

## SOUTH KOREA



# Extraterrestrial application of the Monopoly Regulation and Fair Trade Act

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To promote creative business activities and protect consumers by facilitating fair and free trade in the market, the Monopoly Regulation and Fair Trade Act(MRFTA) was enacted. However, because the MRFTA had no provision, a so-called "Extraterrestrial Application" provision, regarding the issue of whether the MRFTA should be applied to the anti-trust activities taken place in overseas, there had been heated controversies over such issue.

When the MRFTA was revised in 2004, the provision of Extraterrestrial Application was added to the MRFTA. As a result, the KFTC was able to regulate activities of foreign companies in overseas by applying the MRFTA. However, the newly inserted provision raises a new question about the meaning of "any influence on the domestic market."

In 2002 the KFTC imposed surcharges on six(6) foreign companies("the Companies") that had collaborated to fix the price of graphite electrodes exported to the Korea market. It was the first KFTC's decision which held that the MRFTA could be applied to an activity taken place in overseas, and this decision was upheld by the Supreme Court in March 24, 2006. The facts of the case which the KFTC and the Supreme Court relied on for their decisions are as follows;

## World graphite electrodes market status

Graphite electrodes were estimated to be produced one million tons a year all over the world and the Companies produced 80 percent of the total products and the Korean consuming market share in the global graphite electrodes market accounted for approximately four(4) percent.

## Korean market status

Korean companies consuming graphite electrodes were totally dependent upon imports and imported approximately 91 percent of the total demands from the Companies. The Korean companies had entered into purchase agreements every year with the Companies which granted the minimum bid.

## The companies' agreement on basic principles

The Companies held 'Top Management Meeting' in London in

1992 and agreed upon the 'London Principles' for the purpose of the price increase. Following the London Principles, the Companies agreed upon the fixed price, markets division and supply control

## Korean relation

Based on the fact that, even if the London Principles targeted the global market of graphite electrodes, one of the Companies acknowledged that the companies discussed and agreed on the Korean market and, as a result, the price hiked 48.9 percent in 1997 compared to the price in 1992, the KFTC decided that the London Principles were related to Korea.

The Companies challenged the KFTC's order to impose surcharges on them and filed a suit to revoke the order. The Supreme Court(Supreme Court 2006. 3. 24. held 2004du11275) held that though those foreign companies made an agreement to restrict competition in overseas, since the agreement involved the domestic market and the effect of the agreement had an influence on the domestic market, the MRFTA should be applied to the extent that the agreement affected the domestic market. According to the Supreme Court decision, the following conditions should be met to apply the MRFTA to activities done by foreign companies in overseas: (a) there exists an agreement of foreign companies to facilitate improper concerted activities, (b) such agreement is targeting the Korean market and (c) the agreement affects the Korean market. If the conditions are met, the MRFTA shall be applied to the extent the activity affects the Korean market; which means that the KFTC shall take into account the impacts caused by the activity on the Korean market alone when it calculates the amount of surcharges and other penalties, if any.

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