

THE ROLE OF COMPETITION LAW AND POLICY IN KOREA'S  
ECONOMIC REFORM AND A CRITIQUE OF KOREA'S CURRENT  
MERGER REGULATION

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## **ABSTRACT**

Since the economic crisis of 1997, the Korean government has pursued several reforms that can make the national economy a more market-oriented system. However, the Big Deal policy that was suggested as part of corporate restructuring has been debated on economic justification grounds. In particular, the Big Deal policy has arguably negatively impacted the market competitiveness of Korea's main industries.

At this juncture, it is critical for the Korean economy to answer the following questions: First, does Korea need to pursue strict competition law and policy in addition to the corporate governance and financial sector reforms? Second, if so, what should be the proper attitude of the Korea Fair Trade Commission (hereinafter "the KFTC") in its enforcement of Korean antitrust law? In the past, the KFTC relied on exception clauses of the Korean antitrust law when the government's industrial policy raised competition law issues.

Concerning the first question, this paper argues that the function of competition law, i.e. facilitating competition in goods and services markets, complements rather than substitutes for the functions of other laws and other sectors' reforms. In order to argue this, the paper clarifies the goal or function of competition law that cannot be covered by other laws.

The paper examines a specific case that is indirectly but closely related to the implementation of the Big Deal policy, in order to give specific suggestions relating to the second question. Through critical analysis of the Hyundai-Kia merger by using law and economics methodology, this paper argues that the KFTC should enforce the merger

regulation more strictly. The efficiency defense should be admitted only when there is no alternative to an efficient ; the failing firm defense should be applied using a case-by-case approach; and the international competitiveness defense should be abolished.

In conclusion, to ensure the long-term development of the Korean economy, Korea needs to enforce its competition law more strictly. Specifically, the KFTC should exercise its discretion on defense clause analysis and legislation more strictly.

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