The relationship between regulators and competition authorities in Korea

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It’s a great honor for me to speak to you today. I would like to thank the Ministry of Domestic Trade and Consumer Affairs of Malaysia and the Japan Fair Trade Commission for inviting me to join this meaningful program.

I. Governmental regulation – real threat to competition advocacy

I am going to introduce you about the difficulty of enforcing competition policy in Korea where industry regulations are prevalent. Even though we KFTC personnel are continuously trying to spread competition in our regulated industry, those efforts have often failed confronting resistance of regulators and some producers. But we are slowly achieving success in regulatory reform. I believe that the Korean experience should be some help for those countries, which want to use competition policy to promote or revive their economies but suffer from objection of regulators and producers.

There are two targets for competition authority to tackle. One is private restraint on competition and the other is public restraint on competition. For the KFTC, which is affected by other powerful ministries such as the ministry of economy, governmental restraint on competition is very difficult problem to solve.

II. History of governmental regulators to become obstinate resistant to competition policy in Korea

What is the reason that sectoral regulators and large business groups in Korea have become such difficult impediments for KFTC to spread competition spirit? There are three main reasons. 1) Economic policy to promote national champion during government-driven development
phase, 2) Utilization of KFTC to stabilize overall prices, 3) Variety of goals of the KFTC. I will explain one by one.

A. In the government-driven development phase, the government intentionally made a large business entity and also made regulations to regulate them.

In the early stages of economic development, competition policies had little ground in Korea since there were heavy government intervention in the industry sectors under the widely shared perception that government-led economic policies were most effective. The economic strategy led by the government has contributed to economic growth in size, but has made enterprises heavily dependent on government protection and assistance.

These governmental protection and assistance have become the roots of both private and public restraints on free market competition. Through the KFTC’s long time efforts, private restraints have diminished a lot. But government regulations, which exist in industry sectors in Korea, are real problem.

B. The KFTC focused its attention on stabilizing overall prices in Korean economy as the initial law enforcement target

The start was the Price Stabilization Act (1973). With the surging prices due to the first oil shock in 1972, this Act was enacted in order to establish a fair trade order by banning refusal to sell to attain price stability by placing price ceilings on goods and services.

In 1976, the Price Stability and Fair Trade Act overhauled the Price Stabilization Act. This Act stipulated the prohibition of unfair trade practices and laid the legal groundwork for issuing corrective orders against enterprises that breached the law with the purpose of establishing a fair trade order.

This statute provided for the setting of the maximum prices, the
authorization of the prices of monopolistic/oligopolistic products and utility prices, the issuing of directions for the supply and delivery of goods and the implementation of measures for coordinating supply and demand in emergency.

The Price Stability and Fair Trade Act produced side effects such as restricting the proper functioning of price mechanism, since the focus of the law enforcement was primarily on achieving price stability.

The price authorization by the government distorted the market function and prompted the public to expect inflation in the future, resulting in the avoidance of production, creation of double prices.

Focusing on the regulation of the side effects arising from monopoly and oligopoly deepened the problem of monopolization. The lack of a mechanism curbing the concentration of economic power gave rise to the problem of economic concentration.

For the private sector to play the lead, instead of the government, in the operation of the economy, the sections involving fair trade were separated from those on price stability under the Price Stability and Fair Trade Act. A new legislation was introduced, centering on fair trade practices.

C. Korea’s competition policy has focused on a variety of goals, such as protecting domestic producers from foreign competition and protecting small competitors from more efficient large competitors.

If an organization tries to accomplish two different goals at once, it will not be easy. I think that competition authority will get its best result when it has one goal.

We, KFTC, used competition law to stabilize high consumer prices when we introduce competition policy. Article 1 of the Monopoly Regulation and Fair Trade Act (Hereinafter I will call this Act as the Monopoly
Regulation Act), which was established in 1980, describes the purpose.

“to promote fair and free competition, to thereby encourage creative enterprising activities, to protect consumers, and to strive for balanced development of the national economy”

Therefore, we work for the protection of consumers and the balanced development of the national economy. Making national champions in our poor economic conditions was also in our mind. This law enforcement of multi-purpose makes birth of the problem of both private restraints and public restraints.

III. Measures the KFTC has taken to deregulate industries

To solve the regulation problem from the government side, we make our effort roughly in three areas, prior consultation system, Clean Market Project, participation in the regulatory reform process, and promoting public awareness on the benefits of competition by education and advertisement on competition policies.

A. Prior consultation system

Article 63 of the Monopoly Regulation Act requires other administrative bodies to consult with KFTC prior to legislating laws or regulations that can have anticompetitive effects.

It is important to prevent the formation or inclusion of law or regulations, which could restrict competition because, once enacted, it is extremely difficult to make modifications due to probable protest from the interested parties.

In general, anticompetitive provisions identified by KFTC are revised or deleted. However, there are occasions where KFTC recommendations are not adopted or, as an inter-institution compromise, there have been cases where the relevant regulations in question are retained on the condition that the responsible government body must consult KFTC
before it implements competition restrictive actions according to those regulations.

Let me introduce specific examples of prior consultation. A proposal to amend the Coal Industry Act by the Ministry of Commerce, Industry & Energy in 2001 gave the Minister the power to fix minimum and maximum consumer price of the resource. However, this was considered to be excessive government intervention that would bring about inefficient distribution and distortion of the pricing system. Following KFTC’s opinion, the provision was removed from the proposal.

Provisions restricting corporate registration by public or non-profit corporations in the amendment proposal for the Electric Engineering Industry Act in 2001 were also removed upon KFTC’s recommendation because of its acted as a barrier in entering the market.

**B. Clean Market Project**

Since 2001, the KFTC has pursued “the Clean Market Project” for the industries where legal violation often occurs. This aims to correct comprehensive practice and improve the relevant regulation. There has been a progress in correcting behavior while the extent of improvement in regulation through comprehensive approach per each industry falls short of expectation. Moreover, as the project has been carried out through the organization consisting of the type of the current legal violation, it became difficult to collect each industrial data, and share information.

Therefore, the KFTC shifted the system in a way to manage task force per each industry from this year. For 8 major industries, including finance, energy, IT, medicine, pharmaceutical, construction, real estate, broadcasting and private education, 8 task forces headed by director-level were formed. Regardless of bureau or division, 10 to 20 staffs will join the task force. They will make a monthly or quarterly market trend analysis, set competition promotion policies and identify the issues that should be deregulated. All in all, the task forces are scheduled to pursue
the comprehensive clean market project.

Regarding the performance of the project per each industry, 52.4 billion won (43.66 million dollars) of surcharges was imposed to 32 businesses and 12 industries, and 37 cases of deregulation issues were found. In terms of consumer policy per each group, 900 million won (75 million dollars) of surcharges was imposed to 16 industries, and 18 cases of deregulation issues were found.

C. Participation in the Regulatory Reform Process

Since the 1980s when private sector potential increased along with the enlargement of the economy, the various government regulations, which served a positive role in the past economic development, have turned into restrictions on private sectors autonomy and creativity. Thus the need for reforms has increased.

Since the mid 80s the Korean government embarked on regulatory reforms that amend regulations with negative effects by establishing the Economic Law Reform Committed and the Economic Administration Regulatory Committee in the Economic Planning Board (Now Ministry of Finance and Economy). These bodies served to enforce the Monopoly Regulation Act at that time.

Within government, a general consensus emerged which argued that the regulatory reform function would best be executed by the neutrally positioned KFTC. It is also in the position to make the most of professional knowledge and experience of the market. As a consequence, from Apr 1997 to Mar 1998 regulatory reform functions and the implementing agency (later renamed as Economic Regulatory Reform Committee) temporarily transferred to the KFTC, which became the main actor in regulatory reforms.

Later, the Economic Regulatory Reform Committee was integrated into the Regulatory Reform Committee under direct presidential control in Mar 1998 with the aim of creating a stronger government body that takes
full charge of regulatory reform. Thus, the KFTC is now involved in regulatory reform activities by participating in the Regulatory Reform Committee.

D. Competition advocacy through education and public relations

KFTC is constantly promoting and raising awareness on competition law and policy as well as KFTC accomplishments among different ministries.

Cabinet and Vice-Minister Meetings are where official government bodies decide their various statutes or policies and mediate the conflicting views of the different ministries.

After KFTC became an independent administrative institution in 1994, chairman and vice chairman were given the right to attend the Cabinet and the Vice-Minister Meetings respectively. This gave KFTC the ability to assert its opinions more effectively to be reflected in government-proposed statutes or policies. That is, if a government agency does not adopt KFTC’s recommendation during prior consultation in working-level talks, KFTC still has the opportunity to re-discuss the issue and to demand that certain proposals be adjusted in Cabinet and Vice-Minister Meetings.

Local governments are in the position to directly enforce competition-related regulations such as approval and authorization on market entering or area restrictions. In many cases they are not competition-orientated and adopt competition restrictive rules and regulations.

In response to that, KFTC has offered education sessions to 2,358 officials from 15 different cities and provinces from July 2002 to introduce benefits and examples of competition policies and the fair trade system in general.

IV. The future of competition policy in Korea

I would like to say this. Recently we, KFTC staffs, are often listening
voices of complaint from our Korean people, that in this difficult economic situation competition policy doesn’t make sense, that Korea has to put most importance on creation of work, thus improving the economy. You, competition authority people, are doing foolish actions.

But we remember how much defects those government-driven economic development strategy has. In Korea, government made large enterprise groups. Those enterprise groups restricted free competition. That restriction led to government regulations, which is now the one of two targets KFTC aims.

We have to make a choice. Who should be the last beneficiary from our competition authority? And what path should we take?

We believe that consumer welfare should be our last goal of competition policy. And also believe that healthy competition only can maximize consumer welfare.

Thank you.