

# Commitment Decisions in the Antitrust Enforcement of Korea: A Comparative Study with the Settlement Systems of the US and the EU

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**KEYWORDS:** Commitment Decision, Settlement, Consent Decree, Consent Order, Korean Fair Trade Commission (KFTC), Comparative Study, Compensation, Monetary Remedy

## BACKGROUND

- The Korean Fair Trade Commission (KFTC), the Korean competition authority, introduced a commitment, or settlement, procedure in December 2011. Yet, compared to other jurisdictions, it has seen relatively little use with only 4 commitment decision cases occurring during the procedure's first 7 years.
- A key consideration of Korean legislators when designing the commitment procedure was using the scheme as a compensation tool for consumer harm from alleged anti-competitive conduct. The applicant for a commitment decision has to submit a financial plan for compensation corresponding to the amount of the penalty that would have been imposed in the prohibition procedure.

## METHODOLOGY

- The paper conducts a comparative legal study between the commitment regime in Korea and its counterparts in the US and the EU. It analyses the competition-based commitment decisions of the KFTC, reflecting on the experiences of case handlers.

## KEY FINDINGS

- Using monetary remedies for compensation as part of a public procedure is a new path for the KFTC, which has previously imposed administrative fines for the purposes of punishment and deterrence. Prior to the commitment decision procedure, seeking compensation was the responsibility of individuals.
- Using monetary remedies for damages compensation via the competition authority is beneficial for consumers as it can be a quicker and much easier route than private litigation.
- However, the definition of the victims of an infringement and the monetary value of the compensation received, along with the standard of proof, may differ to court decisions as public enforcement considers other factors such as deterrence, punishment, and/or efficiency.
- The KFTC's commitment decision is effectively designed for use as a consumer relief measure. However, the KFTC needs to refine the process to prevent 'cheap' settlements and to improve procedural efficiency.

## POLICY ISSUES

- There have been attempts to supplement the compensation function of private litigation with public enforcement. However, the necessity of this approach and the effective methods for doing so are still under discussion in many jurisdictions.

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