

Korea Enhances Due Process Protections for Companies Subject to KFTC Investigations

MAY 19, 2020

The National Assembly of the Republic of Korea recently passed an amendment to the Monopoly Regulation and Fair Trade Act (MRFTA) meant to improve due process protections for companies under investigation by the Korea Fair Trade Commission (KFTC) (see [KFTC summary of the amendment](#)^[1]). If approved by President Moon Jae-in, the amendment will be promulgated and go into effect the following year.

The proposed changes address issues raised by the United States Trade Representative (USTR) in formal consultations with the Republic of Korea last July. The USTR [press release](#) following the consultations notes that the KFTC hearing process has “denied U.S. parties certain rights, including the opportunity to review and rebut the evidence against them,” in non-compliance with the United States-Republic of Korea Free Trade Agreement. The amendment to the MRFTA appears to remedy some of these procedural concerns, three of which are detailed below.

First, the amendment increases the disclosure requirements for officials conducting dawn raids of corporate offices. Currently, officials conducting raids must present a certificate indicating their authority to conduct the investigation. If the amendment goes into effect, the certificate will also need to include the purpose, duration, and method of the investigation. (For more information about dawn raids you can listen to [Episode 6 of our Competition Corner Podcast](#), in which Winston Partners Jeffrey Amato and Molly Donovan discuss how to develop and implement a dawn-raid response plan).

Second, the KFTC had been denying companies’ requests for access to the evidence used to bring charges. The below change to Article 52(2) would grant respondents access with some limited exclusions:

PROPOSED CHANGES TO ARTICLE 52(2) RE PARTIES’ RIGHT TO REQUEST TO VIEW AND COPY DATA

CURRENT LAW

REVISED LAW

PROPOSED CHANGES TO ARTICLE 52(2) RE PARTIES' RIGHT TO REQUEST TO VIEW AND COPY DATA

Access is limited to materials “deemed necessary for the public interest or under the consent of the person providing such evidence.”

Respondent can access all data, excluding trade secret data, confidential leniency applications, or information protected by other laws.

Third, the amendment increases the KFTC’s obligations to provide notice of the results of its investigations. Under the current legislation, the KFTC must only give written notification of the outcomes of the investigation to the relevant parties. If the amendment takes effect, the KFTC will need to give written notice of the outcome of the investigation, as well as “the grounds for the decision, details of the decision, and the reasons thereof, even when it decides not to impose corrective measures (or cease the investigation).”

This amendment is one to watch for defense counsel in global cartel situations that involve Korea. We will provide further developments as events unfold.

[1] The text of the amendment has not yet been translated into English.

2 Min Read

Author

[Jeffrey J. Amato](#)

Related Locations

New York

Related Topics

Antitrust Intelligence

Cartels

Government Enforcement

International Antitrust

Related Capabilities

Antitrust/Competition

Related Regions

Asia

Related Professionals



Jeffrey J. Amato

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.