

## Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

### Korea Fair Trade Commission, the Republic of Korea

The following template is submitted by the *Korea Fair Trade Commission, the Republic of Korea* pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

#### I. Introduction

The Korea Fair Trade Commission (hereinafter the “KFTC”, <http://www.ftc.go.kr/eng>) is a central administrative agency that develops competition-related policies and, as a quasi-judiciary institution, regulates competition law infringements such as abuse of market dominant position, cartels, unfair trade practices, etc..

Article 1 of the Monopoly Regulation and Fair Trade Act (hereinafter the “MRFTA”) stipulates that “the purpose of this Act is to promote fair and free competition, to encourage thereby creative business activities, to protect consumers and to strive for balanced development of the national economy, by preventing any abuse of market dominant positions by enterprises and any excessive concentration of economic power, and by regulating undue collusive acts and unfair trade practices.”

#### II. Laws, Regulations, and Policies relevant for the implementation of the CAP

*For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.*

*Please update your Template reflecting significant changes as they relate to the CAP, as needed.*

#### b) Non-Discrimination

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

The KFTC applies the same procedural criteria to all persons and companies involved regardless of their nationality.

**c) Transparency and Predictability**

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

- (i) The laws and regulations that apply to investigations and enforcement proceedings of the KFTC are all publicly available on the Official Gazette and the National Law Information Center website ([www.law.go.kr](http://www.law.go.kr)) in accordance with Article 30 (1) 8 of the Rules on Official Gazette and Legislature Operation, and also the KFTC’s official website ([www.ftc.go.kr](http://www.ftc.go.kr)) based on the KFTC’s Rules on Official Website Operation.
- (ii) Entrusted by Articles 48, 55-2 of the MRFTA, the KFTC has in place procedural rules and regulations applicable to investigations and enforcement proceedings. These rules and regulations include ‘Rules on the KFTC’s Operation and Case Handling Procedure (hereinafter, “Rules on Case Handling Procedure”) and ‘Rules on Investigative Procedure’.
- (iii) The KFTC ensures that all procedural rules and regulations that apply to investigations and enforcement proceedings are publicly available on both the National Law Information Center website (Article 30 (1) 8 of Rules on Official Gazette and Legislature Operation), and the KFTC’s official website (Rules on the KFTC Official Website Operation).
- (iv) The KFTC follows applicable procedural rules in investigations and enforcement proceedings. Breaches of the procedural rules may be subject to disciplinary and/or criminal penalties in accordance with the State Public Officials Act, the Criminal Act and the MRFTA.
- (v) The KFTC provides publicly available guidance or other statements, clarifying or explaining its investigations and enforcement proceedings as appropriate on the website.

**d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable*

*opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*

*iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

- (i) The KFTC informs the investigated companies in writing the subject and legal basis of its investigation, and explains the rights of the investigated in detail before beginning an investigation (or at the beginning of investigation in the case of dawn raids). After beginning investigation, the KFTC also provides the investigated with the information about investigative progress, termination, etc., in writing. (Articles 11, 12 of Rules on Case Handling Procedure, Article 16 of Rules on Investigative Procedure)
- (ii) The KFTC provides the investigated companies with reasonable opportunities to be heard and also notifies them of their rights in writing (Article 6 of Rules on Investigative Procedure), and affords them the opportunities to present their opinions through the attendance at the hearing and submission of documents. (Article 14 and 16 of Rules on Case Handling Procedure). In particular, the KFTC ensures sufficient opportunities to the investigated for presenting their opinions by allowing them to participate in the process of collecting and selecting digital data. (Articles 12 and 13 of Rules on Collecting, Analyzing and Managing of Digital Evidence)
- (iii) The KFTC conducts investigations within the scope of the original purpose written on the official notice of investigation (Article 9 of Rules on Investigative Procedure), and carries out its investigation to the minimum extent necessary for enforcing the MRFTA. (Article 50 (5) and (6), Article 50-2 of the MRFTA). Under circumstances where an investigated company cannot answer to the KFTC investigation, it can request for postponing the investigation to have sufficient time to respond to investigative requests. (Article 50-3 of the MRFTA)

**e) *Timing of Investigations and Enforcement Proceedings***

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

The KFTC's investigation is conducted within the regular working hours of the investigated company. If deemed necessary to extend the time, the KFTC explains to and consults with the investigated in advance. In case of on-site investigations including dawn raids, the KFTC investigators are required to finish their investigations within the time period written on the official notice of investigation. (Article 15 of Rules on Investigative Procedure)

Moreover, the KFTC tries to prevent investigations from being unnecessarily delayed by requiring case-handlers to either submit an examination report to the Commission or close the case within a reasonable time period, which is 6 months in principle (9 months for abuse of market dominance and 13 months for cartel cases). (Article 10-4 of Rules on Case Handling Procedure)

**f) Confidentiality**

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

- (i) Pursuant to Articles 29, 29-2, 40-2 of the Rules on Case Handling Procedure, in order to prevent leaking of confidential information, the KFTC makes trade secrets excluded or redacted as appropriate when it services the examination report, allows the perusal for the respondents, gives them opportunities to be heard, or publically discloses its written decisions. (Article 29, 29-2, 40-2 of Rules on Case Handling Procedure).
- (ii) Commissioners and officials who perform their duties at the KFTC shall not disclose any confidential information of an enterprise which they learn in the course of carrying out their duties, or use it for the purpose other than to enforce this Act. Violation of this confidentiality obligation is subject to criminal punishment. (Articles 62, 69 of the MRFTA)
- (iii) When a respondent or other interested person requests for a perusal or a copy of specific data relating to the KFTC enforcement measures the KFTC should comply with such request if consent is granted by the information provider or otherwise deemed necessary for the sake of public interests. (Article 52-2 of the MRFTA, Article 29, 29-2 of Rules on Case Handling Procedure)

**g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

The MRFTA stipulates instruments to prevent conflicts of interest for KFTC commissioners and to ensure fairness in their deliberations. The KFTC commissioners are prohibited to join a political party or engage in political activities, and they can be disqualified for participating in deliberation and decision-making if he/she is personally interested or involved in a particular case. Respondents to a case can also request for a challenge or rejection to a particular commissioner under the circumstance that it would be difficult to expect fairness in deliberation and decision. In addition, commissioners can voluntarily refrain from participating in deliberation and decision-making on a particular case when there is any justifiable reason. (Articles 41 and 44 of the MRFTA)

KFTC officials who are engaged in erroneous enforcement activities for the benefit of their personal and financial interests are subject to punishment for abuse of authority, bribery, etc. under the criminal law. In addition, officials in the Office of General Counsel can be disqualified from, challenged in, or voluntarily refrain from assisting commissioners for their deliberation and decision-making if they are directly or indirectly involved with the case at hand. (Article 30-12 of Rules on Case Handling Procedure)

## **h) Notice and Opportunity to Defend**

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

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| <ol style="list-style-type: none"><li>(i) Once investigation is closed and the examination report is submitted to the Commission, the deliberation process is initiated. Upon submitting the examination report to the Commission, the examiner notifies the respondents by sending a copy of the examination report with attached documents including evidential materials and their list, which excludes confidential information such as trade secrets and privacy-related information. Based on the examination report, the respondents may identify the details and the grounds of the KFTC's accusation, and prepare their counter-argument. (Article 29 of Rules on Case Handling Procedure)</li><li>(ii) Upon request from the respondents for a perusal or a copy of specific data relating to the examination report and its attachments, the KFTC is supposed to comply with such request if consent is granted by the information provider or otherwise deemed necessary for the sake of public interests. (Article 52-2 of the MRFTA) In practice, upon request to access the data containing trade secrets and privacy-related information, the leading commissioner of the case in hand decides whether to disclose the data after considering the need of protecting such confidential information. (Article 29-2 of Rules on Case Handling Procedure)</li><li>(iii) The parties subject to the KFTC's investigation and enforcement may state their opinions and submit evidence during the investigation phase. (Article 52 of the MRFTA, Article 6 (1) of Rules on Investigative Procedure) After issuing the investigation report, the respondent can submit counter-argument within a given period. (Article 29 of Rules on Case Handling Procedure) It is the principle for the Commission's deliberation to proceed with oral statements. The respondents are granted their rights of defense, for example, to attend the hearing for deliberation (Article 34 of Rules on Case Handling Procedure), to state counter-argument (Article 39 of Rules on Case Handling Procedure), to request for the examination of evidence (Article 41 of Rules on Case Handling Procedure), and to interrogate witnesses (Article 41-2 of Rules on Case Handling Procedure).</li></ol> |
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**i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

(i)	The KFTC shall not deny request of the investigated for appointment of a counsel. If deemed necessary in the course of the KFTC’s investigation, the investigated can appoint and seek legal advice from a counsel. (Article 36 of Rules on Case Handling Procedure)
(ii)	Upon beginning investigation, the KFTC investigators inform the investigated of the right to counsel. The subjects may, through the legal counsel, submit their opinions during the investigation and deliberations. Yet, the participation of the counsel can be limited only in exceptional situations where the counsel significantly obstructs investigations and makes it hard to achieve the investigative objective. (Article 13 of Rules on Investigative Procedure)
(iii)	There is a limitation for the KFTC to guarantee the principle of attorney-client privilege, which has not been recognized in the existing Korean legal system. However, the KFTC considers the importance of ensuring free communication between companies and their legal counsel, to the extent practicable.

**j) Decisions in Writing**

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

(i)	The KFTC’s written decisions describe factual findings, legal conclusions, remedial measures, etc. (Article 54 of Rules on Investigative Procedure) The written decisions are issued to the subjects (Article 56 of Rules on Investigative Procedure), and publically disclosed.( Article 43 of the MRFTA)
(ii)	Enterprises under the KFTC investigation or deliberation are allowed to file an application for consent decision by proposing commitments such as remedies of anti-

competitiveness, relief of consumer damages, etc. (Article 51-2 of the MRFTA). The KFTC publicly announce its consent decisions on the Official Gazette and the KFTC's official website, and provides overview of the concerned practices, the relevant legal provisions, remedial measures proposed, and other information to help interested parties present their opinions (Article 51-3 of the MRFTA).

**k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

Any parties subject to the KFTC enforcement measures are given opportunities to file an appeal to the court. (Articles 54 and 55 of the MRFTA)