



Asia-Pacific Economic Cooperation

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**2004/SOMII/CPDG/SEM/006**

## **The role of an Enforcement Agency in Enforcing Competition Laws**

Purpose: Information  
Submitted by: Korea



**Seminar on Best Practices in the Enforcement  
of Competition Policy  
Pucón, Chile  
26 May 2004**

# The role of an Enforcement Agency in enforcing competition laws

26 May 2004

Jeong-eun SHIN

Korea Fair Trade Commission

## Who We Are

- a ministerial-level central administrative agency
- a quasi-judiciary body
- consist of a committee, the decision-making body, and a secretariat, the working body
- Committee has 9 members
  - chair & vice-chair : recommended by the Prime Minister  
appointed by the President
  - other commissioners : recommended by the chair  
appointed by the President

- Responsible for four main tasks
  - promoting competition
  - strengthening consumer's sovereignty
  - creating a comparative environment for SMEs
  - restraining concentration of economic power
- enforce 9 acts
  - Monopoly Regulation and Fair Trade Act, Omnibus Cartel Repeal Act, Adhesion Contract Act, Fair Labeling and Advertising Act, Door-to-Door Sales Act, Installment Transaction Act, Consumer Protection in Electronic Commerce Act, Fair Subcontract Act, Fair Franchise Transaction Act

# History & Organization of KFTC

- 1981. Established under Economic Planning Board (EPB) pursuant to the enactment of MRFTA
- 1994. Separated from the EPB as an independent vice ministerial-level central administrative organization
- 1996. The status of KFTC Chair was elevated from vice-ministerial to ministerial level
- 2004. 9 bureaus, 4 regional offices with 416 staff

# 1. Independence & accountability

- granted independence in enforcement of competition law, personnel and budgeting
  - the only governmental agency entrusted with the enforcement of competition law
- Independent from other ministries and free from the influence of interest groups in its investigation, case deliberation and resolution
  - Decision is made based on the consensus of committee members.
  - Terms of office is guaranteed for 3 years.

## 2. Legal Powers

- Investigative power such as the order to submit relevant documents, administrative fines
- Impose corrective measures including request for indictment, corrective order, corrective recommendation
  - The Scope and the level of the measures have expanded and risen since 1981
- The amount and number of cases of imposing surcharges also increased

# 3. Relation with Other Authorities

## A. Relation with other ministries

### 1) Prior-Consultation rights under the MRFTA

- other government agencies are required to consult the KFTC in the enactment or revision of anti-competition acts or decrees

※ 1994-2002 : reviewed 3,647 cases

suggested removal or revision on 628

actual removal or revision on 570 cases



## 2) Ex-post regulation Reform

- ex-officio member of the Regulatory Reform Committee
- 1997-2002 : improved a total of 147 regulation
- 1999 : enactment of the Omnibus Cartel Act to eradicate cartels in other acts

## 3) attend and present opinions at the cabinet meeting

- make recommendation and deliver opinions on competition policy
- raise awareness on competition issue among heads of government ministries

## B. Relationship with Sector-specific Regulators

- the only government authorities entrusted with the enforcement of competition policy
  - possible overlap between the rights of the KFTC and that granted to the regulators
- ⌘ Tele-communications Commission, Electricity Commission, Broadcasting Commission

- 2 approaches to address the overlap in regulation

- i) prior-consultation system in the enactment of acts and decrees

- ex) on the proposed amendment to Broadcasting Act submitted by the Korea Telecommunications Commission, the KFTC exercised its prior-consultation rights to remove provision that would trigger the overlap

ii) consultation between working-level officials from the KFTC and regulators

- Sector-specific regulators : responsible for the technical regulations
- KFTC : responsible for general competition issues
- Exchange of opinions takes place

ex) signed an agreement with the Ministry of Information and Technology to clarify the mandate of each party and establish working-level consultation body

## 4. the right of plaintiff in due process

- A. Right to appeal

- 2 ways to appeal

- i) Raise objection to the KFTC

- Objections should be raised within 30 days.
- KFTC should conduct deliberation within 60 days.
- Until 2002, 546 objections have been submitted. 92 objections have been accepted.

## B) Appeal to court

- Filing should be made within 30 days.
- Appeal cases are increasing in number.
  - Out of 370 appeal cases, 210 cases have been filed since 2000
- The reason for the increase
  - Public awareness on the redemption-seeking process in court has been raised
  - The KFTC have been enforcing competition law more rigorously and imposing tougher sanctions
- KFTC's winning rate is over 85%
  - Out of 216 cases, the KFTC has won 185 cases

## Conclusion

- How to design competition authority is important for effective enforcement
- Possible elements for effective competition agency
  - Independence, accountability, legal powers, relationship with other authorities, due process
- KFTC's proactive responses to the rapidly changing economic environment and belief of Korean government in market economy