



The Republic of Korea is situated in eastern Asia; it is the southern half of the Korean Peninsula bordering the East Sea and the Yellow Sea.

Korea was an independent kingdom for over five millennium. After World War II, a republic was set up in the southern half of the Korean Peninsula while a Communist-style government was installed in the north. South Korea today is a fully functioning modern democracy.

### Economy

Since the early 1960s, the Republic of Korea has achieved incredible growth and integration into the high-tech modern world economy. Four decades ago, the GDP per capita was less than US\$100. In 2002, it reached per capita GDP of US\$16,950 (purchasing power parity). Moderate inflation, low unemployment, an export surplus, and fairly equal distribution of income characterise the economy. Korea's main exports are semiconductors, wireless telecommunications equipment, motor vehicles, computers, steel, ships, and petrochemicals.

After the devastating Korean War (1950-1953), Korea has enjoyed substantial economic growth and has become the 11th largest trading economy in the world in 2005. This seems 'miraculous', considering that Korea's per capita GDP was only US\$82 in 1961. However, government-led economic growth has eventually taken its toll on the Korean economy. The market structure had become distorted by becoming either monopolistic or oligopolistic.

There have been many attempts from as early as the 1960s to adopt a competition law to remedy such distortions. However, the attempts in 1964, 1969, and 1971 failed because of strong resistance from the business sector and emphasis placed on economic growth and capital accumulation.

PROFILE	
Population:	47.9 million ***
GDP (Current US\$):	605.3
Per Capita Income: (Current US\$)	12,030 (Atlas method)*** 16,950 (at PPP)**
Surface Area:	99, 260 sq. km
Life Expectancy:	75.4 years **
Literacy (%):	97.9 (of ages 15 and above)**
HDI Rank:	28***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

In 1975, with staggering inflation, the government enacted the Price Stabilisation and Fair Trade Act. The drawback of this act was that, with more focus on price than fair trade, the Act was closer to price regulation rather than a competition law, even though it also failed to control prices.

### Competition Evolution and Environment

Korea has pursued government-led economic development plans since the 1960s. There has been considerable success, but such government intervention also had intrinsic limitations. In order to overcome such limitations, Korea relied on a market economy and adopted its competition law when the per capita annual income was only around US\$2,000.

Since then, the Korea Fair Trade Commission (KFTC), which enforces the law, has grown to become a ministerial agency with 484 employees.

Given the high industrial concentration in Korea, the government treats competition issues very seriously. It is for this reason that the KFTC Chairman enjoys the status of a cabinet level minister.

\* Original paper submitted in October 2004. Revised in September 2005 & February 2006  
Republic of Korea, popularly called South Korea

The KFTC has played a crucial role in enhancing efficiency in the economy. Korea, having the experience of introducing competition in a government-interventionist economy at a relatively early stage of development, can be seen as a good “bridge” between the more experienced and young competition authorities. The KFTC plays an important role in international discussions on competition policy. For example, it is a member of the rganisation for Economic Cooperation and Development (OECD) Competition Committee and a Steering Group Member of the International Competition Network (ICN).

Furthermore, the KFTC provides many technical assistance programmes such as the Seoul Competition Forum and the International Workshop on Competition Policy, not to mention programmes provided in conjunction with the KOICA (Korea International Cooperation Agency) and the OECD Asia Regional Centre for Competition.

**Competition Law**

In 1980, Korea’s Constitution was amended for the eighth time and the new amendment included an article stipulating the proper regulation and control of harm from monopolies. There was also a strong public desire to regulate the monopolistic market. With support from both the Constitution and the public, the Korean government finally enacted the Monopoly Regulation and Fair Trade Act (MRFTA) in 1980 and established the KFTC under the Economic Planning Board (EPB).

The significance of the MRFTA is that it is a comprehensive competition law covering all markets. The MRFTA in 1980 aimed to:

1. Prevent anticompetitive practices by market-dominant enterprises;
2. Prevent business combinations, which can create monopolistic market structures;
3. Prevent cartels including price, product and quota fixing;
4. Prevent anticompetitive practices by business associations;
5. Involve prior consultations with the KFTC when enacting competition restrictive regulation;
6. Revise and correct competition-restrictive international contracts; and
7. Prevent unfair trade practices including resale price maintenance, refusal to sell and discriminatory price.

It is interesting to note that the KFTC also enforces other regulatory laws apart from the MRFTA. For example, there is the Fair Subcontract Transaction Act (1984), and a number of consumer protection related laws, which are detailed later.

The Fair Subcontract Transaction Act was enacted against the backdrop of the increasing importance of subcontract transactions in the national economy. However, the transactions were often not mutually beneficial, where the contractor would take advantage of their superior position. The Act was enacted to regulate unfair subcontract transactions, thereby establishing a level playing field that would develop mutually beneficial relationships and promote sound economic growth.

**Institutions and its Competencies**

The KFTC defines competition advocacy as activities undertaken by the competition authority to influence the government’s decisions and regulations, for the purpose of creating a more competitive market structure and encouraging more competition-oriented corporate behaviour.

The KFTC advocates competition in two areas. First, it advocates competition within the government. It does so by using prior-consultations, and participating in the Regulatory Reforms Committee. Another area is to win public support. A good example is the Clean Market Project (CMP). Not only did the KFTC investigate in designated markets, but it also examined and reformed anticompetitive practices in the markets concerned. In winning public support, it is important to raise the awareness of the consumers on the benefits of competition law enforcement. A study, done by the KFTC in 2003, shows that the benefit (consumer welfare increase + income transfer effect) outweighed the costs (KFTC’s budget) of competition law enforcement in 2000 and 2001 (see box 17.1).

<b>Box 17.1: Cost &amp; Benefit of Law Enforcement</b>			
Unit: Million USD			
	<b>Year</b>	<b>2000</b>	<b>2001</b>
<b>Cost</b>	Budget	15.9	18.4
<b>Benefit</b>	Consumer Welfare Increase <sup>1)</sup>	327	527
	Income Transferring Effect <sup>2)</sup>	222	536
<b>Benefit/Cost</b>		<b>34.5</b>	<b>57.8</b>
1. Increased consumer welfare through price reduction and production increase resulted from correcting the monopolistic market structure 2. Including damage indemnity and excess profit restoration			

In terms of advocacy, interfacing with other regulatory agencies, and their laws, has also become important. There are on-going discussions concerning this issue in the electricity, telecommunication and broadcasting industries. The KFTC believes that competition law should be comprehensively applied to regulatory sectors, whereas

the regulatory agency should remain focused on more industry-specific technology and expertise intensive matters. For this purpose, the KFTC is reviewing various ways to divide the roles between the regulatory and competition authorities, including the conclusion of an MOU and other integrated consultation channels.

The introduction of the competition law was difficult enough. But for relatively inexperienced competition authorities, proving its existence is even more difficult. In this sense, the KFTC has been very successful. Such institutional growth has been possible because the KFTC and its law enforcement mechanism have evolved as the economic environment and demand for competition law enforcement have changed. This is an important point to note for developing and transition economies that are undergoing rapid economic development.

There are two main reasons for KFTC's success. First, the KFTC proved its worth by strongly enforcing the MRFTA in traditional antitrust areas such as mergers and cartels, as well as other unfair trade practices. Second, the KFTC established its stature by actively advocating competition within the government and to the public.

### Anticompetitive Business Practices

#### Cartel Investigations

Cartel is probably the worst violation of competition law, as it amounts to taking money out of consumers' pockets. The successful detection and sanction of a cartel will result in increased consumer benefits. This will, in the end, give rise to dynamic economic efficiency, and a boost in the support for competition authority.

Article 19-1 of the MRFTA stipulates that no enterprise shall agree with another enterprise by contract, agreement, resolution or by any other means for activities, as defined below:

- 1) Fix, maintain or alter prices;
- 2) Determine terms and conditions for trade/payment of cost/compensation;
- 3) Restrict production, shipment, transportation, and provision of services;
- 4) Restrict the territory of trade or consumers;
- 5) Hinder or restrict the establishment/expansion/installation of facilities;
- 6) Restrict the type or specification of goods;
- 7) Establish a corporation with the aim of joint conduct; and
- 8) Hinder or restrict business activity, or the nature of business of another enterprise.

The MRFTA uses the presumption clause, which means that parallel behaviour would be presumed to be a result from an agreement, even in the absence of an explicit agreement or compelling evidence.

The detection of cartels comes before investigation. In order to facilitate detection, the KFTC adopted a leniency programme in 1996 and gave it a major facelift in 2005, adopting more certainty and transparency. What is unique to Korea is that the KFTC not only grants amnesty to those who cooperated in the investigation, but also rewards the informant. Although detection of cartels has improved by the leniency programme, deterring cartels would be the best solution. In other words, there needs to be an optimum level of sanction to deter cartels. Currently, the surcharge on cartel is 10 percent of related sales, following an amendment promulgated in December 2004 and notified in April 2005.

Surcharges for cartels were first imposed in 1988 and since then, the KFTC has succeeded in curbing cartel activities. Surcharges under the MRFTA are imposed on the entity rather than on an individual. A surcharge is distinguished from a fine, which is a criminal sanction. Under the MRFTA, a fine can only be imposed after being directed by the Court. The KFTC has the discretion to decide whether to impose a surcharge, and if so, how much. The KFTC does not need a court order to decide on a surcharge penalty.

#### Merger Reviews

Merger review is another important area of antitrust policy. It is vital to have a merger review regime that is transparent and objective. In this respect, the MRFTA of Korea is consistent with the Guiding Principles and the Recommended Practices of the ICN.

As markets expand and become more active, more and more mergers take place. Mergers reviewed by the KFTC are increasing annually.

With an increasingly globalised world economy, a merger that takes place outside the jurisdiction of a country can have a significant effect on the domestic market. For this reason, the KFTC has begun to receive merger notifications for overseas mergers since July 2003. The KFTC's notification system for overseas mergers is often quoted as an exemplary implementation of the ICN Recommended Practices for Merger Review Notification and Procedures.

**Table 17.1: Number of Merger Reviews by Year**

	81-93	94	95	96	97	98	99	00	Total
Cases	2,429	195	325	393	418	486	557	703	5,506
*Annual Average for 1981-1993: 187									

As the name of Korea's competition law, the '*Monopoly Regulation and Fair Trade Act*', suggests, the KFTC also places importance on a fair trading order in the market. This area of KFTC's work is covered by Article 23 (Unfair Business Practices) of the MRFTA. Article 23 sees unfair business practices as:

- Refusal to deal;
- Exclusive dealing;
- Undue luring of customers;
- Abuses of bargaining position;
- Transactions based on Restrictive Conditions; and
- Undue support to specially related persons or company.

Although the concept ‘fairness’ may not be directly related to competition, the regulation of unfair business practices has helped the KFTC to prove its worth in the public eye and establish itself as a competition authority.

#### Box 17.2: School Uniform Cartel Case

Three uniform makers hindered the cooperative buying plan launched by the Parents’ Association, and agreed not to supply to the sales agencies participating in such cooperative buying.

Such a practice is in violation of Article 19 of the *MRFTA*. The KFTC imposed a surcharge of US\$8651.52, and prosecuted 7 individuals and 4 entities. This case was significant as it involved both horizontal and vertical cartels, and had direct effects on consumer welfare.

### Sectoral Regulation

#### *Energy Sector*

The objectives of the Republic of Korea’s energy policy are coherent with the International Energy Agency’s (IEA) shared goals. They are to:

- maintain a stable energy supply;
- increase market efficiency through competition; and
- establish environment-friendly energy systems.

Since the IEA’s last in-depth review in 1994, Korea’s energy policies have changed significantly. The Government has promoted greater use of natural gas, encouraged the development of nuclear capacity and initiated steps to launch renewable energy markets. Emergency oil reserves have now expanded.

To increase the efficiency of the energy market, the Government has begun to withdraw gradually from direct management of the energy sector through capital ownership, licences and control, leaving the market free to allocate resources for investment. The petroleum sector has been deregulated; the electricity sector has been restructured; reforms of the gas sector have begun; and a new regulatory framework is emerging for electricity and gas.

There are no binding rules to deal with the overlap between the KFTC and sectoral regulators. However the KFTC regularly engages in a dialogue with regulators with its

position that the competition law should be comprehensively applied to the regulated sectors, whereas the regulators should remain focused on the technology aspects and areas requiring subject matter expertise.

### Consumer Protection

Consumer protection laws enforced by the KFTC include:

- Adhesion Contract Regulation Act (1986);
- Fair Labelling and Advertising Act (1999);
- Door-to-Door Sales Act;
- Installment Transactions Act (Enforcement authority transferred from the Ministry of Commerce, Industry and Energy in 1999);
- Consumer Protection Act on Electronic Commerce (2002); and
- Fair Franchise Transaction Act (2002).

The *Consumer Protection Act* has been a basic yet fundamental law in the area of consumer protection since its enactment in 1980. The Act states the following:

- to define the duties of the State and Local Governments, and businesses and the role of consumer organisations, in order to protect the fundamental rights and interests of consumers.
- to stipulate the establishment and function of the Korea Consumer Protection Board (KCPB).
- to make the general provisions of planning and implementation of the policies for consumer protection.

For the purpose of mediating disputes between consumers and businesses, a quasi-judicial body, the Consumer Dispute Settlement Commission (CDSC) has been established under the KCPB. The CDSC mediates the dispute cases referred to it by investigating facts and deliberating on the case. When both the parties involved in the dispute accept the decisions of the CDSC, it has the same effect as the judicial compromise in a court. Through this mediation method, consumers are able to claim compensation relatively easily, without going through the legal system. In order to strengthen the effectiveness and expertise of the CDSC, which is one of the alternative dispute settlement bodies, the Government revised the *Consumer Protection Act* (July 2001) to increase the number of the Committee members from 9 to 30, thus facilitating participation of experts in various fields.

#### Box 17.3: Cement Producer Cartel Case

Seven cement producers and the Korea Cement Industrial Association feared that the demand for cement would decline as the demand for cement substitutes have risen. For this reason, it formed a cartel and interfered with business activities of slag cement producers.

The KFTC took a very strong measure by prosecuting all seven-cartel members and levying a surcharge of US\$25269.74.

#### Box 17.4: Graphite Electrodes Cartel and Vitamin Cartel

These two cases mark an important achievement by the KFTC, as they are the first extra-territorial applications of Competition Law.

In 2002, the KFTC imposed a total of US\$7.3mn in surcharges on six graphite electrode producers from three countries. In the following year, the KFTC levied a total of US\$2.9mn on six vitamin producers from five different countries.

These two cases were investigated, involving close cooperation with other competition authorities around the world. Such cooperation was made possible by KFTC's close relationship with the jurisdictions concerned, as well as its active international activities that have raised KFTC's profile in the area of competition policy.

Furthermore, there is an active consumer movement in Korea, spearheaded by the Citizens' Alliance for Consumer Protection, Korea.

Some of the important cases reviewed by the KFTC are explained in the boxes.

#### Concluding Observations and Future Scenario

For the last 23 years, the KFTC has effectively dealt with traditional competition issues such as mergers and cartels. However, the KFTC did not mimic competition authorities of more advanced jurisdictions. The KFTC has been dealing with issues that are unique to the Korean economy and its stage of development.

Effective enforcement and implementation of competition law is more difficult than the enactment of competition law. This means that a Government without political will and constant efforts to innovate will not succeed with competition law and policy. This momentum to boost competition in market will continue after an amendment of the *MRFTA* was done in December 2004 and notified in April 2005. The revision has, *inter alia*, raised the surcharge for cartels to 10 percent of related sales, which was earlier five percent. Furthermore, the amendment enhanced procedural transparency and certainty of the leniency programme and raised the ceiling for the informant reward programme.

#### ◆ Korea Levies Record Fine

South Korea's Fair Trade Commission (FTC) imposed fines totalling €164mn against 10 companies accused of price-fixing. The companies were accused of raising the costs for their products when oil prices increased, but failing to reduce them when oil prices fell. The Commission will hold a general meeting before the end of the 2006 to finalise the fines.

The fine dwarfs previous penalties imposed by the Commission. In 1996, the agency imposed 13 fines totalling US\$11.5mn, while another 13 penalties totalled US\$98mn in 2000.

(Source: *Global Competition Review*, 28.11.06)

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He has served the international competition community as the vice-chairman of Competition Committee in the OECD and Chairman of Membership Working Group in International Competition Network (ICN). His interest extends to competition law and policy experience of Korea, especially economic development and competition policy.