



KFTC set to wrap up feedback period for IPR guideline revisions

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IN BRIEF

The Korea Fair Trade Commission is set to wrap up the process of accepting feedback on its revised intellectual property rights guidelines on Wednesday, it is understood. In December, the KFTC announced that it would revise its existing IPR guidelines. Under the revision, the definition of "standard technology" would apply only to technology recognized as such by the government or standards-setting organizations. The term "standard essential patent", or SEP, would apply only to technology used under fair, reasonable and non-discriminatory commitments. And a different illegality standard would be applied to de facto SEPs to avoid excessive restrictions on technology that is widely used.

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Prior to the revision, the KFTC said there would be a comment period lasting until 13 January, during which parties ranging from companies in the tech sector and other industries to law firms and academics would be able to submit their views on the proposals.

However, concerns remain about the competition agency's tentative IPR guideline revisions. Earlier this month, for instance, the Global Antitrust Institute at the George Mason University School of Law expressed disappointment over what it called the "limited scope of the KFTC's amendments." (see here)

According to the comments, the South Korean regulator's proposed amendments did not

address most recommendations on cross-licensing, grantbacks, discriminatory licensing, excessive pricing, and other conduct involving standard essential patents and patent-assertion entities.

While concerns remain, the extent to which the various parties' comments will be reflected in the KFTC's revised IPR guidelines is uncertain, sources say.

"In a sense, the KFTC's IPR guidelines have drawn excessive attention and concerns mainly from the US," said an industry source. "Such a strong push from a single jurisdiction also raises questions."

The source added that comment from US legal sources could even be supported by interested parties.

Nonetheless, industry sources say the KFTC will pay close attention to all the comment it has received in order to ensure that it drafts fair guidelines that meet global standards. However, there is no guarantee that the agency will go ahead and incorporate all concerns, given that it could be criticized for being soft on foreign interests.

Comment could also be misunderstood due to translation, industry sources said.

An industry source said the competition agency was working hard to find a balance, but that there were challenges, given the fast-changing industry environment. "It is an important area for the competition agency. It has been on the agency's priority agenda for some time," the source said.

Amid all the attention, the KFTC is expected to take a careful approach to revising its IPR guidelines, industry sources said, explaining that the competition agency was well aware of the debate surrounding the guidelines.

As MLex previously reported, the KFTC has been quite active in following IPR cases in recent years. During an IP conference last November, KFTC Vice Chairman Hak-hyun Kim said IPR had become a focus area for the agency. Kim had said then that there were questions about how proper usage of IPR should be measured and of the potential impact on market competition. (see here)

A source close to the regulator said: "We're looking at all of the feedback and will make revisions accordingly."