administrative Division 6-3, where the High Court presented a different (and more reasonable, in my view) approach. Against similar practices in the native chicken cartel case, reportedly, it ruled that the KFTC’s decision to impose fines and corrective orders was justified, rejecting the association’s claims that their conduct was either excluded from competition law as legitimate conduct due to administrative guidance from the Ministry of Agriculture, Food and Rural Affairs, or lacked illegality due to stabilizing the industry. The court found that the association’s collusive actions restricted competition, leading to higher prices and limited output, and were illegal.

What led to the differing judgments in these two similar cases is unclear (to me). At any rate, in 2025, close attention should be paid to whether the Supreme Court will adopt the former's 'constitutionally protected organization' framework or follow the latter's more conventional approach.

Law Talk: Bar Associations' Ban on Legal Platforms—Yet Another Exemption?

Last, but not least, is the *Law Talk* case (Decision No. 2023Nu43763, dated October 24, 2024). Although the judgment has not been made public, and given the complexity of interpreting the Attorney-at-Law Act—particularly Article 34, a matter outside my primary area of expertise—providing detailed commentary is difficult. Nonetheless, it warrants brief discussion, since the Seoul High Court's Administrative Division 3, once again, attempted to carve out a particular category from the scope of competition law.

To simplify the facts: Law Talk was a platform service that allows users to search for and contact lawyers (similar to Japan's Bengoshi.com or the U.S.'s Avvo.com). By reducing information asymmetry and search costs in the legal services market, it grew quickly—especially eliciting an enthusiastic response from junior lawyers. While Law Talk provided lawyer-search services to users for free, it generated revenue from paid advertising services for lawyers, offering them higher visibility on the platform.

However, between 2021 and 2022, its growth stalled due to sanctions imposed by the Korean Bar Association (KBA) and the Seoul Bar Association (SBA). (A media report suggests that these sanctions were primarily driven by complaints from experienced lawyers who disliked the intensified competition in fees and services caused by Law Talk. I find it convincing, but that discussion is beside the point here.) Officially, the associations argued that Law Talk's service constituted a legal brokerage prohibited by the Attorney-at-Law Act, which aims to protect the public interest. The KBA enacted internal rules banning such activities and sanctioned lawyers registered in Law Talk.

Almost no one welcomed the associations' actions. Indeed, on August 24, 2021, the Ministry of Justice announced that Law Talk's service did not violate the Act. On May 11, 2022, the prosecution authority also determined that it did not constitute a prohibited brokerage activity, resulting in no charges. Then, on May 26, 2022, the Constitutional Court reasoned that merely offering a platform through which lawyers and clients can connect (as Law Talk does) could not be deemed a direct referral practice. Accordingly, it found the KAB's rules targeting Law Talk unconstitutional (Case No. 2021Hun-Ma619, dated May 26, 2022). The KBA later amended its rules and imposed sanctions on lawyers, but, the Ministry of Justice cancelled these sanctions on the grounds of insufficient basis for such sanctions on September 26, 2023.

In this context, on April 13, 2023, the KFTC sanctioned the associations for violating the prohibition of anti-competitive decisions by associations, Article 51(1)(3) of the MRFTA (and breaching a law on advertising) (Decision No. 2023-063). In July 2023, media outlets reported that the Ministry of SMEs and Startups (MSS) was even considering requesting the KFTC to refer this case to the prosecution authority.

However, on October 24, 2024, the Seoul High Court's Administrative Division 3 issued another surprising decision regarding the KFTC's decision. Although the details are hard to ascertain (as

the decision is not disclosed), media coverage indicates that, having found no procedural defects, the High Court deemed the associations' practices legitimate under the Attorney-at-Law Act (apparently relating to exceptions under Article 116) and further decided that they were neither 'unjust' nor 'anti-competitive.'

From the perspective of administrative law, it seems the KFTC's corrective order lacked specificity (by merely prohibiting the conduct and its repetition), and imposing fines of 1 billion KRW for each association, in addition to the remedial order, may have been excessive. However, from a competition law perspective, the court's conclusion—once again ruling that competition law does not apply—raises questions about its justifiability. Indeed, Hwang Lee, a former president of the Korea Competition Law Association, commented that such decisions are concerning as they could wrongly signal that there are broad exceptions to competition law, which contradicts established case law that such exceptions be kept very narrow.

In 2025, it will be worth watching whether the Supreme Court will ultimately endorse the High Court's (precisely Divisions 3, 7) attempts to broaden exceptions, or exemptions, to competition law.

KFTC's Continued Vigilance Against Abuse, Whether by Dominance or Not

Let us now turn to another area of competition law: abuse.

Before diving in, it is worth noting that abuse—whether stemming from absolute and objective dominance, or relative and relational dominance, or even occurring without dominance—is prohibited under Korea's competition law regime. The first category falls under the scope of 'abuse of dominance' of Article 5 of the MRFTA, while the latter two can be addressed as 'unfair trading practices' of Article 45, which comprises incipient anti-competitive practices, unfair competition, and abuse of superior bargaining position (also known as abuse of economic dependence). It is noteworthy that all of the unfair trading practices are enforced within the same framework as the prohibitions on cartels and abuse of dominance in Korea (and in Japan, as well).

In the area of abuse, unlike cartels discussed above, there do not appear to have been particularly significant cases that could fundamentally alter the direction or nature of the enforcement of Korean competition law in 2024. I observed that the KFTC maintained its active enforcement activities across various sectors, including the digital platform industry, as ever. The contemporary global discussions concerning the under-enforcement of competition law, especially in unilateral conduct cases, were largely irrelevant in the Korean context in 2024.

Kakao Mobility I, II: KFTC's Confidence in Addressing Self-Preferencing

Among the notable cases are the *Kakao Mobility I* and *II* cases, which were ruled consecutively in 2023 and 2024. These cases arose amidst heightened digital platform regulation discourse (though, it appears that they gained significant momentum from top-down pressure following harsh criticism of Kakao by the President (who is highly likely to be impeached) during a meeting with taxi industry representatives).

In these cases, Kakao, one of the so-called (local) "Big Tech" companies, operated a range of digital services built upon its dominant messaging app (much like WeChat or WhatsApp). At the heart of the criticism against Kakao was the allegation that it abused its dominant position in the taxi ride-hailing market by engaging in self-preferencing, including favourable treatments and refusals, to expand its market power in the franchise taxi services market.

In my view, the two cases are fundamentally quite similar. Personally, I see them as very resembling enforcement actions elsewhere against Amazon for favouring businesses that subscribed to Amazon's logistics services (see, *e.g.*, Lombardi's summary on the Italian competition authority's decision; notably, in Kakao Mobility II's press release, the KFTC also cited the EU's Amazon Buy Box and Prime programme case (AT.40703), along with the data case (AT.40462), as reference cases). Nevertheless, the KFTC treated them as separate cases and imposed sanctions twice.

The 2023 case, the first to be ruled, centered on self-preferencing in Kakao's dispatch practices (press release and its decision, No. 2023-093, dated June 13, 2023). Kakao was found to have "manipulated" its dispatch algorithm to allocate ride requests preferentially to drivers affiliated with its franchise taxi service, by prioritizing them based on the request acceptance rates (Kakao-affiliated taxis showed higher acceptance rates than non-affiliated taxis). The KFTC found this behaviour as (i) discriminatory treatment, which constitutes both abuse of dominance (Article 5(1)(3), MRFTA) and unfair trading practices (Article 45(1)(2)), and (ii) abuse of superior bargaining position (Article 45(1)(6)) against non-affiliated taxi drivers.

The 2024 case, which followed, involved a similar structure but focused on different conduct (press release). Kakao was accused of pressuring competing franchise taxi operators into signing partnership agreements that required them to share real-time operational data, such as ride information. If the operators refused, Kakao blocked access to its taxi ride-hailing platform for drivers affiliated with those competitors. The KFTC deemed this refusal as both (i) abuse of market dominance (Article 5(1)(3)) and (ii) abuse of superior bargaining position (Article 45(1)(6)).

Legally speaking, these cases emerged after the KFTC's notable victory in the appeal of *Naver Shopping*, the first self-preferencing case in December 2022 (2021Nu36129, ruled by Administrative Division 6-1). Given this, they seem to have been pursued by the KFTC with considerable confidence, I think.

Personally, however, I cannot help but harbour some doubts about the illegality of the actions. In particular, regarding the second case, as I briefly commented elsewhere, it raises several questions: Is the increasing reliance on subjective intent in digital abuse cases (e.g., emails) desirable? Has the causal relationship between the alleged conduct and the actual outcomes (i.e., counterfactual scenarios) been sufficiently established? Is the effectiveness of competition sanctions in this case ensured, especially considering the highly regulated Korean taxi market? And finally, was the decision to criminalize this case appropriate? (Both cases were referred to the prosecution authority and are currently under criminal proceedings).

On the other hand, in a market where exclusive franchise relationships are mandated by law (Article 49-11(2), Passenger Transport Service Act), leveraging existing dominance as Kakao did (which may be deemed unfair) may contribute to positive feedback loops that reinforce its power across markets.

Both cases are now on appeal to the Seoul High Court.

Coupang: Self-preferencing As a Deceptive Practice

Regarding self-preferencing, among the notable developments in 2024, the *Coupang* case (Decision No. 2024-284, dated August 5, 2024) was particularly intriguing, even more so than the *Kakao Mobility* cases.

In *Coupang*, the KFTC treated the e-commerce company (often referred to locally as "Amazon of South Korea")'s self-preferencing as a standalone deceptive practice aimed at misleading consumers. There was no reliance on competition tools, such as the prohibition of abuse of dominance or superior bargaining position (Coupang's market share as an online shopping platform was only 24.5% based on transaction value, followed by the second-largest player, Naver, at 23.3%, as indicated in Table 10 in the Decision).

Even the more relaxed prohibitions on anti-competitive conduct, such as discriminatory treatment as an unfair trading practice, as applied in *Kakao Mobility I*, were not invoked. Instead, the KFTC sanctioned Coupang with a hefty fine of 162.8 billion KRW (the highest ever self-preferencing penalty in KFTC history) for (i) manipulating search algorithms and (ii) posting fake reviews (*i.e.*, reviews written by its employees but not disclosed as such) to favour its directly purchased goods and private-label (PB) products over other competing products offered by other businesses, relying solely on the prohibition of (consequential) deceptive practices under Article 45(1)(4) of the MRFTA. (Incidentally, for deceptive practices to constitute a violation of the MRFTA, the conduct in question must have a broader industry-wide impact and significant ramifications, as ruled in Supreme Court Decision 2014Du15740, dated September 26, 2019.)

Regarding both the facts and their illegality assessment, there is much to consider. While the second act—posting undisclosed employee reviews—seems clearly unethical (paras 104, 130, 215), the first act, algorithmic manipulation, raises further questions. For instance, what does the term (illegal) "manipulation" actually mean? Should adjusting search rankings to boost the sales of high-profit products be considered manipulation? (para 86) Was the listing of search results, reflecting Coupang's preferences under the name "Coupang Ranking," truly deceptive? Didn't consumers expect this ranking to be not entirely neutral? (para 247) There seems to be room for a different perspective.

From a legal standpoint, however, addressing the issue of self-preferencing focusing on its deceptive aspects appears far more logical and effective than the traditional abuse approach, which centres on the anti-competitive nature and effects of self-preferencing (I still feel it's awkward to frame a natural discriminative practice, favouring its own products and services, as a discriminatory one, claiming it restricts competition). Although the Seoul High Court has already endorsed the deception-based reasoning in one instance (Case No. 2021Nu35218), the Supreme Court's final ruling is still pending. It remains to be seen how the KFTC's 'deceptive self-preferencing' logic will hold.

Courts' Abuse Cases

The judiciary also delivered some noteworthy rulings in abuse cases, although not many. In my view, courts' decisions in this realm, unlike those in collusion, were not that contestable but worth noting. Two Supreme Court decisions particularly caught my attention: *Daewoong Pharma* and *Siemens*, in addition to some Seoul High Court's notable decisions.

Daewoong Pharma: The First Sham Litigation Case

If I'm not mistaken, *Daewoong Pharma* marks the first sham (or vexatious) litigation case in Korea's competition law history.

A brief overview of the case (taking the risk of oversimplification): Following the expiration of the patent for its original product, Daewoong Pharma undertook some actions aimed (solely) at preventing and obstructing the entry of generic competitors. First, the company filed an injunction request based on its manufacturing method patent, alleging patent infringement (despite knowing that there was no infringement). Second, it launched a follow-up product and applied for a new patent using manipulated data, subsequently initiating patent infringement litigation against generic manufacturers based on that. It also leveraged these litigation proceedings as part of its marketing efforts targeting customers (doctors).

The KFTC determined that such actions did not constitute the "legitimate exercise of patent rights" (which would be excepted from the application of the MRFTA, according to then-Article 59 (now Article 117)) and therefore fell within the scope of the MRFTA. The agency sanctioned this conduct as unfair competition, specifically (consequential) unjust customer solicitation, as defined in then-Article 23(1)(3) (now Article 45(1)(4)) of the MRFTA, in its 2021 decision (Decision No. 2021-063, dated March 11).

The decision was appealed. On January 25, 2024, the Supreme Court upheld the lower court's ruling that filing baseless patent lawsuits, despite the objectively evident absence of patent infringement and with a clear awareness of this, solely to obstruct generic competitors' entry into the market and to disrupt its sales activities, constitutes a violation of the MRFTA. The Supreme Court dismissed the appeal without substantive review (Seoul High Court Case No. 2021Nu40470; Supreme Court Case No. 2023Du55535).

The Korean courts' decisions appear to align more closely with the U.S. approach (*e.g.*, *Professional Real Estate Investors* and *Walker Process* claim) rather than the EU's (*e.g.*, *ITT Promedia v Commission*). This likely reflects that the conduct in question was addressed not as an abuse of dominance, as in the EU framework, but rather as an unfair method of competition.

Anyhow, I think, this case demonstrates the KFTC's flexibility in utilizing a diverse set of tools beyond traditional antitrust law, and this represents a noteworthy characteristic of Korea's competition regime.

Siemens: Abuse in Aftermarket

Next is the *Siemens* case, which addressed the issue of abuse in an aftermarket.

In *Siemens*, the main concern revolved around Siemens' practices regarding service keys required for access to the firm's CT and MRI medical equipment maintenance software. Put simply, Siemens provided the keys free of charge, promptly, and with full functionality to hospitals that contracted maintenance services directly with Siemens, while it required payment, delayed issuance, and provided limited functionality to hospitals that contracted with independent service providers. The KFTC found this conduct to constitute an abuse of dominance (Decision No. 2018-094, dated March 13, 2018), but both the Seoul High Court and Supreme Court overturned this finding (Case No. 2020Du36892, dated November 28, 2024). Setting aside specific technicalities of Korean competition law, the courts' core reasoning was that: Siemens, as the copyright holder of the maintenance service software, had the legitimate right to charge licensing fees, and its practices fell within the scope of legitimate exercise of intellectual property rights.

In the Supreme Court's judgment, I found two aspects particularly noteworthy.

The first concerns the definition of the relevant market. Both the KFTC and the courts defined the medical equipment market and the maintenance service market separately. What I found intriguing was that, for the latter aftermarket, the court narrowly defined the relevant market as the maintenance service market for Siemens equipment, much like a single-brand market in the US *Eastman Kodak* case.

The second aspect relates to the theory of harm. In its decision, the Supreme Court referred to its so-called 2021 "margin squeeze" decision (Case No. 2018Du37700) and further elaborated that abuse could occur in situations where "a vertically integrated undertaking, holding dominance in the upstream market, sets the price of raw materials so high that it excludes equally efficient competitors in the downstream market," or where "a vertically integrated dominant undertaking, which holds overwhelming market shares in both the upstream and downstream markets, sets the price of raw materials in a way that effectively blocks the entry of new competitors into the downstream market." This reasoning is notable, at least in my view, as it advances beyond earlier rulings that conflated conflicting concepts inappropriately. This time, it (clearly) establishes the 'equally efficient competitor' as a benchmark for assessing margin squeeze abuse and draws a better distinction between exclusion (through margin squeeze) and abusive foreclosure (which, as I understand it, can be caused by raising competitors' costs).

That said, it is true that the reasoning was not that critical in determining abuse in this case. As Jae Hun Jeong, a former KFTC commissioner, observed in his case comments (pp. 108–109), establishing abuse based solely on the conduct at issue— the exercise of copyright—was inherently challenging.

And Some High Court's Decisions…

In addition to these cases, the Seoul High Court issued some noteworthy decisions as well, such as the *Google Android* decision (Case No. 2022Nu32995, dated January 24, 2024) and the *Coupang* decision (Case No. 2022Nu36102, dated February 1, 2024).

Put simply, in the *Google Android* case, the High Court upheld the KFTC's finding regarding Google's dominance in the markets for licensable operating systems (OSs) for mobile devices and Android-based app distribution, as well as its abuse in these markets and the market for OSs for non-mobile smart devices, primarily through anti-fragmentation agreements or android

compatibility commitment. (Also, the dependency abuse against device makers allegation was established and confirmed.)

In *Coupang*, the High Court, among other findings, ruled that if a party in a superior position (in this case, a large retailer) argues, with supporting evidence, that it does not hold a "superior bargaining position", particularly with respect to a specific counterparty (in this case, a large supplier), the KFTC must assess the specific relationship and prove the existence of the superior bargaining position in that specific context (for critiques, see, *e.g.*, case comments from In Hea Ko, Director of the KFTC).

For those interested, the Supreme Court's rulings on these cases will also deserve attention in 2025.

Merger Control

In merger control, there have been some institutional developments, including the introduction of the voluntary remedy proposal system modelled after those in the EU and US (see Hyuna Kim *et al.* (2024)).

In addition, a few noteworthy cases were observed. For example, the *Megastudy-STUnitas* case marked the first merger blocked in eight years (Decision No. 2024–094, dated March 20, 2024, with details summarized in the KFTC's OECD submission). Another example is the *Kakao-SM Entertainment* case (Decision No. 2024-211, dated May 30, 2024), where a self-preferencing prohibition was imposed as a remedy for the first time in merger cases, as reported by GCR. Also, it is noteworthy that the *Korean Air-Asiana Airlines* merger, conditionally cleared by the KFTC in 2022 (Decision No. 2022-107, dated May 9, 2022) was approved in 2024 by Japan, the EU, and the US. The clearance of the government-led two-to-one merger drew renewed attention in 2024, as I discussed elsewhere.

Aside from these examples, merger control overall does not seem to involve anything particularly notable.

Criminal Enforcement

Let us finally shift our focus to criminal enforcement, an area where Korea distinctly stands out.

To the best of my knowledge, in modern, liberal, and democratic countries, criminal sanctions, including imprisonment, for competition law violations (aside from hardcore cartels) are certainly uncommon. Only a few countries permit the use of criminal sanctions, and even fewer jurisdictions actively enforce them. South (not North) Korea, notably, is one of these rare exceptions. As I have discussed elsewhere (see slides and a paper), the MRFTA allows the prosecution authority to enforce competition rules, including abuse without dominance, either upon the KFTC's referral or independently of the KFTC's enforcement actions (as demonstrated in the *Built-in Furniture Bid-rigging* case in 2023, where the prosecution authority utilized its independent criminal leniency program for the first time, investigating and indicting collusion allegations ahead of the KFTC's enforcement, and securing convictions before a first-instance court against the implicated

companies, their executives, and employees in June 2024). Criminal sanctions can be imposed on top of administrative enforcement, as an additional layer, without constituting double jeopardy (Case No. 2001Hun-Ka25, dated Jul 24, 2003).

Many of the above-mentioned cases were referred to the prosecution authority, either by the KFTC or by other competent institutions such as the MSS, and were subsequently subjected to criminal proceedings. For instance, in both *Kakao Mobility I* and *II*, the KFTC referred these cases to the prosecution authority—the former at the MSS's request and the latter based on its own judgment—by filing complaints against the firm, the legal entity. Subsequently, in November, the Seoul Southern District Prosecutor's Office carried out its fifth raid, including search and seizure operations, at Kakao's headquarters and Kakao Mobility's offices. Likewise, Coupang's self-preferencing case (*i.e*., algorithmic manipulation) was referred to the prosecution authority, with a complaint against the legal entity, and, in November, the Seoul Eastern District Prosecutor's Office conducted search and seizures at Coupang's headquarters.

Here, one might think that criminal enforcement directed solely at a legal entity, rather than a natural person, might not be so threatening. However, that is not necessarily true. It is not uncommon for the prosecution authority, during an investigation, to identify individuals involved in violations and indict them alongside the firm. Indeed, in the *Daewoong Pharma* case, although the KFTC filed a complaint only against the firm when referring to the case, the prosecution authority later indicted individuals suspected of tampering with data, as well as the firm, in May 2022.

Of course, the cases mentioned above are just some selected examples. Although precise data for 2024 are not yet available, a news report indicated that, over the period from July 2022 to August 2023, the Seoul Central District Prosecutors' Office—the main body handling criminal competition cases—indicted 21 MRFTA-violation cases, charging 76 individuals and 34 corporate entities. This trend does not appear likely to slow down in the near term. Indeed, in March 2024, a report noted that more personnel have been added to the team in the Office, and as discussed above, the prosecution's enforcement activities have been expanding beyond collusion to abuse cases. Moreover, a report in August 203 indicated that the prosecution authority initiated investigating a foreign entity, Apple, over its additional 33% in-app payment fee, including a 10% VAT (although a guilty verdict in that case seems highly unlikely).

Looking ahead to 2025 and beyond, it appears that further developments in the criminal sphere of Korean competition law merit close attention.

Closing Remarks and 2025 Forecast

2024 was an eventful year, spanning from policymaking to law enforcement. As noted above, many notable efforts, actions, and cases remain unresolved, carrying over into 2025.

Indeed, the opposition party's radical regulatory approaches to digital platforms have gained fresh momentum amid the post-impeachment political turmoil, and their developments require close monitoring this year. Meanwhile, the rapidly evolving AI industry is challenging the competition authority to effectively navigate its next steps, following the policy report. Meanwhile, the *LTV cartel* case, which will shape the direction of enforcement against information exchange, was unresolved in 2024 and now awaits the Commission's decision. And the fates of some of the Seoul

High Court's experimental decisions on cartels remain pending before the Supreme Court. Additionally, abuse cases handled by the KFTC, including potential future indictments by the prosecution authority, are also expected to be tested before courts in the coming year(s).

Although not discussed above, there are many more notable developments to watch in 2025, including the actual impact of the KFTC's sustainability guidelines released in December 2024; the KFTC's investigation into Beamin's parity clauses, which could potentially mark the first abuse of dominance case involving MFNs; the investigation into Google's bundling of YouTube Premium and Music; the outcome of appeals against the Broadcom's abuse of superior bargaining position (over Samsung) decision (Decision No.2023-153, dated Oct 6, 2023) and the Kako Entertainment's abuse of superior bargaining position (over novelists, by limiting their rights to authorize derivative works) decision (Decision No. 2023-145, dated September 21, 2023). Also, the Supreme Court's ruling on the *Naver Shopping* case is worth watching.

Just like 2024, 2025 is shaping up to be another dynamic year, marked by significant developments.

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