

### Will a merger of small-sized companies require filing?

A start-up company A (Startup A) with less than \$25 million USD in annual sales or total assets, provides online services to at least 1 million customers in the Korean market every month. Company B, finding that Startup A has great potential for growth, intends to acquire Startup A for a purchase price of \$1 billion USD.

Will Company B need to make a merger filing in Korea?

#### 1. Merger of small companies may require filing.

With reference to the hypothetical above, had Company B acquired Startup A last year, a merger filing would not have been needed because Startup A's total assets or annual sales did not meet the KRW 30 billion (approximately \$25 million USD) threshold. However, with the implementation of the amended Monopoly Regulation and Fair Trade Act ("MRFTA") on December 30, 2021, if Company B were to acquire Startup A after January 2022, it will be required to file its proposed acquisition with the Korea Fair Trade Commission ("KFTC").

As a rule, a filing is required when a party to a merger has total assets or annual sales of at least KRW 300 billion (approximately \$250 million USD) and the other party has total assets or annual sales of at least KRW 30 billion (approximately \$25 million USD). A caveat to this rule is that, if (1) the transaction value is KRW 600 billion (approximately \$540 million USD) or more and (2) the target's activities in Korea for the preceding 3 years were substantial (see below), a merger filing for the proposed acquisition is required. According to the newly amended MRFTA, the target's activities will be deemed "substantial" if either of the following condition is met:

- Target provided goods or services to at least 1 million customers in Korea per month; or
- Target maintained R&D facilities or R&D personnel in Korea for the preceding 3 years and spent at least KRW 30 billion (approximately \$25 million USD) annually for R&D facilities, R&D personnel or R&D activities in Korea during any of the preceding 3 years.

If the target provides internet-based services in Korea, such as games or web toons, the number of monthly customers that purchased such services is calculated based on the number of monthly active users or visitors.

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## 2. Effective as of January 2022, the transaction value and activity in Korea will need to be considered in addition to the size of the target.

Prior to this amendment, certain merger reviews were criticized because large companies were able to acquire SMEs with great potential for growth (e.g., Facebook's acquisition of WhatsApp) without requiring a merger review. As discussed above, the new amendment addresses this issue by subjecting companies to a merger review depending on the transaction value and the substantiality of the target's business activities in Korea.

Companies may face a fine of up to KRW 100 million (approximately USD 80,000) for failing to file a merger.

Yoon & Yang's Antitrust and Competition Practice Group is widely recognized as a premier antitrust and competition practice in Korea. The Group consists of over 40 lawyers and experts who have extensive experience advising clients with respect to all aspects of antitrust and completion law and are fully aware of both the local and international dimensions of antitrust and competition issues. The Group also includes former senior regulators of the Korea Fair Trade Commission (KFTC) who played key roles in the development of antitrust policies and gained direct experience with the KFTC's antitrust investigation and enforcement activities.

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