

**Kobre & Kim's Cross-Border
Disputes Team**

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Chinese Companies Should Not Shy Away From Potential Disputes Against Korean Chaebol Competitors

As more Chinese companies enter the Korean market, they are running into direct competition with giant family-owned conglomerates known as chaebols. These companies' overwhelming dominance may make it hard for PRC companies in a dispute, but as our team explains below, there are creative steps inside and outside the courtroom that can put companies back in control.

Companies from both the People's Republic of China (PRC) and Korea are stepping deeper into each other's markets. However, given the overwhelming dominance of family-owned conglomerates known as *chaebols* in the Korean market, together with the complex intricacies of the Korean legal market, PRC companies may struggle to see a way out when they encounter a dispute, such as those involving unfair competition or trade secret infringement.

PRC companies should not shy away from taking chaebols head on, combining various creative legal and PR strategies designed to maximize pressure on their competitor and assertively protect their business interests.

1. **Develop the Evidence Before the Government Gets Involved.** Contrary to popular belief, the government is not the only one with the power to obtain evidence of anti-competitive conduct outside litigation. Companies can also lawfully develop evidence against competitors and adversaries by identifying and cultivating witnesses with inside knowledge of improper conduct. These can be referred to government authorities or used in a public relations campaign.
2. **Obtain Discovery in One Jurisdiction to Use Elsewhere.** Tribunals in numerous jurisdictions are becoming more comfortable with antitrust law, including applying it to a broader range of actions. However, firms seeking to raise concerns over these actions may

encounter difficulty obtaining discovery in many legal systems, including Korea. One solution is to seek evidence in the U.S. through a 1782 application. This can be done even before litigation has begun and are not limited to evidence of violations of U.S. law.

3. **Leverage Increased U.S.-Korean Antitrust Enforcement.** Korean and U.S. antitrust regulators increasingly collaborate on cross-border matters, especially bid-rigging and procurement fraud. The U.S. has even pursued conduct taking place entirely in Korea. PRC companies that develop evidence of anti-competitive behavior can likely draw the attention of multiple regulators, using their combined firepower to increase pressure and the likelihood of a successful business outcome.
4. **Generate Public Pressure Through a Targeted PR Campaign.** Public pressure can be more effective at changing corporate behavior than government enforcement. A well-designed PR campaign considers the broader strategy and has precise messaging supported by verifiable facts. One consideration turns on whether to coordinate with local or worldwide media. Some local media may be affiliated with or influenced by the chaebol, so it is critical to know reporters who can write neutrally. Working with global outlets respected in Korea may mean that even hostile local outlets will boost coverage.

The oligopolistic Korean market, dominated by chaebols, can make it hard for PRC companies to redress anti-competitive harms that block their entry into the market. Rather than take it lying down, PRC companies should deploy creative, cross-border legal and PR strategies to defend their businesses.

About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focused exclusively on disputes and investigations, including those involving cross-border competition issues. Our firm:

- Has extensive experience representing clients in antitrust investigations alleging price fixing, bid rigging and other cartel activity by enforcers such as DOJ, often in conjunction with non-U.S. authorities, including South Korean authorities such as the KFTC and the Korean Public Prosecutors' Office.
- Includes several former DOJ prosecutors based around the world, including from the DOJ Antitrust Division.
- Includes native Korean-speaking lawyers and a former inspector in the Korean National Police as part of a Seoul-based team focused on advising clients on cross-border matters.
- Maintains a conflict-free, special counsel model that is particularly suited to antitrust disputes that implicate multiple industry participants and other competing interests that prevent many firms from acting.