

# The case handling process of Korea Fair Trade Commission

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## 1. Overview and significance

The multinational enterprises pay keen attention to the legal system of the target countries where they would engage in business activities. The enterprises that have invested or will invest in Korea might expect the Korean antitrust law. As far as actual enforcement is concerned, every nation has its unique feature. In the United States, for example, cartels and abuse of market dominance in violation of its antitrust law are sanctioned exclusively under the judicial process. In case of European countries, however, those issues are addressed according to the decision of Commissioners meeting (similar to the Member countries' cabinet meeting) in the first place, which is followed by European Court's decisions. The KFTC introduced judicial procedures such as adversary system and oral hearing. Consequently, the suspected enterprises including multinational ones are entitled to exercise their rights to defense duly guaranteed in the judicial procedures. I think that the multinational enterprises will be interested in learning the Korean competition law enforcement. And considering that this marks the first of its kind, I thought as more appropriate to give you an overview of our law enforcement procedure rather than presenting specific enforcement cases.

## Legal status and capacity of the Commission

1. The KFTC is a collegiate administrative organization under the authority of the Prime Minister in order to implement its jurisdiction affairs independently (Article 35, 39 of the Monopoly Regulation and Fair Trade Act (hereinafter 'KFTA' ; Korea Fair Trade Act). The article 39 of the KFTA establishes the jurisdiction affairs (Article 39 of the KFTA)<sup>1)</sup> as abuse of market dominance, M&A, cartel, unfair trade practices and resale price maintenance, unfair international contract, anti-competitive practices and etc.

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2. As long as the appeal to the decisions of KFTC belongs to exclusive jurisdiction of the Seoul High Court<sup>2)</sup> (article 55 of the KFTA), KFTC as an administrative authority has at the same time the quasi-judicial status and plays the role of the first trial court in explanation and application of its jurisdiction laws.

## Organization of the Commission and its operation

### (1) Full committee and sub committee

3. The meetings of the KFTC consist of a full committee, which includes all commissioners, and sub-committees, which consists of 3 commissioners including 1 standing commissioner (Article 37-2 of the KFTA). The Full Committee concerns the interpretation and application of statutes and notifications, appeal case, enactment and revision of rules and notifications, and handling cases with major economic implications. (Paragraph 1, Article 37-3 of the KFTA) The Sub-committee treats the deliberation on issues not dealt at the full committee. In this case, the transfer of concerns of the full committee to the subcommittee does not have regulations, but the sub-committee can lay the bill before the full committee. (Paragraph 2, Article 37-3 of the KFTA)

### (2) Quorum (Article 42 of the KFTA)

4. In the case of Full Committee, the resolutions are made by the vote of a majority of the members, and in the case of Sub Committee, the resolutions are decided in the presence of all members by a unanimous vote of the members present.

### (3) Trials and resolutions are disclosed, but agreements are not (Article 43 of the KFTA)

5. Trials and resolutions are disclosed in principles. They are, however, not disclosed when deemed necessary to protect trade secrets of an entrepreneur or enterprise. This grants the examinee an opportunity to make statement that is based on the evidence, and ensures the legitimacy of procedures and guarantees the defense rights of the examinee under the adversary structure same as the Judicature.

1) You can refer English version of the MRFTA(so called 'KFTA') in the KFTC internet homepage in English version : [www.ftc.go.kr](http://www.ftc.go.kr)

2) Korean judicial system consist of 3 trials ; Local court for the first trial, High court as the appeal court and Supreme Court as the last trial

#### (4) Challenge, Discharge, Withdrawal of Members (Article 44 of the KFTA)

6. This article was introduced for fair deliberation and resolution. When a member is connected to a case, it is naturally impossible for him/her to perform duties by law or he can exclude himself, and the person concerned, the examinee for example, can exclude him from deliberation upon request.
7. A commissioner is excluded from deliberation from “the case that he or his corporation participates or have participated as a representative or as a consultant.” (Paragraph 1,2,4, Article 44 of the KFTA). A commissioner can discharge himself from deliberation upon his request when he has difficulties to secure the fairness of deliberation. (Paragraph 3, Article 44 of the KFTA) When a commissioner wishes to discharge himself, he should be approved by the chairman. (Paragraph 4, Article 51 of the KFTA)
8. When it is difficult to expect the fairness from a certain commissioner, the examinee can request the KFTC to make him withdraw, and the chairman decides its acceptance (Paragraph 2, Article 44 of the KFTA). In circumstances to apply to withdraw, its causes has to be clearly stated (Paragraph 1, Article 51 of the KFTA), and the withdrawal cause has to be summoned in 3 days since the application. (Paragraph 2, Article 51 of KFTA) In this situation, the commissioner who has been applied to withdraw has to present its proposal to the chairman. (Paragraph 3, Article 51 of KFTA)

## 2. Introduction of Case Handling Process

9. KFTC Case Handling Process is an administrative and quasi-judicial procedure to handle the violation cases of the KFTA. It consists of Report → Investigation → Deliberation & Resolution → Processing of Result → Dissatisfaction.

### The concerned parties of the KFTC case

10. The statutory ground of case handling process such as investigation is based on the Paragraph 10 of Article 49~ 55-2 of the KFTA, related articles of decree and the KFTC procedural rules on management of meetings and case handling process.

11. The KFTC's deliberation follows the adversary system between the examiner and the examinee (violating enterprise) as counterparts. Therefore one side of a KFTC case becomes the examiner of KFTC. The other side is the examinee; the entrepreneur or the enterprise that violated the KFTA. Compared to a criminal case, the examiner can be described as the prosecutor, the examinee as the litigant is the defendant, and the Commissioners as the judge will independently decide apart from both of litigants whether the case violate the competition law or not. There are several regulations for the commissioners to judge objectively and independently according to their conscience. The examiner is a public servant belonging to Secretariat whose job is to pre-examine alleged violations of the competition law. (Paragraph 1, Article 10 of the case handling procedure rule) The examiner also investigates the existence of violation, writes examination report, and monitors implementation after resolution and so on.

## Report and Allegation from Authority

12. In principle, violation charges should be proof upon allegation from authority, and reports are supplementary. Any person may report violations to the KFTC (Paragraph 2, Article 49 of the KFTA), but a report only provides a clue prompting KFTC's investigation (sentenced on April 11, 2004 by Supreme Court), and there is no legal obligation to start an investigation

## 3. Investigation of violations (Article 50 of the KFTA)

### Authority in the process of investigation of violations

13. Authority in the process of investigation of violations provide the right to summon the parties concerned or witnesses to a hearing and elicit their testimony, the right to designate and engage expert witnesses, the right to order submission of necessary materials (Paragraph 1, Article 50 of the KFTA), the right to enter the office or business place for examination (Paragraph 2, Article 50 of the KFTA), and the right to detain presented materials. (Paragraph 3, Article 50 of the KFTA) The right to demand financial transaction-related information has been temporarily introduced for the investigation of illegal activities such as unfair assistance within conglomerate group and cross-shareholding contravention, etc. (Paragraph 5~9, Article 50 of the KFTA)

14. The summon and hearing opinions of concerned parties, the designation of an expert witness and the order to submit reports on cost and management conditions and other necessary materials under Article 50, Paragraph 1 of the Act shall be made in a written statement. (Paragraph 1,2,3, Article 55 of the Enforcement Decree) The designated "Place" in Article 50, Paragraph 2 of the Act means the office or place of business of an Enterprise or a Trade Association and that place stipulated in the summon issued by the KFTC. (Paragraph 1, Article 56 of the Enforcement Decree) The submission order of documents or materials or detainment thereof under Article 50, Paragraph 3 of the Act is limited to cases where there is the possibility of destruction of evidence. (Paragraph 2, Article 56 of the Enforcement Decree) When the KFTC hears the opinions of interested parties or of witnesses or when it entrusts an appraiser under Article 50, Paragraph 1, Subparagraph 1 & 2 of the Act, it may pay the expenses to relevant parties within the limits of the budget; provided, however, that the foregoing shall not apply when hearing the opinions of interested parties or witnesses at their respective offices or places of business. (Article 57 of the Enforcement Decree)
15. A negligence fine may be imposed when the exercise of examiner's rights is rejected, interfered or challenged, and when the summons or submission of necessary materials are refused. Appeal to the imposition of the negligence fine is the object of the system of three trials followed by 「Law of Non-Contentious Case Litigation Procedure」 apart from the other cases of violation of the KFTA.

## Handling of Investigation Result

- (1) Obligation to give results of the investigation in writing (Paragraph 3, Article 49 of the KFTA)
  16. In the case of investigation, the Fair Trade Commission shall give notice, in writing, to the parties concerned disclosing the results of the investigation (including any corrective measures that will be implemented as a result of investigation).
- (2) Prescription of violations of the KFTA (Paragraph 4, Article 49 of the KFTA)
  17. If five years have passed since an act of violating the provisions of this Act was committed, the Fair Trade Commission shall not make orders for corrective measures or impose surcharges as prescribed by this Act against such an offense;

## 4. Deliberation Process

18. In case of recognized violations of the KFTA from report or allegation of authority, Secretary General investigates and pre-examines alleged violations. (Paragraph 1, Article 10 of the Procedural Rules) Any person who wishes to report or to appeal may present a written report or deliberation from to the KFTC, and the examiner may ask to complement them if not followed by appropriate form. (Paragraphs 2 & 3, Article 10 of the Procedural Rules) Secretary General may designate the examiner either to investigate or to pre-examine, and the examiner may designate a public servant for investigation. (Paragraph 4, 6 & 7, Article 10 of the Procedural Rules)
19. If the result of investigation and pre-examination is not applicable to ‘no commencement of deliberation process’(Article 12 of the Procedural Rules), ‘commencement of deliberation process’(Article 11 of the Procedural Rules) will be proceeded as inception report is presented. When the inception report is presented, the Office of General Counsel grants a number to the case, (Paragraph 2, Article 11 of the Procedural Rules) and the examiner or the public servant for investigation notifies to the examinee. (Paragraph 3, Article 11 of the Procedural Rules)

### Presentation and sending examination report

20. After finishing the investigation of the case, the examiner deliberates the existence of violation, and after the deliberation, the examiner writes an examination report for presentation to the Committee
21. The examiner should present the same copy examination report to the Committee and send another copy to the examinee and demand presentation of opinion. (Article 29 of the Procedural Rules) Supporting evidences and its list except the examiner’s proposed remedy, calculation of details (Paragraph 10, Article 29 of the Procedural Rules) and the trade secret unrelated to the existence of violation (Paragraph 11) may be sent with the examination report. (Paragraph 10) The examinee may present his opinion within 2 weeks in principles, but may vary the period in certain circumstances, the headquarters existence abroad for instance. (Paragraph 10)

## Handling cases without writing examination report

22. The correction measure against the investigation result regulated by the KFTA is the implementation of correcting, surcharge, punishment, negligence fine, and the recommendation for correction. In addition, Procedural Rules prescribes the handling cases ways like warning, no commencement of deliberation, completion of deliberation process, disposition, cleared of suspicion, suspension of investigation. These handling cases without any disposal can be decided by the examiner without writing an examination report as follows. (Article 47~49 of the Procedural Rules)

### (1) Completion of the deliberation process (Article 46 of the Procedural Rules)

23. The examiner may commence the examination process after reporting the case handling that is adequate to violations of competition law, but in the end he may conclude the object not to be violated by law in certain circumstances. The examiner may decide independently to terminate the deliberation process in those circumstances not necessarily to commence the examination process (Subparagraph 1, Paragraph 1, Article 12 of the Procedural Rules). In case of no violation, the examiner may decide to terminate the deliberation process after processing of the investigation apart from the case that the examiner independently decides to forgo an examination.

### (2) Cleared of suspicion (Article 47 of the Procedural Rules)

24. The examiner may clear the case of suspicion without presenting it to either Full Committee or Sub Committee when the case does not fulfill the requisites for violation of the KFTA or when there is no evidence. Moreover, when the violation is minor the examiner may issue a warning in order to prevent from future violation (Paragraph 2) and include a document clearly stated that the object had not violated by law. (Paragraph 2)

### (3) Disposition (Article 48 of the Procedural Rules)

25. The examiner may dispose a case when the examinee does not fulfill its implementation of correcting by certain causes such as the death, disorganization, bankruptcy, closure of business, and when he experiences preservative disposition or the ruling for the commencement of reorganization proceedings in accordance to the reorganization claim

by the Corporation Reorganization Act. If the examinee continues the business by not following the Corporation Reorganization Act after the case had been disposed, the examiner may resume the case handling process.

#### (4) Suspension of investigation (Article 49 of the Procedural Rules)

26. The examiner may suspend the investigation when he faces difficulties because of the suspension of business by dishonor, incorporeal corporative, missing by escape, investigation of the foreign enterprise abroad, and any reasons of the similar examples before he commences or is in commence of the investigation. (Paragraph 1) The examiner may write the examinee on the suspension list and check when the investigation has been suspended, but after 6 months he may dispose the investigation.

#### (5) Warning (Article 50 of the Procedural Rules)

27. Without presentation to the Committee, the examiner independently decides to issue a warning when the violation is minor or when the examinee corrected the violation by itself offsetting the effect of corrective measures. Such warning will be issued only if the examinee violates the law. The enterpriser (or the enterpriser's organization) who is given a warning, which is issued by the examiner independently; (Paragraph 1, Article 53-2 of the Procedural Rules) the warning will be recognized as the violation of law without the deliberation process. When the examinee appeals, the examiner shall write the examination report and present it to Sub Committee for the deliberation process. (Paragraph 6, Article 53-2 of the Procedural Rules)

### Recommendation for Correction of Violation and Simplified Process

28. The concerned case to recommend for correction or any case handled through the simplified process of the Committee's jurisdiction may go through the following procedures.

#### (1) Recommendation for Correction of Violation (Article 51 of the KFTA, Article 58 of the Enforcement Decree, Article 51 of the Procedural Rules)

29. The examiner may recommend for correction to the examinee when there is no time to go through deliberate and resolution before ordering corrective measures. The



Recommendation for Correction of Korea is similar to the Consent Order of FTC (Federal Trade Commission), or either of the Recommendation Decree or the Consent Decree of Japan.

30. The majority grasps the legal nature of the Recommendation for Correction in force as a theoretical administrative guidance. That is, it is powerless and expects actual effect through voluntary cooperation of the other party, but is not legally valid. A person who has failed to comply with corrective measures or an order of prohibition shall be punished by imprisonment for not more than two years or a fine up to but not exceeding one hundred fifty million won. (Article 67 of the KFTA) Such dualistic legislation of KFTA, of which components are powerless, but the validity is compulsory, answers to the common problems of this kind of administrative guidance.

## (2) Simplified Process (Paragraph 59~63, Article 4 of the Procedural Rules)

31. When the examinee accepts the violation of law and recommendation of the examiner, his statement for acceptance will be attached to the examination report and the Sub Committee promptly passes the resolution based on the deliberation by letter without the attendance of the examinee. When the examinee does not accept the recommendation, however, the case is referred to the official deliberation and resolution process by presenting it to Sub Committee. Even though the examinee accepts the recommendation, the case is also referred to the official deliberation and resolution process when Sub Committee decides to make different measures rather than the recommendation of the examiner during the written deliberation process,

## 5. Deliberation Process

### Request for Access and Reproduction of the Attached Materials to the Examination Report (Article 29-2 of the Procedural Rules)

32. The examinee may ask for access to or the ability to make copies of the materials, which shall be sent to him by the examiner but has not been sent for reasons involving protection of trade secrets or etc., attached to the examination report referred to the attached list. Chief Commissioner re-examine the permission for access and reproduction of the specified materials.

## Appointment of Chief Commissioner and his duties (Article 30 of the Procedural Rules)

33. When the examination report is presented to the Committee, Chairman of Full Committee appoints one of the standing commissioners as a Chief Commissioner. (Paragraph 1) Chairman conducts the duties of the chief referred to the case of the Committee.
34. The duties of Chief Commissioner of Full Committee and of the Chairman are as follows. First, he decides whether to begin to preparation for deliberation and instruct the examiner to complement defect when it is discovered. (Paragraph 2) Second, the secretary or the person himself discusses with the Chief to fix the date to begin to preparation for deliberation. (Paragraph 3) Third, he decides whether to give permission for access and reproduction of the materials attached to the examination report. (Paragraph 2, Article 29-2 of the Procedural Rules) He also decides the order to present opinions, progress for the first date of preparation, selection whether to request for investigating evidence, grant whether to claim argument & to present evidence, closing the deliberation preparation, etc. during the deliberation preparation process.

## Deliberation Preparation Process (Article 30-2~30-11 of the Procedural Rules)

35. Deliberation preparation process has been introduced for efficient and focused deliberation of controversial and complex cases. The chairman of each committee decides whether to begin preparation for deliberation. (Article 30-2 of the Procedural Rules) Deliberation preparations can begin when it is necessary to arrange issues and evidences after the first day of deliberation. (Article 30-10 of the Procedural Rules) The examiner and the examinee must present all opinions and evidence during the deliberation preparation process. The Office of General Counsel reports the summary of deliberation preparation process 5 days prior to the first day of deliberation to the examiner and the examinee. (Article 30-9 of the Procedural Rules)

## Deliberation Process (Article 31 of the Procedural Rules)

36. The deliberation is prescribed to begin in the court. (Paragraph 2) All trials and resolutions shall be disclosed under the Paragraphs 1 & 2, the Article 43 of the KFTA and stated orally in principles. Paragraphs 2, the Article 43 of the KFTA permits documentary examination when necessary.

### (1) Delay and Withdrawal of Deliberation Process

37. The Chairman may delay or withdraw the deliberation process either at the request of the examiner or on his authority when circumstances change. (Article 32 of the Procedural Rules)

### (2) Designation and Notification of the Deliberation Day

38. The Chairman shall notify the deliberation day in writing prior to 5 days of the first day of deliberation, but allow exceptions in urgent conditions or when necessary (introduced on Dec 31, 2007. Paragraph 1, Article 33 of the Procedural Rules)
39. The Chairman may permit and notify to change the deliberation day when the examinee has difficulties to present on that day. (Paragraph 3) He may also notify the person who reported the case that the deliberation day has been changed, and send him the examination report when necessary. (Paragraphs 4 & 5)

### (3) Multiple Deliberation System

40. The Chairman may decide the next deliberation day when it is necessary to continue the deliberation for more than two times. (Paragraph 6)

### (4) Attendance to the Committee and Opportunity to state Opinion

41. It also prescribe procedures to guarantee examinee's defense rights such as attendance of examiner and examinee to the Committee (Article 34 of Procedural Rules), participation in deliberation of interested parties (Article 37 of Procedural Rules), opening procedure (Article 38 of Procedural Rules), right to request elucidation, right to ask questions (Article 39 of Procedural Rules), statement of opinions (Article 43 of Procedural Rules), etc. and also request investigation of evidence (Article 41 of Procedural Rules) including witness examination (Article 41-2 of Procedural Rules) & attendance of expert witness (Article 42 of Procedural Rules).

## (5) Participation in Deliberation

42. The deliberation process begins with the personal identification proceeding or the person himself or the attorney. Examinee or the witness himself will firstly be checked with documentary evidence, and secondly be checked with the personal identification proceeding by the Chairman. (Article 35 of the Procedural Rules)
43. The examinee may appoint a lawyer or a person who has been permitted by each Committee, a director of the corporation itself. He should present the power of attorney in advance and show the qualification of the attorney by document. (Article 36 of the Procedural Rules) The Commission may make professionals and interested parties participation in the deliberation and listen to their opinions

## (6) Maintenance of Good Order in Venue of Adjudicatory Proceedings

44. Opportunity to state opinion is a mandatory procedure (Article 52 of the KFTA), but as the right to make a statement may not be given without any restriction, the chairman may restrict the examinee's unnecessary statements in order to proceed the deliberation. The Procedural Rules allows to restrict statements, which are repeated or have no relation to the concerned case, as prescribed in the articles such as restriction of statement (Article 40 of the Procedural Rules) and opening procedure (Paragraph 3, Article 38 of Procedural Rules).

## Decision of Written Resolution

45. Where the KFTC makes a decision on matters violating the provisions of the Act, it shall make a written resolution specifying the reason thereof, and such a written resolution shall be signed and sealed by the commissioners who have participated in the decision. (Paragraph 1, Article 45 of the KFTA) The examiner shall take measures of the resolution of each committee, send the original copy of the written resolution to the examinee, and notify the summary to the reporter of the case. (Paragraph 1 & 2, Article 56 of the Procedural Rules)

## 6. Dissatisfaction Process (Appeal, Suspension of Enforcement of Orders for Corrective Measures and Filing of Lawsuit)

46. The KFTA prescribes the examinee to select one of two courses of dissatisfaction process, the important factor of the defense right of examinee.

### Appeal (Article 53 of the Act & Paragraph 5, Article 64~71 of the Procedural Rules)

47. The defendant who is dissatisfied with measures taken by the KFTC may file an appeal stating the reasons thereof within 30 days from the receipt of notification of said measure (Paragraph 1, Article 53 of the KFTA). The concerned party who is dissatisfied with measures must appeal prior to filing a lawsuit in the past. On the other hand, KFTC revised the law when the amendment of Administration Litigation Act has been made so that now the concerned party may file a lawsuit directly to Seoul High Court.

### Filing of Lawsuit (Article 54~55 of the Act & Article 72 of the Procedural Rules)

48. Where a person desires to file a lawsuit against any measure taken by the KFTC under this Act, he shall do so within 30 days of the date of the receipt of a notice of the disposition in question or a written decision of the KFTC against the appeal, and the period may not be extended.

### Suspension of Enforcement of Orders for Corrective Measures (Article 53-2 of the Act)

49. Where an appeal has been made by a person against whom corrective measures have been ordered, or where the KFTC deems necessary to prevent irrevocable damage or harm caused by the enforcement of such orders or the continuance of procedures, the KFTC may, at the request of one of the parties or ex officio, decide to suspend enforcement of such orders or a continuance of procedures. (Article 60 of the Enforcement Decree)

## 7. Use of Measures to Guarantee Implementation - Surcharge, Filing of Complaint (Punishment)

50. The KFTA includes surcharge and punishment systems as public enforcement measures and a private enforcement measures in order to guarantee the fulfillment of obligations. These measures to guarantee the fulfillment of obligations are not the Procedural Rules themselves, but they are in close connection with the Procedural Rules. This paragraph will describe its contents and its operation circumstances.

## Surcharge (Article 10-2 of the Act & Article 52 of the Procedural Rules)

51. A surcharge is a sort of sanctions imposing financially the person who violates the KFTA in order to guarantee the implementation of obligations. Related to the imposition of surcharges, the KFTA prescribes its general items, and the Enforcement Decree prescribes its individual items. Chapter 10-2 of the Act prescribes the item to consider with 4 articles when imposing of all surcharges in common (Article 55-3 of the Act), Extension of Period of Surcharge Payment and Payment in Installments (Article 55-4 of the Act), Obligation of Aligned Payment of Surcharge (Article 55-5 of the Act), Collection of Surcharge and Surcharge in Arrears (Article 55-6 of the Act). The president entrust Computation of Surcharges (Article 9 of the Enforcement Decree), Standard of Surcharge Imposition (Article 61-1 of the Enforcement Decree), Collection of Surcharges and Additional Fines (Article 61-2 of the Enforcement Decree) and etc.
52. In the case of surcharge impositions, prescribing the scale of the gains of profits by violation of law is to consider the natures of Administrative sanctions and refund of excess profits in addition.

## Punishment

53. When the violation of the Act is serious and clear or when the concerned party does not fulfill the correction measures, the use of very intensive administrative punishment may be needed for psychological inhibition. The administrative punishment follows the code of criminal procedure. In the case of the administrative order act, the subject of imposition is the KFTC, but when the concerned party appeals for dissatisfaction, he will face trial in court according to the non-contentious case litigation procedure act. (Paragraphs 2 & 4, Article 69-2 of the Act)
54. The Detailed procedures for penal provisions are prescribed from Article 66 to Article 69 of the KFTA. The violations under Article 66 are serious and its punishments are the most

intense. Any person who falls into any of the following categories shall be punished by imprisonment for not more than three years or a fine up to but not exceeding two hundred million won. The violations under Article 67 are substantial matters (except Subparagraph 7), and are less serious than those under Article 66.

55. If the representative of a juristic person, or an agent, employee or any other person working for a juristic person, or an individual has committed an offense prescribed by Articles 66 through 68 with respect to business of the juristic person or individual, a fine as prescribed by the corresponding Article shall be imposed on the juristic person or individual as well as on the person who actually committed the violation. (Article 70 of the Act) This is what is called the double punishment.

### (3) Filing of Complaint

56. The Commission may files complaints of not only the concerned enterpriser (or enterpriser's organization) but also the individual by applying the double punishment in order to apply the penal provisions. The Prosecutor's Office may institute a publication only after the Commission files complaints. After Commission's filing of complaints, the Prosecutor's authorities will criminal following the criminal proceedings.

### Liability for Damages (Article 56~57, Chapter 11 of the Act)

57. If an entrepreneur or an enterprise violates the provisions of this Act, and thereby inflicts on a person any damage, he or the organization shall be liable for compensation of such damage to the person. (Article 56 of the Act) Liabilities for Damages would be claimed in the court, if the correction measures have not been established yet. Liabilities for Damages terminate after 3 years of the first day of its execution. On Dec 31, 2004, the amendment of the full text of Article 57 of the Act prescribed Transmission of Records (Article 56-2 of the Act) and Limitations on Claims for Damages and Related Matters (Article 57 of the Act) and gave another option, the private lawsuit for liability for damages.

### Prevention of Violation in Advance and Guidance for Self-Correction

58. The punishment of a violation is not the only way to guarantee the implementation of the competition law. The prevention of a violation in advance may be more efficient than the

punishment afterwards. When a violation occurs, the guidance for self-correction may also be more efficient than forcing the correction measures.

59. The KFTC runs Advisory Opinion Program, which verifies whether a specific action violates the law or not, in order to prevent the violation of law in advance. The Commission also strengthens its P.R. by opening the orientations & explanations of KFTC affairs & law enforcement. When the enterprises who make efforts to prevent violations with CP (Compliance Program) and CCMS (Consumer Complaints Management System), the Commission reduces the sanctions.
60. To strengthen the efforts of enterprises for self-correction, Dispute Resolution system is continuously expanded and strengthened for the cases of which are strongly related to civil dispute between parties concerned. Dispute Resolution system may mediate Unfair Trade Practices since February, this year in addition to Fair Subcontract Transactions Act and Fair Franchise Transactions Act. The Consent Order will also be introduced for strengthening the self-correction of enterprises.