

A Case Study of the Domestic Pharmaceutical Market under the Fair Trade Law

I. Background

The domestic pharmaceutical industry mainly focuses on the domestic market and usually is not affected by the economic situation, maintaining stable growth. Policies and systems have the greatest effect on the pharmaceutical industry. For example, national health insurance was implemented in 1995 and significantly increased demand on pharmaceuticals; pharmaceutical expenses grew by double digits each year and the pharmaceutical industry was booming, but the situation went downhill after the financial crisis with the national health insurance. National health insurance influences medical benefits of the majority of people, and the government thus implemented a series of measures to cut down cost to maintain the national health insurance, e.g. cutting prices of pharmaceuticals to reduce expenses (including the global budget system, pharmaceutical price investigation, and price adjustment), implementing the second generation national health insurance in 2013, and collecting supplementary premiums. These policies lowered the growth rate of pharmaceutical expenses nationwide and caused the revenue of the pharmaceutical industry to decrease. Additionally, the Ministry of Health and Welfare (formerly the Department of Health) requires the pharmaceutical industry to comply with PIC/S GMP in hopes of driving industrial upgrade, and the pharmaceutical industry has been severely impacted as companies must invest a considerable amount of money to improve or build plants and facilities that meet standards, even while their revenue is decreasing.

Expanding into the international market is an important direction for the domestic pharmaceutical industry, and domestic pharmaceutical companies have been actively engaging in international cooperation and making international investments in recent years. This includes mergers, technology transfer, establishing factories overseas, and setting up joint ventures. Pharmaceutical companies hope to expand into the international market and eliminate the bottleneck of the domestic market. A major issue with the domestic pharmaceutical industry is that there are too many companies concentrated in the domestic market and it has caused vicious competition. From the perspective of the FTC, examples of issues derived from vicious competition between pharmaceutical companies include: when the patents of popular drugs expire, many parties all try to get a piece of the profits, and brand drug companies restrain competition or engage in unfair competition by inappropriately issuing patent infringement warning letters or use low prices to deter generic drug companies from entering the market; when medical institutions are making procurements, competition between pharmaceutical companies coupled with purchasing power of medical institutions and payment methods result in medical institutions paying lower prices than the standard price, i.e. the difference between prices paid by the national health insurance and the cost of drugs of hospitals. The FTC focuses on whether if horizontal competition between pharmaceutical companies and vertical trading relations between hospital and pharmaceutical companies involve restraining competition or unfair competition.

The FTC conducts substantive review and analysis in the process of reviewing cases so as to maintain trading order in the market and protect consumers' interests. Yet, it is not possible to gain a comprehensive understanding of the industry from individual cases. Hence, this study hopes that the FTC will continue to collect, organize and categorize cases of the pharmaceutical market, and in the process gain further understanding of the pharmaceutical market's development and how to effectively enforce the Fair Trade Law (hereinafter referred to as the "Act"). This study also aims to offer recommendations for the current competitive environment of the domestic pharmaceuticals industry.

II. Recommendations

After analyzing and organizing cases of the domestic pharmaceutical market involving improper pricing strategy of monopolistic enterprises, merger, concerted action, resale price maintenance, boycott, differential treatment, gaining trading counterparts through inappropriate means, causing another enterprise to refrain from competing in price, trade secrets, exclusive trading, pirating, false advertisement, damaging business reputation, and deceptive or obviously unfair conduct set forth in Articles 10, 12, 14, 18, 19, 20, 21, 22 and 24 of the Law, the FTC mainly focused on whether if hospitals used their advantages in the procurement process with improper means to restrict their trading counterpart (i.e. pharmaceutical companies), or if industry associations used their superior position with improper means to restrict their trading counterpart; whether if pharmaceutical companies engaged in unfair competition by causing hospitals to buy from them using means other than quality, price, or service; and the appropriateness of competitive behavior of domestic and foreign pharmaceutical companies.

At present, in the domestic pharmaceuticals market, brand drug companies are using intellectual property rights, or have even developed new strategies, to delay or prevent generic drugs from entering the market; conduct to restrain competition include inappropriate use of patent rights, horizontal agreement to delay payment, and merger to reduce competition from generic drugs. Brand drug companies have developed a variety of strategies to prevent generic drugs from entering the market and competing with them. When the FTC is handling future cases, besides considering whether or not overall competition and consumer interests are improved, the FTC will focus on strategies that violate the Law by preventing or delaying generic drugs from entering the market.

The national health insurance has adopted a single-payer system since it was implemented in 1995, and it has impacted the structure of distribution channels of the domestic pharmaceuticals market. This has resulted in large hospital systems using their superior purchasing power to set restrictive trading conditions with their upstream suppliers. Whether or not this restrains competition or hinders fair competition requires further observation.

In addition, to eliminate the vicious competition in the pharmaceuticals market, besides having the National Health Insurance Bureau lay down a complete set of rules, domestic pharmaceutical companies should accelerate the progress of their PIC/S GMP certification, develop operating models

and core capabilities of specialty pharmaceutical factories, implement product lifecycle management and innovation to develop high value-added products, and adopt a differentiation strategy to enhance the international competitiveness of the domestic pharmaceuticals industry. The FTC will look further into drug price differences and competition issues caused by patent rights of brand drugs, and will conduct investigations and impose penalties in the event of a violation of the Law for the purposes of maintaining trading order in the market.