

# Sanctions in Cartel Cases

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Hae-kyung, Yoo. KFTC

\* The views and opinions expressed in this presentation are those of the author and do not reflect the official policy or position of the KFTC

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## 1. Criticism

### <Light Punishment ?>

뉴스 1-10 / 2,947건 뉴스검색 가이드

관련도순  최신순  오래된순 검색결과 자동고침 시작 ▶

**처벌은 더 세계, 제도는 충충히...대기업 기술 도둑질 막는다**  
 시사저널이코노미 | 6시간 전 | [🔗](#)  
 하지만 이에 대한 제재는 **승방망이** 처벌 수준이라는 지적이 끊이지 않았다. 기술자문 제공 강요금지 규정어... 신고가 없어도 의심 사례를 **공정위**가 직접 조사하는 등 적극 대응이 필요하다"고 말한 바 있다. **공정위**는...

**중소기술 뺏는 대기업 '무관용 엄벌'**  
 매일경제 | A8면3단 | 22시간 전 | 네이버뉴스 | [🔗](#)  
 피해기업 신고 없어도 **공정위**, 선제적 직권조사 내년 기계 車부터 집중감시 3배 배상...조사 면제기업 축소... 또 당정은 기술유통 기업에 대한 **승방망이** 처벌 관행을 깨고 역지력을 높이기 위해 기술유통행위는 경중을...

**고질적 '기술탈취' 이번엔 근절할까** | 내일신문 | 1일 전 | [🔗](#)  
 [내일신문] 7년간 기술유통 과징금 부과 1건 ... "직권조사 강화하고 처벌수위 높여야" **공정위**가 대기업의... 연간 한 건도 처벌 못하면서 그마저 **승방망이** 처벌에 그친 것이다. 그동안 중소기업에서 기술 유통 문제는...

**중기 기술 가로채기, 공문특허 요구 통한 '무임승차' 막는다...피해 기업 신고...**  
 중앙일보 | 1일 전 | 네이버뉴스 | [🔗](#)  
 불구하고 **승방망이** 처벌로 중소기업은 울의 입장에서 속앓이만 하고 있다"고 말했다. 최근... 당정은 우선 **공정위** 내에 기술유통사건 전담 조직을 신설하고 기술 유통행위에 대해 직권 조사하기로 했다. 피해 기업의...

**김상조 "기술탈취 대책 미흡 사죄...선제적 직권조사 할 것"**  
 이데일리 | 1일 전 | 네이버뉴스 | [🔗](#)  
 더불어민주당과 **공정위**가 당정협의를 열고 중소기업에 대한 대기업의 기술탈취 대책을 논의했다. 우원식... 신고하더라도 **승방망이** 처벌에 그치지 때문"이라고 짚었다. 그러면서 "소송을 하더라도 대기업이 시간을 끌고..."

**'기술특허 간질' 승방망이 처벌에 피해 중소기업 속앓이** | 중소기업뉴스 | 3일 전 | [🔗](#)  
 실제 기술탈취 조항이 신설된 2010년 이후 **공정위**로 신고 건수는 23건(2016년 11월 기준)에 불과하다. 이중 8건은... "공정위, 적극적 직권조사 필요" 조사에 응답한 수급사업자들은 "기술탈취 행위 신고는 아무리 조심해도..."

### <Heavy Punishment ?>

**공정위, 기업에 돌려준 과징금 8300억원...2년 연속 '고공행진'**  
 아시아경제 | 2017.08.19. | 네이버뉴스 | [🔗](#)  
 예정치는 **공정위**가 좀 더 과징금 산정 기준을 명확히 적용해 **과다한** 환급액 규모를 줄일 필요가 있다고 충고했다. 이와 관련, **공정위**도 사내 재발을 막기 위해 지난해 12월 '과징금 부과 세부 기준' 등에 관한 고시...

**공정위 '무리한 과징금' 부메랄 패소 환급액, 작년 42% 경중**  
 동아일보 | A2면 TOP | 2016.07.12. | 네이버뉴스 | [🔗](#)  
 국회 예산정책처는 2015회계연도 결산분석 보고서를 통해 "**공정위의 과징금** 환급 규모가 **과다**해 수납액이 예상에 크게 미치지 못하고 있다"며 "**과징금** 부과 전문성을 높여야 한다"고 비판했다. 국회...

↳ **공정위, 과징금 소송 패소 환급액 전...** | 법률신문 | 2016.07.12.  
 ↳ **'경제검찰' 공정위 돌파소...지난해...** | 머니투데이 | 2016.07.12. | 네이버뉴스

**[흔들리는 경제검찰] 공정위 무리한 조사 과징금에 신사업도 발목...재계...**  
 서울경제 | 5면 TOP | 2016.07.06. | 네이버뉴스 | [🔗](#)  
 최근 5년 동안 **공정위** 고위 공직자의 85%가 대기업이나 대형 로펌에 재취업한 가운데 **공정위**가 **과다한 과징금**을 물리고 이를 재판을 통해 깎는 과정에서 '일감의 선순환'이 이뤄지고 있다는 것이다. **공정위**는 업무...

**공정위 '잘은 헛발질', 작년 세입 60%밖에 못 거둬** | 뉴스토마토 | 2017.08.28. | [🔗](#)  
 직권취소는 **공정위**가 행정소송에서 패소했을 때 소송 관련 유사 사건에 부과한 **과징금**을 **공정위**가 직권으로 취소 처분하는 제도다. 환급액 **과다** 발생의 주요 원인은 **과징금** 부과 처분 시 산정 및 가중감중...

1 2 3 4 5 6 7 8 9 10 다음페이지 >

# I . Optimizing Cartel Penalties

## 2. Types of sanction : from Warning to Prosecution

### ▶ Types of sanction

- **Warning:** when degree of violation is immaterial
- **Corrective Recommendation**
- **Corrective Order:** to discontinue the violation, to announce the receipt of corrective order, to take other necessary measures
- **Penalty Surcharge Payment Order:** up to 10 % of relevant volume of sales  
\* Underlying principle: Redemption of unlawful profit + Sanction of law violation(Supreme Court)
- **Reference to Prosecutor's Office:** (Criminal Accusation)cartel violation shall be sentenced to jail term of  $\leq 3$  years or fine of  $\leq 200$  mil. KRW.

	warning	Corrective Recommendation	Corrective Order	Surcharge Payment Order	Reference to Prosecutor's Office
Penalty Point	0.5	1.0	2.0	2.5	3.0

# I . Optimizing Cartel Penalties

## 3. Statistics Showing KFTC's Enforcement

▶ <Table 1: Sanctions Against Cartels>

Sanction Type	2010	2011	2012	2013	2014	2015
Prosecution(Surcharge)	1(1)	8(8)	2(2)	12(12)	36(36)	9(9)
Corrective order(Surcharge)	34(25)	38(27)	28(22)	20(16)	25(20)	61(54)
Warning	27	26	11	13	15	18
SUM	62	72	41	45	76	88

## II. Type of Sanctions: Penalty Surcharge

### 1. Provisions

#### ➤ Monopoly Regulation and Fair Trade Act(MRFTA)

- within the limits not exceeding the amount equivalent to 10/100 of the turnover determined by Presidential Decree. In case of an absence of turnover, not exceeding two billion won.(Art.22)
- shall take into account ①the nature and degree of unlawful practices, ② The duration and frequency of unlawful practices, ③the amount of benefits accrued from unlawful practices, etc.(Art. 55-3)

#### ➤ Presidential Decree

- Turnover: from selling goods or services in a specific area of transactions during the period for which the violation is committed. it means contract price, if such violation is related to bidding collusion and other similar acts.(Art 9.)
- Criteria for the imposition of penalty surcharges: **table 2**(Art 61.(1))

## II. Type of Sanctions: Penalty Surcharge

### 1. Provisions

☞ Attached table 2 (according to Presidential Decree)

#### 1. Principle of imposition of penalty surcharge

- serious hindrance of free and fair competition, serious impact on consumers, etc.

#### 2. Criteria for imposition of penalty surcharge

a) Basic step: relevant turnover, imposition rate

b) 1<sup>st</sup> step Adjustment: period of violation and frequency

c) 2<sup>nd</sup> step Adjustment: intention/negligence by the violator

d) Decision of final penalty surcharge

➤ **Notice on Specific Criteria for the imposition of Penalty Surcharge**

## II. Type of Sanctions: Penalty Surcharge

### 2. How to calculate Penalty Surcharge: Case

#### ➤ Assumption

- **Two Undertakings(Jupiter, Saturn)**
- **Bid-rigging for highway construction**  
(Jupiter: bid winner, Saturn: dropout)
- **contract amount: 100billion KRW**
- **two undertaking's market share: 80%**
- **degree of damage: considerable**
- **the construction was ordered by private company**
- **cooperative behavior to KFTC's investigation**

➤ **👉 How much would be the penalty surcharge?**



## II. Type of Sanctions: Penalty Surcharge

### 2. How to calculate Surcharges: Case

#### (1) Base Amount

☞ calculate relevant turnover(contract amount) : 100 billion won

☞ calculate points of seriousness according to the criteria(next page)  
: 2.5 point

☞ then, imposition rate(next page) : 7.0% ~ 8.0%

\* Base Amount: 100billion \* (7.0% ~ 8.0%) = 7 billion won ~ 8 billion won

\* (assume) imposition rate: 7.0%, ☞ **7 billion won**(Jupiter)

but, for dropout, 50% reduction is applicable, ☞ **3.5 billion won**(Saturn)

# II. Type of Sanctions: Penalty Surcharge

## 2. How to calculate Surcharges: Case

### ➤ Criteria of specific evaluation for Cartel (\* included in the Notice)

		Weight	Top(3point)	Middle(2)	Low(1)
Contents of violation	Degree of restriction on competition	0.2	.., <b>bid rigging</b> , ..	.., jointly carrying out,....	Not included to Top, or Middle behavior
	Degree of implementation	0.2	.., sanctions,...	.., <b>no sanctions, yet means to do..</b> , ..	.., no sanctions, no means to do...,
Degree of Violation	M/S in relevant market	0.1	<b>m/s &gt; 75%</b>	50% ≤ m/s < 75%	m/s < 50%
	Relevant Turnover	0.2	<b>.... 100billion and over..</b>		.. less than 40 billion..
	Degree of Damage/Profits	0.2	large, severe	<b>considerable</b>	Not included to Top, or Middle..
	Geographical Effects of violation	0.1	..Nationwide.. public ordering agency....	..., More than 2 big cities..., <b>private ordering agency</b> ,...	

$$\begin{aligned}
 \text{Points sum} &= (3 \times 0.2) + (2 \times 0.2) + (3 \times 0.1) + (3 \times 0.2) + (2 \times 0.2) + (2 \times 0.1) \\
 &= 2.5
 \end{aligned}$$

## II. Type of Sanctions: Penalty Surcharges

### 2. How to calculate Surcharges: Case

➤ **Imposition rate by degree of violation** (\* included in the Notice)

Degree of violation	Points accrued to criteria	Imposition rate
Very serious violation	Points > 2.6	$8.0 \leq \text{rate} \leq 10.0$
	$2.2 \leq \text{points} < 2.6$	$7.0 \leq \text{rate} < 8.0$
Serious violation	$1.8 \leq \text{points} < 2.2$	$5.0 \leq \text{rate} < 7.0$
	$1.4 \leq \text{points} < 1.8$	$3.0 \leq \text{rate} < 5.0$
Weak violation	points < 1.4	$0.5 \leq \text{rate} < 3.0$

# II. Type of Sanctions: Penalty Surcharge

## 2. How to calculate Surcharges: Case

- (1) Basic Amount : 7 billion won(Jupiter), 3.5 billion won(Saturn)
- (2) Discretionary Adjusted Amount
  - 1st-step Adjustment: duration of period and frequency of violation
  - 2nd-step Adjustment: retaliation / cooperation, etc.

Company	Basic Amount	adjustment(1 <sup>st</sup> )			adjustment(2 <sup>nd</sup> )		Final surcharge
		duration	Frequency (penalty point)	amount	Cooperation with investigation(ex.20%)	amount	
Jupiter	7	-	↑ 2.8 (=7*40%)	9.8	↓ 1.96 (=9.8*20%)	7.84	5.48 ( ↓ 30%)
Saturn	3.5		↑ 1.05 (=3.5*30%)	3.6	↓ 0.72 (=3.6*20%)	2.88	2.01 ( ↓ 30%)

- (3) Final imposition of surcharge : 5.48 billion(Jupiter), 2.01 billion(Saturn)

## II. Type of Sanctions: Reference to Prosecutor's Office

### Provisions

#### ➤ MRFTA (Art. 71)

- Unduly collaborative acts shall be prosecuted by a public action only after a complaint is filed by the Fair Trade Commission
- KFTC shall file with the Prosecutor General the complaints where it is deemed that such violations may substantially hamper competition, because the degree of violations is obvious and serious from an objective point of view.

#### ➤ Guidelines on types and criteria of violation for referring cases to Prosecutor's Office

ex) Period(past 3 years), frequency(3 times more than warning), Penalty points(6)

#### ★ Debate over abolishing KFTC's exclusive right to file a complaint

# III. Debarment

## Provisions

### ➤ MRFTA

- when any collaborative act is performed in violation of Article 19(1), the Fair Trade Commission may take necessary corrective measures(Art. 21)

### ➤ Guidelines on reviewing the unduly collaborative act in bidding

- KFTC can ask the ordering agency to restrict the qualification for participation of bid-riggers after taking into account the degree and frequencies of violation.

### ➤ Act on Contracts to which the State is a Party (be enacted by Ministry of Strategy and Finance)

- Central government agency shall place restrictions on qualification for participation of bid-riggers not exceeding two years(Art. 27)

# IV. Judicial Review

## Judicial Review

### ➤ Sanctions can be reviewed by the Judicial Courts.

- within 30 days from the date of receiving a written decision of the KFTC(Art.54)
- The Seoul High Court shall have exclusive jurisdiction over any lawsuits for appeal cases. And then, Supreme Court can deliver final judgments.
  - ☆ if lose 🖐️ recalculate penalty surcharges or repeal the sanctions.(The Court can not increase or decrease the sanctions imposed by KFTC.)

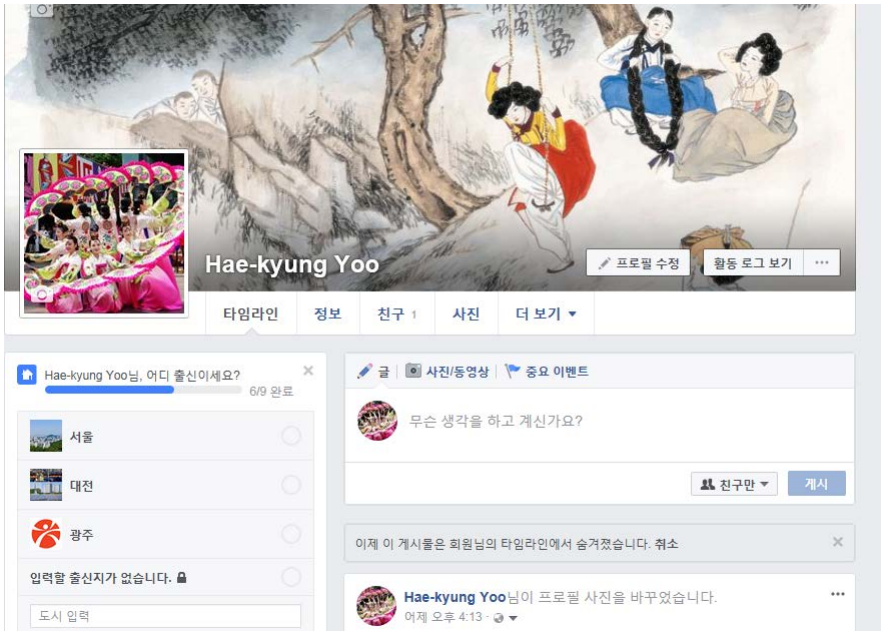
	2013				2014				2015			
Cases of corrective measures(A)(⊃cartel)	382				348				511			
Cases of appeal(B)	46				73				91			
Judgments of the Court	Winning	Partial winning	Overtur ning	Pendi ng	W	P.W	O	P	W	P.W	O	P
	28	2	3	13	26	3	2	42	19	2	-	70

## Damage claim

### ➤ Increasing claims for damage by the public agencies

- Most of the public ordering institutions claim for damage, however, in private sector, damage-claim is not usual.
- ☆ KFTC does not take into account the potential damage claim when setting the level of the sanctions, neither intervene in the process of awarding damages.





**Thank you for your attention**

**yookh@korea.kr**