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M&A 시장의 과제와 전망 (2)

김재중 · 박기홍 · 성보경
이성환 · 정영철 · 정윤모

한국증권연구원
Korea Securities Research Institute

序 言

최근 전세계적으로 M&A 시장의 규모가 급속도로 증가하는 모습을 보이고 있습니다. 이는 M&A가 기업 경영의 현실에서 차지하는 전략적 중요성이 커지고 있기 때문일 것입니다. 그러나 잘 알려진 바와 같이, M&A라는 경제현상은 기업들이나 국가경제에 무조건 긍정적인 것만은 아니며 부정적인 측면도 함께 나타날 수 있는 양면성을 지니고 있습니다.

기업경영권시장에서 M&A 위협으로 인해 초래되는 단기실적주의 (Shortermism)는 오히려 기업의 장기적인 성장을 저해할 뿐만 아니라, 약탈적인 기업인수가 자행될 경우에는 기업 및 주주가치가 심각하게 손상될 우려도 있습니다. 그러나 한편으로 M&A는 기업들의 효율성을 증대시키고 경쟁력을 강화시킴으로써 사회적 이윤을 창출하는 순기능을 가지고 있습니다. 또한 M&A는 경영자들의 무능력이나 비효율성으로 인해 시장가치가 낮은 기업을 매수하여 정상화시킴으로써 기업가치를 높일 수 있을 뿐만 아니라, 대리인 문제의 폐해를 시정할 수 있는 방안이 될 수 있습니다. 이와 같이 M&A는 순기능과 역기능을 모두 가지고 있기 때문에, 공정성과 효율성에 근거한 합리적인 제도의 설계 및 운영을 통하여 순기능은 최대한 살리고 역기능은 최소화시킬 필요가 있습니다.

우리나라에서도 M&A의 중요성이 증가하고는 있으나, 아직도 국내 M&A 시장은 극히 제한된 M&A 방식만을 사용함으로써 외국에 비해 경험이 부족하고, M&A 과정에서 필요한 역량이 전반적으로 미흡합니다. 그러나 이미 M&A를 통해 단기간에 뚜렷한 경영 성과를 얻을 수 있음을 경험한 국내 기업들은 M&A의 필요성을 더욱 크게 느낄 것입니다. 이에 따라 앞으로 국내 M&A 시장은 활용 가능한 거래 방식과 상호 협의를 통한 자발적 사업 부문 교환 등의 성숙하고 선진화된 시장으로 점

차 발전할 것으로 전망됩니다. 또한 경영효율성 제고를 위한 적대적 M&A 시장도 지속적으로 성장할 것으로 보입니다. 따라서 향후 국내 기업들의 M&A 수요증대에 대비하여 바람직한 M&A 거래의 확립과 활성화를 위한 M&A 제도의 모색과 관련 인프라의 정비가 무엇보다 중요하다고 할 수 있습니다.

이를 위하여 본 M&A 연구회는 각계의 전문가들이 모여서 M&A와 관련된 제도 및 관행을 대상으로 하여 이론적 또는 실무적인 연구를 진행하고 있습니다. 이러한 활동을 통하여 본 연구회는 국제적 정합성에 부합하는 한편, M&A가 그 순기능을 충분히 발휘할 수 있도록 합리적인 제도개선 방안을 제시함으로써 자본시장의 발전과 M&A 시장의 활성화에 기여하고자 노력하고 있습니다.

본 자료집은 M&A 연구회에서 지난 5월에 발간한 “M&A 시장의 과제와 전망(1)”에 이어 2007년에 본연구회에서 발표하고 토론했던 자료들을 모아서 작성한 두 번째 자료집입니다. 향후에도 연구결과가 축적되는 대로 지속적으로 보고서를 발간할 예정입니다. 이 지면을 빌어 귀한 연구자료를 발표하고 함께 토론해 주신 회원 여러분들께 진심으로 감사드리며, 앞으로도 연구회 활동에 더욱 적극적인 참여를 기대합니다.

2007년 10월

한국증권연구원

원장 최도성

목 차

序言	i
발표자료	
1. 기업결합심사제도 해설	김재중/3
	(지명토론 강희철)
2. 철강업에서의 M&A 추이와 시사점	박기홍/51
	(지명토론 유정현)
3. M&A와 국제투자금융업무	성보경/81
	(지명토론 한대우)
4. 공개매수제도의 실무상 쟁점과 운영방향	이성환/97
	(지명토론 정윤모)
5. 기업인수계약	정영철/141
	(지명토론 강희주)
부록. M&A연구회 회원 명단	283

발표자료 1: 기업결합심사제도 해설

(발표: 김재중/공정거래위원회 서비스1팀 팀장

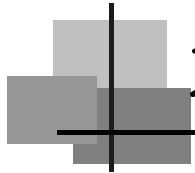
지명토론: 강희철/법무법인 율촌 변호사)



기업결합 심사제도 해설

공정거래위원회 기업결합팀장

김 재 중



차 례

- ▣ 기업결합 제도 개관
- ▣ 기업결합 신고제도
- ▣ 기업결합 심사제도
- ▣ 기업결합 시정조치
- ▣ 기업결합심사와 관련된 몇가지 오해



기업결합 제도 개관 - 목적

- M&A의 장점
 - ․ 경영효율성 제고, 핵심역량 강화 등 사업구조조정의 일환

- M&A로 인한 폐해의 가능성
 - ․ 관련시장에서의 독과점 형성 및 강화
 - ․ 가격인상 등 소비자 피해

- M&A 규제 의 필요성
 - ․ 독점의 폐해는 사후적으로 치유하기 곤란 → 인위적 독과점 형성을 사전적으로 규제할 필요



기업결합 제도 개관 - 관련규정

- 기업결합 신고 관련규정
 - ․ 법 제12조, 시행령 제18조
 - ․ 기업결합의 신고요령, 신고위반에 대한 과태료 부과기준

- 기업결합 심사 관련규정
 - ․ 법 제7조, 시행령 제12조 등
 - ․ 기업결합 심사기준

- 기업결합 시정조치 관련규정
 - ․ 법 제16조
 - ․ 시정조치 불이행에 대한 이행강제금 부과기준, 기업결합 시정조치 부과기준



기업결합 신고제도

- 자산총액 또는 매출액(계열회사 포함)이 일반 당사자는 1,000억원, 타방 당사자는 30억원 이상

- 신고대상 기업결합의 유형
 - 주식취득 : 20% 이상(상장법인은 15% 이상)
 - 합병 : 타방 당사자의 실체가 소멸
 - 영업양수 : 영업의 주요부분(양도회사 자산총액의 10% 또는 50억원 이상)
 - 회사설립 : 다른 회사와 함께 신규회사를 설립하여 그 주식 20% 이상을 인수
 - 임원겸임 : A 회사의 임직원이 B회사의 등기임원을 겸임(대규모회사(자산총액 또는 매출액 2조원 이상)에 한함)



기업결합 신고제도

- 사전신고
 - 대규모회사의 주식취득, 합병, 영업양수, 회사설립
 - 계약체결일 등으로부터 30일 이내에 신고하여야 하며, 심사가 완료될 때까지 이행행위(대금지급 등) 금지

- 사후신고
 - 사전신고 이외의 모든 신고대상 기업결합
 - 이행행위 후 30일 이내에 신고하여야 함

- 임의적 사전신고
 - 신고의무 발생 이전에 범위반 여부를 사전에 심사 신청

기업결합 심사제도 - 수평결합

- 수평결합 : 기업결합 심사 흐름도(발표자료 p. 6)
- 관련시장 확정(상품시장, 지리적 시장)
 - SSNIP(Small, but Significant and Non-transitory Increase of Price) : 특정 상품(지역)의 가격이 작지만 의미 있는 정도로 상당 기간 인상될 경우 당해 상품(지역)의 대표적 구매자가 구매를 전환할 수 있는 상품(지역) 전체를 의미
- 시장집중도 산정
 - 법상 추정요건 : ① CR1>50% 또는 CR3>75%, ② 제1위 사업자, ③ 2위와의 점유율 차이가 25% 이상
 - 심사기준상 요건 : CR1>50% 또는 CR3>70%
 - 시장집중도는 기업결합심사의 출발점(starting point)



기업결합 심사제도 - 수평결합

- 해외경쟁의 도입수준
 - 수입의 용이성, 수입비중 추이, 시장개방 정도 등 고려

- 신규진입 가능성
 - 가까운 시일 내에 커다란 진입비용 없이 충분한 신규진입이 가능한 경우 경쟁제한의 우려 없음

- 경쟁제한 가능성
 - 단독효과(Unilateral Effect) : 결합당사회사가 경쟁사업자를 의식하지 않고 가격인상 등 독점력을 행사할 가능성 검토
 - 협조효과(Coordinated Effect) : 경쟁의 감소로 경쟁사업자 간 명시적, 묵시적 협조의 가능성이 높아지는지 여부 검토



기업결합 심사제도 - 수직, 혼합결합

- 수직결합
 - 시장봉쇄효과(Foreclosure Effect) : 원재료 수급관계에 있는 회사간 결합을 통해 비계열 경쟁사업자와의 거래기회를 차별 또는 봉쇄 → 경쟁사업자 비용인상 또는 퇴출

- 혼합결합
 - 잠재적 경쟁저해(Elimination of Potential Competition) : 결합이 없었다면 독자적으로 진입했거나 당해 기업의 존재로 인해 기존 기업의 경쟁제한행위가 억제되고 있었던 경우
 - 포트폴리오 효과(Portfolio Effect) : 시장지배력이 높은 시장으로부터 시장지배력이 낮은 시장으로의 지배력 전이



기업결합 심사제도 - 예외인정사유

- 효율성 증대효과
 - 결합에 따른 효율성 증대효과가 경쟁제한의 폐해보다 높은 경우 시정조치를 부과하지 않을 수 있음
 - 요건 : ① 당해 기업결합 외의 방법으로는 달성불가능 (merger-specific), ② 가까운 시일내에 발생할 것이 명백
 - 입증책임 : 결합당사회사에 있음

- 회생불가회사
 - 당해 기업결합이 아니라면 생산설비의 퇴출이 불가피한 경우 시정조치를 부과하지 않을 수 있음
 - 요건 : ① 가까운 장래에 지급불능, ② 기업결합이 없으면 생산설비 퇴출, ③ 경쟁제한성이 적은 다른 기업결합 곤란
 - 입증책임 : 결합당사회사에 있음



기업결합 시정조치

- 이행강제금
 - 시정조치 불이행시 매일 단위의 이행강제금 부과(“이행강제금 부과기준”)
 - 사례 : (주)코오롱의 (주)고합 영업양수 건('03. 5)

- 기업결합 시정조치 부과기준
 - 기업결합 시정조치의 일관성, 투명성, 예측가능성 제고('06. 12 제정)
 - 주요 내용 : 시정조치 부과 기본원칙, 시정조치의 종류, 각 시정조치 부과시 주요 고려사항 등



기업결합 심사에 관한 오해

- 공정위가 개별 M&A에 사사건건 개입?
 - 매년 6~7백건의 심사중 시정조치에 이르는 것은 1% 미만
 - '06년 시정조치 건수 : 4건

- 재무구조가 부실한 기업간 결합은 반드시 허용?
 - 현재 재무구조가 부실하더라도 향후 경영정상화가 가능한 경우 경쟁구도에 영향을 미칠 수 있으므로, 시정조치 필요
 - 사례 : 삼익-영창악기 결합 건(공정위의 불허조치 이후 영창악기가 부도에 이르렀으나 이후 경영정상화되어 제3자에게 성공적으로 매각되었으며, 피아노 시장에서의 경쟁을 유지)

기업결합심사에 관한 오해

- 잠재적 해외경쟁압력 미고려?
 - 기업결합심사시 시장획정, 시장집중도 산정, 시장진입단계 등에서 해외경쟁압력을 충분히 고려하고 있음
 - 이에 관해 일반적으로 합의된 계량지표는 존재하지 않으나, 산업별 특성 등에 따라 개별 사건별로 고려

- 수출비중이 높으면 지리적 시장은 세계시장?
 - 기업결합 심사에서 지리적 시장의 범위는 소비자의 선택가능성과 관련되어 있음
 - 따라서 일반적으로 수출보다는 수입이 더 중요한 고려요소
 - 수출은 경쟁제한성 판단시 고려 가능 (예 : 경쟁사업자의 수출물량이 많을 경우, 결합후 결합당사회사가 가격을 인상하더라도 내수로 전환할 수 있으므로, 가격인상 가능성 낮음)



기업결합심사제도 해설

2007. 2

公 正 去 來 委 員 會

- 목 차 -

I. 기업결합제도 개관

1. 의의
2. 관련법령
3. 처리실적

II. 신고제도

1. 신고대상, 시기 및 기한
2. 임의적 사전심사제도

III. 기업결합 심사제도

1. 절차 흐름도
2. 심사항목별 판단기준 및 사례
3. 예외인정 판단기준

IV. 기업결합 시정조치

1. 이행강제금
2. 기업결합 시정조치 부과기준

V. 기업결합심사와 관련된 몇 가지 오해

1. 공정위가 개별기업간 M&A에 사사건건 개입한다?
2. 재무구조가 부실한 기업간 기업결합은 허용해야 한다?
3. 기업결합 심사시 잠재적 해외경쟁압력을 고려하지 않는다?
4. 수출비중이 높다면 지리적 시장을 세계시장으로 확대해야 한다?

I. 기업결합제도 개관

1. 의의

- M&A는 기업 입장에서는 경영효율성을 제고하고, 핵심역량을 강화하는 등 사업구조조정을 하기 위한 주요 수단
 - WTO체제 출범 등으로 국가간 상품, 자본의 이동장벽이 낮아짐에 따라, 기업인수권 시장이 활성화
 - 국내 기업결합 신고건 수도 IMF 경제위기를 거치면서 '99년 5백여건에서 '00년 이후 6~7백여건으로 크게 증가
- 반면, 시장관점에서는 특정기업의 시장지배력이 형성·강화되거나 경쟁사업자간 담합 가능성이 높아지는 등 경쟁이 제한되어 궁극적으로 소비자 후생을 저해할 수도 있음
 - 이에 따라, 주요국가(약 70여개국)들은 대표적 경쟁정책으로서 일정 규모이상의 기업결합에 대해서는 신고제도와 심사제도를 운영
 - 심사결과 관련시장내의 경쟁을 실질적으로 제한하는 것으로 판단되는 경우 주식처분, 자산매각 등 독과점 폐해를 사전에 방지할 수 있는 다양한 시정조치를 부과하고 있음

※ 의사가 질병에 따라 다른 처방을 하는 것처럼 시정조치도 경쟁 제한 폐해의 양태 및 정도에 따라 맞춤형(tailored)으로 하는 것이 중요(출처 : Merger Remedies in American and European Union Competition Law, '03)

- 기업결합 단계에서 사전적으로 경쟁제한성을 심사하는 이유는 결합 이후에는 독과점 구조가 고착되어 사후적으로 이를 치유하는데 한계가 있기 때문
- 시장지배력을 확보한 기업은 가격인상, 생산량 조절, 진입장벽 구축 등 다양한 경쟁제한 행위를 할 유인이 높아지게 되는 반면,
- 사후적으로는 이를 발견하거나 입증하기가 어렵고 과징금 부과 등 경제적 제재만으로는 그러한 유인을 제거하기 곤란하며, 기업결합 이후에는 다양한 법률관계가 이미 형성되어 원상회복시키기가 곤란

2. 관련법령¹⁾

가. 기업결합 신고규정

- 법 제12조(기업결합의 신고) : 신고대상, 신고기한, 사전신고대상 기업결합의 이행행위 금지, 임의적 사전심사요청, 신고의무면제대상 등
- 시행령 제18조(기업결합의 신고 등) : 자산총액 또는 매출액의 규모, 제출 서류 보정, 신고의무 발생일 등
- 관련고시 : '기업결합의신고요령'

나. 기업결합의 심사규정

- 법 제7조(기업결합의 제한) : 경쟁제한적 기업결합의 금지, 기업결합의 유형, 예외인정요건, 경쟁제한성 추정요건
- 시행령 제11조(특수관계인의 범위), 제12조(자산총액 또는 매출액의 기준), 제12조의2(대규모회사의 기준), 제12조의4(회생이 불가한 회사와의 기업결합)

1) 구체적 내용은 공정위 홈페이지(www.ftc.go.kr) "법령정보" 참조

- 관련고시 : '기업결합심사기준'

다. 시정조치, 벌칙, 과태료 등 관련규정

- 법 제16조(시정조치), 제17조의3(이행강제금), 제66조(벌칙), 제69조의 2(과태료)
- 관련 고시 등 : '기업결합신고규정위반사건에 대한 과태료부과기준', '기업결합관련시정조치불이행에따른이행강제금부과기준', '기업결합 시정조치 부과기준'

3. 처리실적

- '80년 공정거래법 제정으로 합병심사제도 도입이후 20여년간 국내에서 발생하는 기업결합건수는 크게 증가하여 왔음
 - '81년부터 '94년까지 연평균 187건의 기업결합이 신고되는데 비해 '95년부터 300건을 넘어섰고 2000년에는 연간 신고건수가 700건이 넘어서는 등 기업결합이 급속도로 증가해왔음
- '03.7월부터는 역외적용 차원에서 해외에서 발생한 외국기업간 기업결합에 대해서도 신고를 받아 심사를 하고 있는데,

24 M&A 시장의 과제와 전망 (2)

- '04년 신고건수가 58건에 달하고 신고위반(3건)에 대해 과태료를 부과하는 등 제도가 성공적으로 정착

<기업결합 심사실적>

	'81-'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05
총건수	2,949	393	418	486	557	703	644	602	589	749	658
신고위반	485			26	17	42	44	44	36	29	16
시정조치건	3	1	-	3	2	4	1	2	7	6	3

- '05년말까지 공정위가 내린 시정조치는 총 32건으로 시정조치의 유형으로는 주식처분명령, 자산매각명령, 영업방식 및 범위의 제한 등이며, '06년에는 4건에 대해 시정조치를 부과
- '06년도 시정조치사례는 '동양제철화학의 콜럼비안 케미컬즈 주식취득 건', 'HCN의 대구북부방송 주식취득 건', '이랜드리테일 등의 한국까르푸 주식취득 건' 및 '신세계의 월마트코리아 주식취득 건'임

II. 기업결합 신고제도

1. 신고대상·시기·기한(법 제12조 제5항 및 시행령 제18조)

- 결합당사회사(특수관계인 포함)의 직전 사업년도 자산총액 또는 매출액이 일방은 1,000억원, 타방은 30억원을 넘는 경우, 다음 5가지 유형이 신고대상임
 - 주식취득 : 다른 회사 발행주식총수(의결권 없는 주식 제외)의 20%(상장·등록법인은 15%) 이상을 소유하게 되는 경우
 - 임원겸임 : 대규모 회사(계열회사의 자산총액 또는 매출액 합계가 2조원 이상인 회사)의 임원 또는 종업원이 다른 회사의 임원을 겸임하는 경우
 - 합병, 영업양수를 하는 경우
 - 회사설립 참여 : 신설회사 주식의 20% 이상을 인수하는 경우

<기업결합 신고 시기 및 기한>

구 분	신고의무자	기업결합 유형	신고 시기
사전신고	대규모회사	· 주식취득	· 계약일부터 30일
		· 합병	
		· 영업양수	
		· 회사신설 참여	· 주총(이사회) 의결일부터 30일
사후신고	대규모회사 외의 자	· 주식취득	· 주권교부일 등으로부터 30일
		· 합병	· 합병등기일부터 30일
		· 영업양수	· 대금지불 완료일부터 30일
		· 회사신설 참여	· 주권납입기일 다음날부터 30일
	대규모회사	· 임원겸임	· 겸임되는 회사의 주주총회(사원총회)에서 선임 이 의결된 날부터 30일

□ 사전신고에 해당하는 기업결합은 신고 후 30일(추가연장 90일)이 경과할 때까지는 기업결합완료행위(합병등기, 영업양수계약의 이행 행위, 주식인수행위 등)가 금지

○ 당해 기업결합이 시장에 미치는 영향력을 감안하여 기업결합을 완료하기 전에 심사토록 하기 위한 것이며, 신고하자마자 기업결합을 완료해버리면 완료전신고의 의미가 없어지기 때문

※ 미국, EU 등 대부분의 국가가 전면적 사전신고제도이나, 우리나라는 기업들의 신고부담 등을 고려하여 원칙적으로 사후신고제도로 운영

- 사후신고제도는 물리적 시설·인력 원상복구 곤란, 취득회사의 경영권 행사로 인한 시정조치 개발의 제약, 부실기업의 부도 가능성 등 내재적 한계와 부작용 초래 가능성

2. 임의적 사전심사제도(법 제12조 제7항)

□ 사전·사후 신고를 막론하고 기업결합 신고의무가 발생하기 이전에 구체적인 기업결합 계획에 대한 범위반여부를 심사받을 수 있음

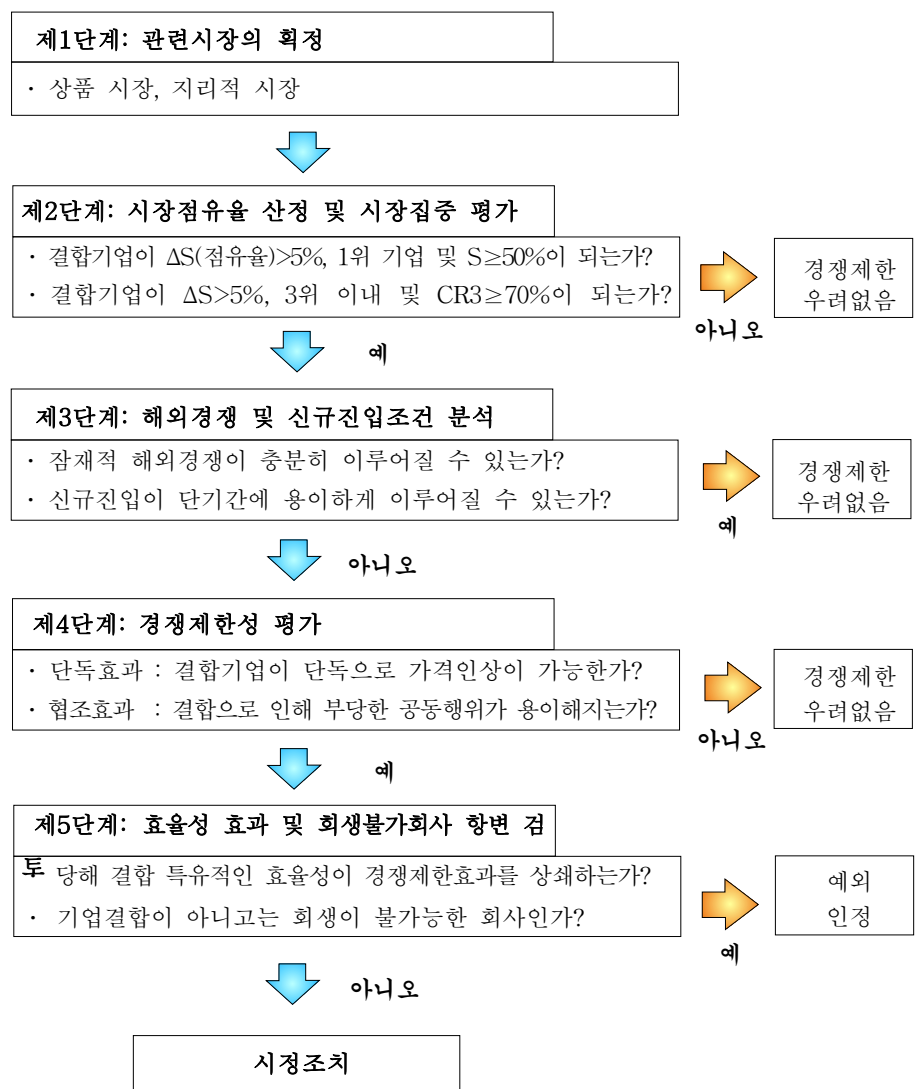
- 기업결합을 하기전에 사전적으로 경쟁제한성, 즉 범위반여부를 판단받을 수 있기 때문에 기업의 투자결정시 매우 유용한 제도로 평가

※ 04년 동 제도의 활용건수는 약 40여건으로 INI스틸 등의 한보철강 영업양수, 하나로텔레콤의 두루넷 인수, 크라운제과의 해태제과 인수 등 대부분의 주요 기업결합건에서 활용

- 그러나, 동 제도는 법률적 의무사항이 아니기 때문에 경쟁제한성이 우려됨에도 이를 활용하지 않고 기업결합을 완료한 후 신고를 하더라도 이를 막기가 곤란(예: 삼익악기의 영창악기 인수건)

III. 기업결합 심사제도

1. 기업결합심사 흐름도(Flow Chart) : 수평결합을 중심으로



2. 심사항목별 판단기준 및 사례

가. 관련시장(Relevant Market) 확정

- 경쟁제한성 판단을 위한 전단계로 당해 기업결합이 영향을 미칠수 있는 관련시장으로 상품 시장과 지리적 시장을 확정
 - ‘상품 시장’은 소비자가 상품의 특성, 가격, 사용목적 등을 고려하여 대체할 수 있다고 여기는 상품 또는 서비스 집합을 의미
 - ‘지리적 시장’은 기업결합당사회사가 상품이나 서비스를 공급하는 지역 중 경쟁조건이 매우 동질적이어서 인접 지역과는 구별될 수 있는 지역을 의미
- ※ 기업결합심사기준상 ‘관련시장’이란 특정상품(지역)의 가격이 상당기간 어느정도 의미있는 수준으로 인상될 경우 당해 상품(지역)의 대표적 구매자가 이에 대응하여 구매를 전환할 수 있는 상품(지역) 전체를 의미(SSNIP Test)

<심결사례>

◆ 무학의 대선주조 주식취득건

30 M&A 시장의 과제와 전망 (2)

- 무학은 지리적 시장이 전국시장이라고 주장하였으나, 공정위 및 서울지방법원은 관련시장을 '경남 소주 시장', '부산 소주 시장'으로 확정

- 결합당사회사의 매출 대부분이 부산 및 경남지역에서 발생하는 점, 소주 가격인상시 소비자가 해당지역을 벗어나 구매하기는 어려운 점, 진입장벽을 감안시 타지역의 경쟁업체가 진입하기 용이하지 않은 점

※ E-H Test, 임계손실 분석(Critical Loss Analysis) 등 실증분석 결과도 두 지역이 가상독점사업자가 독점이윤을 확보할 수 있는 최소지역(관련시장)으로 나타남

◆ 하나로텔레콤의 두루넷 주식취득건

- 초고속인터넷서비스의 지리적 시장을 단독주택과 아파트로 구분하여야 한다는 주장에 대해, 공정위는 주거형태를 구분하지 않음

- 초고속인터넷 사업자가 서비스를 제공함에 있어 특별히 주거형태에 따른 경제적, 기술적 제약이 없고, 이에 따라 소비자는 주거형태를 바꾸지 않고도 초고속인터넷서비스를 제공받을 수 있기 때문에 공급대체성과 수요대체성이 높음

나. 시장집중도 평가

□ 경쟁제한성의 추정요건(법 제7조 제4항)

○ 기업결합 당사회사 시장점유율 합계가

- $CR1 \geq 50\%$ 또는 $CR3 \geq 75\%$ 로 당해 거래분야에서 제1위이며, 2위 회사와의 점유율의 차이가 점유율 합계의 25% 이상인 경우

○ 경쟁제한 추정요건에 해당하는 경우, 당사회사가 경쟁제한성이 없음을 반증하지 못하거나 반증하더라도 그 내용의 타당성이 인정되지 않으면 경쟁제한성이 인정

□ 경쟁제한성 판단기준(기업결합심사기준) - 수평결합

○ 시장점유율 합계가 $CR1 \geq 50\%$ 또는 3위이내로서 $CR3 \geq 70\%$ 인 경우 경쟁을 실질적으로 제한할 수 있으며, 해외경쟁 압력, 신규진입 가능성, 담합 가능성 등을 종합적으로 고려하여 경쟁제한성 여부를 판단

* 다만, 2위로서 30% 미만이면서 1위 시장점유율과 상당한 격차가 있는 경우, 3위로서 1,2위간 또는 2,3위간 상당한 격차가 있는 경우, 1,2위간 및 2,3위간 시장점유율 격차가 상당하지 않은

32 M&A 시장의 과제와 전망 (2)

경우, 시장점유율 증가분이 5% 미만인 경우, 대량구매사업자가 존재하는 경우 등은 경쟁을 제한하지 않을 수 있음

※ 시장집중도는 집중심사를 해야 할 사건을 구분해내기 위한 관문 심사(threshold test)로서, 대부분의 경우 그 자체로 경쟁제한성을 결정짓는 요소(decisive factor)가 아님에 유의

다. 해외경쟁의 도입수준

- 수입의 용이성 및 수입비중 추이 등을 고려하여 잠재적 해외경쟁의 도입 가능성이 큰 경우 경쟁제한가능성이 낮아짐

- 상품의 국제가격, 시장개방정도, 외국인투자현황, 국제적인 유력한 경쟁자의 존재여부, 관세율 및 관세율의 인하계획 여부, 기타 비관세 장벽 등을 종합적으로 고려

<심결사례>

◆ 삼익악기 및 삼송공업의 영창악기 주식취득건

- 삼익악기는 일본 및 중국으로부터의 수입압력이 충분하여 기업결합 후 독점력을 행사할 수 없다고 주장하였으나, 검토결과 해외경쟁압력은 낮다고 판단

- 일본제품은 고가로서 수입비중(10%, 04년 상반기 UP기준)이 높지 않고, 중국제품은 수입실적(1% 미만)이 미미하며 브랜드 인지도 및 품질이 낮고 국내 유통망 구축비용이 상당히 소요되며, 중국 현지 업체들 중 고유브랜드로 여타국가에 수출하는 업체들이 적은 점, 삼익과 영창의 중국산 피아노 국내매출실적이 저조한 점 등을 고려

◆ 삼성전자와 도시바간의 조인트벤처 설립

- 국내 광디스크(ODD) 시장에서 결합후 시장점유율이 심사기준상 요건에 근접하나, 수입비중이 40%에 달하는 등 수입이 용이하고, 강력한 경쟁사업자가 존재하는 등 해외 경쟁압력이 충분하여 경쟁제한성이 크지 않다고 판단

라. 신규진입의 가능성

- 가까운 시일내에 신규진입 가능한 경우 경쟁제한가능성이 낮아짐
- 법적·제도적 진입장벽, 필요최소한의 자금규모, 특허권 기타 지재권을 포함한 생산기술조건, 원재료조달조건, 제품차별화, 경쟁사업자의 유통계열화의 정도 등을 고려

<심결사례>

◆ CJ 및 CJ엔터테인먼트의 플레너스 주식취득권

- 일부지역의 영화관 시장에서 결합후 심사기준상 시장집중도 요건에 해당하나,
 - 자체 증설이나 위탁경영 등을 통한 신규진입이 계속적으로 발생하고 있으며, 주요 사업자들이 모두 향후 수년간의 구체화된 진입계획을 가지고 있는 등 신규진입 가능성이 높고, 멀티플렉스가 전국적으로 조직화되어 있어 특정지역만의 가격인상은 어렵다고 판단

◆ WorldCom-Sprint(미국)

- 미국 FTC는 장거리전화시장에서 결합당사회사의 결합후 점유율이 약 25%에 불과하였으나, 경쟁사업자인 AT&T(점유율 약 53%)를 포함하여 시장집중도가 매우 높아지고 신규진입 가능성 등 경쟁압력이 작다는 이유로 기업결합을 불허

마. 단독행위 및 공동행위 가능성

- 결합당사회사가 단독으로 가격통제능력, 경쟁배제능력 등을 보유·행사할 수 있는지 여부를 검토(Unilateral Effect)

- 특히, 제품차별화가 뚜렷한 시장에서 당사회사가 생산하는 제품간 유사성이 높아 소비자들이 두 제품을 제1, 제2의 대체품으로 여길 경우 당사회사는 가격을 인상하더라도 매출이 증가할 수 있어 가격인상 유인이 큼
- 반면, 경쟁사업자가 생산라인 변경, 증설 등을 통해 생산능력 확대에 제약이 없다면 단독효과의 발생가능성은 낮아짐

<심결사례>

◆ 코오롱의 고탍 나일론필름 영업양수권

- 국내 나일론필름 시장에서 결합당사회사의 점유율이 59%로서 법상 추정요건에 해당하고,
 - 국내 경쟁사업자는 1개사만이 남게 되고, 관세·운송비·납기차이 등으로 인해 수입도 용이하지 않으며, 상당한 건설비용 및 기술확보의 어려움 등으로 인해 신규진입가능성도 작아 결합당사회사는 독자적으로 가격을 인상할 능력과 유인을 갖게 됨

◆ Staples and Office Depot v. FTC(미국)

- 미국 FTC는 '대도시지역의 대형 사무용품 판매장(Office Supply Superstores)에서 판매되는 소비재 사무용품 시장'에서

- 양사는 가격인상을 저지할 수 있는 가장 강력한 경쟁사업자이기 때문에 동 결합은 현재 및 미래의 경쟁을 제거함으로써 양사가 결합하는 모든 지역에서 가격상승이 발생할 것이라고 판단하여 합병을 금지함

□ 경쟁자의 감소로 사업자간에 가격·수량·거래조건에 관한 명시적·묵시적 공동행위가 이루어지기 용이한 경우 경쟁제한가능성이 높아짐(Coordinated Effect)

○ 합의의 성립 가능성, 합의준수여부에 대한 감시 및 이탈자에 대한 처벌가능성 등이 높을수록 담합가능성이 커짐

- 수년간 상품가격추이, 경쟁사업자의 안정적 점유율 유지여부, 상품의 동질성, 생산 및 판매조건의 유사성, 정보입수의 용이성, 독행기업(maverick) 여부, 공동행위 전력여부 등을 고려하여 판단

<심결사례>

◆ 아이앤아이스틸 및 현대하이스코의 한보철강공업 영업양수권

○ 철근시장은 과거 담합사례로 적발된 사례(INI스틸이 주도적 역할)가 다수 있고, 상품의 동질성이 높으며 경쟁사업자간 생산 및 판매조건이 매우 유사한 등 공동행위가 용이한 시장환경으로서

- 이러한 상황에서 결합당사회사의 점유율이 38.1%(1위)가 되고 CR3가 71.4% 되는 등 시장집중도가 높아지게 되고, 동건 결합으로 인한 시장지배력이 증가하여 사업자간 담합가능성이 더욱 커진다고 판단

바. 수직결합의 경쟁제한효과 분석

- 생산과 유통과정에 있어 인접단계에 있는 회사간의 기업결합으로서 원재료 공급 및 수요회사의 판매선 및 구매선 봉쇄여부를 중심으로 경쟁제한성 판단
- 시장집중도(원재료 수급측면 : $CR1 \geq 50\%$ 또는 3위이내로서 $CR3 \geq 70\%$), 기업결합의 목적, 대체 공급선 및 판매선 확보 가능성(수출입 포함), 경쟁사의 수직계열화 정도, 시장의 성장전망 및 설비증설 계획, 공동행위에 의한 경쟁사업자 배제가능성 등을 고려

<심결사례>

◆ 에스케이(주)의 (주)대한송유관공사 주식취득건

- '송유관에 의한 석유제품 1차 수송서비스 시장'에서 공급측면과 수요측면에서 당사회사의 점유율이 각각 $CR1=100\%$, $CR3=83.5\%$ 로서 시장집중도 요건에 해당하고,

- 송유관공사는 정유사가 제출하는 각종 자료를 통해 정유사의 판매 물량 등 영업정보를 지득할 수 있어 경쟁사에 대한 석유수송신청의 거부, 수송신청물량의 제한, 수송순위의 차등, 계약조건의 차별 등 경쟁제한행위가 발생할 우려가 있다고 판단
- 경쟁제한행위를 금지하는 내용을 대한송유관공사 정관에 규정하고, 송유관이용에 관한 사항을 협의·결정하기 위한 협의회를 설치·운영토록 시정조치

사. 혼합결합의 경쟁제한효과 분석

- 수평 또는 수직결합에 해당하지 않는 기업결합의 경우 잠재적 경쟁을 제한할 가능성이 있는지 여부를 중심으로 경쟁제한성 판단
- 상호관련성이 높은 품목간의 결합시 시장지배력을 보유한 기업의 동 지배력이 상대방 기업으로 전이될 수 있는지(포트폴리오 효과)를 검토
- 취득회사의 대규모회사 여부, 취득회사의 잠재적 진입자 여부, 피취득회사의 시장점유율, 취득회사와 피취득회사의 경쟁사업자간에 사업규모, 자금력 등에서 현저한 격차가 있는지 여부, 진입장벽의 증대 여부 등을 고려하여 판단

<심결사례>

◆ 하이트맥주의 진로 인수 건('05년)

- 소주와 맥주가 동일한 상품시장에 속하지 않은 것으로 판단되어 혼합결합으로서 경쟁제한 여부를 검토

- 양사는 서로의 시장에 대해 잠재적 경쟁자로서 본건 결합을 통해 잠재적 경쟁저해(elimination of potential competition) 우려가 인정되었고, 주류도매상에 대한 영향력을 이용하여 경쟁사업자 배제, 진입장벽 증대 등의 경쟁제한 우려가 있음이 인정되어 시정조치를 부과

3. 예외인정 판단기준(법 제7조, 시행령 제12조의4)

가. 효율성증대효과

- 효율성 증대효과가 경쟁제한으로 인한 폐해보다 큰 경우 예외인정

- 효율성 증대효과란 당해 기업결합외의 방법으로는 달성하기 어려운 효과(merger-specific efficiency)로서 가까운 시일내에 발생할 것이 명백하고, 그 입증 책임은 기업결합 당사회사에 있음

40 M&A 시장의 과제와 전망 (2)

- 이는 효율성 증대효과가 결합후 사업자의 경쟁능력과 경쟁유인을 증대시켜 가격인하, 생산량 증대, 서비스 강화 등과 같은 소비자 후생의 증대를 가져올 수 있기 때문

- 효율성 효과는 생산비용 하락 등 경제적 효율성을 의미하는 것으로 손익구조의 개선이나 부의 이전 등은 효율성 효과가 아님

나. 희생불가회사(Failing Firm Defense)

- 예외인정을 받으려면 아래 표와 같이 3가지 요건을 모두 충족해야 함

- 이는 시장에서 퇴출될 정도의 부실기업이라면 M&A 허용여부에 관계없이 독점이 형성되므로 이를 허용하더라도 경쟁구조가 더 나빠진다고 볼 수 없어 생산설비의 퇴출을 방지하자는 취지임

<국가별 회생불가회사 요건 비교>

미국	유럽	일본	한국
① 가까운 장래에 채무를 변제할 수 없을 것	① 가까운 장래에 부실한 재무구조로 시장에서 퇴출될 것	① 기업결합 후 당사회사의 시장점유율이 50%이하일 것 ② 가까운 장래에 도산하여 시장으로부터 퇴출될 것	① 가까운 장래에 지급불능 상태에 이를 것
② 파산법상 회생절차에 의해 재건가능성이 없을 것			② 기업결합이 없으면 생산설비 등이 시장에서 퇴출될 것
③ 기업결합이 없으면 자산이 시장에서 퇴출될 것	② 기업결합이 없으면 자산이 시장에서 퇴출될 것	③ 경쟁제한성이 적은 다른 기업결합이 곤란할 것	③ 경쟁제한성이 적은 다른 기업결합이 곤란할 것
④ 경쟁제한성이 적은 다른 기업결합을 찾기 위한 성실한 노력이 실패하였을 것	③ 경쟁제한성이 적은 다른 기업결합이 곤란할 것		

주) 회생불가회사 요건은 대부분의 국가가 유사하며, 우리나라 기준은 글로벌 스탠다드에 부합

IV. 기업결합 시정조치

1. 이행강제금

결합당사회사가 공정위의 시정조치를 이행하지 않을 경우, 불이행 기간 동안 매일 단위의 이행강제금이 부과

○ 계속 이행하지 않을 경우, 이행강제금이 계속 부과됨

42 M&A 시장의 과제와 전망 (2)

- 구체적인 이행강제금 규모는 결합유형, 결합금액 등을 고려하여 정함(“이행강제금 부과기준”)

- 지금까지 이행강제금 부과사례는 (주)코오롱에 대해 부과된 1건이 있음('03. 5)

- (주)코오롱의 (주)고합 영업양수 건에 대한 시정조치의 이행기간인 '03. 4. 30까지 이행이 이루어지지 않음에 따라 공정위는 '03. 5. 1 부터 매 1일당 618만원의 이행강제금을 부과

- * 이에 따라 (주)코오롱은 27일간의 시정조치 불이행에 대해 총 1억 6,680만원의 이행강제금을 납부

2. 기업결합 시정조치 부과기준('06. 12)

- 공정위는 기업결합 시정조치 부과에 일관성, 투명성 및 예측가능성을 제고하기 위해 「기업결합 시정조치 부과기준」을 새로이 제정

- 기업결합 시정조치 부과에 기본원칙, 시정조치의 종류, 각 시정조치 부과시 주요 고려사항 등을 내용으로 함

V. 기업결합심사와 관련한 몇 가지 오해

1. 공정위가 개별기업간 M&A에 사사건건 개입한다?

□ 공정위는 매년 6백~7백여건의 기업결합 심사를 하고 있는데, 이중 시정조치 건수는 '03년 7건, '04년 6건, '05년 3건 등 1% 미만

※ 참고로 미국의 경우 시정조치 비율이 3.5%('03 회계연도)임

○ 경쟁의 감소에 따른 소비자 피해가 심각할 경우에 한해 시정조치를 하며, 기업결합을 완전히 불허하는 경우는 극히 드물

※ 미국, EU 등은 시정조치는 원칙적으로 주식처분, 자산매각 등 구조적 조치(structural remedy)를 취하고 있으며, 행태적 조치(behavioral remedy)는 간혹 구조적 조치와 병렬적으로 부과할 때 사용되며 단독으로 부과하는 경우는 극히 드물

<'06년 시정조치 내역>

일자	사건명	시정조치 내역
'06. 6	동양제철화학의 콜럼비안 케미컬즈 주식취득 건	콜럼비안 케미컬즈 코리아의 주식지분 매각 또는 동양제철화학의 카본블랙 설비매각 중 택일
'06. 9	HCN의 대구북부방송 주식취득 건	'10년까지 수신료 인상 불허, 채널수 감소 금지, 편법적 수신료 인상 금지 등
'06. 9	이랜드리테일 등의 한국까르푸 주식취득 건	3개 지역(안양, 성남, 순천) 3개 지점 매각
'06. 9	신세계의 월마트코리아 주식취득 건	4개 지역(인천, 안양, 대구, 포항) 4~5개 지점 매각

2. 재무구조가 부실한 기업간 기업결합은 허용해야 한다?

- 부실기업이라도 경영정상화가 가능한 경우 경쟁구도에 영향을 미칠 수 있어 독점을 형성하는 M&A에 대해서는 적절한 시정조치 필요

- 부실기업으로서 인수할 다른 기업이 없어 생산설비가 시장에서 퇴출될 수 밖에 없는 경우(Failing Firm Defense)에만 예외적으로 M&A를 인정하는 것이 글로벌 스탠다드임

- * 미국은 Meade Instrument와 Celestron Int'l간 조인트벤처('91), Olin의 FMC 인수('93), CB&I의 PDM 인수('03) 등 대부분의 경우 재무구조가 부실하더라도 제3의 인수가능성 등을 이유로 예외인정을 하지 않았으며, 대법원이 예외를 인정한 케이스는 International Shoe건('30)이 유일

- * EC도 예외를 인정한 사례는 Kali&Salz와 Mdk간 조인트벤처('98), BASF의 Eurodiol&Pantochim 인수('01) 등 2건에 불과하며, 특히 BASF 건에서는 법정관리 중에도 다른 제3의 인수자가 나타나지 않자, EC가 직접 제3의 인수자를 찾는 노력을 하고 대안이 없다는 것을 확인한 후 M&A를 승인

3. 기업결합 심사시 잠재적 해외경쟁압력을 고려하지 않는다?

□ 기업결합심사기준은 해외경쟁압력을 고려하도록 규정되어 있으며, 시장획정, 시장집중도 산정, 진입단계 등에서 충분히 고려

○ 즉, 시장획정시 국내 소비자의 외국제품에 대한 구매전환이 용이하다면 관련시장을 세계로 확대할 수 있고,

- 시장점유율 산정시 수입비중 및 추이를 고려하여 해석하고 있으며, 진입단계에서 국내 독점이윤 발생시 해외로부터의 잠재적 경쟁도입 가능성 등을 검토

□ 다만, 진입단계에서의 경쟁압력을 명시적으로 나타낼 수 있는 계량화지표 등은 글로벌 스탠다드로서 확립된 방법론이 없으며, 산업별 특성 등에 따라 매 사건별로 처리하는 것이 보편적 심사관행임

* KDI는 '해외부문과의 잠재적 경쟁과 시장구조에 대한 실증분석'(05.3.3) 보고서에서 삼익-영창악기 결정에 대해 잠재적 해외경쟁을 고려한 점을 높이 평가하면서, 방법론상으로 체계화할 필요가 있다고 지적

4. 수출비중이 높다면 지리적 시장을 세계시장으로 확대해야 한다?

- 지리적 시장은 소비자가 상품을 구매할 수 있는 지리적 선택범위가 어디까지인지와 관련된 사항으로서 수입과는 관련성이 높으나 수출과는 직접적 관련이 없음
- 즉, 수출비중이 높다는 것은 동 상품을 수입하는 국가의 경쟁제한성과 관련되는 요소이지, 수출 국가의 경쟁제한효과와는 관련성이 거의 없음

※ 관련시장을 세계시장으로 확대하는 경우

- 관련시장을 세계시장으로 확대하려면 소비자가 국내에서 구매하는 것과 마찬가지로 해외에서도 용이하게 구매(수입)이 가능해야함
 - 그러나, 관세·비관세 장벽, 운송비 등 국경장벽과 유통망, 소비자 선호, A/S 문제 등 유무형의 국내장벽 등에 의해 국가간에 경쟁조건이 같다고 볼 수 있는 경우는 극히 드뭄
- 실제로, 시장이 가장 개방되어 있다고 볼 수 있는 미국조차 관련 시장을 세계로 확대한 사례는 운송비용이 거의 없는 S/W 등에 국한되며, 일반적으로는 미국시장을 관련시장으로 확장하여 미국 내의 경쟁과 소비자 보호를 위해 기업결합심사를 함

- 심지어 미국은 주 또는 대도시를 관련시장으로 확정하는 경우도 상당한데, 가령 04.2. 이동통신사업자간 기업결합인 Cingular Wireless의 AT&T Wireless 인수건에서는 법무부는 미국내 10개 지역에서 AT&T Wireless의 관련자산 일체와 경쟁사업자 보유 지분을 매각하도록 함

□ 일반적으로 기업결합심사에서 수출은 두 가지 측면에서 고려될 수 있음

- 국내가격과 수출가격이 크게 벌어질 경우 반덤핑 제재가 빈번히 이루어지는 산업의 경우 기업은 결합후 시장지배력을 갖게 되더라도 국내 가격을 수출가격에 비해 과도하게 인상하기 어려울 수 있음
- 또한, 결합후 수출물량이 증가하고 그 원인이 원가절감 효과(규모의 경제효과 등)에 기인한다면, 내수 상품의 가격도 하락할 수 있으므로 효율성 효과로서 고려할 수 있음

발표자료 2: 철강업에서의 M&A 추이와 시사점
(발표: 박기홍/포스코 경영기획실장상무
지명토론: 유정현/미래에셋맵스자산운용
PEF 투자본부 이사)



철강업에서의 M&A 추이와 시사점

2007. 2.21

경영기획실장 박기홍 상무



목 차

- I. **철강산업 현황**
- II. **Global M&A 사례**
- III. **Mittal 의 M&A 전략**
- IV. **시사점**



철강산업 현황

□ 글로벌 통합화 확산으로 산업 집중도가 증가하는 추세

- 2006년에는 Arcelor + Mittal 합병으로 Big 3 점유율이 15.1% 로 상승

	1989		1999		2004		2005	
1	NSC	28.4	POSCO	26.5	Arcelor	46.9	Mittal	63
2	Usinor	23.0	NSC	25.2	Mittal	42.8	Arcelor	46.7
3	POSCO	15.5	Arbed	22.2	NSC	32.4	NSC	32.0
4	British S.	14.2	Usinor	22.2	JFE	31.6	POSCO	30.5
5	USX	12.9	Corus	21.3	POSCO	30.2	JFE	29.9
6	NKK	12.3	LNM	20.0	Bao	21.4	Bao	23.8
7	Thyssen	11.6	Bao	16.7	USS	20.8	USS	19.3
8	ILVA	11.4	Thyssen	16.1	Corus	19.0	Nucor	18.4
9	Bethlehem	11.1	Riva	14.1	Nucor	17.9	Corus	18.2
10	Kawasaki	11	NKK	12.8	Thyssen	17.6	Riva	17.5
세계 전체	780		777.3		1068.6		1138.8	
Big3 점유	8.6%		9.5%		11.4%		12.4%	

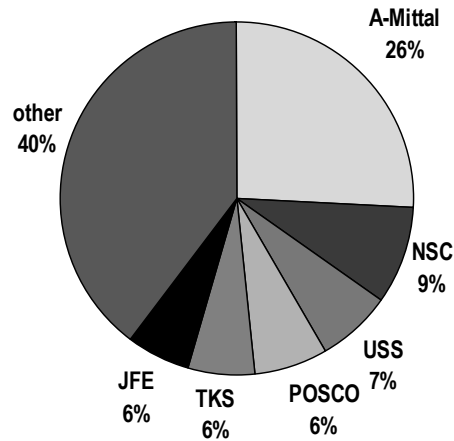


철강산업 현황

□ 세계 자동차 강판 시장 과점화가 빠르게 진전

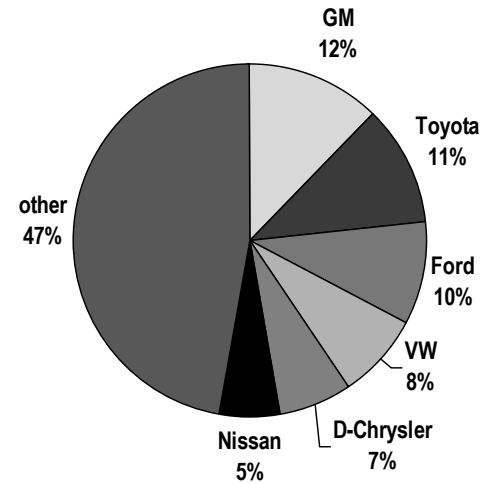
● Big 3의 세계 시장 점유율 : 자동차 강판 42% > 자동차 생산 33%

<2005년 자동차 강판 시장 점유율>



*2005년 세계 자동차 강판 생산량은 67백만톤
*통합 이전 Arcelor의 시장 점유율은 15%

<2005년 자동차 생산 점유율>



르노-닛산 생산량을 합산시 610만
대로 세계 4위 수준

1. 철강산업 현황



※ 글로벌 통합화의 동인 : 자동차 업계의 글로벌 네트워크





철강산업 현황

□ M&A: 다차원적 수준 (Local - Regional- Global)에서 동시 다발적

- 합작투자 등 제휴는 글로벌 수준에서 보다 빈번함

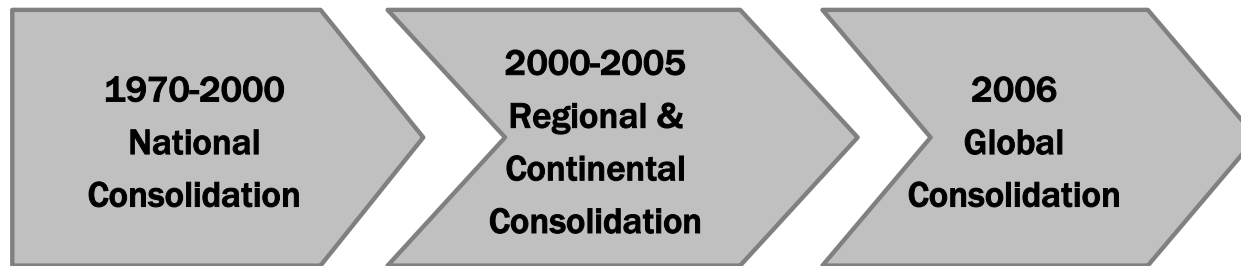
M&A	BAOSTEEL	Uss TATA	Arcelor MITTAL SeverStal
Greenfield		posco	
J.V.		JFE	posco Nippon Steel ThyssenKrupp
	Local	Regional	Global

*Global = 2개 이상 Region (아시아, 미주, 유럽, 기타) 에 걸쳐 있는 경우



II. Global M&A 사례

□ 세계 철강산업의 Consolidation Trend



- Usinor Sacilor
- British Steel
- Thyssen Krupp
- NSC
- Arbed
- Bao Steel
- AK Steel
- Ispat International

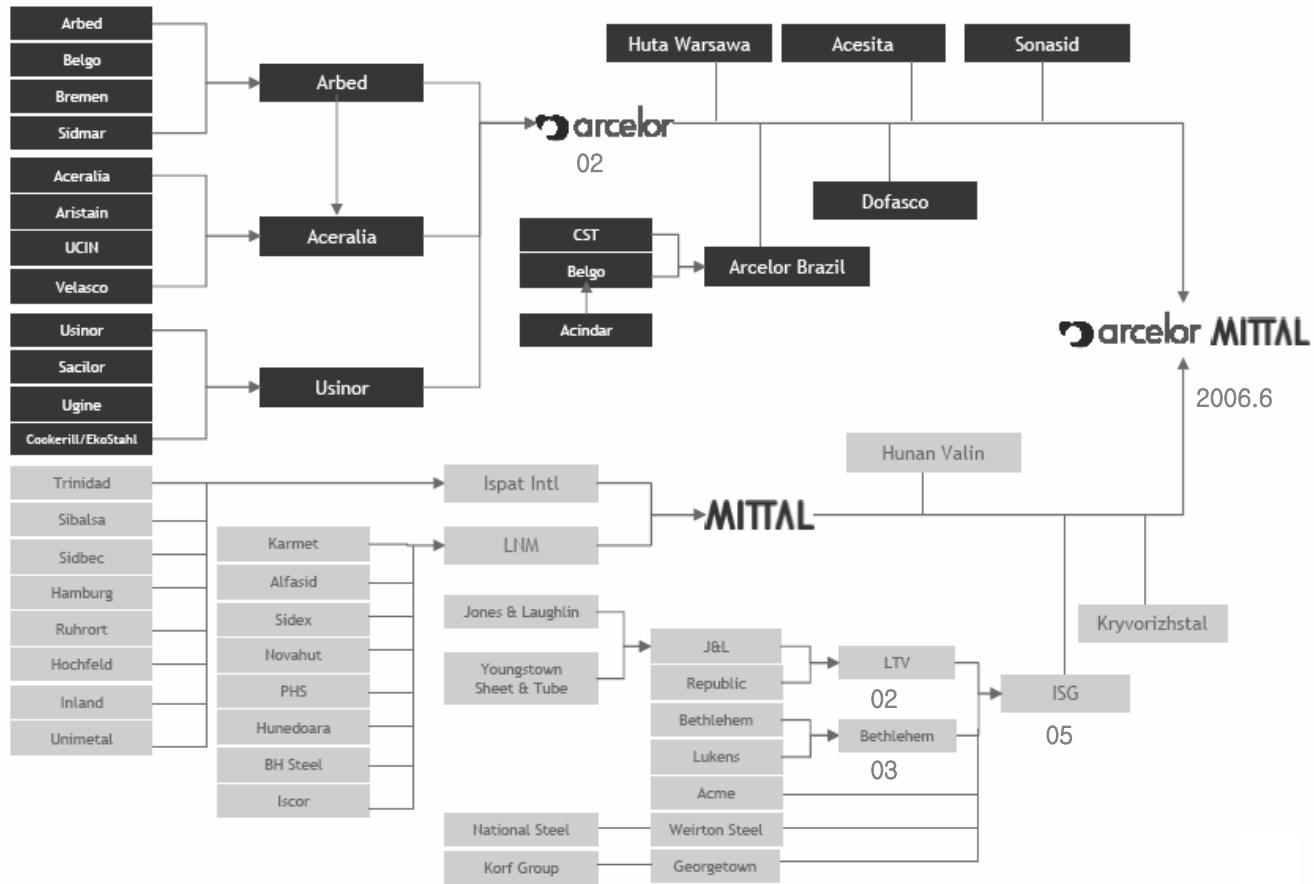
- Arcelor
- Mittal
- ISG
- JFE (NKK, Kawasaki)
- USS (Kosice, Serbia)
- Gerdau (AmeriSteel, CoSteel, Acominas)
- Corus (British, Hoogovens)





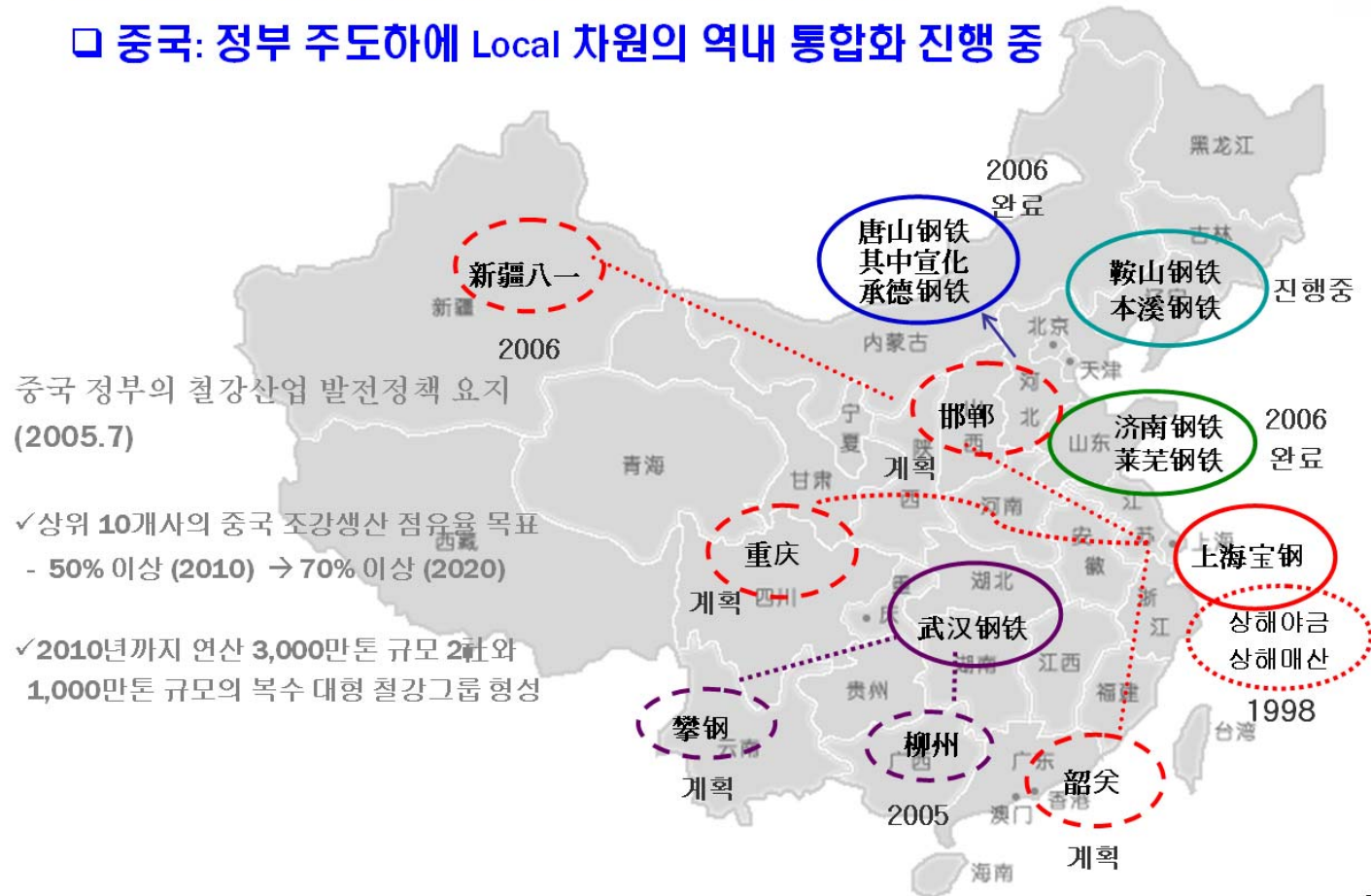
II. Global M&A 사례

□ Mittal의 글로벌 M&A : 아시아를 제외한 전 대륙에서 M&A 실현



II. Global M&A 사례

□ 중국: 정부 주도하에 Local 차원의 역내 통합화 진행 중



II. Global M&A 사례

□ Tata의 글로벌 M&A : 동남아에서 유럽으로



- Corus 인수경쟁 : Tata vs CSN
- Tata ('06.10.17) : Corus 인수 제안 (85억\$)
- CSN ('11.17) : 경쟁 Offer (88억\$)
- Tata ('12.10) : 2차 Offer (93억\$)
- CSN ('12.11) : 2차 Offer (96억\$)
- 최종 경매 ('07.1.30) : Tata 승리(113 vs 112억\$)

※ Corus M&A 효과

구 분	Corus	Tata	합병후
조강(백만톤)	18.2 (8위)	4.4 (55위)	22.6 (5위)
매출액(억불)	190	42	232
시가총액(억불)	92	63	155

*시가총액 '07.1.15



타이 밀레니엄 스틸 (2005)

싱가폴 Natsteel (2004)



II. Global M&A 사례

□ USS의 M&A : Local에서 동유럽으로





III. Mittal 의 M&A 전략

□ TMT 3명이 주도한 신속하고 과감한 의사결정력

- 인수대상기업 1차 선정과 최종협상 및 결정
- 인수 관련 핵심 이슈에 대한 합의와 보장 유도 역할 등



Lakshmi Mittal
(CEO)



Aditya Mittal
(CFO)

**Arcelor* 인수를
*L. Mittal*에게 제안함



Malay Mukherjee
(COO)

M&A 상설 조직

TMT가 선택한 인수 대상 기업 프로파일 보고
재무/회계 전문가 중심으로 구성

M&A 임시 조직

- 실사 임시조직 구성 및 due diligence (컨설턴트, IB인력도 임시조직에 일부 참여함)
- 기업 회생계획과 Bid 가격 검토 보고



III. Mittal 의 M&A 전략

※ Mittal의 기업실사팀 선정기준

- ① 유사 M&A 경험자
- ② 기술 및 지역 전문가
- ③ 해당 회사의 미래 경영진

- 대상 업무별 인력 Sourcing 및 인원 (통상 11명 수준)

업 무	인력 Sourcing	인원수	비 고
Finance, Accounting & Audit	회사 내부	4	- 은행으로 부터 M&A Advisory를 받는 경우도 있음
Production & Technical Services	"	2	
Purchase & Procurement	"	1	
Human Resources	"	1	
Projects	"	1	
Legal	회사내부/외부	1	
Marketing	회사내부	1	
합 계	-	11	



III. Mittal 의 M&A 전략

※ Mittal의 M&A 대상 기업 선정 기준

1) 주로 가동률이 낮은 국영 철강사를 **M&A (100% 지분 확보 목표, 최소 70%)**

- **Under Performing Mill**의 수익성 개선을 위해서는 강력한 경영권 확보 필요

* 재무상태 보다 주변의 경제적 사정으로 부실한 회사들이 대부분임

2) 회사 인수 후 늦어도 **18개월** 이내 흑자 전환이 가능한 회사

3) 관련 국가의 정부 기관의 확고한 의지 및 우수한 지원이 예상되는 회사

4) **Hot Metal** 및 **Crude Steel**의 자체 충족이 가능한 회사

5) 최근 강조되는 조건

- 고급강과 기술을 보유한 기업

- 철강경기 사이클의 리스크 최소화위해 신흥시장과 선진시장의 균형

※ 관련 M&A 사례

- '89 ~ '98 : 북미 및 **Caribbean (Long Product)**

- '95 ~ '99 : 서유럽 (**Long Product**) & **Kazakhstan**

- '01 ~ '03 : 동유럽 및 **Africa**

- '06~: 서유럽, 아시아



III. Mittal 의 M&A 전략

□ Mittal의 Arcelor 전격 인수 경위

Mittal의 급습	Arcelor의 반격	Arcelor의 실수와 Mittal의 승리
<p>MITTAL</p> <p>① Unsolicited Bid 전격 제안 (인수가격 €186억) * Arcelor는 Dofasco 인수를 놓고 TKS와 경쟁 중인 상황</p>	<p>① 인수가격 인상 (€256억) ② 지배구조개선, 고용승계 보장 등 대정부 설득 활동 ③ Arcelor 경영진을 배임죄로 미국법원에 제소</p>	<p>① Severstal 합병이 Arcelor주주에게 불리함을 적극 홍보, 인수가격도 재인상 (€270억) ② 주말 동안 헤지펀드 지분 20% 규합, Severstal과의 합병반대 서한 발송</p>
초기 (~ '06.1월)	중기 (2월 ~ 5월 중순)	후기 (5월 하순 ~ 6월)
<p>Arcelor</p> <p>① '이사회, 적대적 인수로 간주하여 거절함 * 경영진의 대응이 일사불란 하지 못한 것으로 인식됨</p>	<p>① 배당증액 및 자사주매입 발표 ② 유통주식 25% 미만 회사(Mittal)의 M&A 방지 법안 제정 유도 ③ Dofasco를 비영리재단에 위탁 (Mittal의 미국내 Anti-trust 저축 의도 목적)</p>	<p>① Severstal과의 역합병 발표 ② Severstal과의 합병승인 주총 단시일내 개최 시도 Mittal 인수조건 수락 (6.25) → 주총에서 합병 승인 (6.30)</p>



III. Mittal 의 M&A 전략

※ Dofasco 운영 재단 “‘Strategic Steel Foundation’ (Strategic Steel Stichting) 의 특징

- ✓ 재단의 목적 **Dofasco** 주식 최소 **89%**의 법적 소유권 관리 및 유지
 Dofasco의 모든 직간접 자산 보호 및 관련 의결권 행사
- ✓ 이사회 이사 **3명** (**Arcelor** 전직 임원 **2명** 포함)
 이사 임기는 사망시 만료(이사회에 이사 해임 불가)
- ✓ 이사회 권한 **Dofasco** 직간접 매각 결정, 정관 개정 **EMD**
- ✓ 재단의 해체 : 재단의 목적 달성 판단 또는 **5년** 주식 위탁 계약 기간 만료시
- ✓ **Arcelor** 와 재단은 상호 사전동의 없이 **Dofasco** 주식(재단 **90%**보유)의 제**3**자에 매각 못함
- ※ 경영권 방어 등 특정 목적으로 회사가 산하의 기업을 신탁하는 **Stichting**(네덜란드어로 재단법인의 뜻)
 - **1997**년 **LVMH**(루이뷔통)의 인수에 대해 구치가 사용한 방식: 방어 성공
 - **2001**년 프랑스 북미법인 로담코가 호주 웨스트필드 인수에 대해 사용 : 방어실패(주주권리 제한 명분)



III. Mittal 의 M&A 전략

□ Mittal의 제안 내용 : 98% 프리미엄으로 강제합병 가능한 지분 매수

○ 현재 **94.8%** 지분 확보

※ 특셈부르크법상 **95%** 이상 취득시, 소액주주 의사와는 무관하게 강제합병 가능

○ 제안경과

	1차 제안(1.27일)	2차 제안(5.19일)	3차 제안(6.25일)
인수 가격	€186억	€256억	€270억
Premium	33%	80%	98%
주당 인수 가격	€28.21	€37.74	€40.40
주식교환 (유상증자)	Mittal 0.8주	Mittal 1주	Mittal 1.08주
현금지급	€7.05	€11.1	€12.5
교환비중 (현금:주식)	25:75	29:71	31:69

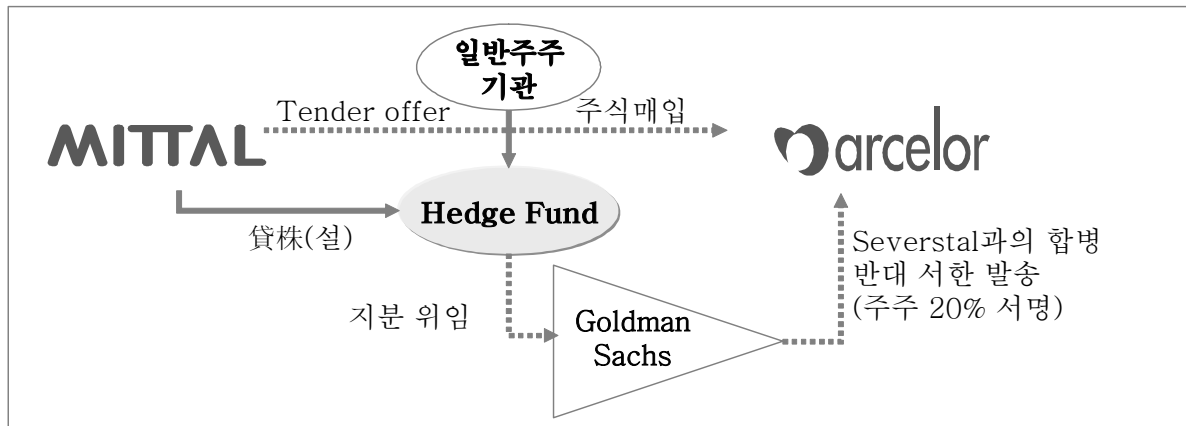
※ Mittal Family의 지분희석 : 87.5% → 43.1%



III. Mittal 의 M&A 전략

□ 공격 패턴 1: 신속한 Tender Offer와 Hedge Fund의 전략적 활용

- Hedge Fund의 지분: 신속한 주식 매입으로 공개매수 제안 3일후 20%, 2주후 40%
 - Hedge Fund 지분을 장외에서 공개매수 방식으로 신속히 확보
- Hedge Fund에게 Arcelor 주식매수 유도를 위해 자사주식 貸株 제공(說)
- Goldman Sachs가 주말 동안 Hedge Fund를 규합, Arcelor의 Severstal 합병 승인을 위한 주총 개최를 반대하는 압박 활동 전개
 - Arcelor의 M&A방어 포기 결정에 영향미침



III. Mittal 의 M&A 전략



□ 공격 패턴 2: 주주 및 이해관계자 포섭

① 기회를 놓치지 않는 주주포섭

- Mittal은 **Severstal** 인수의 불이익 강조, **Arcelor**주주들에게 특별주총을 요구토록 설득
- 주주/이해관계자 요구사항을 파악, **1:1** 로비 전개 및 매수가격을 상향 조정함
- **Arcelor**이사회는 주주의사와 상관없이 **Severstal** 인수발표로 불신 초래

② 끈질긴 로비전

- 룩셈부르크 의회를 설득, 정부가 추진하던 반대법안(**Poison Pill** 등) 부결 유도
- 유럽 정부들에게 **Mittal**지분을 **50%**이하로 낮추고, 합병 후 대량해고 사태는 없을 것이라 설득
- **EU** 독점당국의 소속회원을 포섭, **Mittal**의 **Arcelor** 인수승인 유도



III. Mittal 의 M&A 전략

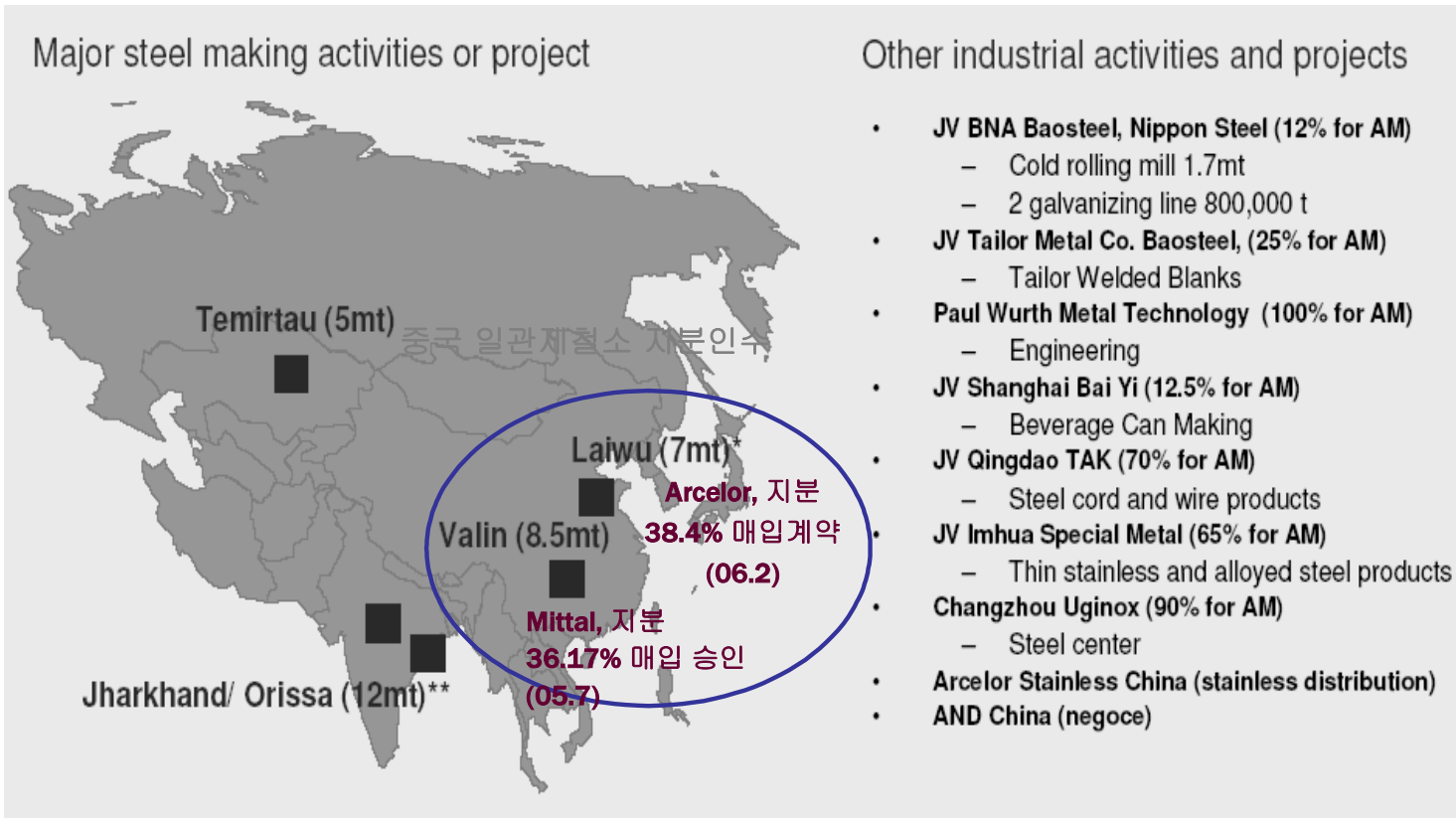
※ Mittal이 주장하는 Arcelor 인수의 시너지 효과

- | | |
|---|---|
| Marketing and trading
(€460m, US\$570m) | <ul style="list-style-type: none">• Accelerated growth of distribution in developing regions e.g., CEE, CIS, Africa• Cross selling through enlarged and enhanced product portfolio• Optimisation of order book for cross product flows and logistical savings• Market volume impact of mill specialisation |
| Manufacturing and process optimisation
(€380m, US\$470m) | <ul style="list-style-type: none">• Benchmarking and best practice alignment across all operating assets• Optimisation of utilisation of assets through selected mill product specialisation (e.g., productivity gains with better sequencing rates, fewer changeovers)• Logistical and mill optimisation through transfers of semi finished products |
| Purchasing
(€400m, US\$500m) | <ul style="list-style-type: none">• Scale effects on standardisation of procurement contracts• Optimisation and efficiencies from maintenance services, subcontracting, spare parts and consumables• Logistics savings on optimisation of raw material flows |
| SGA
(€50m, US\$60m) | <ul style="list-style-type: none">• IT synergies• Reduction in external contracts e.g., consulting services• Duplication in commercial network avoided |



III. Mittal 의 M&A 전략

□ Mittal의 아시아 전략 : 중국은 M&A 겨냥한 JV, 인도는 Greenfield



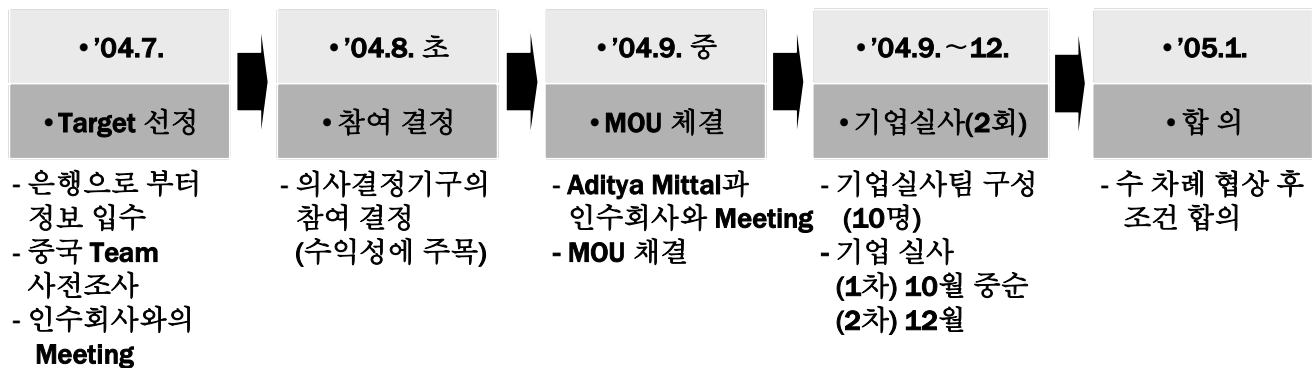


III. Mittal 의 M&A 전략

※ Mittal의 화릉관선 지분인수 사례

- 화릉관선 지분 36.17% 매입계약 ('05.7.14) → 발개위, 국자위, 상무부 최종승인 획득
→ 당초 Mittal은 37.17% 지분으로 공동 최대주주가 되는데 합의하였으나,
신정책 발효 후 비준실패를 우려, 정부와의 사전 조율을 거쳐 1% 적은 2대주주로 계약
- 이사회 구성 : 사외이사 5명 포함, 15명. Mittal이 5명의 이사선임권을 확보

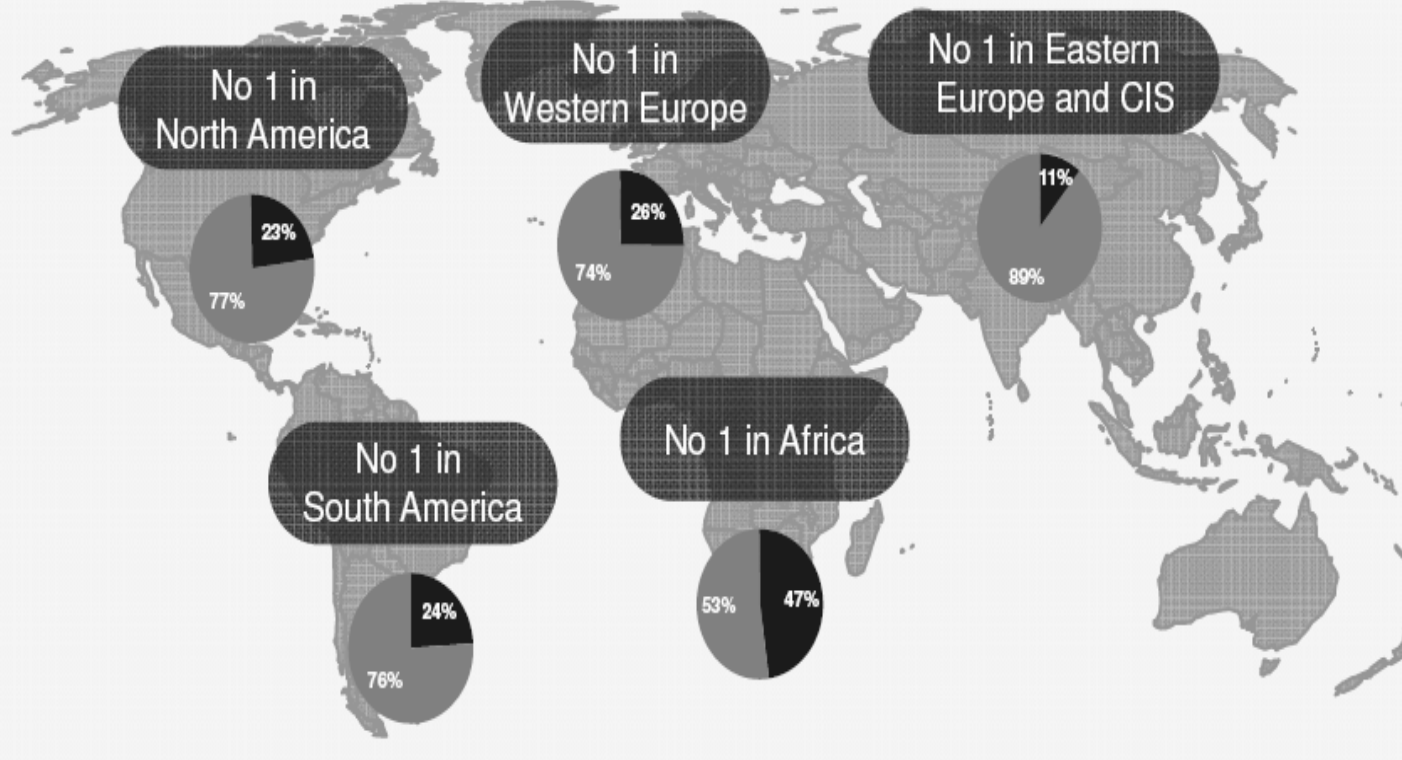
● 화릉관선 지분 인수에 6개월 소요



III. Mittal 의 M&A 전략

□ Arcelor-Mittal의 Market Power: 5개 권역에서 시장점유율 1위

Market position and market share estimates by region*

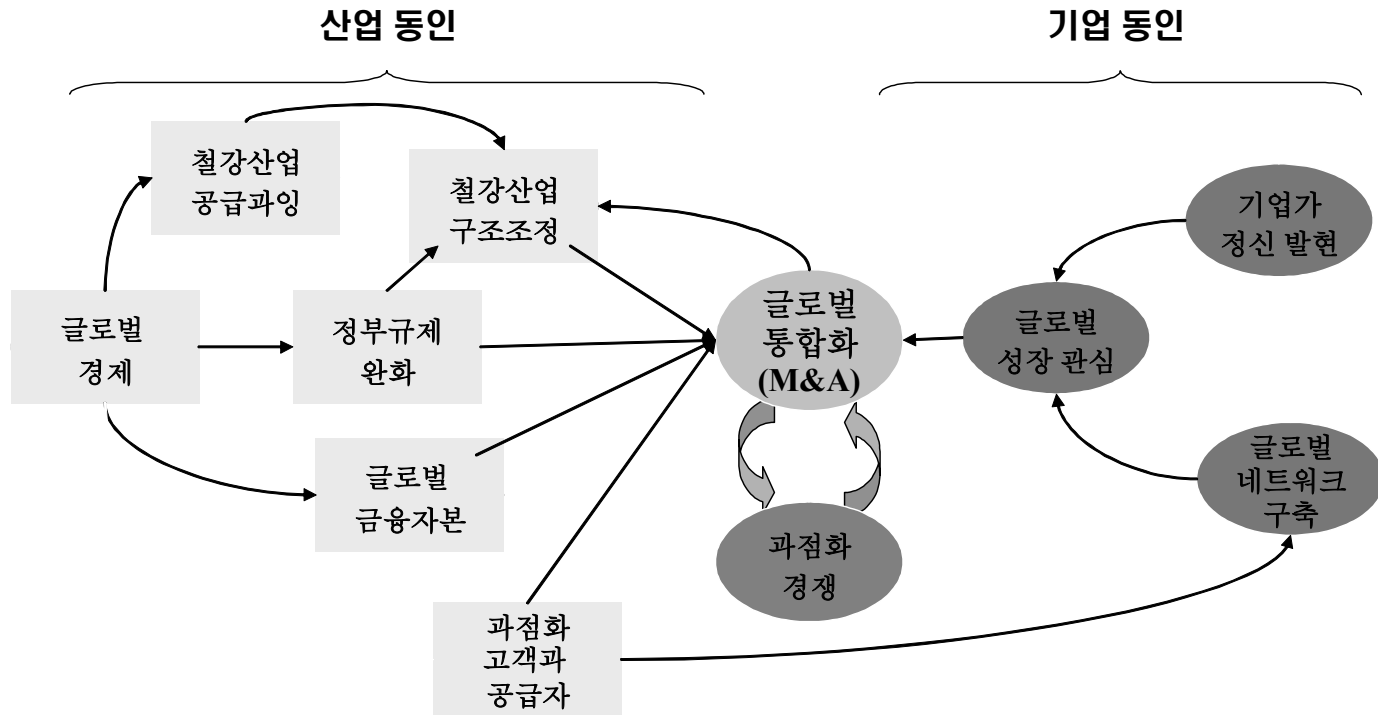




IV. 시사점

□ 철강산업의 Global Consolidation은 계속될 것인가?

- 산업동인과 기업동인이 맞물려 순환 증폭되는 피드백 구조에 있어 당분간 지속
- 특히 금융자본의 논리와 영향력이 갈수록 증가하고 있어 M&A 시장의 불확실성 높아짐

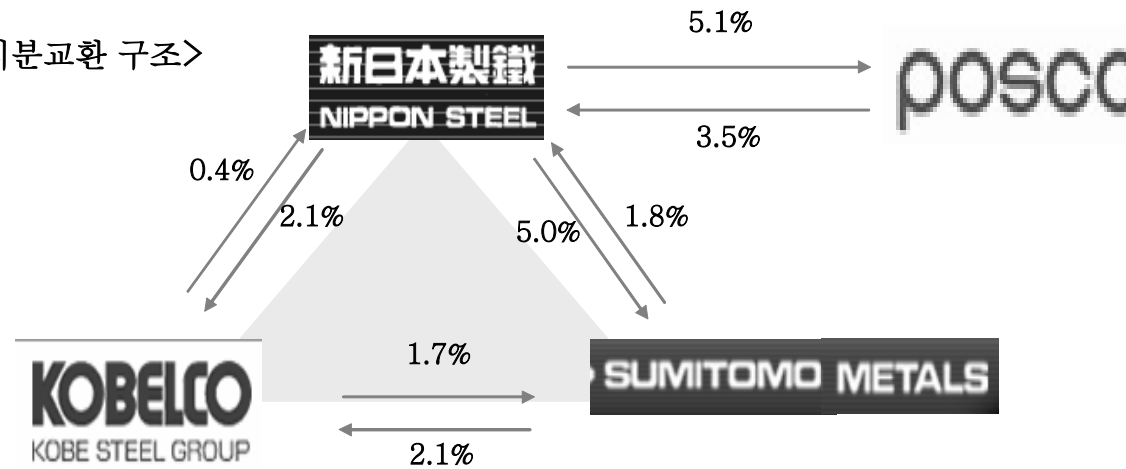


IV. 시사점

□ 신일본 제철의 M&A 대응전략: 스미토모-고베와 M&A 공동 방위책 각서 체결

- 해외기업이 협정 기업 M&A 시도시 제안가격보다 고가로 주식매입 등 공동대응이 골자

<상호지분교환 구조>



(新日本製鐵 三村明夫) : “1억 2,000만톤의 메이커가 등장한 상황에서 新日鐵이 아무리 고급품에 강하다고 해도 종합력 넘버원이라고 이야기하는 것은 솔직히 어렵다. 질과 양의 균형을 이루는 것이 중요하다.... 앞으로도 철강업계의 리딩 컴퍼니라는 자부심만은 잃어버리고 싶지 않다.”

“일거에 합병을 노리기보다는 좋은 회사가 있다면, 그 회사와 서로 메리트를 찾아 부분적으로 제휴함으로써 결과적으로 양적으로는 물론 질적으로 합병과 같은 효과를 철저하게 추구해 나가는 것이 현명하다”



IV. 시사점

□ Thyssen Krupp(TKS)의 M&A 대응전략

- 1대 주주(25.1%)인 Krupp 재단에 이사 3명을 자동 임명권을 부여하는 내용의 정관 개정
 - 지분15% 이상은 이사 2명, 10% 이상은 이사 1명을 주총 승인 없이 자동 임명할 수 있음
- TKS 이사회는 주주 대표 및 근로자 대표 각 10명씩 20명으로 구성되므로 적대적 M&A로 과반수 이상 지분을 확보하더라도 이사회를 지배하기 어려워졌음
 - 특히 독일 상법에 의하면 이사 해임, 회사 해산, 정관 변경, 합병 등은 주총 3/4 이상 찬성을 규정하고 있어, 현재 25.1%의 지분을 보유하고 있는 Krupp 재단이 적대적 M&A와 같은 회사 주요 사항을 저지할 수 있기 때문에 사실상 적대적 M&A는 불가능한 상황임
- 투자은행인 JP Morgan은 최근 보고서에서 약 184억 유로 수준인 TK 그룹의 시가 총액이 M&A를 통해 철강 등 그룹의 5개 사업 부문을 분리하면 거의 2배 이상 증가할 수 있다고 분석하였으며, 이를 근거로 금융 시장에서는 러시아 등 신흥 철강사 뿐만 아니라 금융 투자자들까지 적대적 M&A 시도 가능성이 있다고 분석한 바 있음



IV. 시사점

□ POSCO의 전략: Greenfield Based Globalization

- 성장시장에서의 적극적 **Greenfield**와 글로벌 전략적 제휴로 글로벌 사업능력 강화
- 글로벌 **M&A** 기회의 주시와 선별적 추진

※ 글로벌 통합화의 시대에 대응한 바람직한 전략

1. Keeping Home Market

- 미국 고로사들은 세계 최대 수입시장의 하나인 미국에서 경쟁적 입지를 상실했음

2. Visioning & Organizational Capabilities

- 전략적 확신과 대담하고 빠른 전략실행
- **M&A**의 명확한 논리와 효율적인 실행 및 관리능력(**PMI**)의 배양

3. M&A 기회의 탐색과 선별적 시도

4. 전략적 제휴 네트워크의 확장

5. 경쟁우위와 선진 경영체제에 기반한 기업가치의 제고로 **M&A** 방어 및 공격능력 강화

- 저원가, 프리미엄 제품의 리더십, **Captive Mine**, 혁신기술로 무장한 경쟁우위
- 건전한 재무구조와 기업지배구조, 주주가치의 창출 등 선진 경영체제

발표자료 3: M&A와 국제 투자금융업무

(발표: 성보경/(주)프론티어 M&A 회장)

지정발표: 한대우/산업은행 기업구조조정실 실장

M&A와 국제투자금융업무

2007년 3월 21일(수)
한국증권연구원 19층 대회의실

발표자 : (주)프론티어 M&A 회장 성보경
Tel : 02) 596-4226(직통), E-Mail : merger@merger.co.kr

I. M&A의 정의 및 특성

M&A(mergers and acquisitions)는 다른 회사의 경영권을 확보하기 위해 기업을 사들이거나 합병하는 것을 말하며, 기업합병(mergers)과 한 기업이 다른 기업의 자산 또는 주식의 취득을 통해 경영권을 획득하는 기업 인수(acquisitions)가 결합된 개념으로 다음과 같은 특성을 가지고 있다.

1. M&A는 생물체의 세포분열과 같이 합쳐지고 분열하면서 성장하는 것이다. (Mergers, Acquisitions \Leftrightarrow Divestitures, Spin-offs)
2. M&A는 국제투자금융업무를 진행하는 핵심분야이다.
3. M&A는 주주총회(1주1의결권)와 이사회(1인1의결권)의 의결구조가 다르기 때문에 M&A전략을 활용하는 경우 활용방법에 차이를 두어야 한다.
4. 적대적 M&A는 경영권 프리미엄의 가치를 차지하기 위한 정글게임이다.
5. M&A는 비밀유지의 중요성으로 인해 인포멀 조직에 의해 수행된다.

6. M&A는 시장의 독점과 거대다국적기업으로의 성장을 위한 경영전략이다.
7. 독점금지법은 정치권력이 경제권력을 견제하기 위한 장치이다.
8. M&A를 하기 위해서는 택스헤이븐의 조직과 자금을 활용할 수 있어야 한다.
9. 기업M&A와 투자금융은 부패와 유혹이 난무하는 세계이다.
10. 기업M&A의 수익은 수익율이 아니라 수익배수를 추구한다. (예, 일본골프장, 남미투자에서의 투자수익률)
11. 정관에 의한 경영권 강화는 소유경영자의 권한을 축소시키고 전문경영인의 권한을 확대시키는 효과가 있다.

II. M&A와 국제투자금융업무에서의 Invisible Hand

1. Invisible Money : underground market

2. Invisible Company : Private Equity Firm

3. Invisible Place : Tax Haven

⇒ 택스 헤이븐에 설립되어 투자자들의 실체를 파악하기 어려운 사모펀드

⇒ 수정자본주의의 채택으로 정부주도의 연금 및 기금의 거대화 및 사모펀드의 출현(예, Cal PERS, 한국의 연기금, 싱가포르투자청, Capital Group, Texas Pacific Group etc.)

⇒ 자본 없이 자본시장을 지배하는 금융제국의 출현

(거대규모의 사모펀드의 출현)

(기업경영권의 지배가치와 경영권 프리미엄에 대한 투자가치의 실현 게임의 진행)

III. M&A와 국제투자금융업무의 환경

1. M&A와 국제투자금융업무의 침체 환경

1) 독점금지법의 강화

2) 정부의 시장개입 강화

3) Chinese Wall의 강화

(1) 산업자본과 금융자본

(2) 투자금융과 상업금융

(3) 투자금융내의 영역별 구분

4) 투자펀드설립조건의 강화

5) 경기 성숙기와 독점의 심화에 대한 정부개입

2. M&A와 국제투자금융업무의 발전 환경

1) 독점금지법의 완화

2) 시장의 자율기능 강화

3) Chinese Wall의 폐지

(1) 산업자본과 금융자본

(2) 투자금융과 상업금융

(3) 투자금융내의 영역별 구분

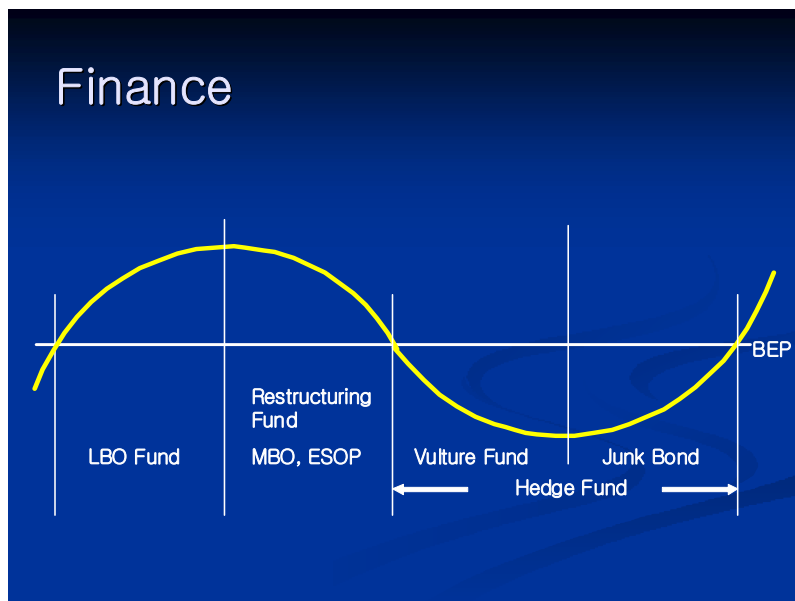
4) 투자펀드설립조건의 완화

5) 경기 침체기 및 경쟁과열에 따른 정부규제의 완화

IV. 경기순환과 M&A전략의 변화

1. 자금조달

기업M&A에 사용되는 자금은 경기순환에 따라 다른데, 경기순환의 상승기나 성숙기에는 상업금융기관에서 대출을 받아 조달하지만 쇠퇴기나 침체기의 경우에는 금융기관의 대출회수정책에 따라 투자금융에 의존하게 된다. 경기순환기에 주로 사용하는 투자금융의 종류를 살펴보면 아래의 그림과 같다.



2. 기업의 M&A 전략

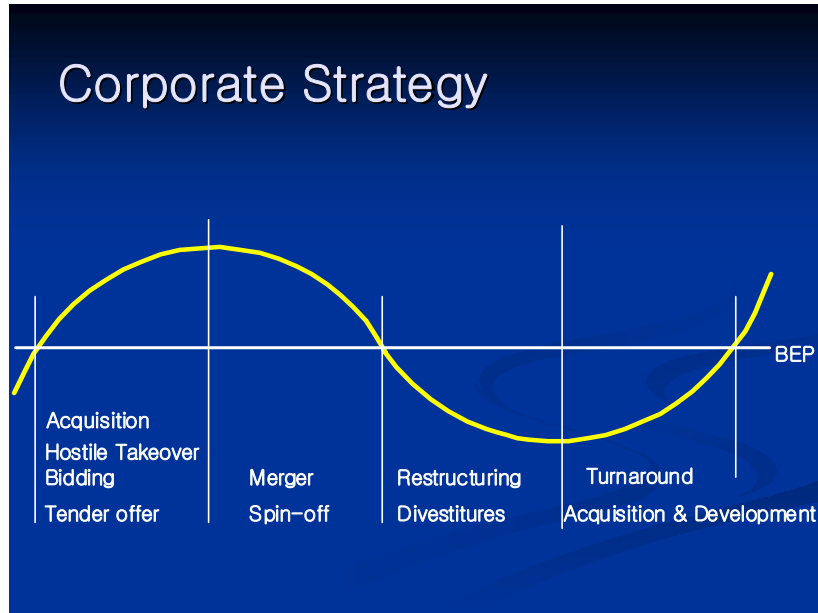
기업M&A전략을 선택할 때, 경영환경을 중요하게 고려하는데, 경기 상승기에는 새로운 시장에 참여하기 위한 시간을 단축하기 위하여 기존 기업을 인수하는 전략을 사용하고, 경기 성숙기에는 시장독점을 위하여 경쟁기업간 합병을 주로 한다.

적대적 M&A의 성공율을 살펴보면, 경기 상승기나 경기 회복기에 실행하는 전략은 성공율이 높고, 경기 쇠퇴기나 침체기에 무분별하게 적대적 M&A를 시도하면 실패할 확률이 높아지게 된다.

경기 상승기의 적대적 M&A는 대상기업에 대한 주식매집단가는 높지만 시장의 팽창으로 인해 높은 수익을 실현할 수 있고, 경기 회복기에는 대상기업의 주식매집단가가 터무니 없이 낮은 가격에 매집할 수 있기 때문에 적대적 M&A를 실행하는 최적의 조건이 제공된다. 이것이 미국에서 불황을 극복하는 과정이나 대공황 이후에 적대적 M&A가 성행하게 된 이유이다.

경기가 후퇴하는 경우에는 경쟁력이 뒤지는 사업부문을 분리하고, 경기가 침체기에 접어들어 수익성이 악화되면 본격적인 구조조정을 실행한다. 하지만 경기가 침체된 경우에도 회복기에 접어들면 거대투자금융가들에 의한 턴 어라운드나 A&D전략을 많이 사용하게 된다.

때문에 기업들이 주로 사용하는 M&A전략을 분석하면 향후 경기의 흐름을 예측할 수 있는 바로미터로 사용할 수도 있는 것이다.



3. 투자가 전략

적대적 M&A에 의한 경영권 분쟁이 발생하는 게임에 참가하고자 하는 시장의 참가자들은 경영권 분쟁의 당사자들 보다 앞선 투자를 하여야 성공가능성이 높아지게 된다. 때문에 경기 침체기의 상황에서 정부정책이나 대규모 투자은행가들의 움직임을 주시할 필요가 있다.

경기 상승기에는 미리 확보한 적대적 M&A가 시도되는 대상기업의 주식을 상대방의 공개매수에 응하거나 방어자를 위한 백기사의 역할을 하면 높은 수익을 실현할 수 있게 된다.

경기 성숙기에는 대개 합병을 많이 하게 되는데, 합병의 경우에는 주식매수청구권을 사용할 수 있으며, 합병주체들에 의한 대규모 주식매집이 있어, 그린메일이나 합병재정거래를 실행하기가 용이하다.

경기 회복기에는 소수주주로서의 투자를 실행하다가 대상기업의 경영권을 인수하여, 경영권 프리미엄을 받고 대상기업을 매각하는 전략이 매우 유용하다. 투자금융의 최고의 적기는 경기 회복기이며, 이 시기가 최고의 수익률을 올릴 수 있는 최적의 기회임을 명심해야 한다.



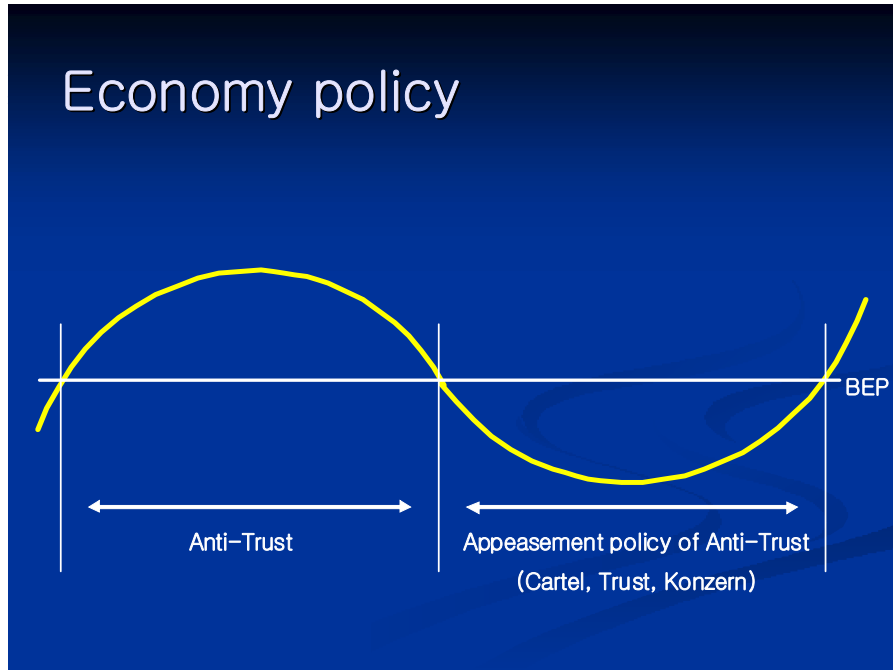
4. 정부정책

경기 성장기와 성숙기의 정부정책은 시장의 과잉팽창을 방지하기 위해 독점금지법을 강화하고, 경기 침체기와 회복기에는 독점금지법을 완화하여 투자유인을 촉진시킨다. 독점금지법은 M&A와 가장 배치되는 법률이며, 독점금지법의 개정은 M&A전문가들이 반드시 숙지해야 되는 법규이다.

자본주의와 민주주의는 배치되는 권력구조를 가지고 있는데, 그 이유는 자본주의는 자본규모에 의해 힘이 생기지만, 민주주의는 다수의 사람으로부터 호응을 받아야 권력을 창출할 수 있기 때문이다.

정치 또는 행정에 종사하는 권력자들은 경제력의 힘을 조절하기 위해 독점금지법을 도구로 사용하는 경향이 있다. 경제권력이 너무 강해지면 빈익빈부익부 현상이 심화되고, 더욱 강해지면 정치나 정부 권력까지도 좌지우지하게 될 수 있다.

대개 5%의 경제집단이 경제력의 80% 이상을 소유하게 되면 그 힘이 정치권력이나 행정권력을 능가하게 되며, 더욱 심화되면 정치권력이나 정부권력이 경제권력에 의존하게 되는 현상이 발생하게 된다. 때문에 수정자본주의는 경기침체와 경제력 독점의 양방향에서 활용된다.



5. 결 론

- 1) M&A와 국제투자금융업무는 경기순환에 따라 다양한 전략으로 진행하여야 한다.
- 2) M&A와 국제투자금융업무는 미래예측을 중심으로 하는 사업분야이다.

V. 토의사항

1. 한국의 자본시장통합법 시행에 따른 M&A와 국제투자금융업무의 변화 가능성은?
2. 한국기업들이 세계시장진출에 의해 거대다국적기업으로 성장하기 위해 준비해야 할 사항은?
3. 한국기업들이 독자적으로 Tax Haven을 활용할 수 있는 방법은?
4. 한국의 투자금융회사들이 글로벌 시장에서 국제투자금융회사들과 경쟁할 수 있는 방안은?
5. 정관에 Golden Parachutes, Poison Pills 등을 삽입한 경영권 강화는 향후 기업지배권에 어떠한 영향을 미치게 되는가?

발표자료 4: 공개매수제도의 실무상 쟁점과 운영방향

(발표: 이성환/금융감독원 공시감독국 변호사

지명토론: 정윤모/한국증권연구원 연구위원)

공개매수제도의 실무상 쟁점과 운영방향

2007. 3. 21.

 금융감독원

공시감독국 이성환 변호사

■■■ 목 차

- 1 공개매수제도의 개관
- 2 실무상 법적 쟁점
- 3 최근 주요 공개매수사례
- 4 “자본시장통합법안”과 비교



공개매수제도의 개관



공개매수제도의 개관

❖ 공개매수의 개념

- 공개매수는 기업지배권의 획득이나 유지·강화를 위해 장외에서 불특정다수인에게 매수청약 또는 매도청약권유를 하여 주권상장법인·코스닥상장법인이 발행한 의결권 있는 주식 기타 유가증권(CB, BW, EB 포함; '주식등')을 매수하는 행위를 말함

❖ 공개매수제도의 목적(효과)

- 기업지배권 시장의 공정경쟁 장치
- 공시를 통한 투자자 보호
- 지배권 premium의 공유
- 무분별한 M&A를 방지하여 기업지배권의 안정 도모

공개매수제도의 개관

❖ 공개매수제도의 보호법익

- 기업지배권시장 관점
 - 기업지배권 시장의 공정경쟁(M&A 공격·방어 사이의 균형), 공시를 통한 투자자 보호(매도압력 완화) 등
- 회사법 관점
 - 지배권 premium 공유(주주평등 원칙의 확대?)

❖ M&A 유형별 공개매수제도의 역할

- 우호적 M&A : 회사법 관점
 - 기업지배권 시장의 공정성이나 지배권 안정보다는 지배권 premium 공유가 주요 고려대상
- 적대적 M&A : 기업지배권시장 관점 및 회사법 관점
 - 기업지배권 시장의 공정성이나 지배권 안정 & 지배권 premium 공유가 모두 고려대상

공개매수제도의 개관

❖ 공개매수제도의 연혁

- '76.12.22. 증권거래법 개정 : 공개매수제도 도입
 - 현행 “공개매수 정의”에 해당하는 행위를 하고자 할 때 공개매수신고서 제출 (5% 공개매수의무 규정 없었음)
- '97.1.13. 증권거래법 개정
 - 5% 의무공개매수 규정 신설
 - 25% 의무공개매수 규정 신설
 - 보유비율 산정에서 특별관계자 합산
 - 위반에 대하여 의결권 제한 및 처분명령 도입
 - 공개매수신고서 기재사항 구체화, 공개매수기간 도입
 - 반복공개매수 제한(1년 동안)
 - 공개매수기간 동안 의결권 있는 주식 등의 발행과 발행결의 금지
 - 정정신고 제도 도입, 공개매수조건 변경금지사유 규정
 - 공개매수철회 제한
 - 전부매수의무 규정
 - 공개매수가격 균일
 - 공개매수자의 배상책임
 - 공개매수결과보고서 제출, 감독당국의 처분권

공개매수제도의 개관

❖ 공개매수제도의 연혁

- '98.2.24. 증권거래법 개정
 - 25% 의무공개매수제도 폐지
- '01.3.28. 증권거래법 개정
 - 공개매수사무취급자 (증권회사로 한정) : 공개매수사무취급자 강제 주의(시행령 제11조의4제4항)는 '05.3.28. 폐지 (자율사항)
 - 공개매수신고서 효력발생기간 단축(10일 → 3일)
 - 반복공개매수 제한기간 단축(1년 → 6월)
 - 정정신고 공고 도입
 - 신고서 등 비치기간 연장(2년 → 3년)
- '05.1.17. 증권거래법 개정
 - 공개매수신고서 효력발생기간(수리제도) 폐지
 - 별도매수 금지의무자에 공개매수사무취급자 추가
 - 반복공개매수 제한 폐지
 - 발행인의 금지행위(공개매수기간 동안 주식 등의 발행과 발행결의 금지) 폐지
 - 정정신고서 제출로 인한 공개매수기간 종료일 변경

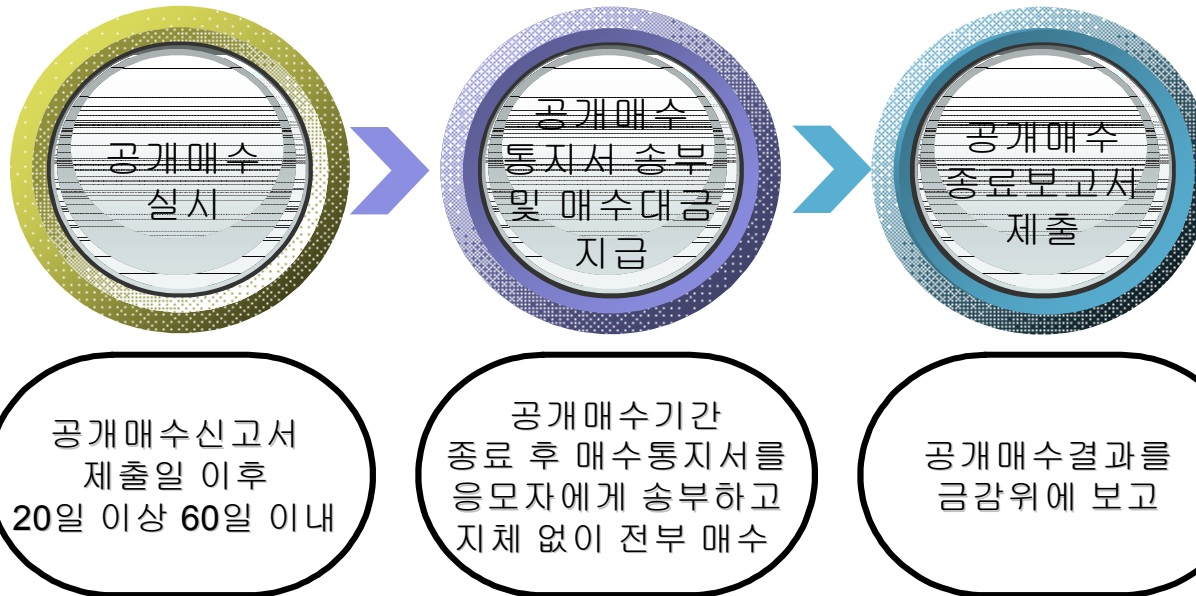
공개매수제도의 개관

❖ 공개매수 절차



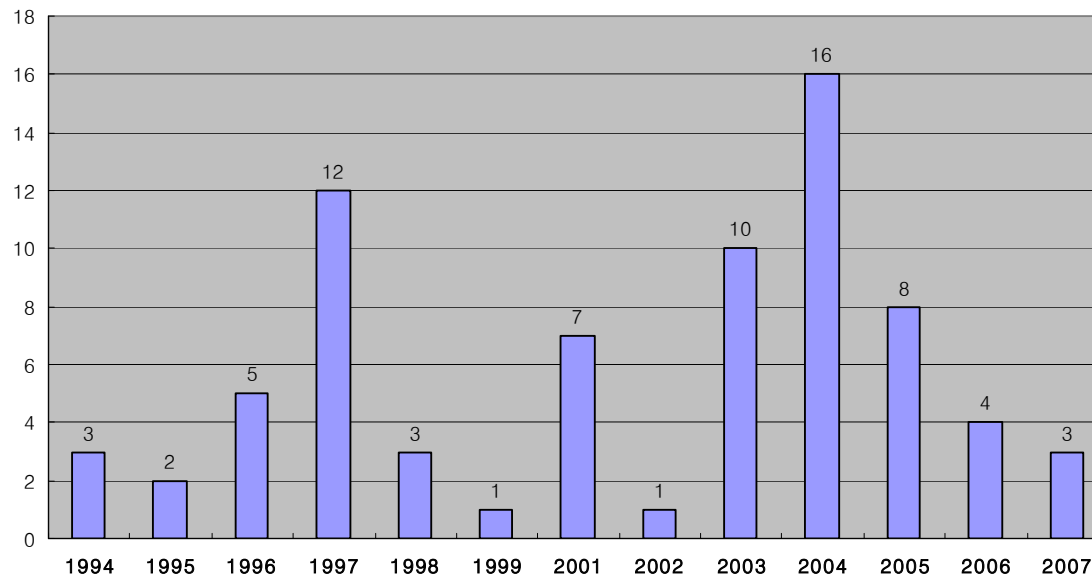
공개매수제도의 개관

❖ 공개매수 절차



공개매수제도의 개관

❖ 공개매수 접수현황



- ❖ '94.5.12.~'07.3.16.까지 총 75건 접수
- ❖ 의결권 있는 우선주 2회를 제외하면 모두 보통주를 대상으로 함

공개매수제도의 개관

❖ 공개매수 목적 분석(2001년 이후)

	경영권 안정	상장폐지	자기주식 취득	적대적 M&A	우호적 M&A	계
2001	4		1	1	1	7
2002	1					1
2003	7	1	1	1		10
2004		9	2	2	3	16
2005	3	5				8
2006	1				3	4
2007	1				2	3
계	17	15	4	4	9	49

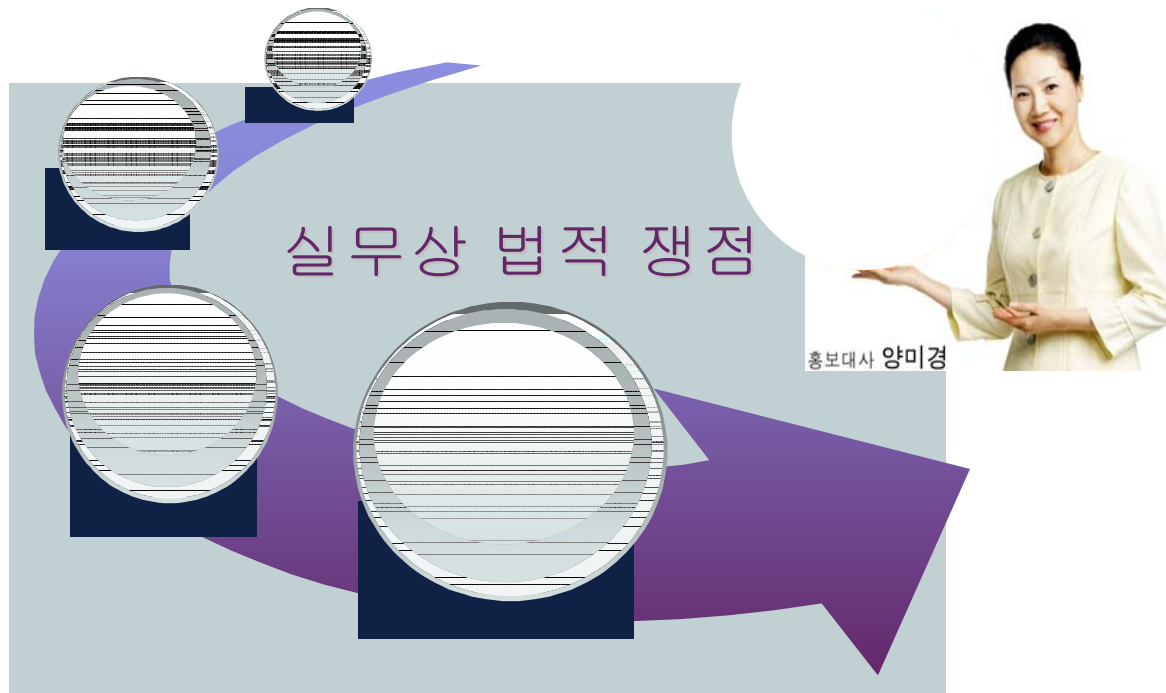
공개매수제도의 개관

◆ 공개매수금액기준 상위 리스트

순위	공개매수자	대상회사	제출일	목적	매수금액	결과
1	신한금융지주	LG카드	'07.02.27	우호적 M&A	6조 6,765억원	전량매수
2	Citibank	한미은행	'04.03.30	우호적 M&A	1조 9,175억원	전량매수
3	LGEI	LG전자	'02.08.16	경영권안정	1조 3,846억원	전량매수
4	㈜태평양	아모레퍼시픽	'06.11.09	경영권안정	5,461억원	미달매수
5	LGCI	LG화학	'01.11.20	경영권안정	2,571억원	미달매수
6	P&G(독일)	쌍용제지	'97.10.27	경영권안정	1,498억원	전량매수
7	LGCI	LG생활건강	'01.11.20	경영권안정	1,364억원	전량매수
8	eBay KTA(UK) Ltd.	옥션	'03.11.17	상장폐지	1,091억원	미달매수
9	LGCI	LG홈쇼핑	'01.11.20	경영권안정	1,079억원	전량매수
10	신한금융지주	조흥은행	'04.04.20	상장폐지	949억원	전량매수

실무상 법적 쟁점

new
대한민국기업정보의 창
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■■■ 실무상 법적 쟁점

❖ 공개매수의무 규정

- 과거 6월 동안 10인 이상으로부터 장외에서 주식 등의 매수 등을 하고자 하는 자는 당해 매수 등을 한 다음 본인과 특별관계자가 보유하는 주식 등의 합계가 5% 이상 되거나 또한 이미 5% 이상 보유한 상태에 있는 경우에 공개매수의무 발생
 - “10인 이상”, “장외에서”, “매수 등을 하고자 하는” 등이 공개매수의무 발생의 주요 요건
- 공개매수제도의 실무운영상 법적 쟁점
 - 공개매수의무 발생 관련 쟁점
 - 공개매수조건의 변경 관련 쟁점 등

■■■ 실무상 법적 쟁점

- ❖ 시간외 대량매매 (場內거래 v. 場外거래)
 - 공개매수의무의 발생요건 중에서 “장외거래” 관련하여 시간외 시장을 통한 거래의 취급이 문제
 - <사례> '06년 9월 甲 증권사가 설립한 사모투자전문회사(PEF)는 시간외 대량매매를 통해 유가증권시장 상장법인인 乙의 주주 15인으로부터 24.1%의 지분 취득
 - 장내매매로 규정되어 있지만 실질적으로 상대매매 성격을 가지는 장내매매에 대하여 공개매수의무 규정을 적용할 것인지 여부

실무상 법적 쟁점

❖ 현행 증권거래법의 해석

- 시간외 대량매매는 장외에서 계약내용을 합의한 다음 그 실행에서 장내거래방식을 이용한다는 면에서 장외거래로 볼 소지가 있음
- 하지만 장외거래로 보아 공개매수의무를 적용하기는 어려워 보임
 - 유가증권시장.코스닥시장의 정의, 거래소의 시장업무규정에 비추어 볼 때 시간외 시장도 유가증권시장.코스닥시장
 - 장외에서 매수 등을 한다는 것은 매수 등의 개시가 장외에서 있을 뿐만 아니라 당해 매수 등이 장외에서 계약체결로 이어져 종결될 것까지 요구
 - 매매교섭을 통해 장외에서 매매조건이나 매매상대방 등이 결정되더라도 그 단계의 의사는 약정한 조건으로 향후 매매계약을 체결하기로 하는 약속에 불과 보임 있음
- '07.3.20. 서울중앙지방법원도 동일한 결론

실무상 법적 쟁점

❖ 입법적 개선 필요

- 場內 거래를 공개매수의무 대상거래에서 제외한 이유
 - 모든 주주가 매도기회를 보유
 - 정규시장 거래를 통해서는 지배권 취득에 필요한 양의 주식을 빠르게 매수하기 어려움
 - 場內 거래는 개설 주체인 증권거래소의 감독 하에 이루어지고 개성을 갖는 거래가 아니고 유통시장에서의 일반적인 수요와 공급원칙에 따르기 때문
- 공개매수제도는 '76.12.22(시행 '77.2.1) 도입된 반면, 시간외 시장은 '96.11.25. 이후 개설
 - 공개매수제도 도입 당시 예상하지 못한 시간외 시장이 도입되었음에도 공개매수와 관련된 입법적 개선이 없었음
- “자본시장통합법안”에서 보완
 - 증권시장에서의 경쟁매매 외의 방법에 의한 주식 등의 매수로서 대통령령이 정하는 매수의 경우에는 증권시장 밖에서 행하여진 것으로 의제(제133조제4항)
- '05.11.30. 증권거래법 개정안(김애실 의원)
 - 시간외 매매에 대하여 공개매수 규정 적용

■■■ 실무상 법적 쟁점

❖ 참고(일본 사례)

- 유사한 일본사례(라이브도어 사건)
 - '05.2.8. 인터넷포털회사인 라이브도어(일본방송 주식 5.4% 既보유)는 완전자회사인 라이브도어 파트너스를 통해 동경증권거래소의 "ToSTNeT-1"에 의한 시간외 거래(장내 거래)로 일본방송(일본 5위의 중앙지인 산케이신문과 민영방송 후지TV의 지주회사) 주식을 하루 만에 29.6% 매수하여 합계 35%를 보유
 - 일본은 우리나라와 달리 매수로 1/3 이상 보유하게 되는 경우 '10인 이상'으로부터의 매수가 아니더라도 공개매수의무를 부담
- 일본 법원(제1심 및 제2심; 신주예약권발행금지 가처분 사건)
 - 강제공개매수규제는 "거래소 유가증권시장 外"에서의 거래에 적용
 - ToSTNeT-1 거래는 동경증권거래소가 시간외거래를 집행하기 위해 개설한 것으로 증권거래법상 거래소의 유가증권시장에서의 거래에 해당하므로 일본 증권거래법 제27조의2의 규제대상이 아님
- 일본은 라이브도어 사건 이후 시간외거래와 같은 상대거래에 의해 1/3을 초과하여 취득하는 경우에도 공개매수의무를 부과하는 내용으로 증권거래법을 개정

■■■ 실무상 법적 쟁점

❖ 공개매수의무 발생요건 중 “10인 이상” 관련하여 다수의 운영상 쟁점 발생

❖ 관련 규정

- 과거 6월 : 당해 주식 등의 매수 등을 하는 날부터 과거 6월간
- 10인 이상 : 당해 주식 등의 매수 등을 하는 상대방의 수와 과거 6월 동안 당해 주식 등의 매수 등의 상대방의 수의 합계를 기준

■■■ 실무상 법적 쟁점

❖ 쟁점 1 (계약 상대방 v. 매수청약 상대방)

- “10인 산정”에서 계약 상대방을 기준으로 할 것인지 매수청약 등의 상대방을 기준으로 할 것인지
 - 당해 주식 등의 매수 등을 하는 상대방의 수
 - & 과거 6월 동안 당해 주식 등의 매수 등의 상대방의 수
- <사례 1> 15인의 주주에게 매수청약 또는 매도청약의 권유를 하였으나 5인만 응하여 그 자들로부터 주식을 매수하는 경우(매수 후 10%보유) 공개매수의무가 발생하는지 여부
- <사례 2> '07년 1월, 15인에게 매수청약(매도청약권유)을 하고 5인으로부터 주식을 매수한(매수 후 4%보유) 다음 '07년 3월, 3인으로부터 주식을 매수하여 5% 이상을 보유하게 되는 경우 공개매수의무가 발생하는지 여부

실무상 법적 쟁점

❖ 쟁점 1에 대한 견해 대립

- 견해1(계약 상대방 기준) : 매매협상과정은 고려하지 않고 결과물인 매매계약 체결의 상대방 기준으로 10인 이상 산정
 - 문언해석에 충실(매수와 매수청약, 매도청약권유는 구분)
- 견해2(매수청약 상대방 기준) : 결과물인 매매계약이 아니라 매매계약을 체결하기 위한 개시행위(매수청약 또는 매도청약권유)의 상대방 기준으로 10인 이상 산정
 - 공개매수정의에 충실('76.12.22. 당시 입법 참조)
 - “매수 등을 하고자 하는”은 계획, 의도가 중요
 - 공개매수의 절차를 거치지 않고 주주명부상 필요 지분을 가진 주주들과 접촉하여(매수청약 또는 매도청약권유를 하고), 제의에 응한 자 중에서 10인 미만의 자를 선별하여 계약을 체결하는 행위가 허용되는가(응모하는 자들은 매도압력을 받을 가능성)
 - 가령, 유가증권을 공모하고자 하는 법인, 상장법인과 합병하고자 하는 법인은 유가증권발행인 등록의무를 부담하는데, 등록하지 않고 공모 또는 합병을 개시하면 등록의무 위반 아닌가
- 다만, 과거 6월 동안의 상대방의 수는 계약 상대방으로 운영(과거 사실, 운영)

■■■ 실무상 법적 쟁점(참고 사항)

❖ 다른 해결방안

- 증권거래법 제21조제1항의 공개매수의무의 발생은 “계약의 상대방”을 기준으로 하고
- 이와 별개로 공개매수의 정의에 해당하는 행위를 하려면 공개매수의무가 발생하는 것으로 운용하는 방안을 생각할 수 있음
 - 이 경우에는 5%의 지분은 요구되지 않을 것임

❖ 문제점

- 공개매수 정의규정(제21조제3항) 위반에 대하여 형사처벌이나, 의결권 제한 등을 적용하기 곤란

■■■ 실무상 법적 쟁점

❖ 쟁점2 (공개매수를 통한 매수 제외 여부)

- 공개매수를 통해 10인 이상으로부터 매수 후(5% 이상 보유) 6월이 경과하기 이전에 공개매수 이외의 방법으로 장외에서 매수할 수 있는지 여부
- <사례> '07년 2월, 주주를 상대로 공개매수를 진행하여 응모한 1,000명의 주주로부터 주식을 매수(보유비율 30%)한 이후 '07년 3월, 3인으로부터 장외에서 주식을 매수하고자 하는 경우 공개매수의무가 발생하는가?

■■■ 실무상 법적 쟁점

❖ 쟁점2에 대한 견해 대립

- 견해1 : 공개매수를 통한 매수를 제외하는 입장
 - 10인 이상 산정은 반복공개매수가 금지될 때에도 존재하였는데 공개매수 상대방을 10인에 포함시키면 사실상 공개매수 후 6월 동안 장외매수가 전면금지
 - 증권거래법 시행규칙 제2조제1호(1년간 공모금액 합산에서 그 기간 동안 유가증권신고서 제출로 조달한 금액 제외) 유추 적용 가능
- 견해2 : 공개매수를 통한 매수를 포함하는 입장
 - 10인 산정에서 특별히 공개매수 상대방을 배제한다는 명문의 규정이 없음
 - 증권거래법 시행규칙 제2조제1호의 유추적용 의견은 수용하기 어려운 해석(특별규정)
 - 균등가격 매수원칙의 무력화 우려(공개매수 종료 후 재배주주 지분을 더 높은 가격으로 장외매수)

■■■ 실무상 법적 쟁점

❖ 쟁점3 (주식 등의 종류의 동일성)

- “10인 산정”에서 주식 등의 종류별로 10인 여부를 산정해야 하는지
 - “당해” 주식 등의 매수 등을 하는 상대방의 수
 - & 과거 6월 동안 “당해” 주식 등의 매수 등의 상대방의 수
- <사례1> '07년 1월, 8인으로부터 **주식**을 매수한(매수 후 4% 보유) 이후 '07년 3월, 3인으로부터 **CB**를 매수하여 5% 이상을 보유하게 되는 경우
- <사례2> '07년 1월, 8인으로부터 **CB**를 매수한(매수 후 4% 보유) 이후 '07년 3월, 3인으로부터 **주식**을 매수하여 5% 이상을 보유하게 되는 경우
- <사례3> 8인의 주주, 3인의 CB 소유자로부터 **동시에** 주식과 CB를 매수하여 5% 이상을 보유하게 되는 경우

■■■ 실무상 법적 쟁점

❖ 쟁점3에 대한 견해 대립

- 견해1 : 주식 등의 종류를 불문하는 입장
 - 보유비율(5%)을 산정함에 있어서 주식 등의 종류를 고려하지 않고 합산
 - 공개매수의무 강화(우회방지)를 위해 주식 등의 종류와 상관 없이 모두 10인 산정에 포함

- 견해2 : 주식 등의 종류의 동일성 요구하는 입장
 - “당해”의 의미
 - 우연한 사정에 의해 공개매수대상 유가증권이 결정되는 문제점(지배권 premium은 공개매수대상 유가증권의 소유에게만 분배)

■■■ 실무상 법적 쟁점

❖ 쟁점4 (DR의 취급)

- 국내 상장법인의 DR을 해외에서 매수한 경우 이를 어떻게 취급할 것인지
 - 주식 등 : 의결권 있는 주식에 관계되는 주권, 신주인수권을 표시하는 증서, 전환사채권, 신주인수권부사채권, 교환사채권(주권, 신주인수권을 표시하는 증서, 전환사채권, 신주인수권부사채권과 교환을 청구할 수 있는 것에 한함)

- <사례>국내 상장법인이 NYSE(뉴욕증권거래소)에 ADR을 상장하였는데 乙이 NYSE에서 10인 이상으로부터 ADR을 매수(보유비율 4%). 乙이 ADR 매수 3개월 경과 후 국내 증권시장에서 원주(原株)인 “주식”을 매수하려는 경우(매수 후 보유비율 6%) 乙은 공개매수의무를 부담하는가?
 - 참고 : DR 취득으로 원주를 보유하게 되므로 보유비율 산정에는 포함

■■■ 실무상 법적 쟁점

❖ 쟁점4에 대하여

- DR의 주식 등 해당 여부
 - 공개매수 대상은 의결권 있는 주식 기타 대통령령이 정하는 유가증권(주식 등)인데, 명시적으로 DR이 규정되어 있지 않으며, 나아가 ADR은 현행 증권거래법상 유가증권도 아님
- DR 매수를 주식 매수와 동일하게 취급 ?
 - 주식을 원주로 하는 DR은 주식의 대체증권[DR 소유자는 의결권 행사, 배당 수령, 신주인수권 등 주주로서의 권리 행사; (언제든지) 원주 교환청구 가능]
 - DR 취득을 그 원주(原株) 취득과 동일하게 볼 여지 발생
 - 국내 법인이 자신이 상장한 ADR을 취득하는 것을 자기주식 취득으로 보아야 하는가?
- 주식을 대상으로 공개매수를 하는 경우 DR 소유자에게 응모기회를 부여해야 하는가(응모할 수 있는가)

실무상 법적 쟁점

❖ 공개매수조건의 변경

- 공개매수조건이란 무엇이며, 그 변경은 가능한가
- <사례> 공개매수자는 공개매수 예정수량을 보통주의 40%로 설정하고 응모수량이 예정수량에 미달하는 경우에는 전부를 매수하지 않으며(조건1), 응모수량이 예정수량을 초과하는 경우에는 50%까지 안분 비례하여 매수하기로 하는(조건2) 조건을 부가하여 '07.1.22 공개매수신고서 제출(공개매수기간 : '07.1.23.~2.21)
- 공개매수자는 '07.2.15. 사정변경으로 위 조건을 변경하고자 하는데, (1) 조건1을 삭제하는 정정신고서를 제출할 수 있는가, (2) 조건2에서 “50%까지”를 삭제하는 정정신고서를 제출할 수 있는가
 - 조건 1 삭제는 응모주주에게 불리하지 않음
 - 조건 2에서 “50%까지”의 삭제는 응모주주에게 불리하게 작용

■■■ 실무상 법적 쟁점

❖ 공개매수조건은 무엇인가

- 공개매수조건의 정의不在
 - “공개매수기간.가격.결제일 등 공개매수조건”으로 규정하고 있을 뿐 별도의 정의규정을 두지 않음
 - 공개매수기간, 공개매수가격, 매수예정수량, 매수대금지급기간, 결제일, 대가의 종류는 명시적 공개매수조건
 - 그 외의 사항에 대하여 어느 범위까지 공개매수조건으로 인정할 것인지 분명하지 않음(가령, 앞의 예에서 조건1, 조건2는 공개매수조건인가?)

- 공개매수조건의 변경사유 제한

실무상 법적 쟁점

❖ 공개매수조건의 변경 제한

- 공개매수조건의 변경에 관하여 현행 증권거래법은 변경이 가능한 경우를 정하는 대신 변경이 금지되는 경우를 정하는 방식을 따름
- 구체적 변경금지사유
 - 증권거래법 제23조의2제1항 : 매수가격의 인하, 매수예정주식 등의 수의 감소, 매수대금 지급기간의 연장
 - 증권거래법 시행령 제12조의6 : 공개매수기간의 단축, 응모주주에게 줄 대가 종류의 변경(대가 종류의 추가는 제외)
 - 유가증권의 발행 및 공시 등에 관한 규정 제127조 : 공개매수 대금 지급기간의 연장을 초래하는 공개매수조건의 변경(별도 예외사유 정하고 있음)
- 변경금지사유는 열거(列擧)인가 예시(例示)인가?
 - 명시된 사항 이외의 공개매수조건을 인정하면, 그 변경에 관한 일반적 해석기준 필요(가령, 조건2를 공개매수조건으로 보는 경우 그에 관한 변경금지사유를 규정되어 있지 않는데 그 변경에 아무런 아무런 제약이 없는가?)
 - 다만, 사안은 “매수예정주식 등의 수의 감소”에 해당될 가능성 많음

■■■ 실무상 법적 쟁점

❖ 정정신고서와 공개매수기간 종료일 변경

- 공개매수자는 정정신고서 제출을 통해 매수조건을 변경할 수 있음
- 정정신고서 제출로 인한 공개매수기간 종료일 변경
 - 잔존 공개매수기간이 10일이 되지 않으면 정정신고서 제출일로부터 10일이 경과한 날
 - 잔존 공개매수기간이 10일 이상인 경우에는 원래 공개매수기간 종료일
 - 도입취지 : 정정신고를 하는 경우 공개매수기간이 새로 시작되지 않고(정정신고제도가 없으면 새로운 공개매수를 해야 함), (1회 정정신고서 제출 시) 당초 종료일보다 최대 10일간만 연장되도록 하여 불필요한 장기화 방지

■■■ 실무상 법적 쟁점

❖ 정정신고서와 공개매수기간 종료일 변경

- 모든 매수조건 변경에 적용되므로 사소한 변경에도 공개매수기간이 연장됨
 - 중요한 사항으로 한정할 필요는 없는가
 - “자본시장통합법안”에는 정정신고서 제출사유를 확대하고, 공개매수기간의 종료일 변경도 획일적으로 적용

- 공개매수기간의 연장
 - 대항공개매수가 발생하는 경우 (대항공개매수기간의 종료일 까지)
 - 정정신고서 제출의 경우 (정정신고서 제출 횟수에는 제한이 없고 공개매수기간의 상한 60일도 적용되지 않을 것임)

최근 주요 공개매수 사례



■ ■ ■ 최근 주요 공개매수 사례

❖ LG카드 공개매수 사례

- (주)신한금융지주의 공개매수 일정
 - '07.2.27. 공개매수공고 및 공개매수신고를 하고 공개매수기간은 20일간('07.2.28.~'07.3.19)이며 결제일은 '07.3.23(금)
 - 매수예정수량은 보통주 78.58%, 매수가격은 주당 67,770원, 소요자금합계는 약 6조 6765억 원
- 공개매수 우회 방법
 - 6월 간격을 두고 분할매도(☞ 15개의 채권금융기관은 공동 매각 합의로 불가)
 - 9인은 바로 매각하고 나머지는 put option 부여(put option 부여는 매수등에 해당하지 않는다는 논리)
 - 채권금융기관의 수 감소(신탁으로 인한 소유권 이전)
 - 시간외 대량매매(충분한 premium 불가)

■ ■ ■ 최근 주요 공개매수 사례

❖ LG카드 공개매수 사례

- 공개매수면제사유
 - ①기업구조조정을 위한 금융기관협약(워크아웃 협약)에 따라 공동으로 기업개선작업 추진대상으로 선정된 기업의 주식 또는 ②기업구조조정촉진법에 따른 부실징후기업의 주식을 매각하는 경우에는 공개매수의무가 면제
 - 하지만 LG카드의 경우 채권금융기관간 자율적인 협약에 의한 공동관리 기업이어서 위 면제사유에 해당되지 않음
- 공개매수신고서 제출시기
 - 매각상대방 선정단계, 선정 후 채권금융기관과의 약정 단계, 금융지주회사의 자회사 편입승인 이후로서 실제 매수행위를 개시하기 이전 단계 등
 - 공개매수의 정의에 따라 불특정다수인을 상대로 매수청약 또는 매도청약권유를 하기 전에 공개매수신고서를 제출하면 되는 것 아닌가 (공개매수의무 발생의 판단과는 다른 문제)
 - 첨부서류 문제 : 인허가 승인 증명 문서

■ ■ ■ 최근 주요 공개매수 사례

❖ 서울증권 공개매수 사례

- (주)유진기업의 공개매수 일정
 - 금융감독위원회는 '06.12.22. (주)유진기업의 서울증권에 대한 지배주주변경 승인 : 승인일부터 6월 이내에 서울증권 주식 55,212,527주(20.83%) 취득
 - (주)유진기업은 '07.1.22. 공개매수 개시 : 서울증권 주식 (10.94%), 공개매수시간('07.1.23.~ 2.12)
- 대항공개매수 가부
 - 증권회사의 최대주주, 최대주주의 특수관계인인 주주, 주요 주주가 되고자 하는 지배주주 변경승인을 받아야 하므로 사실상 제3자의 대항공개매수가 차단
- 낮은 프리미엄 지급
 - '07.1.19. 종가 기준 공개매수 가격프리미엄은 6.4%
 - 공개매수 예정수량이 적은 측면도 작용하여 공개매수 성공 (대항공개매수가 없음이 매도압력으로 작용한 듯)

■ ■ ■ 최근 주요 공개매수 사례

❖ 충남방적 공개매수 사례

- 공개매수 경쟁
 - 정리회사인 충남방적(주)에 대하여 '06.6.19.~8.22. 甲, 乙이 공개매수 경쟁
- 정리회사의 지배권 취득
 - 충남방적(주)은 '02.12.12. 정리절차가 개시
 - '06.8.21. 회사정상화를 위해 제3자 배정 유상증자의 매각 주간사 선정 작업 착수
 - '07.1.18. 기업매각공고 (제3자 배정방식의 유상증자 등을 통한 외부자본 유치; '07.4.5.까지 입찰서 접수)
 - '07.3.15. 기업매각절차 속행중지 가처분 신청
 - (참고사례 : 국제상사) 부산고등법원(제2심)은 '06.12.29. 정리회사 주주에게 신주인수권이 보장되는 것은 아니므로 제3자 M&A를 내용으로 하는 회사정리변경계획안을 인가하고, 그로 인해 지배주주의 변경이 초래되더라도 위법이 아니라고 결정(2006라153; 대법원 계류 중)



“자본시장통합법안”과의 비교

new
대한민국기업정보의창
DART



홍보대사 양미경

“자본시장통합법안”과 비교

- ❖ 해외 증권시장을 “증권시장”에 편입
 - DR를 주식 등에 포함시키는 하위 법규 작업 필요할 할 듯
 - 원주청구권의 대상이 되는 주식의 공개매수에 DR소유자도 응모할 수 있도록
- ❖ 공개매수사무취급자가 증권회사에 제한되지 않음
- ❖ 상대매매 성격의 장내거래도 공개매수 대상
- ❖ 공개매수자의 정정신고서 제출 사유 확대
 - 공개매수조건, 그 밖에 공개매수신고서의 기재사항을 정정하는 경우, 투자자 보호를 위하여 그 공개매수신고서에 기재된 내용을 정정할 필요가 있는 경우로서 재정경제부령이 정하는 경우
- ❖ 공개매수철회 금지기간의 기산점이 “공개매수신고서의 제출일”에서 “공개매수공고일”로 변경

보론

❖ 의무공개매수제도 도입 검토

- 의무공개매수는 지배권(control)을 확보할 수 있는 정도의 주식을 취득하고자 하는 경우에는 잔여 주식의 전부 또는 일정 비율 이상의 주식을 공개 매수에 의하여 취득할 것을 강제하는 제도
- 입법유형(잔여 주식에 대한 취득의무의 내용에 따라) (송종준 교수님 분류)
 - ① 쏠 주식의 취득을 강제하는 유형(영국, EU)
 - ② 일정비율 이상의 주식 취득을 강제하는 유형(우리나라의 과거 25% 의무공개매수제도)
 - ③ 일정 주식의 취득을 강제하지 않는 유형(일본, 미국의 입법시도)

보론

❖ 의무공개매수제도 도입 검토

- 과거 25% 의무공개매수는 우호적 M&A 또는 바람직한 M&A도 차단한다는 비판 때문에 폐지되었는바, 그대로 부활은 곤란
- 지배권 premium의 배분은 상대방의 수와 상관없이 일정 지분 이상을 매수하는 경우에 필요하므로 고려해 봄 직(일본의 입법)
 - 적대적 M&A : 공개매수의무 규정과 상관없이 공개매수를 진행할 가능성이 많음
 - 우호적 M&A : 지배주주 premium 독점 v. 지배권 premium 공유 (바람직한 M&A를 차단할 만한 부담?)
 - 기존 지배주주에게 도움이 되는 경우도 상정 가능 : 1대주주 :30%, 2대주주 : 20%, 3대주주 : 15%인 상황에서 2대.3대 주주로부터 동시에 매수
- '05.11.30. 증권거래법 개정안(김애실 의원)
 - 10% 이상 보유자가 추가 매수하는 경우 대통령령이 정하는 수 이상에 대한 공개매수의무 규정(급격한 지분 매집 방지)
 - 5%보고제도상 '냉각기간' 도입

발표자료 5: 기업인수계약

(발표: 정영철/연세대학교 법과대학 교수)

지명토론: 강희주/법무법인 광장 변호사)

< M&A 연구회 >

- 기업인수계약 -

2007년 4월 18일

법무법인 율촌*

정영철 변호사

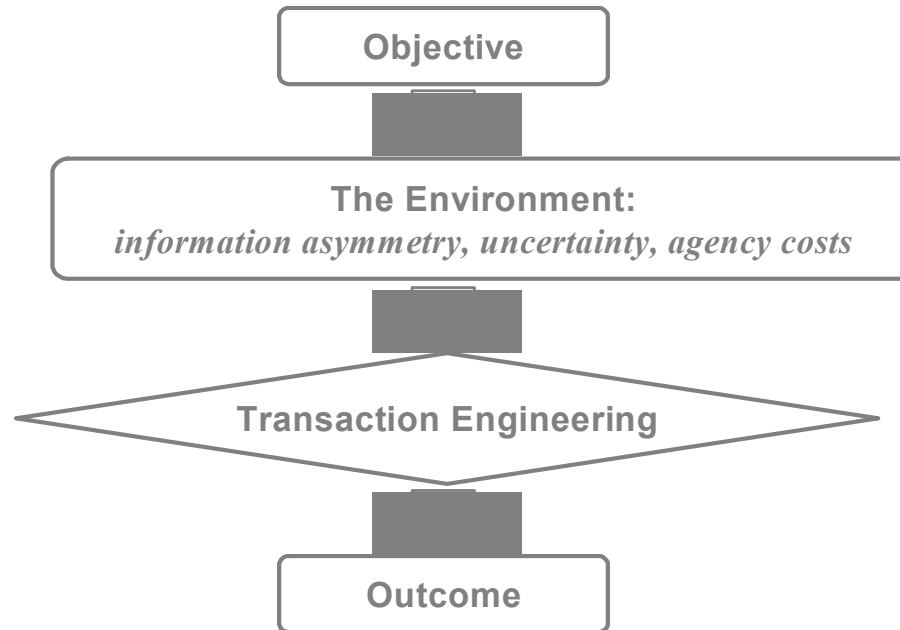
* 발표 이후 연세대학교 법과대학으로 소속이 변경되었습니다.

목 차

1. 기업인수와 법률가의 역할
2. 기업인수계약 기본 구조
3. 구체적 조항에 관한 협상
4. 이해상충

Appendix 계약서 초안 mark-up 실제사례

1. 기업인수와 법률가의 역할



Prof. Ronald J. Gilson, International Legal Training, Dec. 2002

Value Creation by Business Lawyers: Legal Skills and Asset Pricing, 94 Yale L. J. 239 (1984)

1. 기업인수와 법률가의 역할

Filling in the Environment

- Information Asymmetry – One side to the transaction knows more than the other.
- Manifests itself in two kinds of agency costs:
 - Adverse selection.
 - Moral hazard.

1. 기업인수와 법률가의 역할

Adverse Selection: The Problem

- Adverse selection: one party to the transaction knows more about its own characteristics.
- Can result in a lemon's market. An example:
 - Two categories of used cars: good cars worth \$10,000 and bad cars worth \$5,000.
 - Buyer knows only that 50% of available cars fall within each category; seller knows the value of her car.

1. 기업인수와 법률가의 역할

Adverse Selection: The Problem

- What price will a buyer be willing to pay?
 - Suppose buyer offers \$7,500, reflecting 50% chance of each.
 - What quality of car will be offered in response?
- In the absence of a way to distinguish good cars from bad cars, only bad cars will be offered – a lemon's market.

1. 기업인수와 법률가의 역할

Moral Hazard: The Problem

- When one party to a contract cannot observe the actions of the other party in performing the contract.
- What does a lender do if it can't prevent borrowers from altering the risk of the loan after the loan is made?
 - Charge an interest rate that reflects the highest possible ex post risk.
- What does a borrower do who does not intend to change the risk of its business?

1. 기업인수와 법률가의 역할

The Transactional Challenge

- In the presence of significant information asymmetry in the environment:
 - adverse selection or moral hazard can prevent transactions from taking place at all,
 - or increase the difficulty of pricing them.
- As transaction engineers, the lawyer's challenge is to design transactional structures that mitigate these problems.

2. 기업인수계약 기본 구조- Reps. & Warranties

● 주식매매계약; 영업양수도계약: 자산매매계약

● 진술과 보증 Representations and Warranties

● 매도인

- 재무제표자산과 채무
- 주요한 계약
- 근로관계
- 지적재산권
- 적용법규준수
- 환경
- 분쟁
- 보험
- 일체의 정보

● 매수인

- 재정적인 능력
- 거래완결에 필요한 승인

2. 주식매매 계약 기본 구조

- 진술과 보증에 대한 제한
- Disclosure Schedules
- 3가지 제한가능성
 - 중요한 점에서만 materiality
 - 아는 범위 내에서 to the best of seller's knowledge
 - 악영향 adverse effect
- 상장법인의 경우 공시된 자료의 정확성

2. 주식매매 계약 기본 구조 - Covenants

● 계약체결 이후 이행완료시 또는 그 이후 이행사항 Covenants

최선의 노력 - 제3자 동의나 정부인허가
통상의 영업활동
다른 매수자를 찾지 않을 것
근로자 계속 고용
매도인에 대한 추가지급

Richard A. Goldberg et al., Negotiating the Purchase Agreement, Mergers and Acquisitions, PLI (1999)

2. 주식매매 계약 기본 구조 - CP

- 이행완료를 위한 선행조건 **conditions precedent**
- 매수인의 이행완료를 위한 선행조건
 - 진술과 보증의 이행완료일 현재 정확
 - 이행완료일까지의 준수사항 등 이행
 - 이행완료일 교부/서명하여야 할 문서완료
 - 제3자동의, 정부인허가
 - 법률의견서
- 매도인의 이행완료를 위한 선행조건
 - 소송, 제3자의 불법주장 등 법적인 금지가능성

2. 주식매매 계약 기본 구조 – Indem.

● 면책 Indemnification

- 면책을 주는 자
- 면책을 받는 자
- 면책의 범위
- 면책금액
 - Basket – threshold/deductible
 - Cap
- 면책기간
- 면책에 대한 방어
- 면책책임추궁을 위한 절차
- 면책조항의 유효성/범위

3. 구체적 조항 – ABA, SBL 2007 Spring mtg.



3. 구체적 조항

Damages

Vendor Biased Provision

“Damages” means any damages which are actually suffered or incurred (excluding special, punitive, consequential or indirect damages and excluding, for greater certainty, loss of profits and loss of opportunity) or out-of-pocket expenses (including reasonable legal fees and expenses) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.

3. 구체적 조항

Damages

Negotiated Provision

“Damages” means any losses, liabilities, damages or out-of-pocket expenses (including reasonable legal fees and expenses on a full indemnity basis) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.

3. 구체적 조항

Knowledge

Vendor Biased Provision

“Knowledge” where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of the Vendor or words to similar effect, it shall be deemed to refer to the actual knowledge (without further inquiry) of the Secretary of the Vendor, without personal liability on his or her part.

3. 구체적 조항

Knowledge

Negotiated Provision

“Knowledge” where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of the Vendor or words to similar effect, it shall be deemed to refer to the actual knowledge of the CEO and CFO of the Vendor following reasonable inquiry by such officers, including inquiry of the relevant executive responsible for the subject matter of the representation or warranty.

3. 구체적 조항

Material Adverse Effect

Vendor Biased Provision

- 1) “Material Adverse Effect” means any effect that when considered either individually or in the aggregate is material and adverse to the business, operations, assets, liabilities or financial condition of the Corporation and its subsidiaries taken as a whole; except to the extent that the material adverse effect results from or is caused by:
 - i. worldwide, national or local conditions or circumstances whether they are economic, political, regulatory or otherwise, including war, armed hostilities, acts of terrorism, emergencies, crises and natural disasters,
 - ii. changes in financial and security markets generally,
 - iii. changes in the markets or industry in which the Corporation operates,
 - iv. the effect of any changes in applicable Laws or accounting rules
 - v. the announcement of the entering into of this Agreement and the transactions contemplated by it; compliance with the terms of this Agreement; or the consummation of the transactions contemplated by this Agreement, or
 - vi. any act or omission of the Corporation prior to the Closing Date taken with the prior consent or at the request of the Purchaser.

3. 구체적 조항

Material Adverse Effect

Negotiated Provision

- 1) “Material Adverse Effect” means any effect that when considered either individually or in the aggregate is material and adverse to the financial condition of the Corporation and its subsidiaries taken as a whole; except to the extent that the material adverse effect results from or is caused by
 - i. changes in the markets or industry in which the Corporation operates,
 - ii. the announcement of the entering into of this Agreement and the transactions contemplated by it, or
 - iii. any act or omission of the Corporation prior to the Closing Date taken with the prior consent or at the request of the Purchaser.

3. 구체적 조항

Ordinary Course

Vendor Biased Provision

“Ordinary Course” means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person

3. 구체적 조항

Ordinary Course

Negotiated Provision

“Ordinary Course” means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day business of the Person, and, in any event, such action as would be taken by a prudent operator of such a business.

3. 구체적 조항



3. 구체적 조항

Ordinary Course

Vendor Biased Provision

- 1) Except as disclosed in Section 3.1(I) or another part of the Disclosure Letter, since the Interim Balance Sheet Date, the Business has been carried on in the ordinary course of normal day-to-day operations of the Corporation consistent with past practices.

3. 구체적 조항

Ordinary Course

Negotiated Provision

- 1) Except as disclosed in Section 3.1(l) or another part of the Disclosure Letter, since the Interim Balance Sheet Date, the Business has been carried on in the ordinary course of normal day-to-day operations of the Corporation consistent with past practices. Without limiting the generality of the foregoing, the Corporation has not:
 - i. sold, transferred or otherwise disposed of or diminished the value of any assets used in the Business except for (A) assets which are obsolete and which individually or in the aggregate do not exceed \$5,000,000, or (B) inventory sold in the Ordinary Course;
 - ii. made any capital expenditure or commitment to do so in excess of the amount budgeted for same in the capital expenditure budget presented to the Purchaser;

cont'd

3. 구체적 조항

Ordinary Course

Negotiated Provision

- iii. discharged any secured or unsecured obligation or liability (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceeded \$5,000,000;
- iv. increased its indebtedness for borrowed money or made any loan or advance, or assumed, guaranteed or otherwise became liable with respect to the liabilities or obligation of any Person;
- v. granted any general increase in the rate of wages, salaries, bonuses or other remuneration of any employees of the Corporation except as may be required by the terms of a Material Contract or Collective Agreement;
- vi. increased the benefits to which employees of the Corporation are entitled under any Employee Plan or created any new Employee Plan for any employee;
- vii. suffered any extraordinary loss, whether or not covered by insurance;

cont'd

3. 구체적 조항

Ordinary Course

Negotiated Provision

- viii. suffered any material shortage or any cessation or interruption of inventory shipments, supplies or ordinary services;
- ix. cancelled or waived any material claims or rights;
- x. compromised or settled any litigation, proceeding or other governmental action relating to the Assets, the Business or the Corporation;
- xi. cancelled or reduced any of its insurance coverage;

cont'd

3. 구체적 조항

Ordinary Course

Negotiated Provision

- xii. made any change in any method of accounting or auditing practice, or amended or approved any amendment to its constating documents, by-laws or capital structure; or
- xiii. authorized, agreed or otherwise committed, whether or not in writing, to do any of the foregoing.

3. 구체적 조항

Material Contracts

Vendor Biased Provision

- 1) All contracts, licenses, leases and instruments (collectively, the “Material Contracts”) to which the Corporation is a party or is bound by, that provide for the expenditure of \$10,000,000 or more during any twelve month period are listed in Section 3.1(u) or another part of the Disclosure Letter, save and except for those omissions which, either individually or in the aggregate, would not have a Material Adverse Effect.
- 2) The Material Contracts are in full force and effect and the Vendor has not received any notice in writing to the effect that there are outstanding at the date of this Agreement defaults or breaches under the Material Contracts on the part of the Corporation which would have a Material Adverse Effect.

3. 구체적 조항

Material Contracts

Negotiated Provision

- 1) All contracts, licenses, leases and instruments (collectively, the “Material Contracts”) to which the Corporation is a party or is bound by, that are material to the Corporation are listed in Section 3.1(u) or another part of the Disclosure Letter and such list shall include:
 - i. any distributor, sales, advertising, agency or manufacturer's representative Contract;
 - ii. any continuing Contract for the purchase of materials, supplies, equipment or services involving in the case of any such Contract more than \$5,000,000 over the life of the Contract;

cont'd

3. 구체적 조항

Material Contracts

Negotiated Provision

- iii. any Contract that expires or may be renewed at the option of any Person other than the Corporation so as to expire more than one year after the date of this Agreement;
- iv. any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, interest rate, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;
- v. any Contract for capital expenditures in excess of \$5,000,000 in the aggregate;
- vi. any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of the Corporation to engage in any line of business, compete with any other Person, solicit any Persons for any purpose, operate its assets at maximum production capacity or otherwise conduct its business

cont'd

3. 구체적 조항

Material Contracts

Negotiated Provision

- viii. any Contract with any Person with whom the Corporation or the Vendor does not deal at arm's length within the meaning of the Tax Act;
- ix. any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;
- x. any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;

cont'd

3. 구체적 조항

Material Contracts

Negotiated Provision

- xi any Contract made out of the Ordinary Course.

- 2) The Corporation has performed all of the obligations required to be performed by it and is entitled to all benefits under the Material Contracts. The Corporation is not alleged to be in default of any Material Contract. Each of the Material Contracts is in full force and effect, unamended, and there exists no default or event of default or event, occurrence, condition or act (including the purchase of the Purchased Shares) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a material default or event of default under any Material Contract. True, correct and complete copies of all Material Contracts have been delivered to the Purchaser.

3. 구체적 조항

Financial Matters

Vendor Biased Provision

- 1) The Audited Annual Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with the preceding period and each presents fairly in all material respects the financial position of the Corporation as at the respective dates of the relevant statements.

3. 구체적 조항

Financial Matters

Negotiated Provision

- 1) The Audited Financial Statements and the Interim Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with the preceding period and each presents fairly in all material respects:
 - i. the assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial position of the Corporation as at the respective dates of the relevant statements; and
 - ii. the results of the Corporation's operations and its cash flows for the period covered by the Financial Statements or Interim Financial Statements, as the case may be. True, correct and complete copies of the Financial Statements and Interim Financial Statements have been provided to the Purchaser.

3. 구체적 조항

Intellectual Property

Vendor Biased Provision

- 1) Section 3.1(w) of the Disclosure Letter lists
 - i. all Intellectual Property owned by the Corporation that is material to the Business as currently conducted and which has been registered or for which applications for registration have been filed by or on behalf of the Corporation;
 - ii. particulars of all registrations and applications for registration in respect of such Intellectual Property; and
 - iii. all contracts, licenses, leases and instruments in respect of Intellectual Property that are material to the Business.

The Corporation has taken all reasonable steps to protect its rights in and to the owned Intellectual Property that is material to the Business. The Vendor has not received written notification to the effect that the operation of the Business infringes upon the Intellectual Property rights of any Person, which infringement would have a Material Adverse Effect. The Vendor has not received written notification to the effect that any Person is currently infringing any of the Intellectual Property owned by or licensed to the Corporation which infringement would have a Material Adverse Effect.

3. 구체적 조항

Intellectual Property

Negotiated Provision

- 1) The Corporation owns of has the right to use all the Intellectual Property currently used by it in carrying on the Business. The Intellectual Property owned by or licensed to the Corporation or which the Corporation has the right to use constitutes all Intellectual Property necessary for the conduct of the Business presently conducted.
- 2) The Corporation owns all right, title and interest in and to the Intellectual Property owned by the Corporation free and clear of all Liens.
Section 3.1(w) of the Disclosure Letter lists
 - i. all Intellectual Property owned by the Corporation that is material to the Business as currently conducted which has been registered or for which applications for registration have been filed by or on behalf of the Corporation;
 - ii. particulars of all registrations and applications for registration in respect of such Intellectual Property; and
 - iii. all contracts, licenses, leases and instruments in respect of Intellectual Property that is material to the Business.

cont'd

3. 구체적 조항

Intellectual Property

Negotiated Provision

- 3) The Corporation has taken all reasonable steps to protect its rights in and to the owned Intellectual Property that is material to the Business in accordance with prudent industry practice.
- 4) Except as set forth in Section 3.1(w) of the Disclosure Letter, the Corporation is not a party to or bound by any contract, license, lease or instrument that limits or impairs its ability to use, sell, transfer, assign or convey, or that otherwise affects, any of the Intellectual Property owned by it that is material to the Business.
- 5) To the knowledge of the Vendor, the operation of the Business does not infringe upon the Intellectual Property rights of any Person.

cont'd

3. 구체적 조항

Intellectual Property

Negotiated Provision

- 6) To the knowledge of the Vendor, no Person is currently infringing any of the Intellectual Property owned by or licensed to the Corporation.
- 7) The transaction contemplated by this Agreement and the continued operation of the Business will not violate or breach the terms of any Intellectual Property license, or entitle any other party to any such Intellectual Property license to terminate or modify it, or otherwise adversely affect the Corporation's rights under it.
- 8) The Intellectual Property owned by or licensed to the Corporation or which the Corporation otherwise has the right to use constitutes all Intellectual Property necessary for the conduct of the Business as presently conducted. Following Closing, the Corporation will be entitled to continue to use, practice and exercise rights in, all of the Intellectual Property owned by, licensed to and used by the Corporation, to the same extent and in the same manner as used, practiced and exercised by the Corporation prior to Closing without financial obligation to any Person.

cont'd

3. 구체적 조항

Intellectual Property

Negotiated Provision

- 9) Following the Closing, neither the Vendor nor any affiliate of the Vendor will retain or use any of the Intellectual Property owned by, licensed to or used by the Corporation in connection with the Business.
- 10) None of the Corporation's owned Intellectual Property has been developed with the assistance or use of any funding from third parties or third party agencies, including funding from any Governmental Entity.
- 11) All current and former employees and consultants of the Corporation whose duties or responsibilities relate primarily to the Intellectual Property of the Business have entered into confidentiality, intellectual property assignment and proprietary information agreements with and in favour of the Corporation in the form provided to the Purchaser. Each such Person has waived its non-assignable rights to any Intellectual Property created by it on behalf of the Corporation.

3. 구체적 조항

Taxes

Vendor Biased Provision

- 1) The Corporation has filed or caused to be filed all Tax Returns which are required to be filed by it. To the knowledge of the Vendor, the Corporation has paid all Taxes which are due and payable within the time required by applicable Law, and has paid all assessments and reassessments it has received in respect of Taxes except for such payments which would not, either individually or in the aggregate, have a Material Adverse Effect.
- 2) There are no outstanding agreements, arrangements, waivers or objections extending the statutory period or providing for an extension of time with respect to the assessment or reassessment of Taxes or the filing of any Tax Return by, or any payment of Taxes by, the Corporation.
- 3) To the knowledge of the Vendor, there are no claims, actions, suits, audits, proceedings, investigations or other action pending or threatened in writing against the Corporation in respect of Taxes. The Corporation is not negotiating any final or draft assessment or reassessment in respect of Taxes with any Governmental Entity.

3. 구체적 조항

Taxes

Negotiated Provision

- 1) The Corporation has filed or caused to be filed with the appropriate Governmental Entity, within the times and in the manner prescribed by applicable Law, all federal, state, local and foreign Tax Returns which are required to be filed by or with respect to it. The information contained in such Tax Returns is correct and complete, in all material respects, and such Tax Returns reflect accurately, in all material respects, all liability for Taxes of the Corporation for the periods covered thereby.
- 2) The Corporation has paid all Taxes which are due and payable within the time required by applicable Law, and has paid all assessments and reassessments it has received in respect of Taxes. The Corporation has made full and adequate provision in the Books and Records and Interim Financial Statements for all Taxes which are not yet due and payable but which relate to periods ending on or before the Closing Date. The Corporation has not received any refund of Taxes to which it is not entitled.

cont'd

3. 구체적 조항

Taxes

Negotiated Provision

- 3) The liability for Taxes of the Corporation has been assessed by all relevant Governmental Entities for all periods up to and including []. The only taxation years of the Corporation that remain open for the assessment or reassessment of additional Taxes are those set out in Schedule []. There are no outstanding agreements, arrangements, waivers or objections extending the statutory period or providing for an extension of time with respect to the assessment or reassessment of Taxes or the filing of any Tax Return by, or any payment of Taxes by, the Corporation. The Corporation has not received a ruling from any Governmental Entity in respect of Taxes or signed an agreement in respect of Taxes with any Governmental Entity and, without limiting the generality of the foregoing, the Corporation is not a party to or bound by any obligation under any Tax sharing or allocation agreement or similar contract or arrangement (whether or not written) nor does the Corporation owe any amount under any such agreement.

cont'd

3. 구체적 조항

Taxes

Negotiated Provision

- 4) There are no claims, actions, suits, audits, proceedings, investigations or other action pending or threatened against the Corporation in respect of Taxes and, to the knowledge of the Vendor, there is no reason to expect that any such claim, action, suit, audit, proceeding, investigation or other action may be asserted against the Corporation by a Governmental Entity for any period ending on or prior to the Closing Date. The Corporation is not negotiating any final or draft assessment or reassessment in respect of Taxes with any Governmental Entity and the Corporation has not received any indication from any Governmental Entity that an assessment or reassessment is proposed or may be proposed in respect of any Taxes for any period ending on or prior to the Closing Date.
- 5) The Corporation has withheld and collected all amounts required by applicable Law to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Entity within the time prescribed under any applicable Law.

3. 구체적 조항

Buyer “NICE TO HAVE”

Additional Purchaser Representation & Warranties

- 1) **Full Disclosure.** Neither this Agreement nor any Ancillary Agreement to which the Vendor or the Corporation is a party (i) contains any untrue statement of a material fact in respect of the Vendor, the affairs, [prospects], operations or condition of the Corporation, the Assets or the Business, or (ii) [to the knowledge of the Vendor], omits any statement of a material fact necessary in order to make the statements in respect of the Vendor, the affairs, [prospects], operations or condition of the Corporation, the Assets or the Business contained herein or therein not misleading. There is no fact known to the Corporation or the Vendor which materially and adversely affects the affairs, [prospects], operations or condition of the Corporation, the Assets or the Business which has not been set forth in this Agreement.

3. 구체적 조항

Buyer “NICE TO HAVE”

Additional Purchaser Representation & Warranties

- 2) **No Liabilities.** The Corporation has no liabilities or obligations of any nature whatsoever, whether known, unknown, due, to become due, direct, indirect, absolute, contingent or otherwise and whether or not required to be accrued on the financial statements of the Corporation and no matter, fact, circumstance or event has occurred which will give rise to any liability or obligation after Closing of any nature whatsoever, except for, in either case, (i) liabilities and obligations reflected or reserved against in the ● Financial Statements or the Interim Financial Statements, (ii) current liabilities incurred after the Interim Statement Date, which liabilities are in the Ordinary Course, or (iii) liabilities and obligations disclosed in

3. 구체적 조항

Buyer “NICE TO HAVE”

Additional Purchaser Representation & Warranties

3) Matters Relating to the Assets

Sufficiency of Assets. The Business is the only business operation carried on by the Corporation. The Assets include all rights and property necessary to enable the Corporation to conduct the Business after the Closing substantially in the same manner as it was conducted prior to the Closing. With the exception of inventory, motor vehicles and equipment in transit, all of the Assets are situate at the Subject Properties

3. 구체적 조항

Buyer “NICE TO HAVE”

Additional Purchaser Representation & Warranties

4) Financial Matters

Books and Records. All accounting and financial Books and Records have been fully, properly and accurately kept and completed in all material respects. The Books and Records and other data and information are not recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which will not be available to the Corporation in the Ordinary Course

3. 구체적 조항



3. 구체적 조항

Request for Consents

Vendor Biased Provision

- 1) The Purchaser will use its commercially reasonable efforts to obtain, or cause to be obtained, prior to Closing, the consents, approvals and waivers described in Section 3.1(e) of the Disclosure Letter. The Vendor will co-operate in obtaining such consents, approvals and waivers including providing information of the Vendor as is reasonably requested by a third party in order to grant its consent. Despite the previous sentence, the Vendor is under no obligation to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain such consents.

3. 구체적 조항

Request for Consents

Negotiated Provision

- 1) The Vendor will use its commercially reasonable efforts to obtain, or cause to be obtained, prior to Closing, the consents, approvals and waivers described in Section 3.1(e) of the Disclosure Letter. The Purchaser will co-operate in obtaining such consents, approvals and waivers including providing information of the Purchaser as is reasonably requested by a third party in order to grant its consent.

3. 구체적 조항

Notice of Untrue Representation or Warranty

Vendor Biased Provision

- 1) During the Interim Period, the Purchaser will promptly notify the Vendor if the Purchaser becomes aware that any of the Vendor's representations or warranties is untrue or inaccurate or that the Vendor has failed to perform or fulfil any of its covenants or obligations under this Agreement. If the Closing occurs, the
 - (i) Disclosure Letter is deemed to be amended to qualify the applicable representations and warranties and
 - (ii) the Purchaser is deemed to have waived in full any breach or inaccuracy or failure to perform of any of the representations, warranties, covenants and obligations of the Vendor of which the Purchaser has knowledge of at the Closing.

3. 구체적 조항

Notice of Untrue Representation or Warranty

Negotiated Provision

- 1) During the Interim Period, the Purchaser will promptly notify the Vendor if the Purchaser becomes aware that any of the Vendor's representations or warranties is untrue or inaccurate, in any material respect, or that the Vendor has failed to perform or fulfil, in any material respect, any of its covenants or obligations under this Agreement.

3. 구체적 조항

Conduct to Business Prior to Closing

Vendor Biased Provision

- 1) During the Interim Period, the Vendor will cause the Corporation to conduct the Business in the Ordinary Course.

3. 구체적 조항

Conduct to Business Prior to Closing

Negotiated Provision

- 1) During the Interim Period, the Vendor will cause the Corporation to conduct the Business in the Ordinary Course.
- 2) Without limiting the generality of Section 5.1(1), the Vendor will cause the Corporation to:
 - i. use its commercially reasonable efforts to preserve intact the current business organization of the Corporation, keep available the services of the present employees and agents of the Corporation and maintain good relations with, and the goodwill of, suppliers, customers, landlords, creditors, distributors and all other Persons having business relationships with the Corporation; and
 - ii. confer with the Purchaser concerning operational matters of a material nature.

cont'd

3. 구체적 조항

Conduct to Business Prior to Closing

Negotiated Provision

- iii. use its commercially reasonable efforts to retain possession and control of the Assets and preserve the confidentiality of any confidential or proprietary information of the Business or the Corporation;
- iv. use its commercially reasonable efforts to not cause or permit to exist a breach of any representations and warranties of the Vendor contained in this Agreement and to conduct the Business in such a manner that on the Closing Date such representations and warranties shall be true, correct and complete as if they were made on and as of such date; and
- v. otherwise periodically report to the Purchaser concerning the state of the Business and the Corporation

3. 구체적 조항

Actions to Satisfy Closing Conditions

Vendor Biased Provision

- 1) The Vendor shall take all such actions as are within its power to control and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 6.1 including ensuring that during the Interim Period and at Closing, there is no breach of any of its representations and warranties.

3. 구체적 조항

Actions to Satisfy Closing Conditions

Negotiated Provision

- 1) The Vendor shall take all such actions as are within its power to control and to use its best efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 6.1 including ensuring that during the Interim Period and at Closing, there is no breach of any of its representations and warranties.

3. 구체적 조항



3. 구체적 조항

Truth of Representations and Warranties

Vendor Biased Provision

- 1) Except as contemplated or permitted by this Agreement, the representations and warranties of the Vendor contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date.

3. 구체적 조항

Truth of Representation and Warranties

Negotiated Provision

- 1) Except as contemplated or permitted by this Agreement, the representations and warranties of the Vendor contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date; provided, however,
 - (i) if a representation and warranty is qualified by materiality or Material Adverse Effect, it must be true and correct in all respects, and
 - (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date.

The Purchaser must receive a certificate of a senior officer of the Vendor as to the matters in this paragraph.

3. 구체적 조항

Legal Action

Vendor Biased Provision

- 1) No action or proceeding shall be pending by any Person (other than the Purchaser) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement.

3. 구체적 조항

Legal Action

Negotiated Provision

- 1) No action or proceeding shall be pending or threatened [in writing] by any Person (other than the Purchaser) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or the right of the Purchaser to conduct the Business after Closing on substantially the same basis as it is operated on the date of this Agreement.

3. 구체적 조항



3. 구체적 조항

Indemnification in Favour of Purchaser

Vendor Biased Provision

- 1) Subject to Section 9.5, the Vendor will indemnify and save the Purchaser harmless of and from, and will pay for, any Damages suffered by, imposed upon or asserted against it or any of them as a result of, in respect of, connected with, or arising out of, under, or pursuant to
 - i. any breach or inaccuracy of any representation or warranty given by the Vendor contained in this Agreement or the certificate to be delivered pursuant to Section 6.1(a); etc.

3. 구체적 조항

Indemnification in Favour of Purchaser Negotiated Provision

- 1) Subject to Section 9.5, the Vendor will indemnify and save each of the Purchaser and the Corporation and their respective shareholders, directors, officers, employees, agents and representatives harmless of and from, and will pay for, any Damages suffered by, imposed upon or asserted against it or any of them as a result of, in respect of, connected with, or arising out of, under, or pursuant to:
 - i. any breach or inaccuracy of any representation or warranty given by the Vendor contained in this Agreement or the certificate to be delivered pursuant to Section 6.1(a); etc.

3. 구체적 조항

Limitations

Vendor Biased Provision

- 1) The Vendor has no obligation to make any payment for Damages for indemnification or otherwise with respect to the matters described in Section 9.2 unless and until
 - (i) each individual Claim exceeds \$25,000,
 - (ii) until the total of all Damages with respect to such Claims exceed 1% of the Purchase Price, and then only for the amount by which such Damages exceed 1% of the Purchase Price.

Notwithstanding any other provision hereof, in no event shall the Vendor be liable for Damages in excess of 10% of the Purchase Price irrespective of whether the Claims giving rise to such Damages are framed in contract, tort, strict liability or otherwise.

3. 구체적 조항

Limitations

Negotiated Provision

- 1) The Vendor has no obligation to make any payment for Damages for indemnification or otherwise with respect to the matters described in Section 9.2 unless and until the total of all Damages with respect to such claims exceed [\$1,000,000], and then all of such Damages, both above and below such treshold, of the Purchase Price up to a maximum of [50]% of the Purchase Price.
[Consider specific indemnities applying to certain reps]

3. 구체적 조항

Exclusion of Other Remedies

Vendor Biased Provision

- 1) Except as provided in this Section 9.7, the indemnities provided in Section 9.2 and Section 9.3 constitute the only remedy of the Purchaser or the Vendor, respectively, against a Party in the event of any breach of a representation, warranty, covenant or agreement of such Party contained in this Agreement. Each of the Purchaser and the Vendor expressly waives and renounces any other remedies whatsoever, whether at law or in equity, which it would otherwise be entitled to as against any other Party.

3. 구체적 조항

Exclusion of Other Remedies

Negotiated Provision

- 1) Except as provided in this Section 9.7, the indemnities provided in Section 9.2 and Section 9.3 constitute the only remedy of the Purchaser or the Vendor, respectively, against a Party in the event of any breach of a representation, warranty, covenant or agreement of such Party contained in this Agreement. The Parties may exercise their rights of termination in Section 8.1 and their rights of indemnity in Section 12.3. The Parties acknowledge that the failure to comply with a covenant or obligation contained in this Agreement may give rise to irreparable injury to a Party inadequately compensable in damages. Accordingly, a Party may seek to enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage (and without requirement of posting a bond or other security). Each of the Purchaser and the Vendor expressly waives and renounces any other remedies whatsoever, whether at law or in equity, which it would otherwise be entitled to as against any other Party.

3. 구체적 조항

Duty to Mitigate

Vendor Biased Provision

- 1) Nothing in this Agreement in any way restricts or limits the general obligation at Law of an Indemnified Party to mitigate any loss which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement. If any claim can be reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the Indemnified Party shall take all appropriate steps to enforce such recovery, settlement or payment and the amount of any Damages of the Indemnified Party will be reduced by the amount of insurance proceeds actually recoverable by the Indemnified Party.

3. 구체적 조항

Duty to Mitigate

Negotiated Provision

- 1) Nothing in this Agreement in any way restricts or limits the general obligation at Law of an Indemnified Party to mitigate any loss which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement.

3. 구체적 조항



3. 구체적 조항

Survival

Vendor Biased Provision

- 1) All of the representations and warranties contained in this Agreement and the certificates delivered pursuant to Section 6.1(a) and Section 6.2(a) survive the Closing and continue in full force and effect for a period of 6 months after the Closing Date.

3. 구체적 조항

Survival

Negotiated Provision

- 1) The representations and warranties contained in this Agreement and the certificates delivered pursuant to Section 6.1(a) and Section 6.2(a) survive the Closing and continue in full force and effect for a period of two years after the Closing Date, except that:
 - i. the representations and warranties set out in Section 3.1(a) (Incorporation and Qualification), Section 3.1(b) (Corporate Authority), Section 3.1(c) (No Conflict), Section 3.1(d) (Required Authority), Section 3.1(e) (Execution and Binding Obligation) Section 3.1(f)(Execution and Binding Obligation), Section 3.1(g) (Authorized and Issued Capital), Section 3.1(i) (Title to Purchased Shares), and the corresponding representations and warranties set out in the certificates delivered pursuant to Section 6.1(a) survive and continue in full force and effect without limitation of time;

cont'd

3. 구체적 조항

Survival

Negotiated Provision

- ii. the representations and warranties set out in Section 3.1(II)(Taxes) (and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 6.1(a)), will survive and continue in full force and effect until 6 months after the expiration of the period during which any tax assessment may be issued by a Governmental Entity in respect of any taxation year to which such representations and warranties extend. Such period will be determined without regard to any consent, waiver, agreement or other document, made or filed after the Closing Date that extends the period during which a Governmental Entity may issue a tax assessment. A tax assessment includes any assessment, reassessment or other form of recognized document assessing liability for Taxes under applicable Law; and

cont'd

3. 구체적 조항

Survival

Negotiated Provision

- iii. any representation and warranty involving fraud or fraudulent misrepresentation by the Party giving that representation and warranty will survive and continue in full force and effect without limitation of time.

3. 구체적 조항

Purchased Shares & Purchase Price Retaining Deposit Vendor Biased Provision

- 1) If the Closing does not occur for any reason, other than if such failure to close is caused solely by the breach of the Vendor, the full amount of the Deposit together with all accrued interest (less any applicable withholding Taxes) shall become the property of, and may be retained by, the Vendor as liquidated damages (and not as a penalty) to compensate it for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close. In such event, the Vendor may exercise any other rights or remedies that it may have against the Purchaser in respect of any default by the Purchaser.

3. 구체적 조항

Purchased Shares & Purchase Price Retaining Deposit Negotiated Provision

- 1) If the Closing does not occur based solely upon a breach by the Purchaser of any of its representations, warranties or covenants under this Agreement, the full amount of the Deposit together with all accrued interest (less any applicable withholding Taxes) shall become the property of, and may be retained by, the Vendor as liquidated damages (and not as a penalty) to compensate it for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close. In such event, the Vendor may exercise any other rights or remedies that it may have against the Purchaser in respect of any default by the Purchaser.

3. 구체적 조항

Successors and Assigns

Vendor Biased Provision

- 1) This Agreement becomes effective only when executed by the Vendor and the Purchaser. After that time, it is binding on and enures to the benefit of the Vendor, the Purchaser and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by any Party without the prior written consent of the other Party.

3. 구체적 조항

Successors and Assigns

Negotiated Provision

- 1) This Agreement becomes effective only when executed by the Vendor and the Purchaser. After that time, it will be binding upon and enure to the benefit of the Vendor, the Purchaser and their respective successors and permitted assigns.
- 2) Except as provided in this Section 12.12, neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by any Party without the prior written consent of the other Party. Upon giving notice to the Vendor at any time on or prior to the Closing Date, the Purchaser is entitled to assign this Agreement or any of its rights and/or obligations under this Agreement to any of its Affiliates, subject to the following conditions:
 - i. if the assignment occurs prior to Closing, the assignee must execute and deliver a confidentiality agreement to the Vendor in substantially the same form as the confidentiality agreement executed by the Purchaser;

cont'd

3. 구체적 조항

Successors and Assigns

Negotiated Provision

- ii. the assignee will become jointly and severally liable with the Purchaser, as a principal and not as a surety, with respect to all of the obligations of the Purchaser, including the representations, warranties, covenants, indemnities and agreements of the Purchaser; and
- iii. the assignee must execute an agreement confirming the assignment and the assumption by the assignee of all obligations of the Purchaser under this Agreement.

cont'd

3. 구체적 조항

Successors and Assigns

Negotiated Provision

- 3) the Purchaser may assign the benefits of this Agreement, in whole or in part, to a lender or lenders as continuing collateral security for obligations owed to it or them without consent of the other Parties.
- 4) the Purchaser may assign its rights and obligations under this Agreement, in whole or in part, to any Person that acquires all or substantially all of the assets of the Purchaser or acquires Control of the Purchaser, whether by way of take-over bid, amalgamation, arrangement, merger or otherwise.

3. 구체적 조항



3. 구체적 조항

Schedules and Disclosure Letter

Vendor Biased Provision

- 1) The schedules attached to this Agreement and the Disclosure Letter form an integral part of this Agreement for all purposes of it.
- 2) The purpose of the Disclosure Letter is to set out the qualifications, exceptions and other information called for in this Agreement. The Parties acknowledge and agree that the Disclosure Letter and the information and disclosures contained in it do not constitute or imply, and will not be construed as:
 - i. any representation, warranty, covenant or agreement which is not expressly set out in this Agreement;

cont'd

3. 구체적 조항

Schedule and Disclosure Letter

Vendor Biased Provision

- ii. an admission of any liability or obligation of the Vendor;
- iii. an admission that the information is material;
- iv. a standard of materiality, a standard for what is or is not in the ordinary course of business, or any other standard contrary to the standards contained in the Agreement; or
- v. an expansion of the scope of effect of any of the representations, warranties and covenants set out in the Agreement.

cont'd

3. 구체적 조항

Schedule and Disclosure Letter

Vendor Biased Provision

- 3) Disclosure of any information in the Disclosure Letter that is not strictly required under this Agreement has been made for informational purposes only and does not imply disclosure of all matters of a similar nature. Inclusion of an item in any section of the Disclosure Letter is deemed to be disclosure for all purposes for which disclosure is required under this Agreement.
- 4) The Disclosure Letter itself is confidential information and may not be disclosed unless:
 - i. it is required to be disclosed pursuant to applicable Law, unless such Law permits the Parties to refrain from disclosing the information for confidentiality or other purposes or
 - ii. a Party needs to disclose it in order to enforce or exercise its rights under this Agreement.

3. 구체적 조항

Schedule and Disclosure Letter

Negotiated Provision

- 1) The schedules attached to this Agreement and the Disclosure Letter form an integral part of this Agreement for all purposes of it.
- 2) The Disclosure Letter itself is confidential information and may not be disclosed unless
 - i. it is required to be disclosed pursuant to applicable Law, unless such Law permits the Parties to refrain from disclosing the information for confidentiality or other purposes or
 - ii. a Party needs to disclose it in order to enforce or exercise its rights under this Agreement.

3. 구체적 조항

Supplementation & Amendments of Schedules

Vendor Biased Provision

- 1) Sellers may, at their option, include in the Schedules items that are not material and, to avoid any misunderstanding, any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in the Schedules shall constitute a disclosure for all purposes under this Agreement notwithstanding any reference to a specific section, and all such information shall be deemed to qualify the entire Agreement and not just such section.

cont'd

3. 구체적 조항

Supplementation & Amendments of Schedules

Vendor Biased Provision

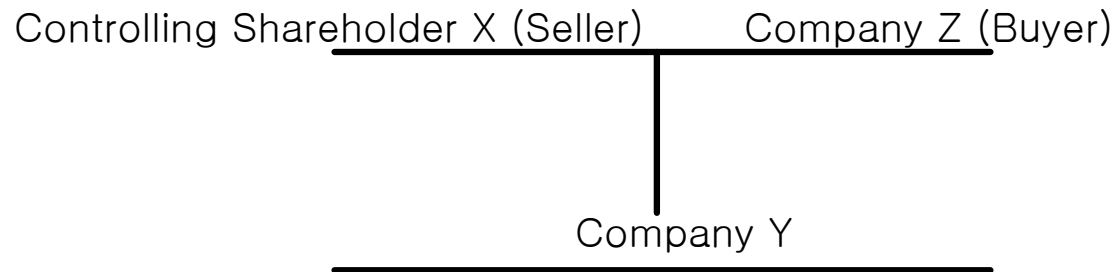
From time to time prior to the Closing, Sellers shall have the right to supplement or amend the Schedules with respect to any matter hereafter arising or discovered after the deliver of the Schedules pursuant to this Agreement. No such supplement or amendment shall have any effect on the satisfaction of the condition to closing set forth in Section 10.1(a); provided, however, that if the Closing shall occur, then Purchaser shall be deemed to have waived any right or claim pursuant to the terms of this Agreement or otherwise with respect to any and all matters disclosed pursuant to any such supplement or amendment at or prior to the Closing.

3. 구체적 조항

Supplementation & Amendments of Schedules **Negotiated Provision**

- 1) Sellers may, at their option, include in the Schedules items that are not material and, to avoid any misunderstanding, any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement.

4. 이해상충



- Q1. Can counsel for Company Y represent X? If so, under what conditions?
- Q2. Can counsel for Company Y represent Z?
- Q2. Can counsel for X advise management of Company Y? E.g. obligation to cooperate with X? Fiduciary duty to the company?
- Q3. Can counsel for X represent Company Y in employment matters?

4. 이해상충

In an auction sale

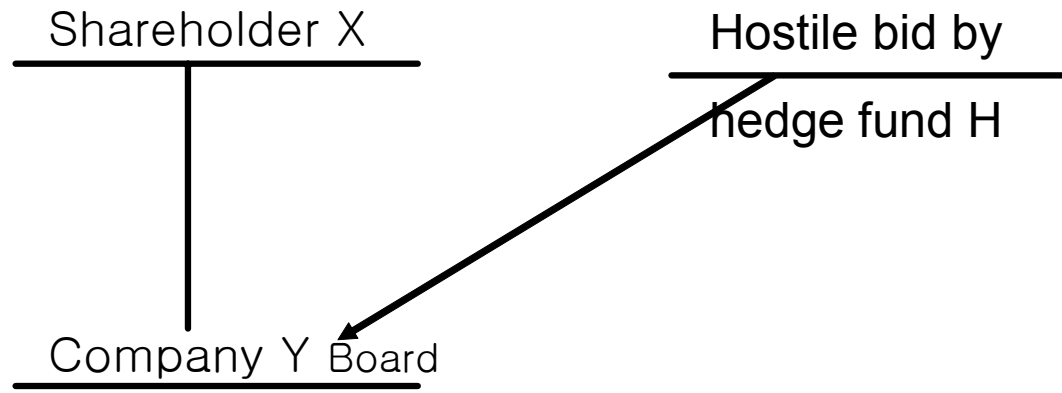
Q1. Can one firm represent multiple bidders? If so,
under what conditions?

Q2. Can one firm represent both seller and buyer?

Q3. Can one firm represent both seller's creditors and
buyer?

In a dine and wine deal – different consideration?

4. 이해상충



SHARE SALE AND PURCHASE AGREEMENT

BY AND AMONG

H Corporation

H Corporation

AND

[PURCHASER]

DATED _____, 2005

Seoul, Korea

Witchon comment: Py
 March 31, 2005

삭제됨 :
 삭제됨 :Draf
 삭제됨 :0

SHARE SALE AND PURCHASE AGREEMENT

ARTICLE I DEFINITIONS..... 4
 Section 1.1 Definitions..... 4
 Section 1.2..... 9
 Section 1.3..... 9
 Section 1.4..... 10
 ARTICLE II SALE AND PURCHASE OF SHARES 10
 Section 2.1 Sale and Transfer of Sale Shares..... 10
 Section 2.2 Purchase Price..... 10
 Section 2.3 Payment Method..... 10
 ARTICLE III THE CLOSING..... 11
 Section 3.1 Closing..... 11
 Section 3.2 Closing Actions by Sellers..... 11
 Section 3.3 Closing Actions by Purchaser..... 12
 Section 3.4 Simultaneous Closing..... 12
 ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS 12
 Section 4.1 Organization..... 13
 Section 4.2 Authorization..... 13
 Section 4.3 Binding Effect..... 13
 Section 4.4 Consents and Approvals; No Violation..... 13
 Section 4.5 Governmental Consents and Approvals..... 13
 Section 4.6 Title to Sale Shares..... 13
 Section 4.7 Certain Actions..... 14
 Section 4.8 Representations and Warranties with Respect to the Company..... 14
 Section 4.9 NO OTHER REPRESENTATIONS 17
 ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER 18
 Section 5.1 Organization..... 18
 Section 5.2 Authorization..... 18
 Section 5.3 Binding Effect..... 18
 Section 5.4 Consents and Approvals; No Violation..... 18
 Section 5.5 Purchaser Consents and Purchaser Approvals..... 18
 Section 5.6 Availability of Funds..... 19
 Section 5.7 Certain Actions..... 19
 Section 5.8 Investigation by Purchaser; Sellers' Liability..... 19
 ARTICLE VI CONDITIONS TO CLOSING 19
 Section 6.1 Conditions to Each Party's Obligation to Consummate the Closing..... 19
 Section 6.2 Conditions to Obligations of Purchaser to Consummate the Closing..... 19
 Section 6.3 Conditions to Obligations of Sellers to Consummate the Closing..... 20
 ARTICLE VII CERTAIN AGREEMENTS 21
 Section 7.1 Filings, Consents and Approvals..... 21
 Section 7.2 Confidentiality..... 22
 Section 7.3 Publicity..... 24
 Section 7.4 Knowledge of Breach; Prior Knowledge..... 24
 Section 7.5 Updates of Disclosure Schedule..... 24
 Section 7.6 Access to Information..... 24
 Section 7.7 Employees; Employment Benefits..... 25

Byulchan comments: Pt
March 31, 2005

Section 7.8 Interim Operations Limitations	25
Section 7.9 Adjustment for Premium	25
ARTICLE VIII TERMINATION	25
Section 8.1 Termination	25
Section 8.2 Effect of Termination	26
ARTICLE IX INDEMNIFICATION	26
Section 9.1 Indemnification and Payment of Damages	26
Section 9.2 Time Limitations	26
Section 9.3 Limitations on Amount	27
Section 9.4 Indemnification Pursuant to the SSSA	27
Section 9.5 Third Party Claims	28
Section 9.6 Exceptions and Deductions	28
Section 9.7 No Duplication; Sole Remedy Procedures	28
Section 9.8 No Right of Deduction/Set-off	29
ARTICLE X GOVERNING LAW AND DISPUTE RESOLUTION	29
Section 10.1 Governing Law	29
Section 10.2 Procedure	29
Section 10.3 Appointment of Arbitrators	29
Section 10.4 Authority of the Arbitrators	29
Section 10.5 Conduct of the Arbitration	29
Section 10.6 Consolidation of Disputes	30
Section 10.7 Provisional Remedies	30
Section 10.8 Decision Final	30
Section 10.9 Award	30
Section 10.10 Confidentiality of Arbitration	31
ARTICLE XI MISCELLANEOUS	31
Section 11.1 Taxes, Fees and Expenses	31
Section 11.2 Amendment	31
Section 11.3 No Assignment	31
Section 11.4 Waiver	31
Section 11.5 Notices	31
Section 11.6 Counterparts and Effectiveness	32
Section 11.7 Entire Agreement	32
Section 11.8 Headings	33
Section 11.9 Severability	33
Section 11.10 No Third-Party Beneficiaries	33
Section 11.11 Injunctive Relief	33
Section 11.12 Time of Essence	33
Section 11.13 Interpretation	33
Exhibit A	36
Disclosure Schedule	36
Exhibit B	37
Share Subscription and Shareholders Agreement	37
Exhibit C	38
Form of Letter Agreement	38
Exhibit D	39
Form of Non-Collusion Letter	39
Exhibit E	40
Confidentiality Agreement	40

삭제됨 :
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238 M&A 시장의 과제와 전망 (2)

	<i>Byulchon comments: Py</i>	삭제됨 :
	<i>March 31, 2005</i>	삭제됨 :Draf
Schedule 2.3(c)	42	삭제됨 :0
Purchaser Closing Deliverables	42	
Schedule 5.4.....	43	
Purchaser Consents	43	
Schedule 5.5.....	44	
Purchaser Required Approvals	44	

BTulchon comments: Pr
March 31, 2005

삭제됨 :
 삭제됨 :Draf
 삭제됨 :0

SHARE SALE AND PURCHASE AGREEMENT

This SHARE SALE AND PURCHASE AGREEMENT ("**Agreement**") is made and entered into as of the [?] day of [?] 2005, by and among:

1. **H Corporation**, a company incorporated and existing under the laws of Korea with its registered principal office at Seoul, Korea ("**H**");
2. **H Corporation**, a company incorporated and existing under the laws of Korea with its registered principal office at Seoul, Korea ("**H**"); and
3. [Purchaser], a company incorporated and existing under the laws of [Purchaser country] with its registered principal office at [?] ("**Purchaser**")

H and HLLC are referred to herein individually as "**Seller**" and collectively as "**Sellers**". Sellers and Purchaser are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS:

- A. K Corporation (the "**Company**") is a company incorporated and existing under the laws of Korea with its registered office at Seoul, Korea. The Company is engaged in the business of generating and supplying electricity.
- B. Sellers collectively own or will immediately prior to the Closing (as defined herein below) own [] common shares of the Company (the "**Sale Shares**") representing 50% of the issued and outstanding capital stock of the Company.
- C. Subject to the terms and conditions herein, Sellers desire to sell the Sale Shares, and Purchaser desires to purchase the Sale Shares from Sellers.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions.

The following terms are used in this Agreement with the respective meanings ascribed to such terms below except as expressly provided or as the context may require otherwise:

"**Action**" shall mean any claim, litigation, arbitration or inquiry, or judicial, administrative, regulatory or other proceeding, brought by or before (or, in the case of a claim, capable of being brought by or before) any court, government agency or other Government Authority or any Person.

BTulchon comments Pr
 March 31, 2005

상계됨 :
 상계됨 : Draft
 상계됨 : 0

"Affiliate" or "Affiliates" shall mean with respect to any Person (i) a Person directly or indirectly controlling, controlled by or under control with such Person; or (ii) a Person beneficially owning or controlling 50% or more of the outstanding voting securities of such Person. For purposes of this definition, the term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" or "this Agreement" shall mean this Share Sale and Purchase Agreement, together with the Exhibits, Disclosure Schedule, Schedules and any other referenced document in this Share Sale and Purchase Agreement.

"Arbitration Rules" shall have the meaning ascribed to such term in Section 10.2.

"Award" shall have the meaning ascribed to such term in Section 10.5.

"Breach" shall have the meaning ascribed to such term in Section 9.1.

"Business Day" shall mean any day (except a Saturday, Sunday or legal holiday) on which banks are generally open for normal banking business in Seoul, Korea.

"Claim Notice" shall have the meaning ascribed to such term in Section 9.5(a).

"Closing" shall have the meaning ascribed to such term in Section 3.1.

"Closing Date" shall have the meaning ascribed to such term in Section 3.1.

"Company Consents" shall mean all of the Consents necessary for the Company to consummate the Closing, the list of which is attached hereto as Disclosure Schedule 4.8(s).

"Company Damages" shall have the meaning ascribed to such term in Section 9.3(c).

"Company Material Adverse Effect" shall mean a material change, effect, or event that is materially adverse to the business, financial condition or results of operations of the Company, taken as a whole, except for any losses attributable to such change, effect or event that directly or indirectly results from: (i) any change in the industries and markets in which the Company operates generally, (ii) any conditions affecting the economy of Korea or the Korean electric power, (iii) any change or effect resulting from changes in the international, national, regional or local markets for electric power, and (iv) changes in the market conditions for electricity.

상계됨 : and securities markets generally

상계됨 : natural gas, coal, or financial hedges related thereto, (v) any change or effect resulting from changes in the national, regional or local electric transmission systems

상계됨 : and (v)

상계됨 : i

상계됨 : any changes in applicable Law, judgments, orders or decrees

"Company Required Approvals" shall mean all of the material Governmental Approvals necessary for the Company to consummate the Closing, the list of which is attached hereto as Disclosure Schedule 4.8(t).

"Confidential Information" shall have the meaning ascribed to such term in Section 7.2(a).

"Consents" shall mean any consent, approval, authorization, ratification, release, waiver or other authorization by any Person.

Wulchon comments Pt
March 31, 2005

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"Copyrights" shall mean Korean and foreign registered and unregistered copyrights (including those in computer software and databases), rights of publicity and all registrations and applications to register the same.

"Damages" shall have the meaning ascribed to such term in Section 9.1.

"Data Room Document List" shall mean [to be provided later]

"Disclosure Schedule " or "Disclosure Schedules" shall mean the disclosure schedule of the same date as this Agreement prepared and signed by Sellers and delivered to Purchaser simultaneously with the execution hereof as amended or supplemented by Sellers pursuant to the terms hereof, attached hereto as Exhibit A

"Dispute" shall have the meaning ascribed to such term in Section 10.2.

"E Shareholder" shall mean E or the transferee of the Shares held by E who shall be bound by the provisions of the SSSA .

"E Transferee" shall mean any transferee of a direct or indirect interest in the issued and outstanding capital stock of the Company owned by E (or any Affiliate of such transferee)

"Employee Plan" shall mean all employee benefit plans and all bonus, stock option, stock purchase, pension, severance or other benefits plans, and all employment, termination, severance, collective bargaining agreement or other agreements, to which the Company is a party, which are maintained for the benefit of employees (up to and including *Sangmu-bo*) of the Company.

"Encumbrances" shall mean any and all charges, liens, security interests, options, claims, mortgages, pledges, proxies, voting trusts or agreements, obligations, understandings or arrangements or other restrictions on title or transfer of any nature whatsoever.

"Environmental, Health and Safety Provisions " shall mean all Laws applicable to the Company, as amended from time to time and as now or hereafter in effect up to the Closing, relating to pollution, contamination, erosion or protection of the Environment, noise levels, or the health and safety of any Persons, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, seepage, potential release or seepage, control, or cleanup of any Hazardous Materials.

"E" shall mean E Korea Holdings Limited, a corporation organized and existing under the laws of Korea.

"Expiration Date" shall have the meaning ascribed to such term in Section 9.4(a).

"Financial Statements" shall mean the balance sheets of the Company as of December 31, 2001 through 2004 together with the statements of income for the years then ended, all certified by KPMG Samjong Accounting Corporation, independent certified public accountants, whose report thereon is included therein.

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March 31, 2005

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"**Governmental Approvals**" shall mean any approval, consent, or authorization from, or registration or filing with, notice to, or license, permit, or certification from, any Governmental Authority. Governmental Approvals with respect to any action to be taken by any Party hereunder means such Governmental Approvals as are required for the action under applicable Law.

"**Governmental Authority**" shall mean any national, local or foreign government, governmental, regulatory or administrative authority or agency, or tribunal, court, or other judicial or arbitral body.

"**Hazardous Materials**" shall mean any substances defined, designated or classified as hazardous, toxic, radioactive or dangerous, or as a pollutant or contaminant, or otherwise regulated or governed under any applicable Environmental, Health, and Safety Provisions.

"**H Payment**" shall have the meaning ascribed to such term in Section 2.2.

"**H Payment**" shall have the meaning ascribed to such term in Section 2.2.

"**Indemnifiable Claim**" shall have the meaning ascribed to such term in Section 9.5(a).

"**Indemnified Party**" shall have the meaning ascribed to such term in Section 9.1.

"**Indemnifying Party**" shall have the meaning ascribed to such term in Section 9.1.

"**Intellectual Property**" shall have the meaning ascribed to such term in Section 4.2(m).

"**JP Morgan**" shall have the meaning ascribed to such term in Section 7.2.

"**Korea**" shall mean the Republic of Korea and shall include the correlative meaning of the adjective "**Korean**".

"**Korean GAAP**" shall mean generally accepted accounting principles in Korea.

"**Law**" or "**Laws**" shall mean any (i) national, provincial, state, or local statutes, regulations, ordinances, rules, codes, judgments, awards, orders or policies of Governmental Authorities, terms and conditions of Governmental Approvals, and any other rules, standards or specifications having the force or effect of law, whether Korean or foreign, and (ii) treaties, conventions, protocols and other promulgations having transnational legal effect.

"**Liability**" shall mean any liabilities, losses, indebtedness or obligations (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or fixed, whether liquidated or un-liquidated, whether matured or unmatured or determined or undetermined, and whether due or to become due), including without limitation those arising under any order of a Government Authority or other Law or equity (including, without limitation, any Law relating to Taxes), and those arising from any contract, agreement, arrangement, commitment or undertaking.

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March 31, 2005

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"Licenses" shall mean all licenses and agreements pursuant to which the Company has acquired rights in or to any Trademarks, Patents or Copyrights, or licenses and agreements pursuant to which the Company has licensed or transferred the right to use any of the foregoing.

"Non-Sale Shares" shall have the meaning ascribed to such term in Section 7.9.

"Patents" shall mean issued Korean and foreign patents and pending patent applications, patent disclosures, and any and all divisions, continuations, continuations-in-part, reissues, reexaminations, and extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention and similar statutory rights.

"Person" shall mean a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other entity or organization.

"Purchase Price" shall mean the amount set forth in Section 2.2.

"Purchaser Closing Deliverables" shall mean, collectively, the Purchaser Required Approvals and the Purchaser Consents.

"Purchaser Consents" shall mean all of the Consents necessary for Purchaser to consummate the Closing, the exhaustive list of which is attached hereto as Schedule 5.4.

"Purchaser Required Approvals" shall mean all of the Governmental Approvals necessary for Purchaser to consummate the Closing, the exhaustive list of which is attached hereto as Schedule 5.5.

"Reference Balance Sheet Date" shall mean the date of the Reference Balance Sheet.

"Real Property" shall mean all land, structures, buildings or other tangible assets permanently affixed to the land that is reflected as an asset of the Company on the Balance Sheet except for the Real Property listed in the Disclosure Schedule.

"Representatives" shall have the meaning ascribed to such term in Section 7.2(b)(iii).

"Reference Balance Sheet" shall mean the balance sheet of the Company as of December 31, 2004.

"Sale Shares" shall have the meaning attributed to it in the Recitals on page one of this Agreement.

"Schedule" or "Schedules" shall mean the schedule or schedules attached to this Agreement.

"Sellers' Accounts" shall have the meaning ascribed to such term in Section 2.3

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March 31, 2005*

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"Sellers Closing Deliverables" shall mean, collectively, the Seller Consents, the Company Required Approvals, and the Company Consents.

"Sellers Consents" shall mean all of the Consents necessary for Sellers to consummate the Closing, the list of which is attached hereto as Disclosure Schedule 4.4

"Shares" shall mean the Company's issued and outstanding common stock.

"SSSA" shall mean the Share Subscription and Shareholders Agreement by and amongst EPED B Company, Hanwha Energy Co., Ltd., and Hanwha Corporation, dated March 31, 2000, attached hereto as Exhibit B.

"Subsidiary" of any Person shall mean any corporation with respect to which that Person (or a Subsidiary thereof) owns a majority of the common stock or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors.

"Tax" or "Taxes" shall mean all taxes, charges, fees, duties, levies, penalties or other assessments imposed by any national, provincial, local Korean or foreign Governmental Authority.

"Threshold" shall mean an amount equal to 3 percent of the Purchase Price.

삭제됨 :three

"Transactions" shall mean the sale and purchase of the Sale Shares pursuant to this Agreement and all other transactions provided for or contemplated by this Agreement.

"Transaction Documents" shall mean this Agreement and other agreements, documents and certificates delivered under or pursuant to the terms of this Agreement.

"Won" shall mean the Korean Won, the lawful currency of Korea.

Section 1.2

In this Agreement, a reference to:

(a) "knowledge" shall mean actual or imputed knowledge of directors, statutory auditors or chief officers of a Party (with "chief officers" being defined as those individuals holding the position of *bujiang* or higher).

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(b) "ordinary course of business" means the Company's ordinary course of business consistent with past custom and practice and not having the Company Material Adverse Effect on the Company.

삭제됨 :

(c) A matter would be considered to have been "threatened" if any demand or statement has been made in writing or any notice has been given in writing.

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Section 1.3

Except where the context otherwise requires, the masculine gender shall include the feminine and neuter and the singular shall include the plural and vice versa.

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Section 1.4

References in this Agreement to Sections, Articles, Schedules and Exhibits shall refer to the sections, articles, schedules and exhibits of this Agreement, and the same shall form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.

ARTICLE II SALE AND PURCHASE OF SHARES

Section 2.1 Sale and Transfer of Sale Shares.

Subject to the terms and conditions of this Agreement, at the Closing, each Seller shall sell and transfer to Purchaser, and Purchaser shall purchase from each Seller, the following number of Sale Shares.

<u>Seller</u>	<u>Number of Sale Shares</u>	<u>Percentage Shareholding</u>
H		
H		
Total	20,000,000	50.0%

Section 2.2 Purchase Price.

The aggregate purchase price for the Sale Shares (the "Purchase Price") shall be the amount of _____ Won, at a price of _____ Won per Share, consisting of (i) _____ Won to be paid to H ("H Payment") and (ii) _____ Won to be paid to H ("H Payment").

The Purchase Price may be subject to amendment by Purchaser at any time before the Closing Date should there arise any facts or conditions that were not disclosed or made known to Purchaser by the Company during the due diligence period in which Purchaser performed due diligence on the Company.

Section 2.3 Payment Method.

On the Closing Date, subject to the satisfaction and/or waiver of the conditions precedent specified in Article VI, Purchaser shall remit the Purchase Price in immediately available funds to the following bank accounts (collectively "Sellers' Accounts"), in Won:

(i) H Payment shall be remitted to the following bank account:

[account details to be inserted]

(ii) H Payment shall be remitted to the following bank account:

[account details to be inserted]

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 March 31, 2005

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ARTICLE III THE CLOSING

Section 3.1 Closing

Subject to the satisfaction and/or waiver of all conditions precedent set forth in Article VI, the consummation of the sale and purchase of the Sale Shares contemplated by this Agreement (the "Closing") shall take place at the offices of [] on [date], unless another date or place is agreed in writing by each of the Parties. The date on which the Closing actually occurs is hereinafter referred to as the "Closing Date."

Section 3.2 Closing Actions by Sellers

At the Closing, Sellers shall make the following deliveries and take the following actions:

- (a) Sellers shall deliver to Purchaser an original of a notarized document with a fixed date stamp signed by both Sellers and the Company, wherein Sellers notify the Company of the Sale Share transfer to Purchaser and the Company's representative director confirms and acknowledges the transfer of the Sale Share to Purchaser without any conditions or objection by the Company; 삭제됨 :that
- (b) Sellers shall deliver to Purchaser a copy of the shareholders registry of the Company showing that Purchaser is the legal owner of the Sale Shares;
- (c) Sellers shall deliver to Purchaser copies of Seller Closing Deliverables listed in Schedule 3.2(c) in form and substance reasonably satisfactory to Purchaser; 삭제됨 :Disclosure
- (d) Sellers shall deliver to Purchaser the certificate required to be delivered under Section 6.2(c);
- (e) Sellers shall deliver to Purchaser, in a form and substance reasonably acceptable to Purchaser, the resignations of the three members of the board of directors and the statutory auditor of the Company that were nominated by Sellers or their Affiliates pursuant to the SSSA, as well the resignations of any other officer nominated by the Sellers and listed on the Company Registry;
- (f) Sellers shall cause the board of directors of the Company to issue a written notice calling for an extraordinary meeting of the shareholders of the Company to be held on the Closing Date, for the purpose of electing the persons nominated by Purchaser as directors of the Company; 삭제됨 :not later than 14 days after
삭제됨 :and
- (g) Sellers shall deliver all other previously undelivered documents, including duly executed original copies of the Transaction Documents required to be delivered by Sellers to Purchaser at or prior to the Closing; and 삭제됨 :
- (h) Sellers shall deliver to Purchaser evidence reasonably satisfactory to Purchaser attesting to the termination of those contracts that the Company had been a party to with any Affiliate or Subsidiary of the Sellers and which were lawfully terminated in accordance with their terms by the Company by the Closing Date. Should there exist any contracts that cannot lawfully be terminated in accordance with their terms by the Company by the

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March 31, 2005*

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Closing Date, the Sellers shall deliver a list of the contracts that were not terminated in addition to the earliest dates that they may be respectively terminated by the Company.

(i) Sellers shall deliver to Purchaser a copy of the executed fuel supply agreement between the Company and Korea Gas Corporation, as set forth in Section 6.2(g) below.

삭제됨 : OGAS [full name]

(j) Sellers shall deliver to Purchaser a copy of the amended and executed SSSA as set forth in Section 6.2(h) below.

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Section 3.3 Closing Actions by Purchaser.

At the Closing, Purchaser shall make the following deliveries and take the following actions:

- (a) Purchaser shall deliver to Sellers the Purchase Price in immediately available funds, to Sellers' Accounts as provided in Section 2.3;
- (b) Purchaser shall deliver to Sellers the certificate required to be delivered under Section 6.3(c);
- (c) Purchaser shall deliver to Sellers copies of the Purchaser Closing Deliverables listed in Schedule 3.3(c) in form and substance reasonably satisfactory to Sellers;
- (d) Purchaser shall deliver copies of resolutions adopted by the board of directors of Purchaser authorizing the execution and delivery of this Agreement and the Transaction Documents; and
- (e) Purchaser shall deliver to Sellers the certificate and the executed letter agreement required to be delivered under Section 6.3(e).

Section 3.4 Simultaneous Closing.

At the Closing the foregoing transactions shall occur and shall be deemed to occur simultaneously at the Closing and shall not occur unless all of the closing conditions of the Parties specified in Article VI have been satisfied or waived and no Party shall be obligated to take any action relating to the Closing unless the other Party shall also take all of the actions specified to be taken by such Parties under this Agreement at or prior to the Closing. For the avoidance of doubt, no Seller shall have any obligation to sell or transfer its portion of the Sale Shares to the Purchaser until the Purchaser has paid the Purchase Price in full in accordance with Section 2.3 for all the Sale Shares and the Purchaser shall have no obligation to pay the Purchase Price (composed of the H Payment and the H payment) to the Sellers until the Sellers have transferred the Sale Shares in full to the Purchaser.

삭제됨 :
삭제됨 : or as disclosed in, or is readily inferable from, the Financial Statements, or as disclosed in the documents and other information provided to Purchaser or Purchaser's Representatives by Sellers or Seller's Representatives in connection with the Transaction

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Disclosure Schedule, each Seller represents and warrants to Purchaser that all of the statements contained in this Article IV are true and correct in all

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March 31, 2005*

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material respects as of the date of this Agreement (or, if made as of a specified date, as of such date) and will be true and correct in all material respects as of the Closing Date as though made on the Closing Date.

삭제됨:For purposes of the representations and warranties of Sellers contained herein, disclosure in any section of the Disclosure Schedule or other document delivered pursuant to this Agreement or in any document or other information provided to Purchaser or Purchases Representatives by Sellers or Sellers' Representatives in connection with the Agreement of any facts or circumstances shall be deemed to be adequate response and disclosure of such facts or circumstances with respect to all representations and warranties by Sellers calling for disclosure of such information, whether or not such disclosure is specifically associated with or purports to respond to one or more or all of such representations or warranties. The inclusion of any information in the Disclosure Schedule or other document delivered by Sellers pursuant to this Agreement shall not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

Section 4.1 Organization.

It is a corporation duly organized and validly existing under the laws of Korea.

Section 4.2 Authorization.

It has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Its execution and delivery of and performance pursuant to this Agreement have been duly and validly authorized by all requisite corporate action on its part and no other corporate proceedings on its part are required in connection with its execution and delivery of and performance pursuant to this Agreement.

Section 4.3 Binding Effect

This Agreement has been duly executed and delivered by it, and, assuming due and valid authorization, execution and delivery hereof by Purchaser, is a valid and binding obligation of it, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy, insolvency, moratorium or other similar Laws affecting creditors' rights generally.

Section 4.4 Consents and Approvals: No Violation.

Except for the filings, permits, authorizations, consents and approvals as set forth in Disclosure Schedule 4.4, the execution, delivery or performance of this Agreement by it, and the consummation of the Transactions, will not (a) violate, conflict with or result in any breach of any provision of the articles of incorporation or other governing documents of it, or (b) violate or result in a breach of or constitute a default under any (x) Law to which it is subject, (y) judgment, decree, order or award of any court, Governmental Authority or arbitrator having jurisdiction over it, or (z) contracts to which it is a party or by which it is bound. Excluded from the foregoing are such violations, breaches or defaults which (A) would not, individually or in the aggregate, have a material adverse effect on each of its ability to consummate the Transactions, or (B) would not have a Company Material Adverse Effect.

Section 4.5 Governmental Consents and Approvals.

The execution and delivery of this Agreement by it, and the performance of its obligations hereunder, do not and will not require any material filing with, or clearance, consent or approval of any Governmental Authority.

Section 4.6 Title to Sale Shares.

It is, or will be immediately prior to the Closing, the record and beneficial owner of, and has good title to, its portion of the Sale Shares, free and clear of all Encumbrances. Upon consummation of the Transactions and the payment of the Purchase Price by Purchaser to Sellers, Purchaser will acquire good title, free and clear of all Encumbrances, to its portion

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March 31, 2005

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of the Sale Shares, except for any Encumbrances created by this Agreement and the SSSA.

Section 4.7 Certain Actions.

There is no pending Action that has been commenced against it and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Transactions. To its knowledge, no such Action has been threatened.

Section 4.8 Representations and Warranties with Respect to the Company.

(a) Organization. The Company is a "chusik hoesa" duly organized and validly existing under the laws of Korea, and has all necessary power, authority and capacity to own, operate or lease the properties and assets now owned, operated or leased by it and to conduct and is qualified to conduct the business of the Company as it is now being conducted by the Company under the laws of Korea.

(b) Capitalization. The authorized capital stock of the Company consists of 80,000,000 common shares having a par value of 5,000 Won per share, of which 40,000,000 shares have been duly and validly allotted and issued and are outstanding as fully paid and non-assessable shares. There are no additional shares of capital stock of the Company authorized, issued or outstanding; and there are no existing options, warrants, calls, pre-emptive rights, subscriptions or other rights, agreements, arrangements or commitments of any character, relating to the issued or unissued capital stock of the Company, obligating the Company to issue, transfer or sell or cause to be issued, transferred or sold any shares of capital stock of the Company, except as provided in the Disclosure Schedule 4.8(b).

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 삭제됨 : (y)

(c) Articles of Incorporation and Other Corporate Records. The Company has provided to Purchaser complete and accurate copies of the articles of incorporation of the Company and minutes of general shareholders meetings and board of directors meetings of the Company for the last three years.

(d) Financial Statements. The Company has provided to Purchaser true and complete copies of the Financial Statements. The Financial Statements have been prepared from and accurately reflect in all material respects the books and records of the Company, have been prepared in accordance with Korean GAAP applied on a consistent basis during the periods involved (except as may be stated in the notes thereto), fairly present the financial position and the results of operations and cash flow of the Company and reflect all material liabilities of the Company, fixed or contingent, required to be disclosed pursuant of Korean GAAP as of the times and for the periods referred to therein.

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(e) Books and Records. All books of account and other financial records of the Company, have been fully, properly and accurately, kept and completed, do not contain or reflect material inaccuracies or discrepancies of any kind up to date and fairly set out in all material respects the financial position of the Company as at the dates thereof and disclose all material transaction undertaken or approved through the date thereof.

삭제됨 : all of which have been made available to Purchaser.
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(f) No Undisclosed Liabilities. Except as disclosed in Disclosure Schedule 4.8(f), to the knowledge of Sellers, the Company has not incurred Liabilities in excess of 100,000,000

삭제됨 : and except for those Liabilities the Company incurred in the ordinary course of business

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March 31, 2005
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Won (or the equivalent thereof in other currencies).

(g) No Company Material Adverse Effect. Except as disclosed in Disclosure Schedule 4.8(g), since the Reference Balance Sheet Date there has not been any Company Material Adverse Effect, or any event or development which, individually or together with other such events, could reasonably be expected to result in a Company Material Adverse Effect.

(h) Pending or Threatened Action. Except as disclosed in Disclosure Schedule 4.8(h), there
삭제됨 : to the knowledge of Sellers.

(i) Compliance with Law. Except as disclosed in Disclosure Schedule 4.8(i), the Company is not in violation of any Law or existing Government Approval which, individually or together with other such events, could reasonably be expected to result in a Company Material Adverse Effect. The Company has all Government Approvals necessary or proper in all material respects to conduct its operations as currently conducted.

(j) Taxes.

(i) The Company has duly filed, within the times and in the manner required by Law, all tax returns and tax reports that are required to be filed by it. All Taxes payable by, or due from, the Company have been paid, and no deficiency for any material amount of Tax has been asserted or assessed against the Company. There is no pending or to the knowledge of Sellers, threatened examination, audit or investigation of the Company in respect of Taxes.

(ii) The Financial Statements as of the dates thereof fully reflect accrued liabilities for all Taxes which are not yet due and payable and for which tax returns are not yet required to be filed.

(k) Subsidiaries and Shareholdings. There are no Subsidiaries of the Company. The Company owns no shares or other securities of, and has no equity or debt investment in, any Person.

(l) Real Properties and Other Assets. Except as set forth in Disclosure Schedule 4.8(1), the Company does not own or have any interest in, nor is the Company a party to any contract to purchase, sell or otherwise acquire or dispose of any Real Properties and other fixed assets. The Company either owns or has leasehold interests in, all Real Properties and other fixed assets used by it, free and clear of any material Encumbrances, except as disclosed in Disclosure Schedule 4.8(1). The Real Properties and other fixed assets used by the Company are in good operating condition and repair and are not in need of maintenance or repairs and are suitable for the continued business operations of the Company after the Closing in substantially the same manner as conducted prior to the Closing.

(m) Intellectual Property Rights. Except as set forth in Disclosure Schedule 4.8(m), the Company has no interests in and uses no Patents, trademarks, trade names, service marks, inventions, processes, Copyrights or other intellectual property ("Intellectual Property") of any other Person. To the knowledge of Sellers, the Company is not infringing any Intellectual Property of any other Person and no claim is pending or threatened against the

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March 31, 2005

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Company.

(n) Employee Plans. Except as set forth in Disclosure Schedule 4.8(n), the Company:

(i) is not a party to any agreement or arrangement with respect to Employee Plans ;

삭제됨 : [WY: Vague. This should be clarified]

(ii) has promptly made and is not in arrears in the payment of any contribution or assessment required to be made by it pursuant to any of the agreements or arrangements set forth in Disclosure Schedule 4.8(n);

(iii) has complied in all material respects with the Laws concerning national pension, national medical insurance, worker's compensation insurance, unemployment insurance and other mandatory social security matters;

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(iv) is not a party to any contract with any labor union or employee association nor has it made any commitments to any labor union or employee association with respect to any future contract and

삭제됨 :

(v) Since the date of this Agreement, there has not been any (1) payment or increase of by the Company of any bonuses, salaries, or other compensation to any stockholder, director, officer or employee or entry into any employment, severance, or similar contract with any director, officer, or employee except in the ordinary course of business; (2) adoption of or increase in the payments to or benefits under any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Company; or (3) damage to or destruction or loss of any asset or property of the Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition, or prospects of the Company.

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(o) Insurance Disclosure Schedule 4.8(o) sets out a list of all policies of insurance maintained by the Company in respect of its business, operations, properties and assets. Such policies of insurance cover risks in the conduct of the business and operations of the Company that entities engaged in the same industry as the Company's business in Korea customarily cover with insurance. None of such policies of insurance shall be cancelled, modified or otherwise terminated as a result of the completion of the Transactions. There are no pending or anticipated claims regarding any occurrence or event related to, or in connection with, the assets of the Company.

(p) Environmental

(i) Except as disclosed in Disclosure Schedule 4.8(p), to the knowledge of Sellers, the Company has been and is in compliance with all Environmental, Health and Safety Provisions in all material respects.

(ii) The Company has all Government Approvals necessary or proper under Environmental, Health and Safety Provisions and has not received any notice, whether written or oral, of revocation or non-renewal of any such Government Approvals, or of any intention of any Governmental Authority to revoke or refuse to renew any of such Government Approvals.

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March 31, 2005*

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(iii) There are no pending, or, to the knowledge of Sellers, threatened claims, Encumbrances or other restrictions resulting from any Environmental, Health and Safety Provisions with respect to the assets of the Company.

(q) Insolvency, Winding up, etc. No order has been made, petition filed or resolution passed for the winding up, dissolution or liquidation of the Company or for the appointment of a liquidator, custodian or trustee for all or substantially all of the property or assets of the Company or for an administrative order with respect to the Company. The Company has not commenced any other proceeding for itself under any bankruptcy, reorganization, composition, arrangement, adjustment of debt, release of debtors, dissolution, insolvency, liquidation or similar law of any jurisdiction, and there has not been commenced against the Company any such proceeding. No public auction, foreclosure, attachment, execution or other process has been levied or threatened on any assets of the Company.

(r) Material Contracts The Company is not a party to any contract under which the obligation of the Company do not exceed 100,000,000 Won (or the equivalent thereof in other currencies) other than those set forth in Disclosure Schedule 4.8(r) or the other Disclosure Schedules referred to in this Section 4.8 To the knowledge of the Sellers, neither the Company nor any other party is in breach of any of the contracts referred to in this paragraph.

삭제됨 :Except for contracts
삭제됨 : under which the obligations of the Company do not exceed 100,000,000 Won (or the equivalent thereof in other currencies)
삭제됨 :) and other than those contracts set forth in the Data Room Documents list. t
삭제됨 :

(s) Conflicting Instruments The execution by the Parties of this Agreement, and the consummation of the Transactions, do not and will not (i) violate any provision of the articles of incorporation or other internal regulations of the Company, or (ii) except as disclosed in Disclosure Schedule 4.8(s), result in a breach of or constitute a default under any material contract to which the Company is a party.

(t) Company Required Approvals Except as disclosed in Disclosure Schedule 4.8(t), there are no Company Required Approvals.

삭제됨 :is

(u) Unlawful Payments Since [date], none of the Company or its directors, officers, agents, or employees, or to the knowledge of Sellers, any other Person associated with or acting for or on behalf of the Company, has directly or indirectly (i) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (1) to obtain favorable treatment in securing business, (2) to pay for favorable treatment for business secured, (3) to obtain special concessions or for special concessions already obtained, for or in respect of the Company, or (4) in violation of any Law, (ii) established or maintained any fund or asset that has not been recorded in the books and records of the Acquired Companies.

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(v) Disclosure To the knowledge of the Sellers, none of this Agreement or any Schedule, statement, document or certificate delivered in accordance with the term hereof contains any untrue statement of material fact or omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading, except where such statement or omission would not have the Company Material Adverse Effect.

Section 4.9 NO OTHER REPRESENTATIONS.

*Buyer comments: By
March 31, 2005*

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EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE IV, NEITHER THE SELLERS NOR ANY OTHER PERSON OR ENTITY ACTING ON BEHALF OF SELLERS MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED.

[WY: If desired, it is possible to put in additional reps and warranties covering accounts receivable, inventory, and other smaller matters, though additional comments may be viewed as counter-productive by the Sellers]

삭제됨 :No representation or warranty of Sellers herein contains an untrue statement or omits to state a material fact which would otherwise make the statements herein misleading.
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서식 있음: 글꼴: (한글) 바탕, (한글) 한죽어

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers that all of the statements contained in this Article V are true and correct in all material respect as of the date of this Agreement and will be true and correct in all material respect as of the Closing Date as though made on the Closing Date.

Section 5.1 Organization.

Purchaser is a corporation duly organized and validly existing under the laws of its jurisdiction of its organization.

Section 5.2 Authorization.

Purchaser has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by it of this Agreement have been duly and validly authorized by all requisite corporate action on its part and no other corporate proceedings on its part are required in connection with the execution, delivery and performance by it of this Agreement.

Section 5.3 Binding Effect

This Agreement has been duly executed and delivered by Purchaser, and, assuming due and valid authorization, execution and delivery hereof by Sellers, is a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

Section 5.4 Consents and Approvals; No Violation.

Except for the filings, permits, authorizations, consents and approvals as set forth in Schedule 5.4, the execution, delivery or performance of this Agreement by Purchaser, and the consummation of the Transactions, will not (a) violate, conflict with or result in any breach of any provision of the articles of incorporation or other governing documents of it, or (b) violate or result in a breach of or constitute a default under any (x) Law to which it is subject, (y) judgment, decree, order or award of any court, Governmental Authority or arbitrator having jurisdiction over it, or (z) contracts to which it is a party or by which it is bound.

Section 5.5 Purchaser Consents and Purchaser Approvals.

Except as set forth in Schedule 5.5, the execution and delivery of this Agreement by

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March 31, 2005*

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Purchaser, and the performance of its obligations hereunder, do not and will not require any material filing with, or clearance, consent or approval of any Governmental Authority.

Section 5.6 Availability of Funds.

Purchaser has, and will have as of the Closing, sufficient funds to pay the Purchase Price in accordance with the terms and conditions of this Agreement.

Section 5.7 Certain Actions

There is no pending Action that has been commenced against Purchaser and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Transactions. To Purchaser's knowledge, no such Action has been threatened.

상제됨 :,
Section 5.8
Investigation by
Purchaser, Sellers'
Liability :
Purchaser and its
Representatives and
agents have entered
upon the Company's
premises and its
facilities and have
conducted their own
independent
investigation, review
and analysis of the
business, operations,
assets, liabilities, results
of operations, financial
condition, software,
technology and
prospects of the
Company. Purchaser
acknowledges that it
and its Representatives
have been provided
adequate access to the
personnel, properties,
premises and records of
the Company for such
purpose. In entering
into this Agreement,
Purchaser
acknowledges that it has
relied upon the
aforementioned
investigation, review
and analysis and on the
representations and
warranties of Sellers set
forth in Article IV, and
Purchaser :
(a) acknowledges that
none of Sellers, the
Company or any of their
respective officers,
directors, shareholders,
employees, Affiliates or
Representatives makes
or has made any
representation or
warranty, either express
or implied, as to the
accuracy or
completeness of (... [1]
상제됨 : , and provided
that, this condition shall
be deemed to be
satisfied if, by reason of
Section 9.3(a),
Purchaser would not be
entitled to
indemnification with
respect to all branches
of representations or
warranties known to
exist at the time of the
Closing

ARTICLE VI CONDITIONS TO CLOSING

Section 6.1 Conditions to Each Party's Obligation to Consummate the Closing.

The respective obligation of each Party to consummate the Closing shall be subject to the satisfaction at or prior to the Closing Date of the following conditions:

(a) Statutes ; Court Orders. No statutes, rule or regulation shall have been enacted or promulgated by any Governmental Authority which prohibits the consummation of the Closing, and there shall be no order or injunction of a court of competent jurisdiction in effect precluding or prohibiting consummation of the Closing; provided, however, that the Parties shall use their commercially reasonable efforts to have any such order of injunction vacated or lifted.

Section 6.2 Conditions to Obligations of Purchaser to Consummate the Closing.

The obligations of Purchaser to consummate the Closing are subject to the satisfaction, at or prior to the Closing Date, of all of the following conditions:

(a) Representations and Warranties. The representations and warranties made by Sellers in this Agreement shall be true and correct in all material respects (or in all respects for any representation and warranty qualified as to materiality or material adverse effect) at and as of Closing Date as though such representations and warranties were made at and as of the Closing Date, except to the extent that any such representation or warranty is made as of a certain date, in which case it shall be true and correct only as of such certain date.

(b) Performance Sellers shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement required to be performed and complied with by Sellers on or prior to the Closing Date;

(c) Certificate. Sellers shall have delivered to Purchaser at the Closing a certificate signed by their respective representative directors, or a Person duly authorized by such representative directors, dated the Closing Date, in form and substance reasonably satisfactory to Purchaser, to the effect that (i) each of the applicable conditions specified in

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Sections 6.2 (a) and (b) have been fulfilled.

(d) Sellers Closing Deliverables. Each of Sellers Closing Deliverables listed in Section 3.2 shall have been delivered or such action required shall have been taken.

(e) Compliance with the SSSA. Sellers shall have obtained from the E Shareholder a waiver of the share transfer restrictions (including the rights of notification and first refusal) as set forth in Article 10.2 of the SSSA with respect to the Sale Shares.

(f) Related Party Contracts. Sellers shall cause the Company to lawfully terminate any contracts that the Company had been a party to with any Affiliate or Subsidiary of the Sellers where possible in accordance with their terms.

(g) Fuel Supply Contract. Sellers shall cause the Company to enter into a formal fuel supply agreement for a period of [1 year] with the terms and conditions of which shall have been approved by Purchaser in advance.

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 삭제됨: [full name]

(h) Amended SSSA. Sellers shall amend the SSSA to include a change of management provision where a party that undergoes a change of control or management at any time during the term of the SSSA must grant the other party the exclusive right to purchase the shares held by the party undergoing the change of management and modified deadlock provisions [Additional details regarding prices, time frame, etc. must be decided upon. In addition, the actual language of the provision can be drafted and attached in an appendix or schedule hereto]. Upon amendment, Sellers shall execute the amended SSSA with the E Shareholder.

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The conditions set forth in this Section 6.2 are for the sole benefit of Purchaser, may be waived in writing by Purchaser, in whole or in part, at any time and from time to time in the sole discretion of Purchaser. The failure by Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

삭제됨:

Section 6.3 Conditions to Obligations of Sellers to Consummate the Closing.

The obligations of Sellers to consummate the Closing are subject to the satisfaction, at or prior to the Closing Date, of all of the following conditions:

(a) Representations and Warranties. All of the representations and warranties of Purchaser set forth in this Agreement shall be true and correct in all material respects (or in all respects for any representation and warranty qualified as to materiality or material adverse effect) on and as of the date of this Agreement and on and as of the Closing Date, as if made on the Closing Date, except to the extent that any such representation or warranty is made as of a certain date, in which case it shall be true and correct as of such certain date.

(b) Performance. Purchaser shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date.

(c) Certificate. Purchaser shall have delivered to Sellers at the Closing a certificate

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March 31, 2005*

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executed by a duly authorized representative of Purchaser, dated the Closing Date, in form and substance reasonably satisfactory to Sellers, to the effect that each of the applicable conditions specified in Sections 6.3 (a) and (b) hereof are satisfied in all respects.

(d) **Purchaser Closing Deliverables.** Each of Purchaser Closing Deliverables listed in Section 3.3 shall have been delivered or such action required shall have been taken.

(e) **Compliance with the SSSA.** Purchaser shall have delivered to Sellers in writing (a) a certificate executed by a duly authorized representative of Purchaser required to be submitted to the Non-Selling Shareholder (as defined in Article 10.2 of the SSSA), representing that Purchaser's purchase of the Sale Shares would not violate any applicable Laws (as defined in the SSSA), and (b) a letter agreement, substantially in the form attached hereto as Exhibit C, executed by a duly authorized representative of Purchaser required to be submitted to the Non-Selling Shareholder (as defined in Article 10.2 of the SSSA) and the Company whereby Purchaser (i) acknowledges and agrees that the Sale Shares are subject to the share transfer restrictions as set forth in Article X of the SSSA and (ii) agrees to be bound by the provisions of the SSSA to the same extent as Sellers, pursuant to Article 10.4 of the SSSA.

삭제됨 : certain
삭제됨 : under
삭제됨 : (f) No Collusion. Purchaser shall execute and deliver to Sellers a letter of undertaking executed by a duly authorized representative of Purchaser, in the form attached hereto as Exhibit D, binding and enforceable against Purchaser by

FFFFF [WY: Subject to change depending upon the results of the conference call with B]The conditions set forth in this Section 6.3 are for the sole benefit of Sellers, may be waived in writing by Sellers, in whole or in part, at any time and from time to time in the sole discretion of Sellers. The failure by Sellers at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

ARTICLE VII CERTAIN AGREEMENTS

Section 7.1 Filings, Consents and Approvals.

(a) Sellers shall use all reasonable efforts following the execution hereof to take, or cause to be taken, all actions, and to do, or cause to be done and cooperate with Purchaser in order to do, all things necessary, proper or advisable (subject to any applicable Laws) to consummate the Closing and the other Transactions as promptly as practicable, including, but not limited to, (i) obtaining all Sellers Required Consents, and (ii) cooperating with Purchaser in obtaining all Purchaser Consents and Purchaser Required Approvals. These obligations shall extend past the Closing with respect to those Sellers Required Consents, Purchaser Required Approvals and Purchaser Consents that may be made after the Closing Date, until such Sellers Required Consents, Purchaser Required Approvals and Purchaser Consents are obtained.

삭제됨 : or an
삭제됨 : entity designated by Sellers, that until April 15, 2007 neither Purchaser nor any of its Affiliates (as that term is defined in the SSSA), successors, or assigns shall, directly or indirectly, take any action to effect any merger of the Company with the

(b) Purchaser shall use all reasonable efforts following the execution hereof to take, or cause to be taken, all actions, and to do, or cause to be done and cooperate with Sellers in order to do, all things necessary, proper or advisable (subject to any applicable Laws) to consummate the Closing and the other Transactions as promptly as practicable, including, but not limited to, (i) obtaining all Purchaser Required Approvals and Purchaser Consents, and (ii) cooperating with Sellers in obtaining all Sellers Required Consents. These

삭제됨 : Transferee or enter into any agreement or arrangement with the
삭제됨 : Trans feree for the purchase or transfer of any securities of the Company, any purchase or transfer of substantial assets of the Company, or similar transaction involving the Company, without written consent from
삭제됨 : or the
삭제됨 : entity, as the case may be.
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obligations shall extend past the Closing with respect to those Purchaser Required Approvals, Sellers Required Consents and Purchaser Consents that may be made after the Closing Date, until such Purchaser Required Approvals, Sellers Required Consents and Purchaser Consents are obtained.

(c) If there is an order, decree, ruling or injunction of a Governmental Authority of competent jurisdiction in effect that permanently restrains, enjoins or otherwise prohibits the consummation of the Closing or materially amends the terms of this Agreement, the Parties shall use their best efforts to have any such order, decree, ruling or injunction vacated or lifted.

(d) Nothing contained in this Agreement shall require (i) Sellers to pay any consideration to any Governmental Authority or other Person from whom any such Purchaser Required Approvals or Purchaser Consents are requested or (ii) Purchaser to pay any consideration to any Governmental Authority or other Person from whom any such Sellers Required Consents are requested.

(e) Each Party will supply to the other Party copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such Party or its respective representatives, on the one hand, and any Governmental Authority, on the other hand, with respect to this Agreement or the Transactions, other than confidential or proprietary information therein.

(f) Neither of the Parties shall knowingly, without the prior written consent of the other Party, take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

Section 7.2 Confidentiality.

(a) By virtue of the Transactions, Purchaser may have access to information that is confidential to the Company and Sellers. As used in this Agreement, the term "Confidential Information" shall mean all information which relates to (i) the other Party to the extent such information was received or obtained as a result of entering into or performing this Agreement, (ii) the provisions or the subject matter of this Agreement or any document referred to herein and any claim or potential claim thereunder, (iii) the negotiations relating to this Agreement or any documents referred to herein; or (iv) the "Evaluation Material" as used in that Confidentiality Agreement signed by Purchaser on March __, 2005 with J.P. Morgan Chase Hong Kong branch ("JP Morgan"), on behalf of the Company and Sellers, attached hereto as Exhibit E.

(b) Purchaser agrees that as to any Confidential Information, Purchaser is obligated:

(i) to use such Confidential Information only in the performance of this Agreement or as otherwise expressly permitted (in writing) by this Agreement or by the Company or Sellers, as applicable;

(ii) not to make copies of any such Confidential Information or any part thereof except to the extent required to fulfill Purchaser's obligations under this Agreement;

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(iii) not to disclose any such Confidential Information to any third party and to keep the Confidential Information confidential, using the same degree of care used to protect Purchaser's own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care; provided, however, that Purchaser may disclose Confidential Information received hereunder to its Affiliates and to its representatives, directors, officers, employees, consultants, advisors and agents (collectively, "Representatives") who have a need to know the Confidential Information to perform obligations or exercise rights under this Agreement, using the same degree of care used to protect Purchaser's own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care; provided such Representatives agree to keep such Confidential Information confidential and Purchaser shall be responsible for such Representatives and Affiliates doing so. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the Company and Sellers; and

(iv) upon request by the Company or the Sellers, to return to the Company and Sellers, or destroy and notify Sellers of such destruction in writing, all of the Company's and Sellers' Confidential Information received hereunder, whether in any tangible medium of expression or electronic or other form or format, promptly upon the expiration, abandonment or termination of this Agreement.

(c) The restrictions set forth in this Section 7.2 on the use and disclosure of Confidential Information shall not apply to information that:

(i) was publicly known at the time of the Company's or Seller's communication thereof to Purchaser;

(ii) becomes publicly known through no fault of Purchaser subsequent to the time of the Company's or Seller's communication thereof to Purchaser or its Representatives;

(iii) is in Purchaser's possession free of any obligation of confidentiality at the time of the Company's or Seller's communication thereof to Purchaser or its Representatives; or

(iv) is identified by the Company or Sellers in writing as no longer proprietary or confidential.

(d) In the event Purchaser is required by Law, regulation or court order or any other action of any Governmental Authority to disclose any of the Company's or Seller's Confidential Information, Purchaser will promptly notify in writing the Company and Sellers of Purchaser's legal counsel's opinion regarding a required disclosure prior to making any such disclosure in order to facilitate the Company's or Seller's efforts to seek a protective order or other appropriate remedy from the proper authority. Purchaser agrees to cooperate with the Company or Sellers in seeking such order or other remedy. Purchaser further agrees that if the Company or Seller's are not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required pursuant to the written opinion of Purchaser's legal counsel and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential

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March 31, 2005

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Information.

(e) Except as otherwise provided in Sections 7.3 and 7.4, Purchaser shall cause its employees, agents, consultants, advisors and Representatives to treat the terms of this Agreement after the date hereof as strictly confidential (unless compelled to disclose such terms by judicial administrative process or other requirements of Law in the opinion of legal counsel).

Section 7.3 Publicity.

Any public announcement or press release with respect to the execution or performance of this Agreement and the Transaction Documents shall be a joint press release acceptable to Purchaser and Sellers. Thereafter, until the Closing, or the date this Agreement terminates or expires pursuant to Section 8.1, none of Sellers, Purchaser or any of their respective Affiliates or Representatives shall issue or cause the publication of any press release or other announcement with respect to this Agreement or the Transactions contemplated hereby or by the Transaction Documents without the prior written consent of the other Party, except as may be required by Law or by any listing agreement with a national securities exchange or trading market.

삭제됨 :

Section 7.4 Knowledge of Breach; Prior Knowledge.

If prior to the Closing Purchaser or any of its Affiliates or Representatives shall have actual knowledge of any breach of a representation or warranty of Sellers, Purchaser shall promptly notify Sellers of its knowledge thereof. No breach by Sellers of any representation, warranty, covenant, agreement or condition of this Agreement shall be deemed to be a breach of this Agreement under Article VIII if Purchaser or its Affiliates or Representatives had actual knowledge prior to the execution of this Agreement of such breach.

삭제됨 : in reasonable detail, including the amount that it believes, based on the facts actually known to it, would be payable by Sellers pursuant to the indemnification provisions hereof

Section 7.5 Updates of Disclosure Schedule.

Sellers may from time to time at least seven (7) Business Days prior to the Closing Date by notice in accordance with this Agreement supplement or amend the Disclosure Schedule, including one or more supplements or amendments to (a) correct any matter that would otherwise constitute a breach of any representation, warranty or covenant contained herein, or (b) to reflect information received by Sellers pursuant to Section 7.4. If such a supplement or amendment of any section of the Disclosure Schedule materially and adversely affects the benefits to be obtained by Purchaser under this Agreement, then Purchaser shall have the right to terminate or abandon the Transactions, but such right of termination shall be Purchaser's sole remedy relating to matters set forth in amendments or supplements to any section of the Disclosure Schedule. Notwithstanding any other provision hereof to the contrary, the Disclosure Schedule and the representations and warranties made by Sellers shall be deemed for all purposes to include and reflect such supplements and amendments as of the date hereof and at all times thereafter, including the Closing Date.

삭제됨 : for any purpose hereunder, and none of Purchaser, its Affiliates or Representatives shall have any claim or recourse against Sellers or its shareholders, Affiliates or Representatives with respect to such breach,

삭제됨 :

삭제됨 : or IX or otherwise,

삭제됨 : or of the threat of such breach or of the circumstances giving rise to such breach

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Section 7.6 Access to Information.

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March 31, 2005*

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Between the date of this Agreement and the Closing, the Company, Sellers and Purchaser shall coordinate with [], at Purchaser's expense, to obtain reasonable access to the Company's offices, facilities, and books and records as Purchaser may reasonably request to review. [] shall accommodate such requests to the fullest extent possible and Purchaser and its Representatives shall conduct all such inspections in a manner that will minimize disruptions to the business and operations of the Company and Sellers.

Section 7.7 Employees: Employment Benefits.

(a) Purchaser shall use commercially reasonable efforts until the third anniversary of the Closing Date to procure the Company to retain those employees (up to and including Sangmu-bo) that are employed by the Company as of the Closing Date without limiting, extinguishing nor denigrating the rights and benefits of any Employee Plan.

(b) Notwithstanding Section 7.7(a) above, Purchaser may at any time after the Closing Date terminate the employment of those employees (up to and including Sangmu-bo) who (i) have reached retirement age (as determined by Korean Law), (ii) have been deemed by Purchaser to have been negligent or to have engaged in willful misconduct with regards to their employment responsibilities, or (c) acted in violation of the Company's rules, regulations and policies. Where lawfully possible, Sellers shall terminate those employees who are in violation of the above guidelines before the Closing Date.

(c) For those employees above Sangmu-bo but not listed on the company registry, Purchaser shall present a list of such employees that Purchaser wishes to retain at the Company after the Closing Date and Sellers shall use their best efforts to retain such employees while lawfully terminating the employment of the employees above Sangmu-bo but not listed on the company registry who were not selected by Purchaser.

Section 7.8 Interim Operations Limitations.

Sellers shall use commercially reasonable efforts to procure that after the date hereof and prior to the Closing Date, except (i) as provided in this Agreement, (ii) as set forth in the Disclosure Schedule, or (iii) as may be agreed in writing by Purchaser: the business of the Company shall be conducted substantially in the same manner as heretofore conducted and only in the ordinary course of business and the Company shall not engage in activities that are likely to have a Company Material Adverse Effect.

[WY: Subject to change depending upon the results of the conference call with B]
ARTICLE VIII TERMINATION

Section 8.1 Termination.

This Agreement may be terminated at any time prior to the Closing:

- (a) By the mutual written consent of Purchaser and Sellers;
- (b) By Sellers if Purchaser shall have materially breached any of its representations, warranties, covenants or other agreements contained in this Agreement;
- (c) By Purchaser: (i) if Sellers shall have materially breached any representation, warranty,

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Section 7.9 Adjustment for Premium
For a period of two years after the Closing, if Purchaser acquires any issued shares in the Company (the "Non-Sale Shares") for a purchase price per share greater than the purchase price per share paid for the Sale Shares, then Purchaser shall pay to the Sellers the amount of the difference between the purchase price per share for the Non-Sale Shares and the purchase price per share for the Sale Shares multiplied by the number of Non-Sale Shares acquired. Purchaser shall pay to Sellers the amount due pursuant to this Section 7.9 immediately upon each closing of the acquisition of the Non-Sale Shares during the two-year period. Purchaser shall make payment (including distribution of the amount due between the Sellers) in accordance with the instructions of Sellers.
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March 31, 2005

covenant or other agreement contained in this Agreement, or (ii) pursuant to Section 7.5 hereof, or

(d) By either Party; if the Closing shall not have occurred by [the date falling two months after the execution date of this Agreement] due to no fault or cause attributable to such Party.

Section 8.2 Effect of Termination.

(a) In the event of the termination of this Agreement by a Party pursuant to the terms of this Agreement, a written notice thereof shall forthwith be given to the other Parties specifying the provision hereof pursuant to which such termination of the Transactions is made, and there shall be no liability or obligation thereafter on the part of Purchaser or Sellers except (i) for fraud or breach of any of the representations, warranties, covenants or agreements in this Agreement prior to such termination or abandonment of the Transactions, or (ii) as set forth in Section 11.1 [Reference is correct?]; provided that no Party shall have any liability to the other in connection with the termination of this Agreement insofar as such termination is effected pursuant to Sections 7.5 or 8.1(a) or (d).

(b) The provisions of Article X and Sections 7.2, 7.3 and 11.1 [Reference is correct?] shall survive unimpaired any termination, abandonment or expiration of this Agreement.

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 삭제됨 : Sellers
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ARTICLE IX INDEMNIFICATION

Section 9.1 Indemnification and Payment of Damages.

Subject to the other provisions of this Article IX, each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party (the "Indemnified Party") for, and will pay to the other Party the amount of, any loss, liability, claim, damage, expense (including reasonable attorneys' fees) (collectively, "Damages"), arising from:

- (a) any breach of any representation or warranty made by the Indemnifying Party in this Agreement; or
- (b) any breach by the Indemnifying Party of any covenant undertaken by the Indemnifying Party in this Agreement. (collectively, a "Breach".)

Section 9.2 Time Limitations.

The representations and warranties provided for in this Agreement shall survive the Closing and remain in full force and effect for a period of [] year after the Closing Date. Commencing on the [] anniversary of the Closing Date, no Party will have any liability (for indemnification or otherwise) with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, unless before the [] anniversary of the Closing Date the Indemnifying Party receives written notice from the Indemnified Party of a claim specifying the factual basis of that claim in reasonable

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detail. The Parties intend to shorten any applicable statute of limitations and agree that no claims or causes of actions may be brought based upon, directly or indirectly, any of the representations, warranties or agreements contained in this Agreement after the applicable survival period or, except as provided in Section 8.2, any termination of this Agreement. This Section 9.2 shall not limit any covenant or agreement of the Parties that contemplates performance after the Closing.

Section 9.3 Limitations on Amount.

(a) No Party will have liability (for indemnification or otherwise) with respect to the matters described in this Article IX unless and until the total of all Damages with respect to such matters for which such Party is liable exceeds the Threshold and in such event, indemnification shall be made for the amount of the Damages that exceed the Threshold, subject to the other provisions of this Article IX. Neither Party shall have liability for any individual Damages which are equal to or less than 11 Won provided that individual Damages that are equal to or less than such amount shall be counted for purposes of determining whether the aggregate amount of Damages exceeds the Threshold. Individual Damages that are greater than such amount shall also be counted for purposes of determining whether the aggregate amount of Damages exceeds the Threshold.

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(b) No Party shall be liable for, and the amount of the Damages for which a Party would otherwise be liable for shall be reduced by (i) the amount of any insurance proceeds payable with respect to such loss, liability, claim, damage or expense, (ii) the amount of any Tax benefit that can be recognized arising from the Damages and (iii) any indemnity, contribution or other similar payment payable by any third party with respect to such loss.

(c) To the extent that the Company suffers any Damages ("Company Damages") for which the Purchaser is entitled to indemnification from the Sellers as a result of (i) a breach of the Company's representations and warranties made in Section 4.8 of this Agreement, (ii) the termination of any employees, directors or officers as set forth in Section 7.7(b) or (c) or (iii) the early termination of any of the contracts as set forth in Section 6.2(f) of this Agreement, the Sellers shall pay to the Purchaser an amount equal to 50% of the Company Damages.

(d) Notwithstanding any other provision in this Agreement, in no event shall any Party's aggregate liability to the other Party, whether pursuant to this Article IX or otherwise, exceed the Purchase Price.

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Section 9.4 Indemnification Pursuant to the SSSA.

Subject to the provisions under this Article IX except for Sections 9.2 and 9.3 hereof:

(a) If Purchaser deems that it may be liable to pay Damages to E Shareholder in accordance with the SSSA, resulting from any claim brought by E or its assignee or transferee in connection with (i) a breach of any representation or warranty made by Seller in the SSSA that survives the Closing Date and (ii) Seller's indemnity obligation under Articles 20.1(c), 20.1(d) or 20.1(e) of the SSSA, then Purchaser shall promptly notify Sellers of such claim so that Sellers may review the validity of such claim. If Purchaser is in fact liable to E Shareholder for such claim, then Sellers will indemnify and hold harmless Purchaser for,

*Byulchon comments by
March 31, 2005*

and will pay to Purchaser the amount of any Damages, which are actually paid by Purchaser to E Shareholder in accordance with the SSSA for such claim.

(b) Purchaser agrees that from the Closing Date and thereafter: (i) Purchaser shall be bound by the terms and conditions of the SSSA; (ii) Purchaser shall indemnify and hold harmless Sellers for any Damages in connection with a breach by Purchaser of the SSSA, **provided that Sellers were not directly or indirectly responsible for such breach by Purchaser**; and (iii) Sellers shall not be responsible nor liable for any Damages for any reason whatsoever under the SSSA to Purchaser, except as pursuant to Section 9.4(a) of this Agreement.

Section 9.5 Third Party Claims.

(a) If the Indemnified Party receives notice of the assertion by any third person of any claim or of the commencement by any such third person of any action, suit or proceeding for which it reasonably believes indemnification may be available to it under Sections 9.1 and 9.4 (any such claim, action, suit or proceeding being referred to herein as an "Indemnifiable Claim"), the Indemnified Party shall promptly notify the Indemnifying Party in writing (the "Claim Notice") of the Indemnifiable Claim.

(b) After its receipt of the Claim Notice, the Indemnifying Party shall have the right to undertake, conduct and control, in its sole discretion, through counsel chosen by it, the defense or settlement thereof, and the Indemnified Party shall cooperate with the Indemnifying Party in connection therewith; **provided**, that (i) the Indemnified Party **may choose to** participate in such defense or settlement through counsel chosen by the Indemnified Party **and** the fees and expenses of such counsel shall be borne by the Indemnifying Party, and (ii) the Indemnifying Party shall not settle any Indemnifiable Claim without obtaining a full release of the Indemnified Party. Notwithstanding the foregoing, the Indemnified Party shall not pay or settle such claim without the Indemnifying Party's consent **which consent shall not be unreasonably withheld**.

Section 9.6 Exceptions and Deductions.

(a) **If and to the extent that the Damages, or any portion of such Damages, arise from or are attributable to the negligence or willful misconduct of the Indemnified Party or its Affiliates or Representatives, the liability of the Indemnifying Party shall be reduced by the percentage attributable to the Indemnified Party** and in no event shall a Party be liable for indirect, special or consequential damages. The Indemnified Party shall take all reasonable steps to mitigate losses upon and after becoming aware of an event which is reasonably likely to give rise to such Damages.

(b) The Indemnifying Party shall make the indemnification payments under this Article IX after making all deductions or withholdings required by any applicable Law.

Section 9.7 No Duplication; Sole Remedy Procedures.

Any liability for indemnification hereunder shall be determined without duplication of recovery for any reason whatsoever including by reason of the underlying circumstances constituting a breach of more than one representation, warranty, covenant or agreement.

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삭제됨 : (c) Article 20.6 of the SSSA shall determine the amount of Damages for which Sellers may be required to indemnify and hold harmless Purchaser pursuant to the provisions of Section 9.4(a) hereof.

삭제됨 : Indemnifying Party shall permit the

삭제됨 : to

삭제됨 : (subject to the consent of the Indemnifying Party, which consent shall not be unreasonably withheld), provided, that

삭제됨 : Indemnified

삭제됨 : No Party shall have liability under any indemnification provision of this Article IX.

삭제됨 : (a)

삭제됨 : (b) After the Closing Date or the termination of this Agreement (but subject to Section 9.2 hereof), the Indemnified Party's rights to ... (2)

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March 31, 2005

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Section 9.8 No Right of Deduction/Set-off

Neither Purchaser nor Sellers shall have any right to deduction of or set-off any payments due pursuant to Article II of this Agreement against any other payment to be made pursuant to this Agreement or otherwise (including against indemnification payments).

ARTICLE X GOVERNING LAW AND DISPUTE RESOLUTION

Section 10.1 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Korea (regardless of the laws that might otherwise govern under applicable Korean principles of conflicts of law).

Section 10.2 Procedure

Any disputes, claims or controversies between the Parties arising out of or relating to this Agreement, whether in contract, tort, equity or otherwise and whether relating to the meaning, interpretation, effect, validity, performance, termination or enforcement of this Agreement ("**Dispute**") shall be resolved exclusively through binding and final arbitration. In the event of any Dispute, either Party shall send to the other Party a request for arbitration referring such Dispute to final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (the "**Arbitration Rules**") then in effect, except as modified herein. In such event, each Party agrees to submit itself and its property to the jurisdiction of the arbitration tribunal convened to resolve such Dispute.

Section 10.3 Appointment of Arbitrators

There shall be three arbitrators. Purchaser, on the one hand, and Sellers on the other hand, shall each nominate one arbitrator within 30 days following either the transmission or receipt of the request for arbitration, as applicable. The two nominated arbitrators shall jointly nominate the third and presiding arbitrator within 30 days of the nomination of the second arbitrator. If any arbitrator has not been nominated within the time limit specified herein, and unless this period is extended by agreement of the Parties, any Party may request the International Chamber of Commerce of Arbitration to appoint the third and presiding arbitrator in accordance with the Arbitration Rules.

Section 10.4 Authority of the Arbitrators

The arbitrators shall have the authority to assess the costs and expenses of the arbitration proceeding (including, but not limited to, reasonable attorneys' fees and expenses) against one or more of the Parties in whatever manner or allocation the arbitrators deem appropriate.

Section 10.5 Conduct of the Arbitration

The arbitration proceedings shall be conducted and the award decision (the "**Award**") shall

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March 31, 2005

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be rendered in the English language in Seoul, Korea.

Section 10.6 Consolidation of Disputes.

In order to facilitate the comprehensive resolution of related Disputes, all claims between any of the Parties to this Agreement that arise under or in connection with any of the Transaction Documents may be brought in a single arbitration. Upon the request of any Party to an arbitration proceeding, the arbitration tribunal shall consolidate the proceeding with any other proceeding involving any of the Parties hereto relating to this Agreement or any of the Transaction Documents if the arbitrators determine that:

- (a) there are issues of fact or Law common to the proceedings so that a consolidated proceeding would be more efficient than separate proceedings; and
- (b) no Party would be materially prejudiced as a result of such consolidation through undue delay or otherwise. In the event of different rulings on this question by different arbitration tribunals constituted under this Agreement or any of the Transaction Documents, the ruling of the arbitration tribunal constituted first in time shall control, and absent agreement by the Parties, such arbitral tribunal shall serve as the arbitral tribunal for any consolidated arbitrations.

Section 10.7 Provisional Remedies.

By agreeing to arbitration, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings and the enforcement of any Award. Without prejudice to such provisional remedies in aid of arbitration as may be available under the jurisdiction of a national court, the arbitral tribunal established under this Article X shall have full authority to grant provisional remedies to order that a Party request that a court vacate or modify any provisional relief granted by a court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect.

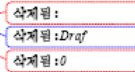
Section 10.8 Decision Final.

- (a) The Award shall be final and binding upon the Parties as from the date rendered, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accounting presented to the arbitral tribunal. Judgment upon any Award may be entered in any court having jurisdiction thereof.
- (b) The Parties waive any rights of application or appeal to any court or tribunal of competent jurisdiction to the fullest extent permitted by Law in connection with any question of Law arising in the course of arbitration or with respect to any Award made except for actions relating to enforcement of this agreement to arbitrate or the arbitral Award and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

Section 10.9 Award.

The arbitral tribunal shall have the authority to award any remedy or relief proposed by the

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March 31, 2005



claimant or respondent in accordance with the terms of the Parties' agreement, including, a declaratory judgment, specific performance of any obligation created under this Agreement or the issuance of an injunction.

Section 10.10 Confidentiality of Arbitration.

Once any Dispute has been submitted to arbitration proceedings pursuant to this Article X, Section 7.2 shall apply *mutatis mutandis* to the existence and progress of such proceedings.

ARTICLE XI MISCELLANEOUS

Section 11.1 Taxes, Fees and Expenses.

All Taxes and all fees and expenses incurred in connection with this Agreement and the consummation of the Transactions shall be paid by the Party incurring such Taxes, fees and expenses, except as specifically provided to the contrary in this Agreement.

Section 11.2 Amendment.

This Agreement may be amended, modified or supplemented in any and all respects, but only by a written instrument signed by all of the Parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Agreement.

Section 11.3 No Assignment.

No Party may assign, transfer or otherwise convey, or create any Encumbrance over, its rights or obligations hereunder in whole or in part to any other Person without the prior written consent of the other Parties. Any attempted assignment or transfer contrary to this Agreement shall be null and void. This Agreement and all the terms and conditions herein shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

Section 11.4 Waiver.

Any of the terms or conditions of this Agreement which may be lawfully waived may be waived in writing at any time by the Party which is entitled to the benefits thereof. Any waiver of any of the provisions of this Agreement by any Party hereto shall be binding only if set forth in an instrument in writing signed on behalf of such Party, and shall be effective only with respect to such Party. No failure to enforce any provision of this Agreement shall be deemed to or shall constitute a waiver of such provision, and no waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

Section 11.5 Notices.

All notices, requests, claims, demands and other communications hereunder shall be in writing in the English language and shall be given by hand delivery, telecopier, courier of

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March 31, 2005

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international reputation, or mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Parties as follows:

(a) If to Sellers, to:

H Corporation

Attention: ?
 Telephone: ?
 Telecopy: ?

with copies of any notice to each Seller to:

(b) If to Purchaser, to:

 Telecopy: _____

with a copy to:

 Telecopy: _____

or to such other address as any Party hereto may, from time to time, designate in a written notice given in like manner to each other Party hereto. Any such notice shall be deemed given when so delivered personally, telecopied or sent by courier or certified or registered mail with acknowledgment of receipt or evidence of delivery and in this latter case shall be deemed to be received on the date shown on such acknowledgment of receipt.

Section 11.6 Counterparts and Effectiveness.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement. This Agreement shall become effective when each Party has signed a counterpart and delivered a signed counterpart to each of the other Parties.

Section 11.7 Entire Agreement.

This Agreement, which includes the exhibits and Disclosure Schedules hereto, contains the entire understanding of the Parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth in such documents with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.

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Section 11.8 Headings.

The headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 11.9 Severability.

Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Section 11.10 No Third-Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer on any person or entity, other than the Parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 11.11 Injunctive Relief.

Each Party acknowledges and agrees that a violation of any of the terms of this Agreement may cause the Parties irreparable injury for which adequate remedy at law is not available. Accordingly, it is agreed that each Party shall be entitled to an injunction, restraining order or other equitable relief to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, in addition to any other remedy to which they may be entitled at law or in equity.

Section 11.12 Time of Essence.

Each of the Parties hereto hereby agrees that, with regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 11.13 Interpretation.

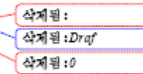
(a) When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(b) Whenever the words "include", "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation."

(c) The words "hereof", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(d) The meaning assigned to each term defined herein shall be equally applicable to both

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March 31, 2005



the singular and the plural forms of such term, and words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(e) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and permitted assigns.

(f) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(g) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

270 M&A 시장의 과제와 전망 (2)

*Byulchon comments: By
March 31, 2005*

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IN WITNESS WHEREOF, each of Sellers and Purchaser has caused this Share Sale and Purchase Agreement to be executed by a duly authorized officer as of the day and year first above written.

H Corporation,
a Korean Corporation

By: _____

Name:

Title:

H Corporation,
a Korean Corporation

By: _____

Name:

Title:

[PURCHASER]

By: _____

Name:

Title:

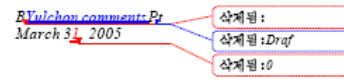


Exhibit A

Disclosure Schedule

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March 31, 2005

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Exhibit B

Share Subscription and Shareholders Agreement

Exhibit C

Form of Letter Agreement

Byulchon comment: Pt
March 31, 2005

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Exhibit D

Form of Non-Collusion Letter

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Exhibit E

Confidentiality Agreement



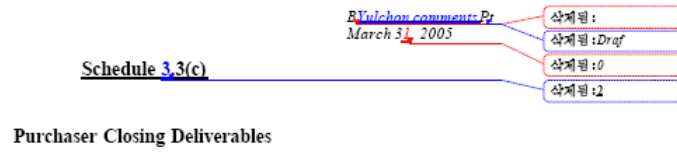
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Schedule 3.2(c)

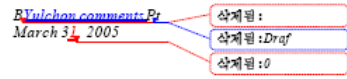
Sellers Closing Deliverables

[please amplify the Seller Consents, the Company Required Approvals, and the Company Consents.]



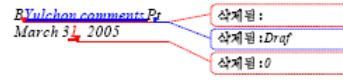
Schedule 5.4

Purchaser Consents



Schedule 5.5

Purchaser Required Approvals



Section 5.8 Investigation by Purchaser; Sellers' Liability.

Purchaser and its Representatives and agents have entered upon the Company's premises and its facilities and have conducted their own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, software, technology and prospects of the Company. Purchaser acknowledges that it and its Representatives have been provided adequate access to the personnel, properties, premises and records of the Company for such purpose. In entering into this Agreement, Purchaser acknowledges that it has relied upon the aforementioned investigation, review and analysis and on the representations and warranties of Sellers set forth in Article IV, and Purchaser:

(a) acknowledges that none of Sellers, the Company or any of their respective officers, directors, shareholders, employees, Affiliates or Representatives makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information (including in materials furnished in the Company's data room, in presentations by the Company's management or otherwise) provided or made available to Purchaser or its directors, officers, employees, Affiliates, controlling persons or Representatives, and

(b) agrees, to the fullest extent permitted by Law, that none of Sellers, the Company or any of their respective directors, officers, employees, shareholders, Affiliates or Representatives shall have any liability or responsibility whatsoever to Purchaser or its directors, officers, employees, Affiliates, controlling persons or Representatives on any basis based upon any information provided or made available, or statements made (including in materials furnished in the Company's data room, in presentations by the Company's management or otherwise), to Purchaser or its directors, officers, employees, Affiliates, controlling persons or Representatives (or any omissions therefrom), including with respect to the specific representations and warranties of Sellers set forth in this Agreement, except that the foregoing limitations shall not apply to the specific representations and warranties set forth in Article IV of this Agreement, subject to the limitations and restrictions contained in Article IX.

부록. M&A 연구회 회원 명단

부록. M&A 연구회 명단 (가나다 순)

1. 자문위원단

<u>성명</u>	<u>기관명</u>	<u>직책</u>
최도성(위원장)	한국증권연구원	원장
김건식	서울대학교 법과대학	교수
김종욱	우리투자증권	회장
선우석호	홍익대학교 경영대학	교수
이상권	산업은행	이사
이윤우	산업은행	전부총재
전홍렬	금융감독원	부원장
정광선	중앙대학교 경영대학	교수
제갈정웅	대림대학(M&A 협회)	이사장

2. 연구회 회원

<u>성명</u>	<u>기관명</u>	<u>직책</u>
정윤모(간사)	한국증권연구원	연구위원
강희주	법무법인 광장	변호사
강희철	법무법인 율촌	변호사

고창현	김앤장 법률사무소	변호사
구분용	KTB Network	상무
권세훈	한국증권연구원	연구위원
권재열	숭실대학교 법과대학	교수
권종호	건국대학교 법과대학	교수
권행민	KT 재무실	전무
김도형	법무법인 율촌	변호사
김병연	건국대학교 법과대학	교수
김선용	충정회계법인	상무
김성배	삼성전자 재경팀	전무
김정수	증권선물거래소 경영지원본부	부장
김화진	서울대학교 법과대학	교수
노희진	한국증권연구원	연구위원
문석록	삼성증권	상무
문주호	JP모건증권회사 서울지점	이사
박경서	고려대학교 경영대학	교수
박기홍	포스코	상무

박상수	경희대학교 국제경영대학	교수
박수근	삼일회계법인	전무
성보경	프론티어 M&A	회장
송종준	충북대학교 법과대학	교수
송치승	중소기업연구원	연구위원
신원정	삼성증권 IB사업본부	팀장
신인석	중앙대학교 경영대학	교수
신진영	연세대학교 경영대학	교수
오창진	금융감독원 공시감독국	팀장
왕윤중	SK 경영경제연구소 경제연구실	상무
유정현	미래애셋맵스자산운용 PEF 투자본부	이사
윤정선	국민대학교 경상대학	교수
이성환	금융감독원 공시감독국	변호사
이승철	전경련 경제조사본부	상무
이정수	증권업협회 증권산업지원부	이사
이준봉	성균관대학교 법과대학	교수
임경택	산업은행 M&A실	실장

정남성	재경부 금융정책국 증권제도과	팀장
정순섭	홍익대학교 법경대학	교수
정영철	연세대학교 법과대학	교수
정유신	굿모닝신한증권 상품운용/개발본부	부사장
정해근	대우증권 OTC과생상품 영업본부	본부장
조병주	우리투자증권 M&A 1팀	팀장
조성욱	서울대학교 경영대학	교수
조성훈	한국증권연구원	연구위원
주성훈	우리투자증권 M&A 1팀	변호사
주정일	삼일회계법인	상무
최성근	청주대학교	교수
최원진	재경부 금융정책국 증권제도과	사무관
한대우	산업은행 기업구조조정실	실장
황이석	서울대학교 경영대학	교수