SEP-related Legislative and Policy Measures Adopted by Member States, including Notable Case Law

Republic of Korea

o POLICY

The Ministry of Intellectual Property (MOIP) has supported academia·public research institutions and SMEs·enterprises of middle standing for creation of SEPs. Specifically MOIP has supported the aforementioned institutions and enterprises carrying out R&D related to international standard in their strategies of obtaining SEPs, based on the analysis of published patents and standard-related information.

On the one hand, the Korea Fair Trade Commission (KFTC) has nationally regulated competition. The FTC has established "The Monopoly Regulation And Fair Trade Act", "Guidelines on Undue Exercise of Intellectual Property Rights", etc. for regulating undue exercise and abuse of SEPs.

However, MOIP cannot inform specific criteria applied by the FTC or other SEPs related policies of the Commission because they are beyond our scope of work.

o CASE LAW

□ The relevant case is as follows:

Qualcomm rejected/limited licensing of its mobile communication SEPs to other modem chip manufactures, such as Samsung or Intel, etc., and reached a supply contract of modem chip in connection with a patent licensing contract with a mobile phone manufacture.

-> The Seoul High Court decided that the case is subject to unfair competition or abuse of market dominance (Ruling 2017Nu48).

Also, Ruling 2013Du14726 rendered by the Supreme Court in January 31, 2019 noted that where a corporation that has CDMA standard technology and a market dominance in the modem chip supply market at the same time sales modem chips to mobile phone manufactures, provided That certain exclusionary conditions are satisfied, if the corporate provides 'rebate' with the exclusive royalty regarding standard technology cut down, the case satisfies the presumptive requirements of exclusive conditional transaction, that is, an act of abuse of market dominance.

[1] See https://www.wipo.int/wipolex/en/judgments/details/2150.