

## **Joint Implementation of Competition Policy by Non-profit Organizations**

### **I. Background**

The concept of a civil society has flourished in recent years, and non-profit organizations are taking active action to fulfill the duty of a civil society to oversee the government. Non-profit organizations have also begun cooperating with the government and become an important partner in providing various public services. Since competition policy is an important part of the nation's economic policy, and is also closely related to economic development and the public's well-being, non-profit organizations also serve an important role and function in competition policy, as they shoulder the responsibility of protecting public interests and aim to support the government in achieving good governance. In recent years, competent authorities of competition law in other countries have actively built relations with non-profit organizations in the implementation and execution of competition policy. This has increased opportunities for non-profit organizations to participate in the policy and also help provide public services that serve to promote competition. Hence, this paper examines the methods of other countries when collaborating with non-profit organizations to implement competition policy, and reviews how non-profit organizations have assisted the FTC in implementing competition policy and their results in the past 22 years. This paper further makes recommendations based on the findings for the FTC's future administration.

### **II. Recommendations**

This study makes the following recommendations for the FTC's future administration:

- i. Enhance the expertise of non-profit organizations with respect to competition policy and competition law

Observing foreign non-profit organizations that have effectively assisted their government in the implementation of competition policy, the key is not whether if their purpose of establishment is to jointly promote competition with the competent authority of competition law, but rather their expertise in the field of competition law. For example, the American Antitrust Institute (AAI), the American Bar Association (ABA), the Japan Competition Law Research Association, the Japan Fair Trade Associations, and The India Consumer Organization (CUTS) all have departments dedicated to the research of competition issues, and their staff members all have a certain level of expertise in competition law and possess education and promotion abilities. This enables the organizations to cut to the point when assisting the government with implementing competition policy, and allows them to provide expert opinions and resist conservatives that oppose competition. It also helps alleviate the regulatory capture situation in their countries. In contrast, among domestic non-profit organizations that assist with the implementation of competition policy, only "the Fair Trade and Consumer Protection Association" under the Chinese National Federation of Industries and various bar associations have a certain level of expertise. All other non-profit

organizations are not familiar with issues and specialized knowledge in the field of competition law. Hence, the FTC should invite or send materials to non-profit organizations when holding competition law related conferences, speeches, and presentations, or issuing publications or e-newsletters, so as to improve their level of expertise.

- ii. Increase the degree of competition advocacy of non-profit organizations with respect to issues they are most concerned about

All domestic non-profit organizations that are assisting with the implementation of competition policy were not established with the purpose of promoting competition. Hence, the organizations have mainly served as competition advocates to the private sector and general public, i.e. promote laws and regulations related to fair trade. These non-profit organizations interact with the FTC in a top-down “collaborative-vendor model.” In comparison, the English consumer group “Which?” and Indian consumer group CUTS also were not established with the purpose of promoting competition; the consumer groups operate independently and do not accept government subsidies; their interaction with the government is mainly on the right end of the spectrum, i.e. “dual model” in which non-profit organizations and the competent authority of competition law continue provide their respective services and compete with each other. However, when the competition issue or antitrust case clearly damages consumer interests, the non-profit organizations will proactively declare their stands and work with the competent authority in a “collective-partnership model,” combining their efforts in a common direction. Therefore, the FTC can refer to the experience of other countries and increase the degree of involvement of non-profit organizations by selecting competition issues they are most concerned about, e.g. the Chinese National Federation of Industries and various bar associations are most concerned about international antitrust issues, transforming interactions from the current “collaborative-vendor model” into the “collective-partnership model,” where non-profit organizations voluntarily participate in planning and decision-making for competition advocacy. The FTC may even let non-profit organizations organize and raise funds for competition advocacy events related to the topics they are concerned about, which will further increase the results of competition advocacy.

- iii. Support or establish non-profit organizations that aim to promote competition

Observing the achievements of non-profit organizations established with the purpose of promoting competition, e.g. the American Antitrust Institute (AAI) , the Japan Competition Law Research Association and the Japan Fair Trade Associations, they have been far more effective than other non-profit organizations because they have the same purpose as the competent authority of competition law, are independent, have high level of expertise, and have the ability to research related issues; such non-profit organizations can more easily gain the recognition of high-level government officials in terms of competition advocacy, especially to the public sector, and are even able to alleviate regulatory capture or strengthen the competition legal system. As early as 1997 to 1999, the FTC had already considered

supporting the establishment of non-profit organizations with similar qualities as the Japan Fair Trade Associations and aim to promote competition, hoping to bring together academia, industries and other persons concerned with the fair trade system, to study the fair trade system through organizations, to train professionals in the field of fair trade, to strengthen promotion and communication mechanisms, and to promote international exchanges and cooperation. Yet, the FTC did not proceed due to various issues, such as the source of funding. The development of competition policy and competition law has become growingly important under international trends. The Fair Trade Law has been in effect for over 22 years, during which numerous specialists in the field of competition law have been trained, and there are quite a few fair trade researchers in academia. Therefore, if the FTC continues to observe its political support and evaluate the feasibility of gaining funding, the FTC will be able to greatly increase its support in implementing competition policy by suitably supporting the establishment of such non-profit organizations.