

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

AUGUST 29, 2024

**Benjamin Sirota**
New York
benjamin.sirota@kobrekim.com**Daniel S. Lee**
Seoul
daniel.lee@kobrekim.com**Jason J. Kang**
Shanghai / Hong Kong
jason.kang@kobrekim.com**Jian Wu**
Shanghai
jian.wu@kobrekim.com**John Han**
Hong Kong
john.han@kobrekim.com**Robin J. Baik**
Seoul
robin.baik@kobrekim.com

Chinese Companies Should Not Shy Away from Potential Disputes Against Korean Chaebols

On May 27, 2024, the People's Republic of China (PRC) and South Korea vowed a "new start" in future economic cooperation, paving the way for companies from both countries to enter each other's markets more deeply. However, given the dominance of chaebols in the Korean market, PRC companies may struggle to see a way out when they encounter a dispute. Below, our team shares creative steps inside and outside the courtroom that can put companies back in control.

On May 27, 2024, the People's Republic of China (PRC) and South Korea vowed a "new start" in future economic cooperation, paving the way for companies from both countries to enter each other's markets more deeply. However, given the dominance of family-owned conglomerates known as *chaebols* in the Korean market and 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 the 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" – a mechanism under U.S. law that permits litigants to obtain evidence in the U.S. for use in a non-U.S. proceeding. This can be done even before litigation has begun and is not limited to evidence of violations of U.S. law.

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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 Media Campaign.** Public pressure can be more effective at changing corporate behavior than government enforcement. A well-designed media 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 global law firm focused exclusively on disputes and investigations. Our firm:

- Avoids ongoing client relationships with common industry participants such as Korean *chaebols* and instead focuses on special-situation engagements.
- 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.