

Ki-Jeong Han, Chair of Korea Fair Trade Commission, 'New Government's Fair Trade Policy Direction' (ECCK Lecture, Dec 1, 2022)

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New Government's Fair Trade Policy Direction

Chairperson of Korea Fair Trade Commission
Ki-Jeong Han

- 1 Situation**
- 2 Basic Framework**
- 3 New Government's Fair Trade Policy Direction**

1 Situation

The global economy faces increasing downside risks

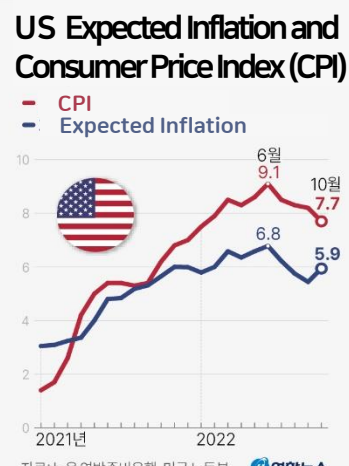
with **interest rate hikes** caused by global **inflation** and **sluggish growth** in major countries

Rising inflation in major countries, including increased **global energy** and **grain prices**

- ✓ Decline in supply caused by the Ukraine War
- ✓ Recovery in demand from COVID-19

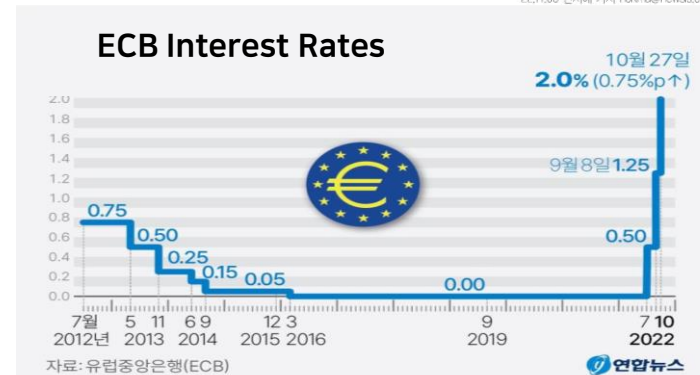
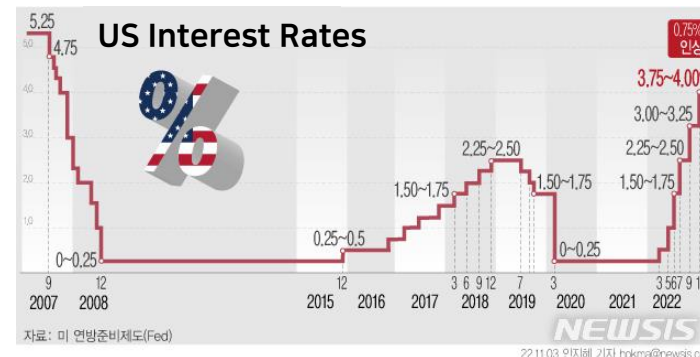


김민지 기자 20221031



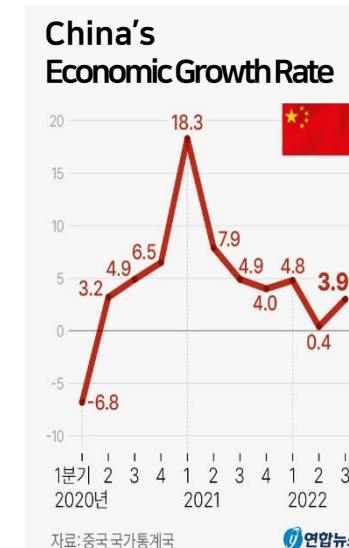
김영은 기자 20221115

Accelerating interest rate hikes in major countries, including the US

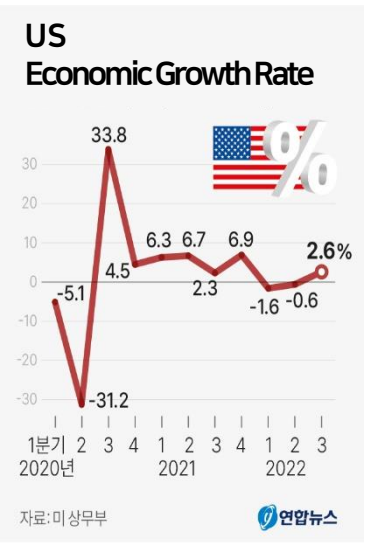


반종빈, 김영은 기자 20221027

Sluggish growth in major countries, including China



김영은 기자 20221024

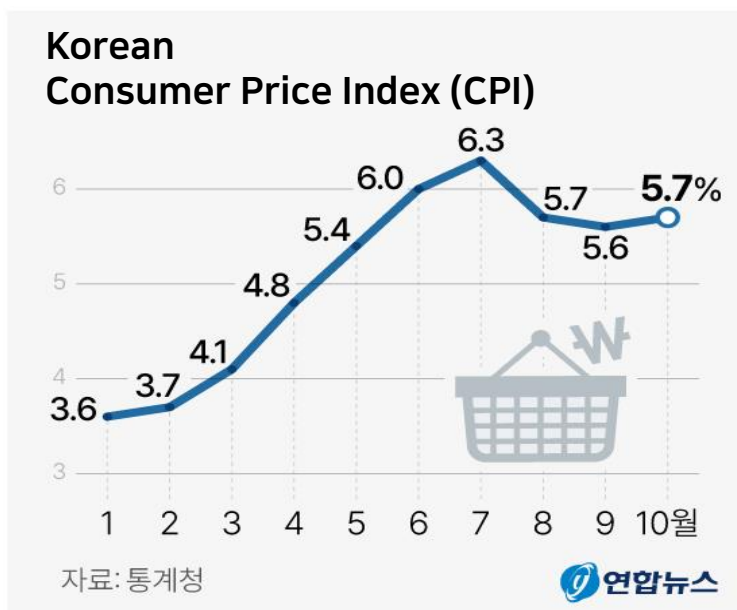


김영은, 김민지 기자 20221028

The Korean economy is experiencing **high inflation, high interest rates, and high exchange rates**, and is **facing widespread concerns over an economic slowdown**

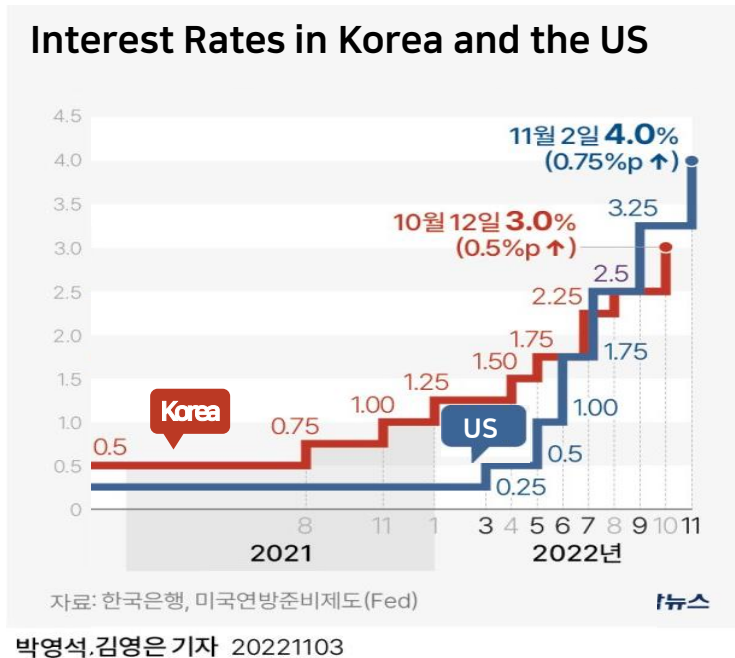
* Growth forecasts - OECD : ('22) 2.8% → ('23) 2.2%, IMF : ('22) 2.6% → ('23) 2.0%

The **CPI rose 5.7% in October** (year-on-year)
as a result of the sharp increase
in global raw material prices



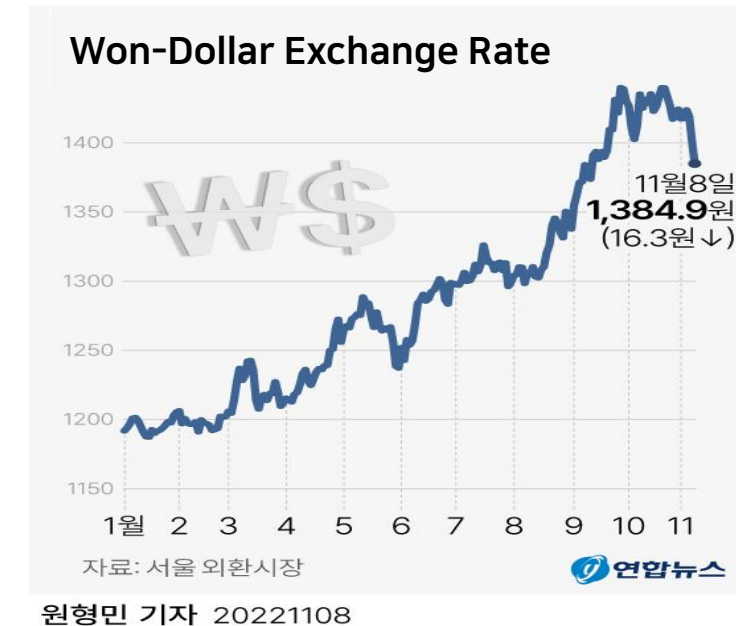
원형민 기자 20221102

Korea raised its interest rate to 3.25%
as major countries accelerate
the pace of interest rate hikes



박영석,김영은 기자 20221103

The **won-dollar exchange rate dropped to KRW 1320~KRW 1360** after reaching
KRW 1400, but there is still high uncertainty



원형민 기자 20221108

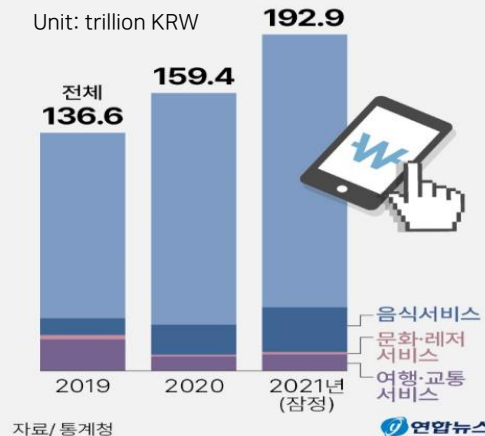
Small business owners and consumers continue to raise issues over unfair trade practices in online platforms that have become a important space for consumption and sales

Online platforms have become a important space for consumption and sales with the advancement of IT and contact-free lifestyles

- Lower transaction costs through services connecting suppliers and consumers
- Contribute to improving consumer welfare

Online shopping transaction costs

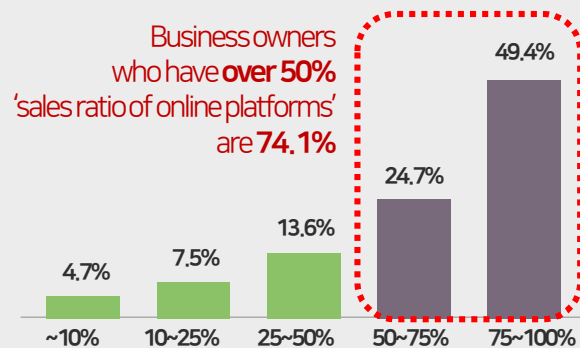
Unit: trillion KRW



김영은 기자 20220203

Sales ratio of online platforms

조사대상: 2020년 온라인 플랫폼 이용사업자 888명



*출처: 중소벤처기업부

Small business owners and consumers continue to raise issues over unfair trade practices while using platforms

- ✓ A global phenomenon as a result of the growth of the digital economy
- Countries are working to address these issues
- * The enactment of the Digital Markets Act (DMA) by the EU and the proposal of the package of five bills by the US

The monopolistic structure of platforms is pointed out as the indirect but fundamental cause of the recent Kakao incident



2

Basic Framework

Seems like inspired by the DMA and P2B Reg.

1 **Set clear and rational legal boundaries**

2 **Strict law enforcement** against violations made outside of legal boundaries

3 **Build understandable and reliable law enforcement systems**

Create the basis
for **fair competition**
so that **all businesses**
can engage in
dynamic and creative
business activities

Create the basis for fair competition in major markets

- Respond to monopolistic issues in online platforms
- Improve anti-competitive regulation in major industries
Competition advocacy (i.e., de- or re-regulation)

Rationally operate systems for large business groups Jeabol (Zaibutz) regulation

- Strictly respond to intra-group transaction
- Improve unclear and irrational systems

Protect consumer rights and interests in the digital economy

DSA ---> affect?

- Prevent new types of consumer deception
- Swiftly respond to consumer harm by making temporary suspension orders

Level the playing field for SMEs subcontracting, retail relations

- Reflect increased raw material prices in the delivery price and prevent technological theft
- Improve guidelines for mandated franchisor-supplied products and service subcontracting practice

Boost trust through enforcement & organization reform

- Innovate law enforcement, restructure organizations, and build policy networks

3

New Government's Fair Trade Policy Direction

1

Create the Basis for Fair Competition in Major Markets Including Online Platforms

2

Rationally Operate Systems for Large Business Groups

~~Jeabul~~

3

Protect Consumer Rights and Interests in the Digital Economy

~~consumer protection~~

4

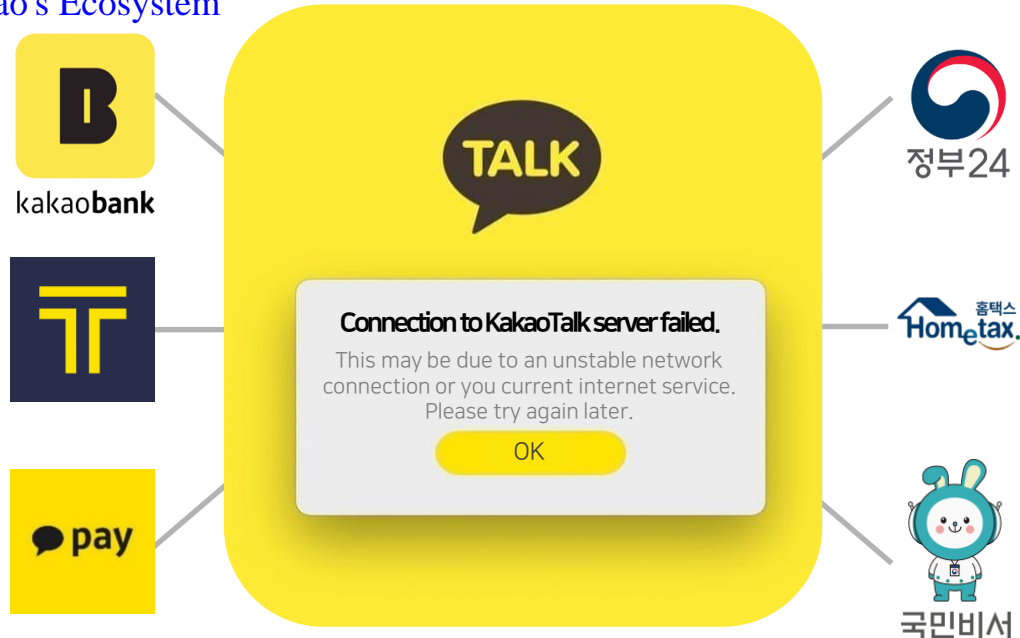
Level the Playing Field for SMEs

5

Boost Trust Through Enforcement & Organization Reform

(INSTEAD OF regulations)

Kakao's Ecosystem



✓ **Kakao's services were down** for five days 7.5 hours due to a fire at its data center

: The **monopolistic structure** is pointed out as the indirect but fundamental cause

General approach

- » With the **lack of competitive pressure, monopolistic platforms** are likely to **neglect innovative efforts** and are less likely to take **social responsibility**
- » Respect the **creativity** and **innovation** of platforms **as much as possible** while **effectively correcting adverse effects** arising from the abuse of monopolistic power

Some experiences in the digital and tech sectors

Law enforcement in the **digital sector**

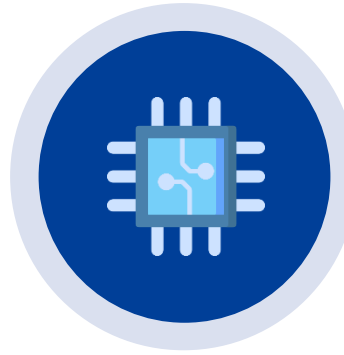
PC



Microsoft Window OS
(‘05, fine KRW 32.4 billion)

Intel CPU
(‘08, fine KRW 26 billion)

Mobile



Qualcomm IPR
(‘16, fine KRW 1.31 trillion)

Naver, Daum search engine
(‘14, commitment decision)

Platform



Naver shopping
(‘20, fine KRW 27.8 billion)

Google mobile OS
(‘21, fine KRW 224.9 billion)

Hotel booking platform MFN
(‘22, voluntary correction)

* KFTC relied on (not competition rules, but) consumer protection rules

Platform-related legislative trends in major countries

DMA, Digital Market Acts of the EU

- The final text was announced in the second half of '22 → **Enter into force** with a grace period until **May '23**
 - **Designate** platforms that meet the thresholds as **gatekeepers**
 - **Major requirements** of gatekeepers
: ① Ban self-preferencing, ② Ban multi-homing,
③ Promote interoperability and data mobility,
④ Ban combining personal data without the user's consent,
⑤ Allow users to remove preinstalled apps etc.
 - Gatekeepers must **report** intended mergers or acquisitions to the European Commission **before merging** digital platform companies
 - Impose **remedies** * or **finest** (within 10% of its worldwide turnover) in the case of violations
- * **Structural remedies** can be imposed if gatekeepers **repeatedly violate** the new rules and if their **status is maintained and strengthened**

The Package of Five Bills of the US

- After proposing the Package of Five Bills* in June 2021, it is **pending in the Senate and the House of Representatives**
- * (House of Representatives) American Innovation and Choice Online Act, Platform Competition and Opportunity Act, Ending Platform Monopolies Act, Augmenting Compatibility and Competition by Enabling Service Switching Act
- * (Pending in the Senate) Merger Filing Modernization Act
- **For designated platforms** meeting requirements
- **Details**
: ① Ban self-preferencing, ② Restrict merging new innovative companies,
③ Ban from selling on their own platforms,
④ Ensure data mobility and interoperability,
⑤ Raise filing fees on mergers and acquisitions
- Impose **civil penalties** in the case of violations (within 15% of the total US turnover in the previous year)
- * The court may impose **structural remedies (divestiture)** in the case of violating the American Innovation and Choice Online Act due to a **conflict of interest**

Strict law enforcement against digital platform monopolies

- **Strict law enforcement** against the abuse of monopolistic power of platform operators

※ Especially investigate and sanction self-preferencing, restricting multi-homing



< Sectors under the process of investigation and deliberation >

Kakao mobility?	Google & Apple?	Coupang?	Broadcom? Qualcomm?
Mobility	App market	Open market	Semiconductor
Self-preferencing	Restrict multi-homing	Self-preferencing	Force long-term contract

Possibly, those considerations can be placed at the center of the KFTC's future infringement decisions

Improve platform guidelines

- Enact the 「**Review Guidelines on Monopolistic Online Platforms**」 to effectively regulate the abuse of monopolistic power
 - Propose the criteria for relevant market definition and market dominance assessment* considering the characteristics of online platforms
 - * (e.g.) Consider business operators' ability to collect and retain data, their gaps and the number of users when assessing market dominance
 - Specify the **main types of violations** (① Restrict multi-homing, ② MFN clause, ③ Self-preferencing, ④ Tying)
- Revise the 「**M&A Review Guidelines**」 to prevent reckless business expansion through mergers of platforms
 - A **conglomerate merger** of platform operators in different industries : Mostly, simplified review → In principle, general review killer-acquisitipon
 - Consider a **platform' unique characteristics** as an element of **determining anti-competitiveness** (X)
- Check whether the mergers of platforms are not reviewed properly under the current merger reporting requirements*
 - If necessary, consider **revising the merger reporting requirements**

*(Current) **Business size** (Total assets or Turnover: One party KRW 300 billion & the other party 30 billion),

Transaction amount (the transaction value is at least KRW 600 billion even if the other party/s total assets or turnover is less than KRW 30 billion)



Review legislation

- Review whether the current regulations are enough and whether further legislation is needed
 - Start reviewing by creating a **task force** with **internal and external experts** in this year
- ※ Plan to launch a task force within December after major economic and law societies recommend experts → Discuss in earnest early next year

Build an organization dedicated to platforms

like the UK CMA's DMU?

- Reorganize a temporary **Online Platform Team** into an **Online Platform Policy Division** (Dec 1st)
- expected roles
- **Respond to policy issue** for the online platform **monopolies** and **voluntary regulation schemes** for gap-eul relationship issues

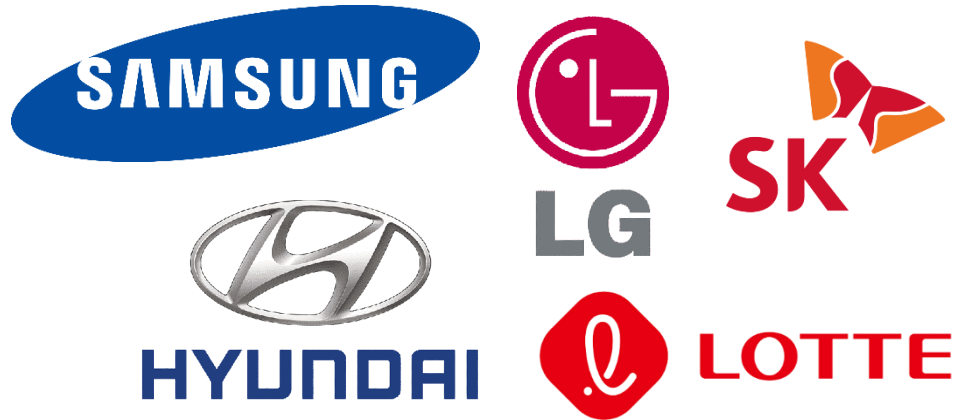
COMPETITION ADVOCACY

Improve anti-competitive regulation

- Agreed to improve **29 regulations** that **block** the **market entry** of innovative businesses or excessively **restrict business activities** (announced results on Nov 24th)
 - ✓ **Ease restrictions on business areas of car sharing and rental car services**
 - : **Allow** to operate **car sharing** and **rental car vehicles** for **up to 15 days** even if they are returned to a non-registered area after **moving one-way**
 - **Promote one-way car rentals** and **the sharing economy** with lowered prices, and **increase consumer benefits**
 - * (Current) If a customer **returns** a car sharing vehicle/a rental car at **another location**, the operator has to bring it to the **original pick-up location**
(e.g.) If a customer uses car sharing services/a rental car from Seoul to Daejeon and returns it to Daejeon, the operator has to bring it back to Seoul
 - ✓ **Ease standards for designing movie theaters**
 - : **Improve minimum space standards** after checking the negative effects of easing the standards
 - Facilitate **price and service competition** in the market by promoting **SMEs to start and re-start their own businesses**
 - * (Current) Need to have **at least 30 seats** or **60m² of floor space** to run an indoor theater

Jeabol* Regulation

* tantamount to zaibatsu or keiretsu



- ✓ Large businesses have made great contributions to Korea's economic growth, but at the same time, there are negative aspects

General approach

- » Strictly respond to unfair intra-group transaction by large businesses that undermine fair market competition
- » Maintain the basic framework while improving unclear and irrational systems that put an excessive burden on businesses

Strictly sanction against unfair intra-group transaction

- According to law and principle **strictly respond to unfair insider trading**, which provides unfair benefits to affiliates
- But first, provide **law violation prevention programs** to companies newly subject to regulation
 - * The number of companies subject to tunneling regulation: 265 (May 2021) → 835 (May 2022, increased by 570)



Rationally reorganize the disclosure system

- **Raise the requirements** for disclosing * **large-scale intra-group transaction** of businesses
 - * (Current) intra-group transaction of KRW 5 billion or more or 5% or more of capital·total equity
- **Simplify disclosure items** and **reduce the frequency** of less important items

Improve law enforcement predictability of tunneling

Revise the 「**Review Guidelines of Giving Unfair Benefits to Persons in special relations**」

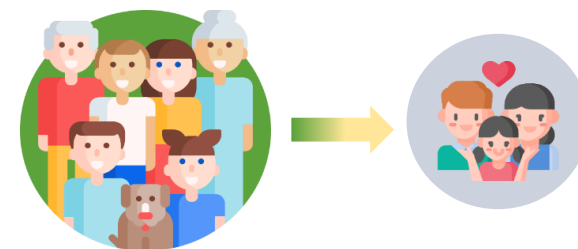
- **Specify criteria for determining the provision of 'unfair' benefits** which violates the law and 'trade for increasing efficiency' which is not subject to the law

Promptly propel announced system improvement

Revise the 「**Enforcement Decree of the MRFTA**」 to **adjust the scope of relatives of the same person**

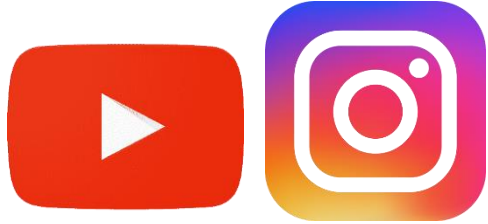
(Current) A spouse, lineal relative within the sixth degree of consanguinity,
the relative within the fourth degree of affinity

→ (Improved) A spouse, lineal relative within the **fourth degree** of consanguinity,
the relative within the **third degree** of affinity



Revise the 「**Review Guidelines of Unfair Support**」 to improve the **safety zone**

(Current) Uncertain concepts, such as support amount → (Improved) **Objective standards**, such as total transaction amount



DARK PATTERNS

User Interfaces designed to trick people

- ✓ With the advent of the **digital economy**, **new types** of **consumer deception** emerge, which leads **to an increase** in **consumer harm**

General approach

- » **Build consumer trust** in **online markets** by alleviating the factors that negatively affect consumers' reasonable purchase decision
- » **Aggressively and proactively** respond to new types of consumer issues

Prevent digital consumer fraud

- **Intensively monitor** and enforce against deceptive practices that are regulated by **current laws** (e.g. **undisclosed ad**, **review manipulation**, **empty box marketing**)
- Develop **effective and practical ways** to fight **dark patterns*** that are not appropriately regulated by current laws based on the ongoing research

* Deceptive user experience designs that take advantage of consumer inattention
(e.g. **automatic payment policies**, “**easy to subscribe but hard to unsubscribe**”)



Respond to C2C dispute resolution

- Find ways to **settle C2C disputes**, even though ‘**The Act on Consumer Protection**’ which regulates B2C transactions **is not applicable to C2C ones**
- Encourage platform operators to establish **guidelines voluntarily for C2C dispute resolution**, notify them to users and impose **practical sanctions** on sellers who cause problems

Prompt response to consumer harm through preliminary injunctions

- Protect consumers by imposing **an preliminary injunction**, an emergency measure that **prevents harm from spreading**
 - ※ Shut down a fake online shopping website “Sacrastrada” (Oct 14th) — “Take money but do not deliver products” (2nd preliminary injunction imposed by the KFTC)
- **Enhance the viability** by **easing the conditions** and **simplifying the procedures** for imposing preliminary injunctions
 - ✓ Current conditions
 - ① It is **obvious** that a business operator committed an act of violation **by deceptive means**
 - ② A customer **suffers damage to his/her property** as a result of the violation
 - ③ **The irreparable damage** is likely to spread among **many** consumers
 - ④ **The urgency** to prevent the harm is acknowledged
 - ✓ Current procedures – Written deliberations and resolutions of the KFTC Committee



SME protection



- ✓ Amid **the high prices, high interest rates and high exchange rates**, **SMEs and microbusinesses** are **facing challenges** due to the surge in raw material and financial costs.

General approach

- » **Level the playing field** so that **SMEs and microbusinesses** are **fairly paid** for their costs and efforts

Reflect an increase in raw material costs on transaction costs

- Promote **fair business environment** where SMEs are **fairly and timely paid** for their products and services
- **Revise 「the Subcontracting Act」** to make sure that **an increase in raw material costs is reflected** the transaction costs when SMEs (suppliers) supply to large firms (client)

Prevent Technology appropriation

- **Stop** large companies' **stealing technologies** from SMEs,
which **undermines SMEs' core competitiveness** in the 4th Industrial Revolution

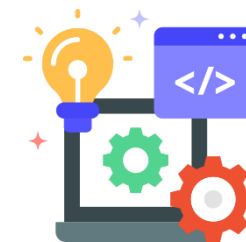
※ Amount of damages ('17~'21, MSS): KRW 280 billion (given the unreported cases, the actual number would be bigger)
- **Conduct intensive monitoring** on such misappropriation by **increasing the number of investigators** and **establishing an anonymous complaint center**
- **Increase the punitive damages** (currently up to x3) and
introduce a standard to calculate the amount of actual damages to effectively redress damage

Improve guidelines for mandated franchisor-supplied products

- **Too many required supplies** from a franchisor or **excessive unit cost increase** directly affect a franchisee's profits, which often causes franchisees' **complaints** and franchise **disputes**
- Provide **more detailed and reasonable guidelines** for mandated franchisor-supplied products based on precedents and overseas cases

Fair subcontracting practices in service industry

- **Service industry** is becoming a **key value-added industry** (e.g. software, movie, content)
- **Enhance the infrastructure** for investigating and monitoring unfair service subcontracting practices in service industry by sector



Governance



- ✓ **Trust** building **between the market and government** is an essential prerequisite to make our efforts for fair market economy bear fruit
 - **Persuasive policy making** and **reasonable enforcement** are the keys

General approach

- » Internally, **innovate the organization** and **law enforcement system of the KFTC** to **respond** to violation of market competition principles **more swiftly and rigorously**
- » Externally, **establish policy network**

Reform enforcement system

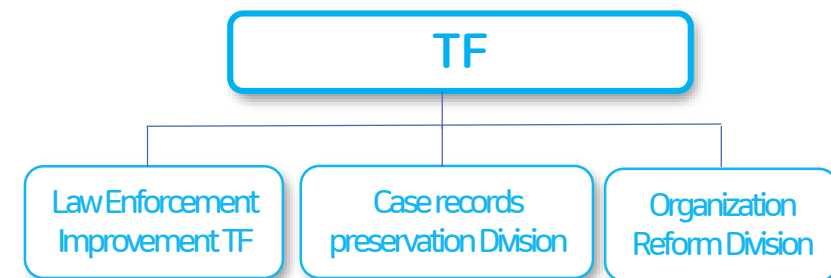
- Enhance the **transparency and predictability** of **investigation**,
reform law enforcement system to streamline case handling
 - ✓ Notify an examinee of the **scope of investigation** more clearly
 - ✓ Ensure a defendant has **the right to raise an objection** to the investigation process(submission of information)
 - ✓ **Enhance case records management**
 - ✓ Establish **a real-time dashboard** that visualizes the status of cases under investigation
to streamline case handling

Reform organization

- Boost **specialization by sector** in investigation, policy making and deliberation·resolution
 - ✓ Make sure that investigators can **focus on** and **take responsibility** for **case handling**
 - **Support the effectiveness** of **law enforcement system reform**

Launch TF

- **Launch TF** to improve law enforcement in line with organizational reform
 - ✓ **Integrate** the two separate bodies
 - Law Enforcement Improvement TF** and **Organization Reform Division**
 - ✓ **Create a team dedicated to case records management** within the TF



* review in detail how to enhance case records preservation and management

Establish policy network

- Establish **policy networks** for major sector and expand **the participation of experts & stakeholders** in **policy making and implementation**
 - ✓ **Form a consensus** by listening to the **opinions of experts and stakeholders**
 - ✓ **Develop reasonable policy alternatives** and **increase trust in the KFTC**
- Establish **Policy networks for major sector*** and **discuss important policy issues** through **forums & seminars**
 - * online platforms, large business groups, consumers, SMEs policy



Create the basis for fair competition
foster the private sector's
autonomy and creativity
help them reach their full potential

KFTC will maintain
continued
communication and interaction
with the market

Thank you