

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

REPUBLIC OF KOREA

March 2006

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	Article 12 of the Monopoly Regulation And Fair Trade Act (MRFTA) and Article 18 of Enforcement Decree Of the MRFTA
B. Notification forms or information requirements	They are available on the website of the Korea Fair Trade Commission (http://ftc.go.kr/data/english/2003_m_a6.doc).
C. Substantive merger review provisions	Article 7 of the MRFTA and Article 11-12 of Enforcement Decree of the MRFTA
D. Implementing regulations	Enforcement Decree of the Monopoly Regulation and Fair Trade Act
E. Interpretive guidelines and notices	Notification On M&A Reporting Guidelines and Notification On M&A Review Guidelines (http://ftc.go.kr/data/english/2003_m_a5.doc , http://ftc.go.kr/data/hwp/review(1999_2).doc)

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one	The Korea Fair Trade Commission (KFTC)
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authority, please describe allocation of responsibilities.	
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Chungang-dong #1, Gwachon-shi, Kyunggi-do, Republic of Korea Telephone : +82 2 504 4163 (Merger and Acquisition Team) Fax : +82 2 504 6460
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Yes. Merger and Acquisition Team

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	They are provided in Article 7 of the MRFTA: The acquisition or ownership of stocks of other companies, the concurrent holding of an officer's position in another company by an officer or employee, a merger with other companies, an acquisition by transfer of business, and participation in the establishment of a new company.
B. If change of control is a determining factor, how is control defined?	Change of control is not a determining factor in deciding whether a given transaction is subject to notification obligation.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Yes. Acquisition of 15% or more stocks of a listed company or Acquisition of 20% or more stocks of an unlisted company.
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	Yes. Any types of joint ventures.

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>One party of an M&A : total assets or annual sales(including total assets or sales of affiliates) should be at least 100 billion won. The other party : total assets or annual sales should be at least 3 million won.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>Most recent fiscal year-end</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>No.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>The latest balance sheet.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>Value of Transaction - The profit and loss statement which is made with the latest balance sheet. Relevant sales or turnover - The profit and loss statement which is made with the latest balance sheet. Relevant asset - The latest balance sheet.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>When converting financial statements of a foreign company into the won, the exchange rate as of the closing date of the immediately preceding business year when the concerned merger took place is applied to total assets, and the average exchange rate of the immediately preceding business year is applied to sales turnover.</p>

G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	Thresholds only apply to Worldwide sales/assets.
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No.
I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?	Effects doctrine. In case of M&As between foreign businesses, the parties are required to make notification if the M&A is deemed to have an impact of the Korean market, in other words, if the asset or sales of one party(including affiliates) is more than 100billion won and sales in Korea of each party is more than 3 billion won.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	National sales are not relevant.
K. If market share tests are used, are there guidelines for calculating market shares?	Yes.
L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?	No, for particular sectors. Yes, in the case of acquiring not less than 20% stocks of a company to be newly established.
M. Are any sectors excluded from notification	No.

requirements? If so, which sectors?	
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No.
O. Does the agency have the authority to review transactions that fall below the thresholds?	Yes, If the agency find it appropriate.

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes, when one or more companies involved in merger, takeover of business, acquisition of stocks and participation in the establishment of a new corporation are larger companies whose total assets or sales are more than 2 trillion won. (Article 12 of the MRFTA and Article 18 of Enforcement Decree of the MRFTA).
B. Is notification mandatory post-merger?	Yes, for the rest cases not covered in A.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes. They may request the KFTC review the M&A even before the period requiring a report.
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	<p>Paragraph 5 of Article 12 of the MRFTA Paragraph 7 of Article 18 of the Enforcement Decree of the MRFTA</p> <p>"The Date of Business Combination" under Article 12 (Reporting of Business Combinations), Paragraph (5) of the Act means the following days:</p> <ol style="list-style-type: none"> 1. When acquiring another firm's stocks, any of the following days: <ol style="list-style-type: none"> a. When transferring the stocks of a joint-stock corporation, the date on which the share certificate is delivered: Provided, however, that if the share certificate has not been issued, the day on which the purchased shares are paid for; 2. When there is an interlocking directorate, the day on which officers are elected at general shareholders' or members'

	<p>meeting;</p> <p>3. In the case of asset acquisition, the day on which contracts are concluded;</p> <p>4. In the case of a merger with another corporation, the day of merger contract conclusion; and</p> <p>5. When participating in the establishment of a new company, the day on which participation was decided at general shareholders' meeting.</p>
<p>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>Reports on the combination of enterprises shall be made within 30 days after the date of such combination.</p>
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>No.</p>

6. Simplified procedures

<p>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p>	<p>According to the Notification On M&A Reporting Guidelines, business combinations falling into one of the following categories shall be Subjects of Simplified Reporting:</p> <p>A. When the enterprise subject to reporting business combination and its counterpart in the business combination are Specially Related Persons;</p> <p>B. When an enterprise that is not a large-scale enterprise engages in business combination with an enterprise whose total amount of assets and turnover are ten (10) billion Won or less;</p> <p>C. Engaging in interlocking directorate with less than one-third (1/3) of the total number of directors in the counterpart</p>
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	enterprise of the business combination less than one-third (1/3) of the total number of directors in the counterpart enterprise; provided, however, that interlocking directorate with the representative director shall be excluded.
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7. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).	See the above notification forms (http://ftc.go.kr/data/english/2003_m_a6.doc). They include Report on the Acquisition (or Ownership) of the Shares of a Corporation, Status of the shareholders, Status of affiliate, papers providing proof of matters relating to acquisition of shares, papers providing reason for acquisition of shares, audit reports prepared by certified public accountants for the reporting corporation and the corporation selling its shares respectively, Market situation such as supply and demand of major items, Report of Interlocking Directorate, Status of Officers, Certificated copies of registrations of the reporting corporation and the corporation in which there is interlocking directorate, respectively, One copy of papers providing reason for interlocking directorate, Report of merger, the contract document of business combination, papers providing reasons for business combination, Report of Business Transfer, document stating reasons for the business transfer, Report on Subscription of the Shares of a Newly Established Corporation, documents proving the establishment of corporation, Business plan of the newly established corporation, etc.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	No.
C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	No

8. Translation

A. In what language(s) can the notification forms be submitted?	Korean or English
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<p>B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</p>	<p>There are no requirements to submit translations of documents into Korean.</p>
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9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>Review should be concluded until 30 days after making such a report, and the period can be extended up to not more than 90 days from the date following the expiry date.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>See paragraph 7 of Article 12 of the MRFTA. The waiting period can be extended up to 90 days in case of pre-notification.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>There are no provisions for shortening waiting period. When merging parties voluntarily request for the KFTC review before the filing period, the waiting period can be shortened.</p>

10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</p>	<p>No one who has made a pre-merger notification shall execute the contracts until 30 days after making such a report, and the period can be extended up to not more than 90 days from the date following the expiry date.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>If a filing party requests to accelerate merger review process by showing special circumstances and KFTC finds no restriction of competition, KFTC can notify the requesting party of the result of the review even before the end of 30 days of waiting period. The party can execute the contract after the notification.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension</p>	<p>No. However, under the MRFTA, "voluntary pre-merger notification" is available to shorten the waiting period. Under the VPN, a merging party may request the KFTC a merger review even before entering into the merger agreement. Therefore, the KFTC may begin the review earlier than usual, which enables it to finish the review earlier than usual.</p>

obligations, commitment to hold separate the local business operations, escrow agents.)	
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Currently, no. But the KFTC is planning to propose amendment of the MRFTA to include such provision.
E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.	See paragraph 7 of Article 12 of the MRFTA. The waiting period can be extended up to 90 days.
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	There are no provisions for shortening waiting period. When merging parties voluntarily request for the KFTC review before the filing period, the waiting period can be shortened.
G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	Nothing is provided about it in the MRFTA.

11. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make	Acquiring person
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its own filing?	
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	Nothing is provided about it in the MRFTA.
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	There is no rule as to who can represent the notifying parties.
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	A power of attorney must not be legalized.

12. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	Filing fee is not required.
B. Who is responsible for payment?	N/A
C. When is payment required?	N/A
D. What are the procedures	N/A

for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	
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13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	The fact that a pre-merger notification filing was made or the contents of the notification are not made public.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Nothing is provided about it in the MRFTA.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Nothing is provided about it in the MRFTA.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	The fact that a pre-merger notification filing was made or the contents of the notification are not made public.
E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	The government is a party to bilateral agreements with the EU (MOU), Australia and Mexico, and has a Free Trade Agreement with Chile.

<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</p>	<p>There is no stipulation about the issue in the MRFTA, nor has there been any actual case where the issue arose.</p>
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14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>The KFTC releases an M&A trend report semiannually.</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes.</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Yes.</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>Depending on the frequency and types of violations, up to 100 million won of surcharges can be imposed.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>Those who are required to file a notification.</p>

<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>KFTC order sanction or penalties directly.</p>
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16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>They are provided in Article 54 of the MRFTA. Those who want to file a lawsuit against any measure taken by the KFTC can do so within 30 days of the date of the receipt of a notice of the disposition in question or a written decision of the KFTC against the appeal.</p>
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17. Additional filings

<p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</p>	<p>No.</p>
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18. Closing deadlines

<p>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</p>	<p>Nothing is provided about it in the MRFTA.</p>
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19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?

No.