

# KFTC- INTERNSHIP PROGRAMME ON COMPETITION LAW AND POLICY November 2023

"A Kenyan economy with globally efficient markets  
and enhanced consumer welfare for shared Prosperity"

3/27/2024



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# Contents

- Introduction
- Objectives
- Key training areas
- Challenges in Kenya/Authority
- Recommended Action Plan

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# Introduction

- The internship was organized by the Korea Fair Trade Commission (KFTC)
- The internship targeted participants from 4 countries: Kenya, Vietnam, Mongolia and Mongolia and Pakistan
- The course aimed to provide participants with the theoretical lectures on competition law and policy in Korea as well as practical cases/exercises by KFTC officials.

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# Objectives

- i. Enhance the participants' knowledge in competition law and policy of Korea and the attending countries through sharing of experiences; and
- ii. Enable the participants to learn from each other on how to promote effective enforcement of competition law and policy in their respective countries

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# Key Training Areas- Cartels and Bid Rigging



Ways adopted by KFTC to maximize cartel Detection

## ➤ Leniency Program

- Incentive for self-reporting cartels- Only 1<sup>st</sup> and 2<sup>nd</sup> applicants are eligible

## ➤ Ex Officio Detection

Bid-rigging Indicator Analysis System (BRIAS)-



Digital Forensic Investigation- Digital Forensic Investigation Team in Cartel Investigation Bureau in 2010 (currently an independent division)

Role- Collect digital data evidence on dawn raids

- Analyze the evidence for investigators to use in proving violations of law
- Provide education on digital forensic investigation method for investigators

## ➤ Informant Rewarding

Rewarding system for providing information about cartels (Giving financial rewards to those who reported unlawful behaviors and submitted the evidence

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# Cartels and Bid Rigging Sanctions

## ❖ Warning

- When degrees of violation is immaterial

## ❖ Corrective Order

- To discontinue the violation
- To publicly announce the fact of receiving corrective order

## ❖ Administrative Fine

- Up to 20% of the affected turnover

## ❖ Criminal charge (File to Prosecutor's Office)

- Jail term up to 3 years
- Fine up to 200 million KRW

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# Abuse of Market Dominance:

## Conditions for an abuse of dominance case to be found illegal

1. A market dominant position  
(Dominance/monopoly power)

2. Abusive conducts

3. anti-competitive effect  
(unreasonableness)

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# Key Training Areas- Abuse of Dominance



- Any enterpriser who can determine, maintain, or change the prices, quantity or quality of commodities or services or other terms and conditions of business as a supplier or customer in a particular business area individually or jointly with other enterprisers.(MRFTA Art. 2(3)).
- Market share of one enterpriser is 50/100 or more or The total market share of not more than 3 enterprisers is 75/100 or more
- Types of abusive conducts
  - A. Exploitative Conducts
    - Price abuse (unfair pricing)
    - Output control
    - Conduct that significantly harms consumer benefits
  - B. Exclusionary Conducts
    - Interfering with the business activities(Refusal to deal, discriminatory pricing, coercing disadvantage, improper use of legal proceedings, etc)
    - Impeding market entry(Excusive dealing, loyalty rebate, etc)
    - Excluding competitors(Predatory pricing, margin squeeze, etc)

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## Online Platform Guidelines

- Growing concern regarding anticompetitive conduct of online platforms, Need to fully reflect the unique characteristics of online platforms
  - Multi-sidedness, indirect network effects, economy of scale, data concentration
- Factors for examining whether a firm holds a dominant position
  - Barriers to entry(Cross network effects, economies of scale, economies of scope), Influence as a gatekeeper, Collection • retention • use of data, Possibility of new services, etc
  - Calculation of market share based on various variables- percentage of app market pre-installed on devices, number of available apps, number of users
- Factors taken into account when analyzing anti-competitive effects and pro-competitive effects
  - Changes in services: decrease in diversity and quality, the risk of stifling innovation
  - Linkage effect between goods and services: not only on the market in which it has dominance, but also on other markets for relevant goods and services
  - Multiple sides: correlation between each side of a platform
  - Effect on innovation

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# Online Platform Guidelines

## Major Types of Conduct That May Raise Competition Concerns

Type	Main Points	Anticompetitive Effect
Restriction on multi-homing	A platform directly or indirectly prevents users from using its rival platforms.	Maintain and strengthen the dominance in a market.
Demand for MFN status	A platform demands no other platforms can get a better deal than it does.	
Self-preferencing	A platform directly or indirectly gives preferential treatment to its own goods and services.	Monopolize relevant markets by leveraging the monopoly power in a market.
Tying	A platform requires users to use goods or services in a bundle.	

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# Mergers

- ▶ **Type of mergers Sanctioned:**
- ▶ Acquisition of shares(20% or more)
- ▶ Interlocking directorates(affiliate directors)
- ▶ Merger
- ▶ Acquisition of business- whole or part
- ▶ Joint venture (Largest shareholder) and Public equity fund (general partner should notify)
- ▶ During analysis of mergers- Transactional value and Significance presence and can be subject to simplified review if no competition concerns are presumed.
- ▶ Economic analysis in non simplified review is employed in two main areas- market definition (price correlation analysis) , market concentration test (Herfindahl-Hirschman index HHI)- competitive analysis.

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Vision:"A Kenyan

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# Recommendations/ Takeaway

- a) The Authority can consider procuring digital forensic equipment and software for obtaining and analyzing digital evidence during cartel investigations.
- b) Provide education on digital forensic investigation method for investigators within the technical departments.
- c) There is need increase credibility of review of outcomes especially for cross boarder mergers through international corporations between competition Authorities
- d) Through advocacy, the Authority can work with other government agencies such as PPRA to come up with a system such as BRIAS in KFTC where Public institutions Bidding Information can be share to between the two agencies and aid in assessment of possible bid rigging.
- e) Leniency in KFTC has been found to be the most effective cartel detection method, this can be credited to stringent administrative fines such 20% penalty. The Authority can consider reviewing its administrative penalties upwards as a way to deter cartel conduct within the economy.
- f) Continuous survey/ market inquiries o understand the status of transactions in digital markets

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# THE END



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