

# ***Cartel Enforcement in Korea***

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# ***1. Cartel regulations in the MRFTA***



# ***Structure of Korean Competition Law***

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- 1. Abuse of market dominance(Article 3-2)**
  - 2. Merger and acquisition(Article 7)**
  - 3. Cartel(Article 19)**
  - 4. Unfair competition practices(Article 23)**
  - 5. Resale price maintenance(Article 29)**
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Fight against  
Cartel is #1  
Priority

"The most egregious  
violation" (98 OECD)

"The most serious  
restriction of  
competition"(02 EU)

"Supreme Evil of  
Antitrust"(04 USA)

# ***Cartel regulations in the MRFTA***

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## **(1) Definition**

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**“Agreement between Businesses not to Compete”**

*(Article 19-1*

*Monopoly Regulation and Fair Trade Act)*

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# ***Cartel regulations in the MRFTA***

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## (2) Requirements

- A. collude with other companies(plurality)
- B. make agreement in any form(agreement)
- C. pursue a specific conducts(types of conduct)
- D. restrict or prevent competition(anti-competitive effects)

# ***Cartel regulations in the MRFTA***

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## (3) Types of Conduct

Cartels are generally categorized into 8 types under Article 19, Paragraph (1) of Korean competition law (Monopoly Regulation and Fair Trade Act)

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# ***Cartel regulations in the MRFTA***

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## **(3) Types of conduct**

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1. **fix prices**
2. **set similar transaction conditions**
3. **limit production, sales or investment**
4. **allocate market**
5. **limit product variety**
6. **joint venture**
7. **bid-rigging**
8. **Other anti-competitive practices**

# *Cartel regulations in the MRFTA*

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## (4) Horizontal agreement vs. Vertical agreement

- Basically cartel regulations are applied to horizontal agreement before 2013.
- In 2013, the KFTC applied the cartel regulations to the vertical agreement.

\*Bid rigging case of “SMART Mall” of Seoul Metro.

# *Cartel regulations in the MRFTA*

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## (5) Explicit evidence vs. Implicit evidence

- Regardless of types of evidence, even **implicit evidences** have the power of proofs.
  - But in case of implicit evidences, **plus factors** such as indirect or substantial evidences are required.
- \* sharing price information, meetings on customer allocation, etc.

# ***Cartel regulations in the MRFTA***

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## (6) Per se illegality vs. Rule of reason

- Per se illegal : **hardcore** cartels(price fixing, bid rigging, customer(market) allocation, output restriction)
- Rule of reason : **softcore** cartels(other cartels except above 4 cartels)
  - \* having both anti-competitive and pro-competitive effect, thus subject to **full-blown analysis**



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## **2. Investigation and Deliberation**

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# Investigation and Deliberation

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## 1. Typical investigation process

- ✓ Preliminary investigation
  - ✓ Dawn raid
  - ✓ Order to submit materials
  - ✓ Summon for testimony
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# Investigation and Deliberation

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## (1) Preliminary investigation

- ✓ Analyze the information obtained from complainants
  - ✓ Work out the investigation plan
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# Investigation and Deliberation

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## (2) Dawn raid

- ✓ KFTC has the power to enter the premises of the suspect **without prior notice** and copy documents, electronic materials, and etc
  - ✓ At entrance, officials must deliver **the official written notice** to the suspect and present a certificate
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# Investigation and Deliberation

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## (3) Order to submit materials

- ✓ KFTC has the power to order the suspect to report on its business or other necessary information (US CIDs)
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# Investigation and Deliberation

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## (4) Summon for testimony

- ✓ KFTC has the power to summon relevant parties and witnesses and elicit their testimony (US subpoena)
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# Investigation and Deliberation

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## 2. Deliberation

1. Send Examiner's Report to respondent(s), giving them normally 3 weeks to submit their argument(extended on the request)
  2. Oral Hearing is open to the public.  
Almost same as court hearing  
(adversarial process)
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# Investigation and Deliberation

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## 3. Statute of limitation

1. The KFTC can not take any action after **7 years** from the discontinuance of cartel.
  2. When investigation begins within 7years from the discontinuance of cartel, the statute of limitation extends to **another 5 years** from the initiation of investigation.
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### ***3. Sanctions against Cartel***



# ***Sanction against Cartel***

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## 1. Administrative measures

- cease and desist order
- surcharge

## 2. Criminal punishment

- fine and imprisonment

## 3. Civil action(private damage action)

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# ***Sanctions against Cartel***

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## 1. Administrative measures

(1) cease and desist order(corrective order)

(2) **surcharge**(administrative fine)

- upper limit is **10%** of the affected turnover
  - adjustable by taking into account several factors(mitigating and aggravating factors)
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# ***Sanctions against Cartel***

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## 2. Criminal punishment

(1) corporate and/or individual possible

(2) fines(up to US\$3 mil.), imprisonment(up to 3 years)

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# ***Sanctions against Cartel***

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## 3. Civil action(private damage action)

- actual damage(US treble damage)
- Since 2000, the number of civil action cases is gradually increasing.

(damage action against military oil bid rigging, flour price fixing, LPG price fixing, Air cargo price fixing, Ramyon price fixing, etc.)

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## ***4. Leniency and Amnesty Plus***



# ***Leniency and Amnesty Plus***

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## (1) Leniency Requirements

### **1. First or second-in applicant**

- Report cartels when the KFTC has **not obtained** information about cartels or **enough evidences** to prove cartels

### **2. Sincerely cooperate until the end of an investigation**

- State all facts related to cartels
  - Submit related information promptly
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# ***Leniency and Amnesty Plus***

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## (1) Leniency Requirements

### **3. Stop the Cartel immediately**

(or at least until the end of the period permitted by investigator)

### **4. Not a coercer**

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# *Leniency and Amnesty Plus*

## (2) Leniency Benefits

	Corrective Order	Surcharge	Criminal Accusation
1 <sup>st</sup> applicant	Immunity	Immunity(100%)	Immunity
2 <sup>nd</sup> applicant	Reduction	Reduction(50%)	Immunity

- Only 1<sup>st</sup> and 2<sup>nd</sup> applicants are eligible
  - Ranking is decided based on the acceptance time of application(Speed matters!!)

# *Leniency and Amnesty Plus*

## (3) Amnesty Plus

- If a company that is under investigation and will be punished by A cartels discloses B cartels first, it will get leniency not only B cartels but also A cartels.



# Proportion of Leniency Triggered Cases to All Cartel Cases



-----> **Trend  
Line**

## Lessons from the KFTC Experience

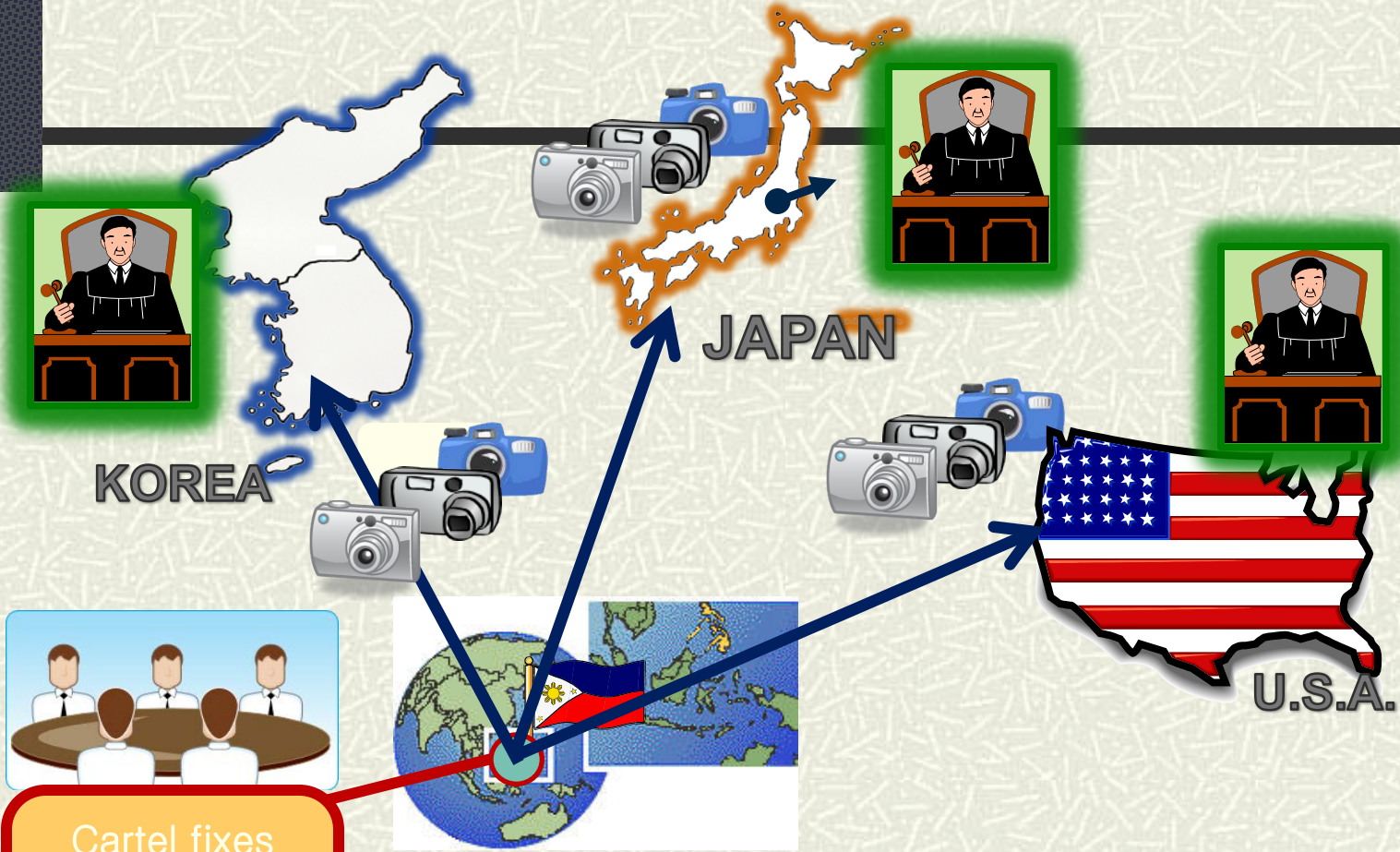
1. Convince cartelists that they will surely benefit from the leniency program if they report cartels and cooperate (**predictability and transparency**).
2. **Immunity from criminal punishment** should be offered to encourage leniency applicants.
3. **Impose strict sanctions** (e.g. **criminal penalty**) against cartelists.





## ***5. International Cartel***





Cartel fixes price on cameras sold worldwide

# *International Cartel*

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## 1. 1<sup>st</sup> case: Graphite electrodes case(2002)

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- **Effect theory** applied
  - Request for publicly available information to foreign authorities
    - ✓ **U.S**: stenographic records of U.S. courts and evidences made public
    - ✓ **EU**: non-confidential version of SO
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# *International Cartel*

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## 2. Institutional changes

(1) Revised the MRFTA in Dec. 2004

*“The act shall apply even to activities carried out overseas when they are deemed to have **effect on the domestic market**(MRFTA Article 2-2)”*

*“The commission **may support a foreign government** in a request for law enforcement...”*

(2) Created **international cartel division** in 2008

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# *International Cartel*

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## 3. 1<sup>st</sup> simultaneous dawn-raid case: Air cargo(2010)

- **A agency**

- √ Coordinated dawn-raids (Feb. 2006)
- √ Close consultation on method of fine calculation

- **B agency**

- √ Coordinated dawn-raids (Feb. 2006)
  - √ Close consultation on avoiding double counting issue(in/out-bound), statute of limitation
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# ***International cartel***

## International cartel cases by the KFTC

<b>case</b>	<b>year</b>
Graphite Electrode	2002
Vitamins	2003
Copy Papers	2008
Marine Hose	2009
Air Cargo	2010

<b>Case</b>	<b>year</b>
CRT, LCD , CDT	2011
Air Passenger	2012
Truck	2013
Auto Parts	2013

# *International Cartel*

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## 4. International cooperation format

### (1) Formal

- Competition chapter in FTA : USA, Chile, Singapore, EFTA
- Intergovernmental Agreement : EU
- Agency Cooperative Arrangement : Australia, Mexico, Canada, Russia, China, Turkey...

(2) Informal : email, conference call, face to face meeting, etc.

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**- Lessons from experience -**

**Two heads are better than one.**

**A trouble shared is a trouble halved.**







**Thank you**

