



## **Risk Rises for Korean Companies as U.S. Pursues More Aggressive Antitrust Enforcement**

**As U.S. authorities aggressively ramp up cross-border enforcement, Korean companies and individuals have come under the radar. U.S. enforcement could have grave consequences and could spark a joint fight with Korean and other authorities as well. We explain the risks and responses Korean companies and their counsel should consider as the threat grows.**

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Antitrust enforcement is a priority for the current U.S. administration, which recently increased funding for its antitrust enforcement agencies. The U.S. is pursuing actions at home and abroad, enjoying particular success with procurement fraud that harms the U.S. government. Some of these actions have targeted Korean companies and individuals.

U.S. antitrust enforcement actions can have grave consequences, including significant monetary penalties. They can also spark a two-front, multijurisdictional fight due to the U.S. government's increasing cooperation with Korean antitrust authorities. Korean companies and their counsel should be aware of the growing risk and be prepared to adopt aggressive, multi-jurisdictional responses.

### **Korean companies at risk**

In 2019, the U.S. Department of Justice (DOJ) formed the Procurement Collusion Strike Force (PCSF) to investigate individuals and organizations that engage in public procurement crimes, such as price-fixing and bid-rigging. The PCSF is regarded as one of the U.S. government's most successful antitrust enforcement efforts, showing a consistent increase in the number of investigations since its establishment.

This creates a risky environment for Korean companies that frequently engage in business with the U.S., particularly for Korean companies that bid for U.S. Department of Defense contracts. Indeed, the PCSF has stressed an international focus by launching PCSF: Global — a program designed to target antitrust conduct that affects U.S. government spending outside the U.S.

### **Multi-jurisdictional response is essential**

Several Korean companies and individuals have been investigated for price-fixing and bid-rigging in recent years. Traditionally, fuel, construction and maintenance have been key target industries, but U.S. enforcement actions could expand to other areas in light of the current administration's aggressive posture. Increasing U.S.-Korea cooperation in recent years could compound the risk for Korean companies, requiring a cross-border response.

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.

Potential Korean targets and their counsel should also take heed that U.S. enforcement and investigative dynamics often play out very differently from domestic actions, and the initial response to the U.S. government's preliminary inquiry often plays a critical role in shaping the rest of the investigation.

Facing these serious risks, Korean companies who may be under the U.S. government's radar would do well to seek the assistance of an international team of counsel who have deep knowledge in both U.S. government enforcement actions and the Korean corporate landscape.

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### **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:

# KOBRE & KIM

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.