

**SOUTH KOREA**

# Establishment of Rules on the Management of and Procedures for the Consent Decree System



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The Korea Fair Trade Commission (KFTC) is the government body in charge of handling fair trade and competition matters. The KFTC introduced the Rules on the Management of and Procedures for the Consent Decree System on March 28th, 2012 (enforced on April 1st, 2012), in connection with the consent decree system which was adopted on December 2nd, 2011.

**Background and implementation of the consent decree system**

Under the consent decree system, a respondent that is involved in an investigation initiated by the KFTC may voluntarily propose a corrective measure. According to the new Rules, the proposed corrective measures will then be reviewed by the KFTC in consultation with other interested parties. If the proposal is considered reasonable and is thereby accepted by the KFTC, the KFTC may choose to close the case without making a determination as to liability and subsequently require the implementation of the corrective measures. Some important characteristics of the consent decree system are that a company being investigated by the KFTC may submit an application in writing for a consent decree that may be withdrawn by the company before the consent decree is actually issued, and moreover, a consent decree does not imply that the behavior in question has been recognised as a violation of the Monopoly Regulation and Fair Trade Act (the MRFTA). Similar systems are already in place and have been adopted by most competition-governing authorities in other jurisdictions. The KFTC, however, intends to operate the consent decree system under strict standards, which are summarised as follows:

- Upon the respondent's request, the KFTC will decide whether or not to initiate the consent decree process by considering factors such as the need for expedient resolutions and the compensation of damages. However, the consent decree system is not available in cartel cases and other cases

wherein there are clear and material violations of the MRFTA that may be subject to criminal sanctions. In such instances, the disputes will be governed by other civil and criminal procedures and regulations and the relevant governing and administrative authorities.

- Following the initiation of the consent decree process, a 30 to 60 day public comment period will commence during which interested parties and government agencies may submit their opinions and, in particular, the KFTC will consult with the Prosecutor's Office regarding the possibility of criminal sanctions.
- Once the KFTC issues a consent decree after undergoing its deliberation and resolution procedures, any respondent who fails to comply with the KFTC's proposed corrective measures shall be subject to a fine of up to KRW 2 million per day and/or the consent decree may be vacated.

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The KFTC anticipates that the system will: (i) allow consumers to seek prompt and effective remedies for any damages incurred; (ii) allow corporations to save time and resources and further prevent any negative effects stemming from adverse public perception; and (iii) allow the government to reduce administrative costs that may otherwise be incurred when determining liability.

**Looking ahead**

Going forward, the KFTC plans to focus on the application of the consent decree system in cases where consumer damages are significant, and to actively implement the system in order to remedy those consumer damages.

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