

# KOREA

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## 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.<sup>2</sup> 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. 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:

- a* interlocking directorate;
- b* merger;
- c* share acquisition;
- d* business transfer (i.e., asset acquisition); and
- e* formation of a new company (e.g., a joint venture).

Among these five types of transactions, interlocking directorates, mergers and the formation of a new company are not subject to the size-of-transaction test.

The size-of-transaction test applies to share acquisitions and certain business transfers. With respect to a share acquisition, the size-of-transaction test is satisfied if:

- a* the number of shares acquired pursuant to the proposed transaction is 20 per cent (or 15 per cent if the target company is a Korean entity and is publicly traded) or more of the total issued and outstanding voting shares of the target company; or
- b* the acquirer becomes the largest shareholder of the target company, holding 20 per cent (or 15 per cent if the target company is a Korean entity and is publicly traded) or more of the total issued and outstanding voting shares of the target company, pursuant to the proposed transaction.

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2 The mergers and acquisitions division of the KFTC is in charge of merger control matters. The contact information for the Mergers & Acquisitions Division of the KFTC is: 95 Dasom-3ro, Sejong, Korea; Tel: +82 44 200 4363; Fax: +82 44 200 4399; www.ftc.go.kr.

A business transfer involving the transfer of only a portion, and 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 5 billion won or more, or 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. On the other hand, 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 either party to the transaction had consolidated worldwide assets or sales of 200 billion won or more during the most recently ended fiscal year; and the other party to the transaction had 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 won) have been established by the Enforcement Decree of the MRFTA.<sup>3</sup>

In addition, a local nexus test applies to a transaction where both parties to the transaction are foreign entities, or where 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 had 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 had Korean sales of 20 billion won or more during the most recently ended fiscal year. When calculating a foreign entity's Korean sales, inter-group sales between the foreign affiliate and its Korean affiliates are excluded to avoid double counting.

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 for an interlocking directorate between affiliates, a share acquisition of which the parties are all specially related persons (i.e., affiliates), and 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. For a tender offer transaction, only a post-merger filing is required, even if the transaction satisfies the pre-merger filing requirement; specifically, the merger filing for a tender offer transaction must be made within 30 days after closing and does not trigger any waiting period.

A pre-merger filing may be made any time between the execution of the transaction agreement 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 (gun-jumping), they may be subject to an administrative fine imposed by the

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<sup>3</sup> 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.

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 of 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 a 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 2016, the KFTC reviewed a total of 646 transactions, which represents a 3.4 per cent decrease from 2015. (However, the total transaction value increased by 55.4 per cent from 381.9 trillion won in 2015 to 593.6 trillion won in 2016). Of these transactions, 490 (approximately 75.9 per cent) were Korean entities' acquisitions of Korean or foreign entities, while the remaining 156 transactions involved foreign entities' acquisitions of Korean or foreign entities. Of these 156 transactions, 47 were foreign companies' acquisitions of Korean entities, while the remaining 109 were foreign-to-foreign transactions that affected the Korean market, thus requiring merger filing in Korea.<sup>4</sup>

In 2016, the KFTC blocked a proposed transaction in the *SK Telecom/CJ Hellovision* case. It was the first KFTC's outright ban since the KFTC prohibited Essilor's proposed acquisition of Daemyung Optical in its entirety in 2014. SK Telecom entered into an agreement with CJ Hellovision in 2 November 2015 pursuant to which SK Telecom will acquire 30 per cent of CJ Hellovision's shares. On 1 December 2015, SK Telecom filed a merger notification with the KFTC. After reviewing the merger for eight months, the KFTC concluded that neither behavioural corrective measures nor structural corrective measures like partial divestiture of relevant assets will suffice to remedy an anticompetitive effect from the transaction and blocked the transaction in its entirety. More specifically, the KFTC pointed out that: (1) the combined market share of the merged entity in 21 cable franchise areas will range from 46.9 to 76 per cent, thereby diminishing competitive pressure in those markets; and (2) the acquisition by SK Telecom (MNO), a market dominant firm in the mobile communication market, of the CJ Hellovision(MVNO), a maverick in the mobile communication market, will aggravate the oligopolistic mobile communication market structure.

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<sup>4</sup> KFTC press release (28 February 2017), available in Korean at [www.ftc.go.kr/common/download.jsp?file\\_name1=/news/report/2017&file\\_name2=170302](http://www.ftc.go.kr/common/download.jsp?file_name1=/news/report/2017&file_name2=170302).

In the *Boehringer/Sanofi* merger case and *Abbott/St. Jude Medical* merger case, the KFTC granted conditional clearance with structural corrective measures, including requiring a divestiture of relevant assets.

On 26 June 2016, Boehringer Ingelheim International GmbH (BI), a multinational pharmaceutical company, entered into an agreement for the sale and purchase of Sanofi's Animal Health Business with Sanofi, to acquire Sanofi's animal health product business, and BI filed a merger notification with the KFTC on 5 July 2016. According to the KFTC competitive assessment, (1) the combined market share of the parties to the transaction in the Korean markets for swine circovirus vaccine (swine vaccines) and oral non-steroidal anti-inflammatory drugs (NSAIDs) for pet dogs will trigger the Korean merger control regime's anticompetitive effect presumption threshold, and (2) the acquisition by BI will strengthen the oligopoly in the relevant markets, practically suppressing competition. Therefore, the KFTC required either BI or Sanofi to divest all of the assets related to sales of swine circovirus vaccines and also oral NSAIDs for pet dogs in Korea.

In the *Abbott/St. Jude Medical* merger case, the KFTC determined that Abbott's acquisition of St. Jude Medical will increase the combined market share to 98.92 per cent in the small-hole vessel closure device market in Korea, increasing the possibility of unilateral price increase by the combined entity. Thus, the KFTC imposed a corrective measure requiring either Abbott or St. Jude Medical to divest and transfer to a third party all of the assets and contracts related to their small-hole vessel closure device businesses in Korea within 6 months from the consummation of the transaction.

In the *LAM Research/KLA Tencor* merger case, the KFTC viewed that the proposed transaction between LAM Research and KLA Tencor, integrating inspection and metrology equipment with process equipment business, will result in foreclosure of business opportunities for LAM Research's competitors. To remedy the anticompetitive effect in the semiconductor manufacturing equipment industry, the KFTC issued a statement of objection to impose remedies involving divestitures of KLA-Tencor's major five inspection and metrology tool businesses that are difficult to replace with competitors' products. Ultimately, the parties abandoned their merger plans.

In the four cases discussed above, the KFTC primarily opted for structural corrective measures, including divestitures, to remedy the likely anticompetitive effect of the proposed transactions. This reflects the KFTC's official position that it prefers structural remedies to behavioural measures to rectify the anticompetitive effect of a given transaction, and that behavioural remedies may also be imposed to support the structural remedies to ensure that the proposed transaction does not restrict competition. In addition, the KFTC is showing a tendency to gradually and concretely describe the procedures for structural remedies. This is an improvement over the past practices, and will help clarify the practical issues involved in the KFTC's devising (or the merging parties' suggesting) structural remedies and how the merging parties may comply with such remedies.

In 2016, the KFTC imposed fines amounting to 385.6 million won with respect to 19 transactions that were not reported or that were reported late. The figures represent a 18.8 per cent increase in the number of such 'failure to file' cases as compared with 2015, when the KFTC imposed 336.6 million won in fines with respect to 16 transactions that were not reported or that were reported late.

Other noteworthy KFTC merger cases in 2016 include the merger between Dell Inc and EMC. In this transaction, Dell Inc announced its plans to acquire EMC in 2015 and filed a merger notification in Korea in December 2015. Touted as the largest-ever M&A in the

technology sector, the *Dell/EMC* transaction raised questions on (1) potential anticompetitive effect in the external enterprise storage systems market where both parties overlap horizontally; and (2) the potential anticompetitive effect in the vertical relationship between Dell's server business and server virtualisation Software of VMware (EMC's subsidiary). Given the merging parties' extensive worldwide presence, the *Dell/EMC* transaction was notified in over 20 jurisdictions globally. At least partially due to the high-profile nature of the transaction, the KFTC conducted an extremely thorough investigation before granting unconditional clearance in April 2016.

### 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 Guidelines on Standards of Business Combination Examination provide a 15-day waiting period, in principle, for the following types of transactions that may qualify for the simplified review process:

- a* transactions between affiliates;
- b* transactions that do not form any controlling relationship (within the target);
- c* conglomerate mergers by small or medium-sized companies (i.e., companies that do not belong to a business group whose consolidated total assets or turnover amount to 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; or
- e* participation in the establishment of a private equity fund or transaction involving an asset-backed securitisation company.

In addition, under the recently revised KFTC Guidelines, the 15-day waiting period rule also applies when the acquiring party files a formal merger notification after the KFTC's review and provisional clearance of the parties' provisional merger notification,<sup>5</sup> provided that the facts and the market conditions have not materially changed since the KFTC's provisional clearance.

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 KFTC's current practice is that, if it views the case as having no effect of restraining competition, it usually clears the transaction within one month (or two months in certain cases) from the date of filing of the notification.

Meanwhile, the KFTC recently revised the Guidelines on Methods of Business Combination Notification, exempting companies that qualify for the simplified review process from submission of market status data. For a conglomerate merger, the KFTC simplified the reporting process by requiring the market status data for the top product only.

With respect to confidentiality issues, the materials submitted at the time of filing of the notification and thereafter to the KFTC are protected from disclosure to third parties. If a third party requests 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.

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<sup>5</sup> As described more fully below, the acquiring party may file a provisional merger notification form to obtain provisional clearance when there is not yet a binding merger agreement.

The KFTC is permitted to impose several remedies if it determines that the transaction restrains competition. Under Article 16(1) of the MRFTA, the KFTC may:

- a* prohibit the relevant transaction altogether;
- b* order the total or partial disposal of assets, shares, or both;
- c* restrict the scope or method of operation of the relevant entity;
- d* order the resignation of relevant directors;
- e* order the transfer of business;
- f* order the relevant parties to disclose the fact that they have received the corrective order; and
- g* any other necessary measures.<sup>6</sup>

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 day<sup>7</sup> pursuant to Article 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.<sup>8</sup> 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.

Meanwhile, the recently enacted statute commonly referred to as the 'One Shot Act,' which allows for pre-emptive business reorganisation before insolvency, contains special provisions concerning mergers. For instance, Article 9(5) of the Act simplifies the filing burden on businesses undergoing reorganisation as it allows a business filing for reorganisation to file a reorganisation plan including, where applicable, a merger notification, which the

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

7 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 businesses in the case of a business transfer.

8 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.'

government agency at issue must then forward to the KFTC. Furthermore, the KFTC under Article 10(7) of the Act must consider the views submitted by the government agency on any enhanced efficiencies resulting from the contemplated reorganisation or merger. However, the Act does not modify the substance of the merger control regime in any appreciable way.

#### **IV OTHER STRATEGIC CONSIDERATIONS**

When making worldwide merger filings in various countries, including Korea, parties need to consider the 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.

The KFTC in principle reviews the reportability of each transaction or step in a series of transactions that may constitute a 'single transaction' in other jurisdictions. As a result, an ancillary transaction (e.g., parties' joint establishment of a paper company or an acquisition vehicle) preceding a main transaction may require a separate merger filing in Korea even though it may be exempt from merger filing obligations in other jurisdictions. Thus, parties to a series of transactions should check at the very outset whether any of the transactions requires a separate merger filing in Korea.

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 the establishment of a cooperation system and the exchange of relevant information and opinions on market definition, analysis of anticompetitive effects and proposed corrective measures regarding the transaction at issue among the concerned jurisdictions.

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 or provisional filing procedure under Article 12(9) 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 file a formal re-notification after the execution of the agreement. However, such re-notification only needs to be brief, and as explained above, the recently revised Guidelines on Standards of Business Combination Examination provide that a shorter 15-day waiting period applies to review of the formal re-notification. This procedure would be useful for parties wishing to close the proposed transaction shortly after the execution of the binding merger agreement.

Finally, 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 & CONCLUSIONS

In a June 2016 report to the National Assembly of Korea, the KFTC emphasised (1) prevention of both monopoly and oligopoly by blocking anticompetitive M&As and (2) an active KFTC response to global M&As that will likely affect the domestic Korean market such as IT and semiconductor markets. In practice, the KFTC blocked the proposed *SK Telecom/CJ Hellovision* merger transaction. Moreover, it either imposed or planned to impose structural remedies in the *LAM Research/KLA Tencor*, *Boehringer/Sanofi* and *Abbott/St. Jude Medical* transactions.

Furthermore, the KFTC is strengthening inter-competition authority cooperation with foreign competition authorities, particularly in the assessment of global M&As. In particular, for the *LAM Research/KLA Tencor* case, the KFTC made clear that it closely cooperated and discussed the review process with the Antitrust Division of the US DOJ and MOFCOM.<sup>9</sup> The KFTC also recently cooperated with foreign competition authorities with respect to a number of recent major global transactions, including the *Microsoft/Nokia* merger, the P3 Network joint venture, the *GSK/Novartis* transaction, the *Applied Materials/Tokyo Electron* merger, and the *FedEx/TNT* merger.

Therefore, parties to global transactions triggering merger filings in multiple jurisdictions including Korea should expect the KFTC to be in even closer contact with other competition authorities that are also reviewing the same transaction.

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<sup>9</sup> KFTC press release (7 October 2016), available in Korean at [www.ftc.go.kr/common/download.jsp?file\\_name1=/news/report/2016&file\\_name2=20161007](http://www.ftc.go.kr/common/download.jsp?file_name1=/news/report/2016&file_name2=20161007).

## **SAI REE YUN**

### *Yulchon LLC*

Mr Yun, a founding partner of Yulchon, is the managing partner of the firm. Mr Yun practises primarily in the areas of corporate (with an 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 and 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 (KFTC) and the Ministry of Trade, Industry, and Energy, and was a member of the Competition Policy Advisory Board for the KFTC. In addition, 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 Ministry of Finance and Economy.

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 M&A 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 was also chosen as a leading lawyer of 2009 by *IFLR 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 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 has also successfully represented many international and domestic companies in merger review cases, including Texas Instrument's acquisition of National Semiconductor and Lotte Shopping's acquisition of GS Mart.

As the head of Yulchon's healthcare practice team, Mr Lee has 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 took a leading

role in investigating many historically important antitrust cases in Korea, including abuse of market dominance cases involving 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.

Mr Lee has published many articles, including ‘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 master’s degree in accounting from Syracuse University Graduate School of Management in 2000. He has been a member of the New York Bar since 2000 and AICPA in New York since 2001.

## **CECIL SAEHOON CHUNG**

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Mr Cecil Saehoon Chung is a senior foreign counsel at Yulchon. As vice chair of the antitrust practice group and head of the international antitrust team, Mr Chung handles all aspects of antitrust, anti-corruption and other regulatory issues covering diverse industries, with a particular emphasis on international antitrust.

He has practised law for almost 30 years. In his antitrust practice, he has handled numerous criminal grand jury investigations, civil class action cases, regulatory merger and non-merger investigation and litigation matters, and consumer protection matters in the US and numerous international cartel, abuse of dominance, unfair trade practice and global merger control matters in Korea.

Prior to joining Yulchon in 2012, he was an antitrust partner at two global law firms (Pillsbury Winthrop and Greenberg Traurig) in Washington, DC. From 1988 to 1995, he was a litigation attorney in the Bureau of Competition at the US Federal Trade Commission. He 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 is ranked as a leading antitrust lawyer by numerous international publications, including GCR’s *Who’s Who Legal: Competition*, *Chambers Asia*, *Chambers Global* and *Euromoney’s Expert Guides*. In addition, he has a rare distinction of being ranked as both a US antitrust law expert based abroad (Korea) and foreign (US licensed) expert on Korean antitrust law by *Chambers Global*.

Mr Chung is active with various bar associations and international organisations. His competition/antitrust-related leadership roles include vice-chair of the International Committee and member of the Procedural Transparency Task Force of the Antitrust Section of the ABA; vice-chair of the International Antitrust Committee of the International Section of the ABA; and member of the Mergers Working Group of the Antitrust Committee of the IBA.

Mr Chung has written and lectured extensively on various Korean, US and EU antitrust, consumer protection and other legal issues. Furthermore, since 1997 he has advised and assisted the Korea Fair Trade Commission to modernise its antitrust and consumer

protection enforcement programme. He has spoken at various international conferences organized by the ABA's Antitrust Section and International Section, GCR, MLex, PaRR, Seoul Bar Association and Croatian Bar Association.

Mr Chung received his BS in economics from the Wharton School, University of Pennsylvania in 1985 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 and practises primarily in the areas of antitrust, mergers and acquisitions, general corporate, and data privacy and security compliance matters. She joined Yulchon as an associate in 2001 and became a partner in 2009.

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

Some of the major projects she participated in are the sale of Hyundai Merchant Marine's terminal, the sale of Hynix Semiconductor's display division, Crown Confectionery's acquisition of Haitai Confectionery & Foods, the joint venture of Samsung Electronics and Samsung SDI for AMOLED business, and the incorporation of Samsung LED, the merger case of KED Korea, the merger case of Lotte Shopping Co, Ltd and GS Retail Co, Ltd, and the merger case of Lotte Shopping Co, Ltd and HiMart Co, Ltd.

Ms Kim's articles include 'Establishing the regulatory foundation for Big Data 2', *Data Protection Law & Policy*, Vol. 12, Issue 5 (2015); Korea chapter, 'Competition Law in Asia Pacific – A Practical Guide', Wolters Kluwer (2015); Korea chapter, *The Cartels and Leniency Review*, second to fifth editions, Law Business Research (2014–2017); 'Korea's Aggressive Antitrust Enforcement in Financial Product Markets', Asian-Mena Counsel, Volume 12, Issue 5 (2014–15); 'Early Signs of Protectionist Merger Control in Korea? Probably No, At Least Not Yet', Competition Policy International's Antitrust Chronicle (October 2014); Korea chapter, *The Merger Control Review*, third to seventh editions, Law Business Research (2012–2016).

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Mr Kim's representative matters include Dell's acquisition of EMC, Qualcomm's abuse of dominant market position, Honam Petrochemical's acquisition of Titan, and the global photocopy paper manufacturers' cartel case.

Mr Kim has published many articles, including the Korea chapter, *The Merger Control Review*, fifth to seventh editions, Law Business Research (2014–2016); Korea chapter, *Getting the Deal Through: Telecoms and Media*, Law Business Research (2008–2010).

Mr Kim received his LLB from Seoul National University in 2001 and his LLM from University of Michigan Law School in 2012. He is a member of the Korea and New York Bars.

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