



U.S., Korea Antitrust Enforcers on Watch for Bid-Rigging in USFK Defense Contracts

South Korean and U.S. antitrust regulators are joining forces, increasing the odds South Korean companies doing business with the U.S. Forces Korea (USFK) will fall under investigation. Our global antitrust team, based in Seoul and around the world, unpacks the dangers in their latest client alert.

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Two of the world's most active antitrust regulators, South Korea and the United States, are increasingly collaborating closely in cross-border matters. Recent pledges by the Biden administration to "vigorously" enforce antitrust violations have increased the odds of joint U.S.-Korean investigations into bid-rigging and other anticompetitive behavior for South Korean companies that conduct business with the U.S. Forces Korea (USFK).

These joint actions bring antitrust enforcement in Korea to a new scale, and Korean targets and their counsel will need to quickly adopt an aggressive, multi-jurisdictional defense.

U.S. Executive Order Signals "Vigorous" Antitrust Enforcement in Key Markets

An [Executive Order](#) signed by U.S. President Biden in July 2021 ushered in an era of vigorous antitrust enforcement, setting competition-law priorities for regulators such as the U.S. Department of Justice (DOJ) that will likely bear global implications beyond U.S. national borders.

Among the numerous key industries called out in the Order is the defense industry. Specifically, the U.S. Department of Defense (DOD) has been directed to conduct a review of the state of competition within the U.S. defense industrial base and make recommendations on how to improve the solicitation process within 180 days of the Order's signing, or early January 2022. This will likely put defense contractors operating in key markets around the world, such as Korea, under the microscope with regards to their solicitation practices and processes.

U.S. and Korean antitrust enforcement collaboration on the rise

As the Biden administration indicates a re-invigoration of its antitrust enforcement priorities, it should not come as a surprise if a similar pattern emerges in Korea. After all, not only are U.S. and Korean antitrust enforcers among the world's most active regulators, but they are also have increasingly partnered on cross-border investigations and enforcement actions.

The DOJ's frequent actions against South Korean construction companies conducting businesses with the USFK is a hot spot for U.S.-Korea antitrust enforcement collaboration: In particular, we have seen cases where Korean prosecutors, in conjunction with U.S. Army Criminal Investigation Division (CID), charged seven South Korean construction companies without detention accusing them of bid rigging on USFK construction contracts, reeling in over US \$43.9 million. Given the current antitrust enforcement climate in these countries, it should not come as a surprise if similar cases come to pass in the months to come.

Preparing for simultaneous U.S.-Korean bid-rigging investigations

With these highly active U.S. and South Korean antitrust enforcers closely monitoring anticompetitive behaviors by construction companies operating in Korea, it is no longer unusual to see a local bid rigging allegation become a major cross-border antitrust litigation.

For example, while KFTC does not automatically refer U.S. defense contractor investigations to the DOJ, if it finds that there is a potential harm to the operations of USFK, KFTC may notify relevant branches of the U.S. Department of Defense, which in turn could prompt criminal and/or civil investigations by DOJ. Conversely, a DOJ investigation against a Korean company may trigger a KFTC investigation in South Korea.

The DOJ and KFTC approach criminal antitrust cases quite differently, including their enforcement mechanisms, the individual rights and the privileges they recognize. When these enforcers take collaborative antitrust actions, targets will require equally coordinated defense strategies – likely combining the knowledge of both Korea and U.S. antitrust specialists.

KOBRE & KIM

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, with extensive experience representing clients in antitrust investigations alleging price-fixing, anti-competitive behavior and cartel activity by regulators such as the U.S. Department of Justice and the U.S. Federal Trade Commission, often in conjunction with non-U.S. authorities. With former U.S. government lawyers based in non-U.S. jurisdictions prone to antitrust enforcement actions, such as South Korea, our team brings deep experience in representing corporate clients in high-stakes antitrust enforcement matters involving overlapping stakeholders.

Led by former U.S. federal prosecutor and former U.S. army officer Michael Kim, our Korean Investigations team includes native Korean-speaking lawyers based out of our Seoul and U.S. offices focused on advising Korean parties on U.S. matters, with many having experience in the military and in handling contentious cases involving alleged construction bid rigging.

Additionally, we have extensive experience with South Korean regulatory authorities such as the KFTC and the Korean Public Prosecutors' Office.

Our firm maintains a conflict-free, special counsel model that is particularly suited to antitrust disputes that implicate multiple industry participants, allowing us to file amnesty applications when competing interests prevent other firms from acting.