

The 4TH Seoul International Competition Forum

Introductory Remarks by

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Introduction

Good morning, ladies and gentlemen.

It is a great honor for me to speak at the opening session of the 4th Seoul International Competition Forum 2006 here in Gyeongju, a historical city of Korea.

At first, I would like to express my sincere respect and appreciation to Chairman Kwon and the Korea Fair Trade Commission for the efforts for preparing and organizing this distinguished Forum and the 11th International Workshop on Competition Policy starting from tomorrow.

Today's Forum reminds me of the last Seoul International Competition Forum two years ago that I also attended. It was very much successfully held in Seoul in April 2004 back to back with the 3rd ICN (International Competition Network) Annual Conference and I believe that those two conferences have drawn greater attention to the development of competition policies in the East Asia region.

Generally speaking, East Asian countries and economies still do not have enough experience in the enforcement of competition law and policy, and the culture of competition has not been fully instilled throughout the public and private sectors. However, it would be safe to say that the competition policy and cooperative relations among competition authorities in East Asia have been greatly strengthened these two years after the last Seoul International Competition Forum.

I wish to take this opportunity given to me this morning to show my understanding on the current status and the future direction of competition policy in East Asia for facilitating your thinking on these matters. Thus, I will begin with the recent development of the competition law in Japan. Next, I will touch upon the need to address for ensuring fair competition which is the mutual interest in the East Asia region and the challenge of Japan. Finally, I will comment on strengthening of cooperative relations among competition authorities in East Asia.

I. Recent development of Competition Law in Japan

The Antimonopoly Act (AMA), Japan's competition law, was enacted in 1947 and it will mark the 60th anniversary next year. In 1977, thirty years after its enactment, the AMA was extensively reinforced with the introduction of monetary surcharge system against cartelists and other revisions.

Upon the Japanese government's strong commitment to the structural reform and promotion of competition for economic revitalization, the AMA underwent its first comprehensive amendments in the last quarter century in April 2005. These amendments took effect on January 4, 2006. They primarily aim to eradicate cartels and bid-riggings in more active and stricter manner so as to contribute to realizing a vital, energetic and robust economy and society.

Among the specific provisions that were amended is an increase in the rate of surcharge imposed on violators of the AMA, from 6% to 10% of the related turnover for the large-sized enterprises and the application of 50% higher rates to undertakings with a repeated history of violations. In addition, the amendments introduced criminal investigation powers for the Japan Fair Trade Commission (JFTC). On the other hand, the amendments provide a motivation for terminating violations at the earliest opportunity. For example, a leniency program was introduced. This is similar to those already introduced in many other countries in which undertakings that report their violations to the competition authorities are able to enjoy immunity from or reduction of penalties. The first leniency applicant before an initiation of investigation is to be granted full immunity from the surcharge payment and the second to be 50% reduction, and the third to be 30%. Even after the initiation of investigation, 30% reduction is equally available to up to the third applicant. Contrary to some concerns on the applicability of the program prior to the enactment, the JFTC received 26 leniency applications in just three months from January 4, the effective date of the amendments, until March 31.

Currently, the first priority of the JFTC is to appropriately enforce these new systems so as to restrain violations of the AMA to the fullest extent possible.

II. Need to address for ensuring fair competition which is the mutual interest in the East Asia region and the challenge of Japan

In addition to the private monopolization and the cartel under the Article 3 of the AMA, unfair trade practices under the Article 19 are

characterized as the third major type of prohibited practices, and a variety of specific types of practices are designated by the JFTC.

Unfair trade practice regulations under the AMA were originated from Section 5 of the Federal Trade Commission Act of the United States, but they have developed in a different manner from the original one. They have multiple functions such as supplement to regulation of private monopolization, consumer protection and prevention of unfair method of competition. Most of the East Asian competition laws seem to have similar or more diversified provisions for unfair trade practice regulations.

In Japan, amongst various types of unfair trade practices, the JFTC has recently dealt actively and strictly with abuse of dominant bargaining position, for example, coercive behaviors by a large-scale retailer against its suppliers heavily dependent on the retailer in the distribution sector. The dominant bargaining position means that a firm has a superior power in transaction against its counterpart but the position of the firm in a market doesn't necessarily have to be absolutely dominant. I have heard that the same type of abusive conduct in the distribution sector sometimes occurs in some East Asian countries and economies.

When competition policies are discussed, people tend to immediately turn their attention to the United States and the European Union. As a result, one may consider that only anticompetitive unilateral conduct of market dominant firms should be regulated by the competition law just like the Article 82 of the EU Treaty and Section 2 of the US Sherman Act and the unilateral conduct of firms without market dominant position should not be dealt with by competition laws and competition authorities.

However, considering the East Asian cultural background and social and economic systems that are different from those of the United States and the Europe, I believe that some kind of unilateral conduct of a firm, even though not in the market dominant position should also be controlled by competition laws and competition authorities.

In Japan, when violations of unfair trade practice regulations are found, the JFTC may issue only a cease-and-desist order and cannot levy a surcharge. There exists a strong argument, however, that at least some types of unfair trade practices should be subject to surcharge payment order. This kind of argument is one of the focuses for consideration under the scheduled review of the 2005 AMA amendments within two years after its enactment and

the possibility of levying a surcharge against specific types of unfair trade practices is now being considered.

III. Strengthening of cooperative relations among competition authorities in East Asia

In my view, competition authorities in East Asia need to make more efforts to share their experiences and cooperate among each other for mutual enhancement of their performance and dissemination of the competition culture in this region, in a manner that is suited to the East Asian character of social and economic development.

That is why in the last Seoul International Competition Forum in 2004, I proposed that the top level officials of the competition authorities and related agencies in East Asia come together to jointly create a forum for sharing and developing views and understanding of competition policies.

This proposal came true as the "Top-Level Officials' Meeting on Competition Policy," that was first convened in Bogor, Indonesia, in May 2005 and second in Bangkok, Thailand in June 2006. These meetings aim to provide top level officials of East Asian competition authorities with an opportunity to share their understanding of competition policy and to freely and candidly discuss the issues they face in implementing their competition laws and policies. At the meeting in Bangkok last June, about 40 officials from 13 countries and economies in the East Asia region participated and made active discussion for strengthening of the cooperation among East Asian competition authorities and approaches towards establishment of effective technical assistance mechanism. I am sure that the meeting in Bangkok was another great success and I hope that the Top- Level officials' meeting will further deepen our understanding of competition policy in this region and will help East Asian competition authorities to effectively enforce competition laws and thereby lead to enhancement of the competition environment in this region. Next year, the third Top-Level Officials' Meeting will be held in Hanoi, Vietnam.

As Chairman of the Japan Fair Trade Commission, I will do whatever I can to further strengthen cooperative relations among East Asian competition authorities to achieve our goals.

Thank you very much for your kind attention.