The Merger Control Review

Third Edition

Editor

Ilene Knable Gotts

Law Business Research

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EDITOR'S PREFACE

Perhaps one of the most successful exports from the United States has been the adoption of mandatory pre-merger competition notification regimes in jurisdictions throughout the world. Although adoption of pre-merger notification requirements was initially slow – with a 13-year gap between the enactment of the United States' Hart-Scott-Rodino Act in 1976 and the adoption of the European Community's merger regulation in 1989 – such laws were implemented at a rapid pace in the 1990s, and many more were adopted and amended during the past decade. China and India have just implemented comprehensive pre-merger review laws, and although their entry into this forum is recent, it is likely that they will become significant constituencies for transaction parties to deal with when trying to close their transactions. Indonesia also finally issued the government regulation that was needed to implement the merger control provisions of its Antimonopoly Law. Many of the jurisdictions that were 'early adopters' have either refined their processes and procedures in substantial ways or have proposals pending to do so, typically to conform their regime with the pre-merger regimes of other jurisdictions (e.g., Brazil, Canada and the UK). This book provides an overview of the process in each of the jurisdictions as well as a discussion of recent decisions, strategic considerations and likely upcoming developments in each of these. The intended readership of this book comprises both in-house and outside counsel who may be involved in the competition review of cross-border transactions.

As shown in further detail in the chapters, some common threads in institutional design underlie most of the merger review mandates, although there are some outliers as well as nuances that necessitate careful consideration when advising clients on a particular transaction. Almost all jurisdictions either already vest exclusive authority to transactions in one agency or are moving in that direction (e.g., Brazil, France and the UK). The US and China may end up being the outliers in this regard. Most jurisdictions provide for objective monetary size thresholds (e.g., the turnover of the parties, the size of the transaction) to determine whether a filing is required. Germany provides for a *de minimis* exception for transactions occurring in markets with sales of less than €15 million. There are a few jurisdictions, however, that still use 'market share' indicia (e.g., Bosnia

and Herzegovina, Colombia, Lithuania, Portugal, Spain, Ukraine and the UK). Most jurisdictions require that both parties have some turnover or nexus to their jurisdiction. But, there are some jurisdictions that take a more expansive view. For instance, Turkey recently issued a decision finding that a joint venture ('JV') that produced no effect on Turkish markets was reportable because the JV's products 'could be' imported into Turkey. Germany also takes an expansive view, by adopting as one of its thresholds a transaction of 'competitively significant influence'. Although a few merger notification jurisdictions remain 'voluntary' (e.g., Australia, Singapore, the UK and Venezuela), the vast majority impose mandatory notification requirements.

Almost all jurisdictions require that the notification process be concluded prior to completion (e.g., pre-merger, suspensory regimes), rather than permitting the transaction to close as long as notification is made prior to closing. Many jurisdictions can impose a significant fine for failure to notify before closing even where the transaction raises no competition concerns (e.g., Austria, the Netherlands, Romania, Spain and Turkey). Some jurisdictions impose strict time frames by which the parties must file their notification. For instance, Cyprus requires filing within one week of signing of the relevant documents and agreements; Brazil requires that the notification be made within 15 business days of execution of the agreements; and Hungary and Romania have a 30-calendar-day time limit from entering into the agreement for filing the notification. Some jurisdictions that mandate filings within specified periods after execution of the agreement also have the authority to impose fines for 'late' notifications (e.g., Bosnia and Herzegovina and Serbia) for mandatory pre-merger review by federal antitrust authorities.

Most jurisdictions more closely resemble the European Union model than the US model. In these jurisdictions, pre-filing consultations are more common (and even encouraged), parties can offer undertakings during the initial stage to resolve competitive concerns, and there is a set period during the second phase for providing additional information and for the agency to reach a decision. In Japan, however, the Japanese Federal Trade Commission ('JFTC') announced in June 2011 that it would abolish the prior consultation procedure option. When combined with the inability to 'stop the clock' on the review periods, counsel may find it more challenging in transactions involving multiple filings to avoid the potential for the entry of conflicting remedies or even a prohibition decision at the end of a JFTC review. Some jurisdictions, such as Croatia, are still aligning their threshold criteria and process with the EU model. There remain some jurisdictions even within the EU that differ procedurally from the EU model. For instance, in Austria the obligation to file can be triggered if only one of the involved undertakings has sales in Austria as long as both parties satisfy a minimum global turnover and have a sizeable combined turnover in Austria.

The role of third parties also varies across jurisdictions. In some jurisdictions (e.g., Japan) there is no explicit right of intervention by third parties, but the authorities can choose to allow it on a case-by-case basis. In contrast, in South Africa, registered trade unions or representatives of employees are even to be provided with a redacted copy of the merger notification and have the right to participate in Tribunal merger hearings and the Tribunal will typically permit other third parties to participate. Bulgaria has announced a process by which transaction parties even consent to disclosure of their confidential information to third parties. In some jurisdictions (e.g., Australia, the EU and Germany), third parties may file an objection against a clearance.

In almost all jurisdictions, once the authority approves the transaction, it cannot later challenge the transaction's legality. The US is one significant outlier with no bar for subsequent challenge, even decades following the closing, if the transaction is later believed to have substantially lessened competition. Canada, in contrast, provides a more limited time period for challenging a notified transaction.

As discussed below, it is becoming the norm in large cross-border transactions raising competition concerns for the US, EU and Canadian authorities to work closely with one another during the investigative stages, and even in determining remedies, minimising the potential of arriving at diverging outcomes. Regional cooperation among some of the newer agencies has also become more common; for example, the Argentinian authority has worked with that in Brazil, and Brazil's CADE has worked with Chile and with Portugal. Competition authorities in Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Serbia, Montenegro and Slovenia similarly maintain close ties and cooperate on transactions. In transactions not requiring filings in multiple EU jurisdictions, Member States often keep each other informed during the course of an investigation. In addition, transactions not meeting the EU threshold can nevertheless be referred to the Commission in appropriate circumstances. In 2009, the US signed a memorandum of understanding with the Russian Competition Authority to facilitate cooperation; China has 'consulted' with the US and EU on some mergers and entered into a cooperation agreement with the US authorities in 2011, and the US has also announced plans to enter into a cooperation agreement with India.

Minority holdings and concern over 'creeping acquisitions', in which an industry may consolidate before the agencies become fully aware, seem to be gaining increased attention in many jurisdictions, such as Australia. Some jurisdictions will consider as reviewable acquisitions in which only 10 per cent interest or less is being acquired (e.g., Serbia for certain financial and insurance mergers), although most jurisdictions have somewhat higher thresholds (e.g., Korea sets the threshold at 15 per cent of a public company and otherwise 20 per cent of a target; and Japan and Russia, at any amount exceeding 20 per cent of the target). Jurisdictions will often require some measure of negative (e.g., veto) control rights, to the extent that it may give rise to *de jure* or *de facto* control (e.g., Turkey).

Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously. China, for instance, in 2009 blocked the Coca-Cola Company's proposed acquisition of China Huiyuan Juice Group Limited and imposed conditions on four mergers involving non-Chinese domiciled firms. In *Phonak/ReSound* (a merger between a Swiss undertaking and a Danish undertaking, each with a German subsidiary), the German Federal Cartel Office blocked the merger worldwide even though less than 10 per cent of each of the undertakings was attributable to Germany. Thus, it is critical from the outset for counsel to develop a comprehensive plan to determine how to navigate the jurisdictions requiring notification, even if the companies operate primarily outside some of the jurisdictions.

For transactions that raise competition issues, the need to plan and to coordinate among counsel has become particularly acute. As discussed in the last chapter, it is no longer prudent to focus merely on the larger mature authorities, with the expectation that other jurisdictions will follow their lead or defer to their review. In the current

environment, obtaining the approval of jurisdictions such as China and Brazil can be as important as the approval of the US or EU. This book should provide a useful starting point in this important aspect of any cross-border transaction being contemplated in the current enforcement environment.

Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz
New York
July 2012

Chapter 27

KOREA

Sai Ree Yun, Seuk Joon Lee, Cecil Saehoon Chung and Kyoung Yeon Kim[1]

I INTRODUCTION

The Monopoly Regulation and Fair Trade Act ('MRFTA') is the primary antitrust statute and governs the merger control process in Korea. Under the MRFTA, the Korea Fair Trade Commission ('KFTC') is the government agency that oversees the merger control process in Korea.[2] Article 7(1) of the MRFTA sets forth the types of transactions (i.e., business combinations) for which a merger filing with the KFTC may be required. In addition, Article 12 of the MRFTA sets forth transactions that trigger a pre-merger filing requirement and those that trigger a post-merger filing requirement.[3]

In general, whether a merger filing is required under the MRFTA is examined under two jurisdictional tests: the size-of-transaction test and the size-of-party test. Whereas the size-of-transaction test applies only to certain types of transactions, the size-of-party test applies to all transactions. Under the MRFTA, there are five types of transactions: (1) interlocking directorate; (2) merger; (3) share acquisition; (4) business transfer, i.e., asset acquisition; and (5) formation of a new company (e.g., a joint venture). Among these five types of transactions, interlocking directorates and mergers are not subject to the size-of-transaction test.

On the other hand, the size-of-transaction test applies to share acquisitions, certain business transfers, and the formation of a new company. With respect to a share acquisition, the size-of-transaction test is satisfied if: (1) the number of shares acquired pursuant to the proposed transaction is 20 per cent or more of the total issued and

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outstanding voting shares of the target company (or 15 per cent if the target company is publicly traded); or (2) the acquirer becomes the largest shareholder of the target company pursuant to the proposed transaction. In case of the establishment of a new joint venture company, the size-of-transaction test is satisfied if the acquirer acquires 20 per cent or more of the total issued and outstanding voting shares of the joint venture company. A business transfer involving the transfer of only a portion, not all, of the business at issue is also subject to the size-of-transaction test, which is satisfied if the value of the business transfer is (1) 5 billion won or more, or (2) 10 per cent or more of the total assets of the transferor according to its financial statements at the end of the most recent fiscal year. It should be noted that a business transfer involving the transfer of all of the business at issue is not subject to the size-of-transaction test.

Even if a proposed transaction meets the size-of-transaction test, a merger filing with the KFTC is not required unless each of the relevant parties meets the size-of-party test. The size-of-party test is satisfied if (1) either party to the transaction has consolidated worldwide assets or sales of 200 billion won or more during the most recently ended fiscal year, and (2) the other party to the transaction has consolidated worldwide assets or sales of 20 billion won or more during the most recently ended fiscal year. These two thresholds (i.e., 200 billion and 20 billion) have been established by the Enforcement Decree of the MRFTA.[4]

In addition, a local nexus test applies to a transaction where (1) both parties to the transaction are foreign entities, or (2) the party with the filing obligation is a Korean entity and the counterparty is a foreign entity. Where both parties to a transaction are foreign entities (i.e., as in a foreign-to-foreign transaction), the local nexus test is satisfied if each party has Korean sales of 20 billion won or more during the most recently ended fiscal year. Where the counterparty to the party with the filing obligation is a foreign entity, the local nexus test is satisfied if the foreign counterparty has Korean sales of 20 billion won or more during the most recently ended fiscal year.

However, a transaction that satisfies the jurisdictional and local nexus tests need not be reported to the KFTC if it qualifies for an exemption under the MRFTA. The three most notable exemptions are (1) an interlocking directorate between affiliates, (2) a share acquisition of which the parties are all specially related persons (i.e., affiliates), and (3) a transaction where either the acquirer or the target is an investment company or a fund that satisfies certain conditions.

Where a transaction satisfies the jurisdictional and local nexus tests and does not qualify for an exemption, a pre-merger or post-merger filing with the KFTC is required. A pre-merger filing is required for a merger, business transfer, share acquisition or establishment of a new company where either the acquirer or the target has consolidated worldwide assets or sales of at least 2 trillion won. However, in a business transfer transaction, the assets or sales of affiliates are not included in calculating the assets or sales of the target. For all other transactions, a post-merger filing is required. A pre-merger filing may be made any time between the execution of the transaction agreement

4 Under a 2008 amendment to the Enforcement Decree, the thresholds were raised to the current figures to ease regulatory burdens faced by companies undergoing business combinations.

and prior to the closing date as long as the KFTC's clearance is obtained prior to the closing date. If the parties to a transaction close the transaction prior to the KFTC's clearance (e.g., gun jumping), they may be subject to an administrative fine imposed by the KFTC. Furthermore, the KFTC may also review a transaction on its own initiative even where the transaction does not satisfy the jurisdictional and local nexus tests if it determines that the proposed transaction may have a significant impact on the Korean market.

If the parties to a transaction fail to file a merger notification in violation of the Korean merger regulations, they are subject to a maximum fine of 100 million won under Article 69-2(1) of the MRFTA. The specific amount of a fine imposed by the KFTC is determined in accordance with the Guidelines on Standards of Imposition of Fines for Violation of Rules on Business Combination Notification.

With respect to merger filing and review, the applicable statutes, regulations, and guidelines are as follows:

a the MRFTA and the Enforcement Decree to the MRFTA;
b the Guidelines on Methods of Business Combination Notification;
c the Guidelines on Standards of Business Combination Examination;
d the Guidelines on Standards of Imposition of Fines for Violation of Rules on Business Combination Notification;
e the Guidelines on Standards of Imposition of Corrective Order Regarding a Business Combination; and
f the Guidelines on Imposition of Fines for Non-Performance of a Corrective Order Regarding a Business Combination.

II YEAR IN REVIEW

In 2011, the KFTC reviewed a total of 543 merger cases, which is an 8.8 per cent increase from 2010. Of the 543 cases, 431 (approximately 79.4 per cent) were transactions between Korean corporations. The remaining 112 (or 20.6 per cent) cases were transactions reported by foreign corporations.

In two of the 543 merger cases, the KFTC imposed corrective measures. Both cases were horizontal mergers. In each case, the KFTC concluded that the merger at issue would restrain competition in the relevant market. In one of the two cases, the KFTC imposed a behavioural remedy. In the other case, the KFTC imposed a structural remedy.

The first of the two cases concerned the acquisition of Dongseo Digital Broadcasting by T-Broad Nakdong Broadcasting. As a result of the acquisition, T-Broad's market share increased to 88.1 per cent in the cable broadcasting market for western districts of Busan, the second most populous city in Korea. Because of the resulting *de facto* monopoly of T-Broad in the regional market at issue, the acquisition was presumed

to restrain competition in the relevant market under Article 7(4)(1) of the MRFTA.[5] Despite this presumption, the KFTC cleared the acquisition in consideration of the fact that there was growing competition between cable broadcasting and other types of digital broadcasting services including satellite broadcasting and IPTV services. However, to protect consumers of analogue broadcasting services, the KFTC imposed a behavioural remedy that included restrictions on raising the subscription fee for service packages including analogue broadcasting services.

The second case involved the acquisition of Viviti Technology Ltd (formerly Hitachi GST) by Western Digital Corporation. Before the acquisition, Western Digital had the second largest market share in the worldwide market for hard disk drives ('HDD') and Hitachi GST had the third largest market share in the same market. Although the acquisition did not trigger the presumption of restraint on competition, the KFTC concluded that the acquisition was likely to have an anti-competitive effect on the HDD market because it resulted in a two-competitor market for desktop and personal-use HDD. Hence the KFTC imposed a structural remedy including sale of assets relating to HDD production. This case is particularly noteworthy because it is the first time since the *Owens-Corning/Saint Gobain Vetrotex* merger case in 2007 that the KFTC imposed a remedy in a foreign-to-foreign transaction.

In contrast to its decision in the *Hitachi GST* acquisition, the KFTC cleared a similar transaction between Samsung Electronics and Seagate without imposing any conditions even though the same worldwide HDD market was at issue. In this transaction, Seagate acquired Samsung's HDD business. As a result, Seagate came to possess the second largest market share in the worldwide HDD market. Nevertheless, the KFTC concluded that this transaction would not have any anti-competitive effect because (1) Samsung's presence in the relevant market was negligible, and (2) Samsung did not directly compete with Seagate.

Meanwhile, in 2011, the KFTC continued to actively sanction companies that violated the Korean merger notification regulations. More specifically, the KFTC imposed total administrative fines of 84 million won with respect to 18 transactions. Of the 18, three were foreign-to-foreign transactions for which the total administrative fines imposed amounted to 34 million won.

5 Under Article 7(4)(1) of the MRFTA, a merger is presumed to restrain competition if after the merger (1) the acquirer is the competitor with the greatest market share in the relevant market, (2) the acquirer's market share is or greater than 50 per cent, or the sum of the market shares of the top three competitors including the acquirer is 75 per cent or greater, and (3) the difference between the market share of the acquirer and that of the entity with the second largest market share is 25 per cent of or greater than the sum of market shares of the acquirer and the target. Where a merger is presumed to restrain competition under Article 7(4)(1), the parties to the merger carry the burden of proving that the merger will not restrain competition in the relevant market.

III THE MERGER CONTROL REGIME

The waiting period for the KFTC merger control review varies depending on the type of merger filing method employed. The MRFTA provides a 15-day waiting period, in principle, for the following types of transactions that may take advantage of the simplified review process:

a transactions between affiliates;

b transactions that do not form any dominant relationship (within the target);

c conglomerate mergers by a small- or medium-sized companies (i.e., companies that do not belong to a business group whose consolidated total assets or turnover amount is 2 trillion won or more);

d a conglomerate merger where no product or service substitutability exists between the parties due to the particular nature of the relevant market;

e participation in the establishment of a private equity fund or transaction involving an asset-backed securitisation company; and

f transactions that achieve low levels of market concentration in the post-transaction market.[6]

The waiting period for the ordinary pre-merger filing is 30 days from the date of filing of notification, but the KFTC may, on its own initiative, extend the waiting period for an additional 90 days, if necessary. The current practice of the KFTC is that, if the KFTC views the case as having no competition restraining effect, it usually clears the transaction within one month (or two months in certain cases) from the date of filing of notification.

With respect to confidentiality issues, the materials submitted at the time of filing of notification and thereafter to the KFTC are protected from disclosure to third parties. If a third party requests for access to or a copy of such materials, the KFTC must obtain the prior consent of the submitting parties. The submitting parties are recommended to insert a statement in the notification to such effect.

The KFTC is permitted to impose several remedies if it views that the transaction restrains competition. Under Article 16(1) of the MRFTA, the KFTC may prohibit the relevant transaction altogether, order the total or partial disposal of assets, restrict the scope or method of operation of the relevant entity, order the resignation of relevant directors, order the transfer of business, order the relevant parties to disclose the fact that they have received the corrective order, and any other necessary measures.[7] If the parties fail to comply with the corrective measures, the KFTC may impose a penalty of not more than 0.03 per cent of the relevant amount of transaction per day[8] pursuant to Article

6 Such cases are, for example, where the Herfindahl-Hirschman Index ('HHI') in the horizontal business combination is less than 1200, the HHI is between 1200 and 2500 but the resulting increase in the HHI is less than 250, or the HHI is 2500 or more but the resulting increase in the HHI is less than 150

7 On June 22, 2011, the KFTC announced its standard for merger remedies, in which it highlighted its preference for structural remedies over behavioural remedies in merger cases.

8 For example, the value of the relevant business combination refers to the aggregate amount of value of acquired shares and debts in the case of a share acquisition and the value of the relevant

17-3 of the MRFTA. Further, under Article 67(6) of the MRFTA, failure to comply with corrective measures is punishable by a prison sentence of up to two years or a criminal fine not exceeding 150 million won.

In certain cases, the parties may apply for reconsideration of the KFTC's decision to the KFTC or appeal the KFTC's decision (or reconsidered decision if the parties had applied for reconsideration) to the Seoul High Court. Both options may be instituted simultaneously. The application for reconsideration must be made within 30 days from the issuance of the KFTC's written decision. The KFTC is required to reconsider its decision within 60 days from the date of receipt of application pursuant to Article 53 of the MRFTA. The relevant parties may also file an appeal before the Seoul High Court within 30 days from the issuance of the KFTC's written decision or reconsidered decision. The Seoul High Court's decision may be appealed to the Supreme Court.

Where the transaction falls under the ambit of responsibilities of other government agencies such as the Korean Communications Commission or the Financial Services Commission under the relevant statutes such as the Electrical Communications Business Act or the Financial Industry Structure Improvement Act, Article 12(4) of the MRFTA provides that the merger filing requirements under Article 12(1) of the MRFTA are not applicable to the relevant transaction.[9] These transactions do not, however, entirely avoid the review of the KFTC because those other government agencies are still required, under Article 12(4), to discuss and consult with the KFTC regarding the potential competition restraining effect of the relevant transaction during the review process.

IV OTHER STRATEGIC CONSIDERATIONS

When making worldwide merger filings in various countries including Korea, the parties need to consider specific merger filing thresholds and waiting periods for each country. For example, as explained above, Korea imposes the merger filing obligation for the establishment of a joint venture company if it satisfies the jurisdictional and local nexus tests. As a result, where both parents of the joint venture are foreign entities, if they satisfy not only the size-of-transaction and size-of-party tests but also the local nexus test, which requires both foreign entities to achieve turnover or sales in Korea of 20 billion won or more, the transaction must be filed with the KFTC.

With respect to foreign-to-foreign transactions, in December 2011, the KFTC issued a manual on cooperation with foreign competition authorities in reviewing cross-border mergers subject to notification in multiple jurisdictions. It provides for a greater degree of cooperation with major competition authorities around the world, including establishment of a cooperation system and the exchange of relevant information and opinions on market definition, analysis of anti-competitive effects and proposed corrective measures regarding the transaction at issue among the concerned jurisdictions.

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businesses in the case of a business transfer.

9 Article 12(4) of the MRFTA reads as follows: 'The provisions of Article 12(1) shall not apply if the head of the (other government) administrative agency concerned has consulted in advance with the KFTC regarding the business combination under the relevant statutes.'

The parties to the transaction are recommended to submit as much relevant information as possible regarding the proposed transaction and the relevant market at the time of filing in order to reduce the waiting period. If the parties wish to find out the KFTC's position on the competitive effect of the proposed transaction earlier than the typical notification period, they may apply for the discretionary advanced filing procedure under Article 12(8) of the MRFTA. Under this procedure, the parties may be permitted to make a merger filing even prior to the execution of the relevant agreement as long as they submit sufficient information about the proposed transaction. Under the procedure, the relevant parties will be required to make a formal re-notification after the execution of the agreement. However, such re-notification only needs to be brief and the KFTC usually takes about a week to review the formal re-notification and confirm that no material change has been made to the details of the proposed transaction explained in the discretionary advanced filing. This procedure would be useful for parties wishing to close the proposed transaction shortly after the execution of the agreement.

Lastly, it is worthwhile to note that the failing firm defence is available in Korea and the parties may request an expedited review if the filing specifies that the relevant target entity is facing bankruptcy. However, the requirements to avail oneself of such defence are very strict.

V OUTLOOK AND CONCLUSIONS

The most recent proposed amendments to the MRFTA aimed at improving the Korean merger control regime died when the 18th session of the Korean National Assembly ended. The proposed amendments sought to ease the filing threshold for interlocking directorates and special-purpose companies. For example, the proposed amendments sought to exempt from the filing requirement interlocking directorates involving less than one-third of the total number of directors of the relevant company and transactions with special purpose companies. The KFTC is expected to promote a bill seeking similar changes to the MRFTA in the next session.

Meanwhile, in March 2012, the KFTC issued its first-ever non-binding but informative handbook on merger filing to help answer frequently asked questions about the merger notification requirements. In line with this recent effort to enhance the transparency of its merger review process, the KFTC is expected to issue by June 2012 clarifications on the substance and form of the information to be included in a merger filing. Among the expected clarifications are more detailed explanations of the filing obligation in complex transactions including: (1) multiple successive mergers, and (2) situations where a single transaction results in multiple mergers. The clarifications will also address the scope of Korean sales recognised as such with respect to a foreign entity. Furthermore, the clarifications will establish new exemptions from the pre-merger filing obligation.

Appendix 1

ABOUT THE AUTHORS

SAI REE YUN

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Mr Yun, a founding partner of Yulchon, is a co-head of the firm's corporate group and a member of the firm's executive committee. Mr Yun practises primarily in the areas of corporate (with emphasis on M&A), antitrust, tax, and governmental relations. Before founding Yulchon, Mr Yun was a prosecutor with the Pusan District Prosecutor's Office, an associate with the law firms of Lee & Ko and Baker & McKenzie (Chicago and New York), and a partner at Yoon & Partners.

Mr Yun has written many articles for various publications, including 'Regulation of Business Combinations under the Antimonopoly and Fair Trade Act with Emphasis on Case Law, Journal of Korean Law' (2002), 'Tax Aspects of Derivative Financial Instruments' for the 49th Congress of the International Fiscal Association (1995) and 'Transfer Pricing for South Korea' published in CCH International Transfer Pricing Laws (1994).

Mr Yun has given lectures at both the Judicial Research and Training Institute and Seoul National University Law School. He has served as outside legal adviser to various government agencies such as the Korea Fair Trade Commission (the KFTC) and the Ministry of Trade, Industry, and Energy, and was a member of the Competition Policy Advisory Board for the KFTC. Also, Mr Yun has been on the Legal Advisory Committee of the Korean Broadcasting Commission, and was a Technical Adviser for the Tax Policy Review Council for the MOFE.

In recent years, Mr Yun was selected as one of the world's leading M&A lawyers by the *International Financial Law Review*, as a Practical Law Company cross-border mergers and acquisitions leading lawyer, as a *Chambers Global* leading banking and finance/corporate lawyer, as a *Global Competition Review* leading (competition) lawyer and as one of Asia's leading (competition) lawyers by AsiaLaw. He has been selected by *Who's Who Legal* as a leading competition lawyer every year since 2004. Additionally, Mr Yun has received a Prime Minister's Award for antitrust administration and a Deputy

Prime Minister's Award for tax administration. Mr Yun has also been chosen as a leading lawyer of 2009 by the *International Financial Law Review 1000*.

Mr Yun has successfully represented numerous major corporations, including AMD, Bridgestone Corporation, the Carlyle Group, Citigroup, Daum Communications, GE, Goldman Sachs, Hyundai Capital, Hyundai Merchant Marine, Hyundai Motors, LG Philips LCD, Lotte Shopping, LVMH, RealNetworks, Samsung Electronics, Samsung Life Insurance, SK Corporation, and SK Telecom.

SEUK JOON LEE

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Mr Seuk Joon Lee is a senior foreign counsel and co-vice chair of the antitrust practice group at Yulchon, and primarily practises in the areas of antitrust, medicine and pharmaceutical and broadcasting and telecommunications. At Yulchon, Mr Lee has handled antitrust matters in all practice areas including cartels, merger reviews, abuses of market dominance and unfair trade practices. For example, Mr Lee has successfully represented many companies in domestic and international cartels involving products and services such as LPG, air cargo, marine hoses, copy paper, beverages, life insurance and credit rating services. He also successfully represented many international and domestic companies in the merger review case including Texas Instrument's acquisition of National Semiconductor, Lotte Shopping's acquisition of GS Mart, to name just a few.

As the head of Yulchon's Health Care Practice Team, Mr Lee also successfully represented many prominent Korean and international pharmaceutical companies regarding antitrust issues including unfair trade practices.

Prior to joining Yulchon in 2006, Mr Lee spent over 21 years working for government agencies such as the Korea Fair Trade Commission ('KFTC'), the Economic Planning Board and the Ministry of Information and Communication. At the KFTC, he held major positions such as Director of the Investigation Division, Director of the Labelling and Advertising Division, Director of the Business Group Division, Director of the Competition Promotion Division and Director of the Monopoly Regulation Division. At the KFTC, he took a leading role in investigating many historically important antitrust cases in Korea, including the abuse of market dominance cases of Microsoft, Intel and Qualcomm. In addition, Mr Lee took a prominent role in the development of fair trade policies and the revisions of the Monopoly Regulation and Fair Trade Act ('MRFTA') and relevant regulations, in particular as they relate to large Korean conglomerates, i.e., chaebols.

Mr Lee has published many articles including 'Comparative Study on Regulation of Market Dominance in the US and EU' (*Competition Journal* No. 129, 2006), 'Analysis of Settlement System of Competition Law Cases' (*Competition Journal* No. 133, 2007), 'Study on Improvement of Holding Company System under the MRFTA' (*Competition Journal* No. 134, 2007), 'Comparative Analysis of Court Rulings and the KFTC's Decisions Concerning Business Combinations in the Retail Industry' (*Competition Journal* No. 141, 2008), 'Relationship between Cartel Damage Claim Suits and Leniency Status' (*Competition Journal* No. 142, 2009), 'Recognition of Leniency Status for Companies under the Common Control' (*Competition Journal* No. 143, 2009), 'Comparative Study on the US and EU Regulation Concerning Price Squeezes

of Vertical Integrated Companies' (*Competition Journal* No. 144, 2009), and 'Review on Competition Law Issues in Online Distributors' Business Combinations' (*Competition Journal* No. 145, 2009).

Mr Lee received his JD from Syracuse Law School in 1999 and a Masters degree in accounting from Syracuse University Graduate School of Management in 2000. He is licensed as a lawyer in New York (2000) and an AICPA in New York (2001).

CECIL SAEHOON CHUNG

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Mr Cecil Saehoon Chung is a senior foreign counsel at Yulchon. As co-vice chair of the Antitrust Practice Group and Head of the International Antitrust Team, Mr Chung handles all aspects of antitrust, consumer protection and trade regulation litigation and counseling matters covering diverse industries, with a particular emphasis on international antitrust.

Mr Chung has practised law for more than 20 years, primarily focusing on antitrust, trade regulation, consumer protection, and intellectual property. In his antitrust practice, Mr Chung has handled numerous criminal grand jury investigations, civil class action cases, regulatory merger and non-merger investigation/litigation matters, and consumer protection matters. Mr Chung also has extensive experience in handling intellectual property issues, both straightforward patent infringement litigation and licensing matters and also in the context of the antitrust and IP interface.

Prior to joining Yulchon in 2012, Mr Chung was an antitrust partner at two global law firms (Pillsbury Winthrop and Greenberg Traurig) in Washington, DC, where he handled numerous multi-billion dollar merger transactions, 'bet-the-company' litigation matters, and various counseling matters involving antitrust, trade regulation, consumer protection, intellectual property, and other legal issues in diverse industries. For example, Mr Chung handled merger matters such as Chevron's $43 billion acquisition of Texaco, SBC Communications Inc's (now AT&T) $17 billion acquisition of Pacific Telesis, Chevron Chemical's $7 billion joint venture with Phillips Chemical. In the non-merger antitrust areas, among other matters, Mr Chung handled the DRAM matters (both civil and criminal), vitamin C antitrust litigation, and brand-name prescription drugs antitrust litigation.

From 1988 to 1995 Mr Chung was a litigation attorney in the Bureau of Competition at the US Federal Trade Commission, where he investigated and challenged numerous merger transactions and non-merger antitrust violations in the energy, chemical, food, telecommunications and IT industries. In the process, Mr Chung handled matters such as KKR's LBO of RJR Nabisco, Phillip Morris's acquisition of Kraft, Adobe's acquisition of Aldus, Panhandle and Texas Eastern's natural gas pipeline merger matter, and ConAgra's acquisition of Beatrice. In addition, Mr Chung was a principal member of the FTC's trial team that successfully challenged BAT's acquisition of American Tobacco in the federal district court.

Mr Chung has written and lectured extensively on various antitrust, consumer protection and other legal issues. He regularly provides antitrust compliance counseling and training to clients in various industries. Furthermore, since 1997 Mr Chung has

advised and assisted the Korea Fair Trade Commission to modernise its antitrust and consumer protection enforcement program.

Mr Chung received his BS in Economics from the Wharton School, University of Pennsylvania in 1995 and JD from Cornell Law School in 1988. He is a member of the California and District of Columbia bars.

KYOUNG YEON KIM

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Ms Kyoung Yeon Kim is a partner at Yulchon who practises primarily in the areas of antitrust, mergers and acquisitions, corporate general, and TMT matters. She joined Yulchon as an associate in 2001 and was made a partner in 2009.

Ms Kim also worked on secondment at Cleary Gottlieb Steen & Hamilton's Hong Kong office from 2007 to 2008.

Ms Kim has published many articles including 'Analysis on the Unfair Subsidization of Person Controlling Group Companies' (*Competition Case Law Review*, Vol 4, 2007), 'Legal Review on the Plan for Establishment of Holding Company,' (*Holding Company and Law*, edited by Kon Sik Kim and Hyeok Joon Roh, 2005, co-authored), 'M&A Review Guidelines under Korean Competition Law,' (*Journal of Korean Competition Law*, Vol 11, Korean Competition Law Association, 2005, co-authored) and 'Legal Issues Relating to the Mergers between Financial Institutions' (*Business Finance Law*, Vol 7, Business and Finance Center in Seoul National University, 2004, co-authored).

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