



Kobre & Kim's Cross-Border Disputes Team

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International Companies Should Not Shy Away from Potential Disputes Against Korean Conglomerates

Emerging commercial opportunities in South Korea are opening doors for investors worldwide. However, foreign investors and trade partners continue to face significant challenges when navigating disputes with chaebols, given their dominant position and the complexities of the Korean legal landscape. Utilizing antitrust authorities may be one component in building an aggressive and effective strategy.

As South Korean lawmakers advance corporate governance reforms to restore global investor confidence, emerging commercial opportunities open doors for investors worldwide. Given the dominance of top conglomerates known as *chaebols* and the complexities of the Korean legal landscape, however, foreign investors and trade partners continue to face significant challenges when navigating disputes.

Those investors and trade partners need not shy away from taking matters head-on, as there are ways to combine various creative legal and PR strategies to maximize pressure on their competitors and assertively protect their business interests. Utilizing antitrust authorities may be one component in building an aggressive and effective strategy.

- 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 interviewing witnesses with inside knowledge of improper conduct. These can later be referred to the government authorities or used in a public relations campaign.
- 2. Obtain Discovery in One Jurisdiction to Use Elsewhere.** Jurisdictions take different approaches in allowing discovery in aid of proceedings elsewhere, and courts in the “continental tradition,” including Korea, tend to provide limited discovery tools. One strategy to consider is to seek evidence in the U.S. or other common law jurisdictions to support proceedings in Korea (and other courts). Notably, the U.S. allows such discovery 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.-Korea 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. 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.

The oligopolistic Korean market can make it difficult for international investors to redress anti-competitive harms that block their entry. 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 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 Korea Police inspector as part of a Seoul-based team that advises clients on cross-border matters.