

Korea

Barun Law LLC



**Kwang Hyun
Back**



**Weon Cheol
Han**



**Alex Si Yoon
Lee**

1 The Legislative Framework of the Cartel Prohibition

1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

In South Korea, the legal basis and general nature of cartel prohibition is administrative sanctions (corrective orders and fines) and criminal penalties. Both administrative sanctions and criminal penalties may be imposed concurrently.

Administrative sanctions are imposed by the Korea Fair Trade Commission (the “KFTC”), which oversees not only policy work related to cartels but also investigations and the imposition of sanctions. The KFTC may impose corrective measures such as ordering the cessation of the infringing activities, publicising the fact that a corrective order has been issued, and other necessary measures for correction. The KFTC can also impose fines up to 20% of the sales revenue of the relevant products during the period of the violation to businesses involved in cartels.

Criminal penalties are imposed by the prosecution and the courts. However, under the Monopoly Regulation and Fair Trade Act (the “Fair Trade Act”), the KFTC has an exclusive right of criminal complaint in which criminal prosecution is only possible following a criminal complaint from the KFTC. To supplement this, there is a mandatory criminal complaint request scheme, whereby the Prosecutor General can request the KFTC to file a criminal complaint, which the KFTC is obliged to do.

1.2 What are the specific substantive provisions for the cartel prohibition?

The substantive provision for cartels prohibition is Article 40 of the Fair Trade Act. Article 40(1) defines “unlawful cartel conducts” as actions by business that unfairly restrict competition jointly with other business in any manner. Article 40(1) also enumerates nine specific types of such conduct:

1. Determining, maintaining, or changing prices.
2. Determining the terms and conditions for transactions of goods or services, or for payments of their prices or fees.
3. Imposing limitations on production, delivery, transportation, or transactions of goods or on transactions of services.
4. Imposing limitations on the area in which transactions can be made or on the other party to a transaction.

5. Hindering or imposing limitations on the establishment or extension of facilities or the installation of equipment.
6. Imposing limitations on kinds of, and standards for, goods.
7. Jointly managing the main parts of business.
8. Agreeing on a successful bidder, winning bidder, bidding price, successful bidding price, or other matters prescribed by Presidential Decree in a bidding or auction.
9. Other practices substantially restricting competition in a particular business area by hindering or imposing limitations on the business activities or the details of business of other business entities (including business entities that engage in such conduct) or by exchanging information prescribed by Presidential Decree, such as the price and the production volume.

1.3 Who enforces the cartel prohibition?

The KFTC is the agency responsible for investigating and reviewing cartel cases. Articles 80 and 81 of the Fair Trade Act grant the KFTC the authority to conduct investigations into businesses suspected of engaging in price-fixing.

As the enforcing body of the Fair Trade Act, the KFTC takes strict measures against businesses that disrupt market order by violating laws, and strives to establish a fair trade order in South Korea. According to the KFTC data, the KFTC handled 145 cartel cases, and imposed fines in 47 of these cases (35%) in 2023. In 2024, the KFTC handled 237 cartel cases and imposed fines in a total of 52 cases (22%).

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The procedure from initiating an investigation to imposing a sanction generally involves the following steps:

1. **Examination of the case:** The investigating officer (examiner) conducts the examination to determine whether the business operator has violated the law. In cartel cases, the examiner must prepare an examination report on the case within 13 months from the initiation of the examination. This report mainly contains the examiner’s findings on the violation and opinions on the appropriate level of sanctions.
2. **Referral to review procedure:** The examiner submits the examination report to the KFTC’s meeting. The meeting is divided into two types: the “Full Meeting” with all nine members of the KFTC; and the “Small

Meeting” with three members. Cases involving serious legal violations or requiring in-depth consideration are submitted to the Full Meeting, while other matters are referred to the Small Meeting.

3. **Holding a review hearing:** The chairperson of each meeting, upon receiving the examination report, submits the case for review and schedules a hearing date. Hearings proceed with the attendance of the examiner and the business operator, and allows the business operator to present explanations or opinions.
4. **Imposition of sanctions through resolution:** Each meeting, after undergoing a deliberation process, may issue resolutions to impose corrective orders and fines on a business operator if it is determined that a violation has occurred. The content of the resolution is documented in a resolution notice, which is then conveyed to the business operator. The sanctions take effect once the business operator receives the resolution notice.

1.5 Are there any sector-specific offences or exemptions?

Article 40(2) of the Fair Trade Act provides exceptions where, even if the conduct meets the criteria of “illegal cartel conduct”, it may not be subject to sanctions if it serves a special purpose and has been approved by the Fair Trade Commission. These special purposes include:

1. industrial restructuring during a recession;
2. research and technological development;
3. rationalisation of trade conditions; and
4. enhancing the competitiveness of small and medium-sized enterprises.

Even if these special purposes apply, the conduct must also meet other requirements specified by the Fair Trade Act to qualify for an exemption. Although the specific requirements vary slightly for each purpose, common requirements across these purposes are (i) that forming a cartel is indispensable for achieving the said purpose, and (ii) that the effect of achieving the said purpose outweighs the anti-competitive effect.

1.6 Is cartel conduct outside your jurisdiction covered by the prohibition?

The Fair Trade Act allows for sanctions against conduct that occurs outside of South Korea if the anti-competitive effects of such conduct impact the domestic market. Therefore, cartel cases involving activities that took place abroad can still be subject to sanctions.

However, physically conducting investigations in foreign countries is practically impossible due to staffing limitations and sovereignty concerns, so such investigations are typically conducted through written inquiries.

2 Investigative Powers

2.1 Please provide a summary of the general investigatory powers in your jurisdiction.

The KFTC’s investigations are carried out through on-site investigations and interviews. These investigations are voluntary in nature, so they require the consent of the business operators for investigations to proceed. If business operators refuse the investigation, it cannot be forcefully conducted.

However, if a business conceals or destroys documents, denies access, or falsifies or alters information to refuse, obstruct, or evade an investigation by the Fair Trade Commission, or fails to submit requested materials or items, or submits false information, the business operator may be subject to fines for obstructing the investigation.

2.2 Please list any specific or unusual features of the investigatory powers in your jurisdiction.

As mentioned earlier, because the KFTC’s investigations are voluntary in nature, there is concern that detecting violations may be difficult if a business operator completely refuses to cooperate. To ensure that administrative objectives are met, the Fair Trade Act includes provisions to penalise business operators who obstruct KFTC’s investigations. To penalise such business operators, criminal complaints must be filed by the Prosecution Service and the criminal prosecution is initiated.

Specifically: if during an investigation, violence, obstruction, or intentional delay is used to refuse, obstruct, or evade the investigation; if false reports or materials are submitted in response to information submission requests; and if, during an investigation, data is concealed, destroyed, access is denied, or falsified or altered to refuse, obstruct, or evade the investigation, such actions may be subject to criminal penalties under Articles 124(13), 125(6), and 125(7) of the Fair Trade Act.

2.3 Are there general surveillance powers (e.g. bugging)?

Under the Korean law, the KFTC does not have general surveillance powers such as wiretapping. For example, wiretapping is defined as a “communication restriction measure” under the Protection of Communications Secrets Act, and is only permitted under very limited circumstances related to criminal investigations and national security. Even then, wiretapping requires separate court approval.

Thus, even with a public policy objective of detecting and monitoring cartel activities, the KFTC cannot monitor businesses using wiretapping.

2.4 Are there any other significant powers of investigation?

Materials exchanged among business operators to form and maintain cartels are often stored in digital storage devices such as computers within business premises or employees’ mobile phones.

The KFTC’s investigative powers also include the authority to collect, analyse, and manage data from such digital storage devices. The KFTC may temporarily store digital storage devices within the business premises if necessary, and if it is difficult to distinguish data directly related to the cartel from other data, the KFTC may collect all data on the digital storage device using imaging techniques.

2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

On-site investigations at business premises are conducted by investigating officers responsible for the case. In practice,

on-site investigations often involve testimonial investigations from employees involved in business activities and the search of relevant materials within the premises. Therefore, at least three investigating officers, including those capable of conducting forensic tasks on electronic devices, participate in on-site investigations.

Businesses undergoing on-site investigations can appoint legal representatives for assistance, but in practice, on-site investigations proceed regardless of whether legal representatives have arrived at the business premises.

2.6 Is in-house legal advice protected by the rules of privilege?

While attorney-client privilege is broadly recognised in both common law countries such as the United States and civil law countries such as Germany and France, Korean laws do not legally protect the confidentiality of communications related to legal advice provided by in-house counsel or internal legal departments.

However, as previously mentioned, KFTC investigations are fundamentally voluntary in nature. Thus, the KFTC cannot legally compel the submission of materials related to such legal advice.

2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

To prevent the excessive exercise of investigative powers from infringing on the rights of businesses, the Fair Trade Act stipulates the prohibition of the abuse of investigative powers. According to Article 84 of the Fair Trade Act, investigating officers must conduct investigations within the minimum necessary scope to detect cartel violations and must not abuse investigative powers for other purposes.

Furthermore, business operators and their employees have the right to appoint legal representatives and respond to investigations with their assistance, as stipulated in Article 83 of the Fair Trade Act. This right is guaranteed not only for all investigation methods conducted by the KFTC but also throughout all procedures leading up to the imposition of sanctions.

In addition, the Fair Trade Act ensures that the KFTC must guarantee the procedural rights and defence rights of business operators concerning the collection of materials. For instance, requests for information submission or summons must be made in writing, and the requested information must be clearly specified. Moreover, unless otherwise agreed, on-site investigations must be conducted only during the regular working hours of the business.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

In addition to the criminal penalties mentioned in question 2.2, the Fair Trade Act includes additional sanctions to ensure the effectiveness of investigations.

For example, if a business operator fails to comply with the KFTC's order to submit materials related to the investigation, the KFTC may issue another order with a set compliance period based on a Small Meeting decision. If the business

operator also fails to comply with this subsequent order, the KFTC may impose a non-compliance fine of up to 3/1,000 of the average daily sales revenue of the business until compliance is achieved, as stipulated in Article 86(1) of the Fair Trade Act.

Furthermore, if a business operator fails to comply with the KFTC's summon related to the investigation without a legitimate reason, the KFTC may impose an administrative fine of up to KRW 100 million or KRW 10 million on the business operator or its employees, according to Article 130(1)(7) of the Fair Trade Act.

The criminal penalties stated in question 2.2, which punish businesses operators or their executives and employees for submitting false reports or materials in response to a request for information, as well as for refusing, obstructing, or evading an investigation by concealing, destroying, denying access to, falsifying, or altering materials during an investigation, were newly implemented with the amendment of the Fair Trade Act on July 19, 2017. The provision for imposing non-compliance fine was also introduced at this time. Also, the KFTC filed its first criminal complaint under these amended provisions on February 17, 2021. In addition, on January 17, 2023, the KFTC filed a criminal complaint against a business operator subject to FTC's investigation for obstructing an investigation (KFTC Decision No. 2023-002, January 17, 2023).

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

Issuing fines is the primary enforcement tool. These fines are calculated based on up to 20% of the relevant sales revenue during the cartel period. The amount is determined by considering the illegality of the cartel conduct and the extent of the undue benefits gained by each participant involved in the cartel.

In bid-rigging cases, even if a business operator only participates as a bystander, the entire successful bid amount is calculated as related sales revenue. Fines are then determined by applying a reduction factor for the bystander role.

When a business involved in a cartel undergoes a merger, division, or business transfer, the Fair Trade Act allows fines to be imposed on any entity involved, thereby ensuring no gaps in the imposition of fines. However, the KFTC tends to impose fines primarily on the entity that continues to operate the business unit involved in the cartel activity.

3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

When a business operator is subject to criminal sanctions due to cartel activities, its representatives, agents, employees, or specially-related persons may also face criminal penalties. However, prosecution of individuals requires a criminal complaint filed by the KFTC with the Prosecution Service, similar to the prosecution of the business operator.

The KFTC has established guidelines for determining whether to file criminal complaints with the Prosecution Service against individuals involved in cartel activities. According to these guidelines, factors such as (1) leadership in decision-making, (2) awareness of the illegality, (3) level of active participation and involvement, and (4) duration of involvement are considered. Individuals are generally

filed for prosecution if they score above a certain threshold. Nevertheless, the KFTC may decide whether to file a criminal complaint based on a comprehensive assessment of various factors that influence the severity of the conduct, such as whether the conduct impacts life or health of individuals, and the level of cooperation during the investigation.

3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

The KFTC considers a business operator's actual financial capacity, such as economic hardship, when calculating fines. However, such reductions are not granted indiscriminately and must meet specific conditions set by the KFTC.

The following are the key conditions for reduction of fines based on financial hardship.

1. If, according to the company's business report for the fiscal year immediately preceding the imposition of the fine, the debt ratio exceeds 300%, or it exceeds 200% and is 1.5 times the industry average, and the current net income is in deficit, and the imposed fine is substantial compared to the surplus, the fine may be reduced by up to 30%.
2. If the company is in a state of capital impairment in the business report for the fiscal year immediately preceding the imposition of the fine, the fine may be reduced by up to 30%.
3. If conditions 1 and 2 are met simultaneously, the fine may be reduced by up to 50%.
4. If the company's capital impairment ratio is 50% or more, according to the business report for the fiscal year immediately preceding the imposition of the fine, and the company's ability to pay the fine is significantly lacking, the fine may be reduced by more than 50%. However, in such cases, it must be considered whether the company would be unable to continue operations without reducing the fine by more than 50%.
5. If the debt ratio exceeds 400%, or exceeds 200% and is twice the industry average, and the net income in the recent two fiscal years is in deficit, and the company is in capital impairment in the fiscal year immediately preceding the imposition of the fine, the fine may also be reduced by more than 50%. As before, it must be considered whether the company would be unable to continue operations without reducing the fine by more than 50%.

3.4 What are the applicable limitation periods?

The Fair Trade Act limits the period during which violations can be subject to KFTC sanctions to prevent businesses operators from being in a legally uncertain position for extended periods and to ensure that the time interval between violations and administrative sanctions is not too lengthy.

According to Article 80(4) of the Fair Trade Act, the KFTC cannot impose corrective measures or fines for conduct violating the Fair Trade Act if seven years have passed since the termination of the conduct.

For cartels activities, a similar provision exists. Under Article 80(5)(1) of the Fair Trade Act, if the KFTC initiates an investigation into a cartel activity, corrective measures or fines cannot be imposed if five years have passed since the investigation was initiated. Under Article 80(5)(2) of the Fair Trade Act, if no investigation is initiated, corrective measures or fines cannot be imposed if seven years have passed since the last date of the cartel activity.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

South Korea's Fair Trade Act does not have specific provisions prohibiting a corporate entity from paying financial penalties imposed on its former or current employees.

If a corporate entity pays the financial penalties imposed on its former or current employees, a subrogation relationship will be created between the business and the employee for the equivalent amount of the expense. In other words, the employee's obligation to pay the monetary penalty to the KFTC will be extinguished, but the employee will owe a new monetary obligation of the same amount to the corporate entity.

Similarly, the business operator may choose to cover the legal costs for its former or current employees. However, a subrogation relationship will be created between the business operator and the employee for the equivalent amount of the legal costs.

3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

If a business operator incurs legal costs or financial penalties due to violations of the Fair Trade Act, and if an employee's actions are found to have led or executed the violations, the employee may be liable to compensate the business operator for damages.

There are precedents in South Korean courts where employees who played a leading role in cartel activities have been held liable for damages to their employers. The courts have recognised that the employees violated their contractual obligation to protect the employer's legitimate interests and not to unfairly infringe upon them stipulated under the employment agreement (Seoul Central District Court, Judgement 2021Na48719, November 4, 2022).

Additionally, if an executive of the business operator directed or condoned the participation or execution of the cartel activities by other employees, the executive may be liable for damages to the business operator, as it constitutes neglect of his or her duties, thereby causing harm to the business (Seoul High Court, Judgment 2021Na2043409, February 10, 2023).

3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

Under the South Korean legal system, companies are generally treated as separate entities unless there are exceptional circumstances, such as the parent company owning 100% of the subsidiary's shares and exercising complete control. Therefore, unless the parent company was involved in (directed) the subsidiary's cartel conduct, the parent company will not be held liable.

However, Article 102(2) of the Fair Trade Act allows for fines to be imposed on the surviving entity following a merger if the company involved in the cartel has been dissolved as a result of the merger. Therefore, if a parent company absorbs a subsidiary involved in a cartel through a merger, fines may be imposed on the parent company.

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

The leniency programme is a crucial component of the KFTC's handling of cartel cases in South Korea. Although specific statistics are not readily available, it is assumed that leniency is involved in most significant cases. In practice, KFTC investigators actively encourage the use of the leniency programme during cartel investigations.

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

South Korea's leniency programme grants differential reductions in sanctions based on the order of voluntary reporting. Specifically, the first applicant is granted 100% immunity from fines and criminal prosecution, while the second applicant receives a 50% reduction in fines. No special benefits are provided to applicants ranked third or lower. The ranking is generally based on the order in which leniency applications are received.

To qualify for leniency status, an applicant must:

1. provide sufficient evidence to the KFTC; and
2. immediately cease the cartel conduct.

Failure to meet these requirements can result in denial of leniency status, even if the applicant was the first to apply. Moreover, applicants who coerced other businesses into participating in the cartel or have previously benefitted from leniency may be disqualified from receiving benefits. Businesses operators consider the possibility of sanctions and the amount of potential fines or criminal prosecution when deciding whether to apply to voluntary reporting.

4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

Applicants may apply for leniency orally if it is challenging to submit a written application to the KFTC. However, oral leniency does not include phone calls.

When applying for leniency orally, KFTC investigators will ask questions orally that are present in the leniency application form, and the responses will be recorded or videotaped for preservation.

4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

The Fair Trade Act strictly prohibits the KFTC and its officials from providing or disclosing information and materials related to leniency, such as the identity and content of the report, to individuals not involved in handling the case. This duty of confidentiality applies regardless of whether the cartel case has been concluded.

However, there are exceptions where the KFTC may provide information and materials related to leniency to others: (1) when necessary for case processing; (2) when the leniency applicant consents to the provision of information; and (3) when it is necessary for filing or prosecuting related lawsuits.

In practice, the KFTC often refuses requests from third

parties for disclosure of materials submitted or collected during investigations when the request is made for the third parties' litigation, citing the confidentiality obligations under the Fair Trade Act.

4.5 At what point does the 'continuous cooperation' requirement cease to apply?

To receive leniency benefits, leniency applicants must cooperate fully with the KFTC throughout the entire process, from the investigation phase through to the decision stage when sanctions are imposed.

In other words, "continuous cooperation" must be maintained from the investigation to prove the cartel conduct until the sanction decision is made through the meetings of the KFTC.

4.6 Is there a 'leniency plus' or 'penalty plus' policy?

In Korea's leniency programme, if a party subject to fines or corrective measures due to involvement in a cartel meets the requirements of a self-reporting party for another cartel they are also involved in, the so-called "Amnesty Plus" programme operates, which allows for a reduction in the level of sanctions against that cartel.

In such cases, the extent of additional reductions may vary depending on the scale of the other cartel. Specifically:

1. if the scale of the other cartel (or the sum of the scales if there are multiple other cartels) is smaller than or equal to the cartel in question, the reduction may be up to 20%;
2. if the scale of the other cartel is larger but less than twice the scale of the cartel in question, the reduction may be up to 30%;
3. if the scale of the other cartel is at least twice but less than four times the scale of the cartel in question, the reduction may be up to 50%; and
4. if the scale of the other cartel is four times or larger, the fine imposed on the cartel in question may be fully exempted.

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

The Fair Trade Act does not have specific provisions for individuals to report cartels separately.

However, under Article 80 of the Fair Trade Act, any person can report suspected cartel violations to the KFTC. Upon receiving a report, the KFTC is obliged to respond to the informant in some manner. Furthermore, the identity of the informant is strictly protected even after investigations into the reported cartel conduct commence, and it will not be disclosed to the business operator under investigation.

6 Plea Bargaining Arrangements

6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

Regarding early resolution, some cases may be closed with

the consent of the parties without going through the KFTC's review procedures, but this does not apply to cartel cases. Additionally, the consent resolution system, where parties submit voluntary corrective plans regardless of the acknowledgment of facts, is also not applicable to cartel cases.

In terms of settlements, South Korea does not have a specific system for resolving cartel-related cases through settlements. However, in damages claims based on cartel conduct, efforts are often made to mediate the amount of compensation considering both parties' circumstances.

Conditional leniency pledges (plea bargaining) are similarly not operated separately under South Korea's Fair Trade Act framework. However, the KFTC provides benefits by reducing fines by up to 20% for businesses that admit to cartel conduct and cooperate diligently throughout the investigation and review process (except when leniency benefits have already been granted).

The KFTC's approach to handling cartel cases remains stringent and uncompromising, with no observed shifts towards greater flexibility.

7 Appeal Process

7.1 What is the appeal process?

There are two primary methods to appeal against a KFTC decision: filing an objection with the KFTC; or directly initiating an administrative lawsuit in the Seoul High Court. One can file an objection with the KFTC first and then appeal to the Seoul High Court if rejected, or skip the objection and directly file a lawsuit in the Seoul High Court. To contest the Seoul High Court's decision, one may file an appeal with the Supreme Court.

A notable aspect is that fines imposed by the KFTC are treated as if they were first-instance court rulings, making the Seoul High Court the exclusive appellate court for these cases. As such, the KFTC's sanctions are effectively treated like first-instance decisions.

Meanwhile, according to a KFTC press release, in 2024 the KFTC fully prevailed in 40 out of 42 administrative lawsuits concerning cartels, and partially prevailed in one case. Accordingly, the likelihood of a KFTC decision on cartels being overturned in litigation is very low (5%).

7.2 Does an appeal suspend a company's requirement to pay the fine?

No, it does not. Filing an administrative lawsuit to challenge the KFTC's sanction does not affect the imposition of fines. Therefore, failure to pay the fines imposed by the KFTC while appealing may result in additional charges.

However, if certain conditions are met, a separate application can be made to the court to suspend the execution of the fine after filing a lawsuit. To grant such suspension, the requirements set by the Administrative Litigation Act must be satisfied, specifically:

1. there is an urgent need to prevent irreparable damage from executing the fine;
2. there is no significant concern that it will adversely affect public welfare; and
3. the administrative lawsuit is filed based on at least a minimum of reasonable grounds.

7.3 Does the appeal process allow for the cross-examination of witnesses?

An administrative lawsuit challenging a KFTC sanction is conducted similarly to ordinary administrative lawsuits, except that the Seoul High Court serves as the exclusive jurisdiction, effectively making it a two-instance procedure.

Thus, both the plaintiff (the business) and the defendant (the KFTC) may request and examine witnesses to prove their claims, and cross-examination of opposing witnesses is permitted.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow-on' actions as opposed to 'stand alone' actions?

Cartel damages claims often follow the KFTC's sanctions as a follow-on action. In cases where KFTC sanctions have not preceded the damages claim, proving the existence of the cartel itself is necessary to succeed in the claim. However, obtaining evidence to prove cartel activities can be challenging in civil litigation, where parties are considered equal.

In follow-on cartel damages claims, the existence of the cartel is typically not disputed, as it has already been established by the KFTC's sanctions. The primary issue often lies in determining the actual extent of damages suffered by the victim due to the cartel conduct.

In this context, the "hypothetical competitive price" serves as the benchmark for calculating the extent of damages, a principle well-established by the Supreme Court of Korea. The "hypothetical competitive price" refers to the price level that would have been set if the business operators had competed normally without forming a cartel.

Since the "hypothetical competitive price" is not an actual price, it needs to be estimated using sophisticated methods. Recently, regression models derived from econometric methods have been commonly used to estimate it.

8.2 Do your procedural rules allow for class-action or representative claims?

There are no explicit legal provisions under South Korea's Monopoly Regulation and Fair Trade Act that allow for class-action or representative claims in relation to cartel conduct (in the securities field, the "Securities-Related Class Action Act" was enacted and came into effect on January 1, 2005, allowing class actions in securities-related matters in South Korea).

However, the Civil Procedure Act provides for a procedure similar to class-action suits by allowing a "selected party" representing multiple persons with common interests to proceed with litigation. This approach is limited in terms of relief, as it only covers victims who participated in selecting the representative party.

There has been an active discussion recently about establishing a class-action system specifically for competition law to enable multiple victims harmed by cartel conduct to file lawsuits. Several legislative proposals for class actions in the field of competition law are currently pending in the National Assembly.

8.3 What are the applicable limitation periods?

A damages claim based on cartel conduct is generally viewed as a claim for compensation arising from a tort due to the cartel conduct.

Under Articles 766(1) and 766(2) of the Civil Act of South Korea, if three years have elapsed since the victim became aware of the damage and the perpetrator, or if 10 years have elapsed since the occurrence of the tort, the victim can no longer seek compensation through a court judgment.

In cartel damages cases, courts typically consider the date when the KFTC imposed sanctions on the cartel as the starting point of the victim's knowledge of the damage and the perpetrator, allowing victims more time to seek redress through litigation, even if a considerable time has passed since the damage occurred.

8.4 Does the law recognise a 'passing on' defence in civil damages claims?

Although there are no explicit statutory provisions on the "passing on defense", in cases where the damage caused by the cartel may have been passed on to others, such circumstances can be considered in determining the extent of damages payable by the cartel participants to the victim.

In this regard, an example can be drawn from a ruling by the Supreme Court of Korea.

In the case presented, eight flour manufacturing and sales companies, which occupied the majority of market share in the Korean flour market, formed a cartel to limit flour production and maintain, determine, or change the price of flour. A company (hereinafter referred to as Company A), which purchased flour from these eight companies and used it as a raw material to manufacture and sell its products, claimed to have suffered damages due to the cartel and filed a claim for damages against the eight companies.

The Supreme Court of Korea, noting that Company A had raised the selling price of the products manufactured using the flour it purchased, ruled that "if there is a possibility that the damages were partially mitigated through a price increase to the final consumer, even if a direct causal link is not recognised, it is reasonable to consider such circumstances when determining the amount of damages in accordance with the principle of fairness". Based on this reasoning, the Court partially limited the scope of damages awarded to Company A against the eight companies (Supreme Court Judgment 2010Da93790, rendered on November 29, 2012).

8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

There are no specific legal provisions regarding the allocation of litigation costs in cartel damages claims. As with other types of litigation, the allocation of litigation costs in cartel damages claims is determined by the court's judgment.

Typically, the defendant (the business) is required to bear the portion of litigation costs corresponding to the plaintiff's (victim's) successful claim relative to the total amount claimed. This may include a portion of the legal fees incurred by the plaintiff.

8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

Since 2010, cartel damages lawsuits have been continuously active. For example, in a case involving collusive activities by 10 companies related to the bidding for the LNG storage tank construction project commissioned by the Korea Gas Corporation, a Korean public institution, the court ordered the 10 companies to pay approximately 38 billion KRW in damages to Korea Gas Corporation (Daegu High Court Judgment 2023Na10802, rendered on February 7, 2024).

In addition, in connection with collusive activities by suppliers on a military food procurement commissioned by the Defense Acquisition Program Administration, the court ordered the suppliers involved to pay approximately KRW 2.1 billion in damages to the Defense Acquisition Program Administration (Seoul High Court, Judgments 2024Na2034703 and 2024Na2054745, rendered on April 18, 2025, affirmed by the Supreme Court).

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9 Miscellaneous

9.1 Please provide brief details of significant, recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

On August 28, 2024, the KFTC amended and implemented the detailed standards for imposing fines by revising its notification, thereby establishing specific reduction criteria for granting benefits, such as fine reductions, to business operator that adopt and operate the Compliance Program (CP) in an exemplary manner.

According to the amended notification, businesses that receive high ratings in CP evaluations can have their fines reduced by up to 20%. Specifically, companies that receive an "AA" grade can receive a reduction of up to 10%, while those that receive an "AAA" grade can receive a reduction of up to 15%. Additionally, if a business discovers and terminates a legal violation through CP operations before a KFTC investigation begins, an additional 5% reduction can be applied.

Cartels are also generally eligible for these reduction benefits under the amended fine notification. However, cartels formed in a manner that clearly restricts competition are excluded from these benefits. Specifically, the following actions are excluded from the reduction benefits:

1. acts of determining, maintaining, or changing prices;
2. setting conditions for the transaction of goods or services, or terms of payment for such transactions;
3. restricting the production, shipment, transportation, or transaction of goods, or limiting the transaction of services;
4. restricting transaction areas or business partners; and
5. determining bidding-related matters, such as the successful bidder, winning bid price, or auction price, in bidding or auction processes.

In this regard, on April 23, 2025, the KFTC revised its “Notification on the Operation and Evaluation of the Compliance Program (CP)” to reorganise the system for its settlement and expansion.

Under this amendment:

- the previous six-tier evaluation system (AAA-AA-A-B-C-D) was restructured into a three-tier system (AAA-AA-A);
- the benefit of exemption from *ex officio* investigations previously granted to companies with an “A” grade was abolished (although companies currently rated “A” will continue to enjoy this benefit until 2026);
- the former rule of downgrading up to two levels in cases where a company that applied for a CP evaluation was sanctioned for a violation has been replaced with a deduction of five points from the evaluation score;
- unlike before, companies that are not yet subject to a confirmed violation can also receive an evaluation grade; and
- companies that received a rating of “outstanding” or higher in the KFTC’s performance evaluation of voluntary compliance agreements in the year immediately preceding their CP evaluation application may be awarded up to 1.5 bonus points in the CP evaluation.

Through these amendments, the KFTC expressed its expectation that the adoption and operation of CPs will be further encouraged, evaluations will become more substantive, and a culture of fair trade compliance will be more widely disseminated.

9.2 Please mention any other issues of particular interest in your jurisdiction not covered by the above.

According to recent reports, in 2024 the KFTC refunded a total of KRW 131.94 billion in fines to businesses as a result of losing administrative lawsuits, representing a 73% increase from the previous year. This amount accounted for 43.9% of the total fines collected.

Some commentators interpret this trend as reflecting an increase in “over-enforcement” by the KFTC, leading to more cases in which fines imposed by the KFTC are found unlawful or unjustified by the courts.

However, most of the cases in which the KFTC lost were not cartel cases but rather cases concerning unfair trade practices, subcontracting, or unfair support. In fact, in 2024, the KFTC’s loss rate in administrative lawsuits related to cartels was only 5% (two out of 40 cases).



Kwang Hyun Back, attorney, has specialised in fair trade since 2007, accumulating 19 years of practical experience addressing areas such as unfair collusion, suppression of economic concentration, corporate mergers, abuse of dominant market positions, unfair trade practices, favouritism in awarding contracts, subcontracting transactions, large-scale retail transactions, franchise dealings, agency transactions, e-commerce, and Compliance Programs. Notable cases include the unfair collusion case between Dong-A Pharmaceutical and GSK (the first reverse payment settlement case in Korea), the bidding collusion in the Gyeongin Canal Project, the bidding collusion in the Incheon Subway Line 2 Project, the LNG storage tank bidding collusion, as well as numerous related cases involving construction companies and damages claims.

Currently, as the team leader of the Fair Trade Team 2 at Barun Fair Trade Group, Back meets with clients and practises various initiatives to promote the importance of a fair competitive environment. He also runs the YouTube channel "Law Veteran Baek Kwang-hyun" and regularly conducts training for corporate employees. He has published several works, including "Reasons Why Popcorns can be Expensive at Movie Theaters", "Let's Live Together Franchise Business", and "Precedents per Clause and Terms of the Wholly Amended Fair Trade Act".

Barun Law LLC

7 Teheran-ro 92-gil, Gangnam-gu
Seoul, 06181
South Korea

Tel: +82 2 3479 2497
Email: kwanghyun.back@barunlaw.com
URL: www.barunlaw.com/member/595



Weon Cheol Han, attorney, has served as a specialist in fair trade and investigation response for antitrust and competition matters at Barun Law LLC since 2003. He has managed numerous cases in the fair trade sector, including a cartel case involving bidding processes for semiconductor systems by 13 businesses, a cartel case concerning wood pellet bidding by four operators, and a cartel case related to transformer bidding by 10 businesses.

Barun Law LLC

7 Teheran-ro 92-gil, Gangnam-gu
Seoul, 06181
South Korea

Tel: +82 2 3479 7853
Email: weoncheol.han@barunlaw.com
URL: www.barunlaw.com/member/2773



Alex Si Yoon Lee is an Associate in Barun Law LLC's Corporate Law Group. He received his J.D. from the Indiana University Maurer School of Law and B.A. from Johns Hopkins University. He is admitted to the New York Bar.

Barun Law LLC

7 Teheran-ro 92-gil, Gangnam-gu
Seoul, 06181
South Korea

Tel: +82 2 3479 7573
Email: siyoon.lee@barunlaw.com
LinkedIn: www.linkedin.com/in/siyoonlee

Since its establishment in 1998, Barun Law LLC has earned a reputation as one of the most prominent and respected litigation firms in Korea. In particular, the Fair Trade Group Team 2, led by Attorney Kwang Hyun Back — who has been awarded the TOP AWARDS Grand Prize in the fair trade category for two consecutive years — has consistently delivered results that meet clients' expectations in a wide range of fair trade law matters, including cartel cases, abuse of market dominance, unfair trade practices, and unfair support cases.

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