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Korean Companies Should Prepare For Rising U.S.-Korea Parallel Antitrust Investigations

Risks for Korean companies are rising as U.S. and Korean antitrust enforcers are joining forces to investigate potential anticompetitive behavior, even over conduct based entirely in Korea. Our team explains what this collaboration looks like and what an effective multijurisdictional response should be.

Two of the world's most active antitrust enforcers, Korea and the United States, are increasingly collaborating to investigate potential anticompetitive behavior. The U.S. Department of Justice (DOJ) has even pursued conduct taking place entirely in Korea, on the basis that it may affect U.S. commerce or interests.

Korean companies and their counsel will need to quickly adopt an aggressive, multi-jurisdictional response to these joint actions, which carry the risk of U.S.-imposed criminal sanctions.

U.S. and Korean antitrust collaboration on the rise

As the U.S. acts aggressively to enforce U.S. antitrust law, it should come as no surprise that a similar pattern is emerging in Korea. This follows years of U.S. and Korean enforcers partnering on antitrust investigations.

Hotspots for U.S.-Korea antitrust enforcement include joint investigations into price fixing, as well as bid rigging in the defense and other industries. Fines against companies in these matters have often topped hundreds of millions of dollars.

Procurement fraud a focus

In 2019, the DOJ formed the Procurement Collusion Strike Force (PCSF) to investigate antitrust crimes that harm the U.S. government. The PCSF has pursued several cases involving the alleged rigging of U.S. government contracts fulfilled in Korea. Any Korean company that does business with the U.S. government may become a target of U.S. enforcers' efforts.

Preparing for simultaneous U.S.-Korean investigations

With these highly active U.S. and Korean antitrust enforcers closely monitoring behavior by companies operating in Korea, it is no longer unusual to see a local antitrust allegation turn into a major cross-border investigation.

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Companies should strongly consider conducting a “competition stress test” to assess their exposure to action by U.S. and Korean antitrust enforcers. An independent, objective examination of a company’s practices can reveal risk of an antitrust investigation by either one or both of these enforcement regimes. An international team of counsel familiar with both U.S. and Korean antitrust laws and unencumbered by long-term relationships within the industry can offer a clear-eyed assessment. Following the test, proactive strategies can be designed to reduce risk, consistent with the company’s business objectives.

The DOJ and the Korea Fair Trade Commission (“KFTC”) approach antitrust cases differently, including what individual rights and privileges they recognize. When these enforcers take collaborative action, targets will require equally coordinated defense strategies, combining the knowledge of both Korean and U.S. antitrust specialists.

About Kobre & Kim

Kobre & Kim is a conflict-free Am Law 200 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 Korean parties on U.S.-facing 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 some firms from acting.