



**Asia-Pacific
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Agenda Item: 8

Updates and Developments: Korean Competition Policy and Law

Purpose: Information
Submitted by: Korea



**Competition Policy and Law Group Meeting
Moscow, Russia
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Meeting of APEC Competition Policy and Law Group, Moscow

Updates & Developments: Korean competition policy & Law

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Introduction of Consent decree system (1)

- ▶ Dec. 2011 Korean competition law amended for introducing consent decree system
 - ▶ Reduce costs and risks related with lengthy investigation & legal proceedings
 - ▶ More flexible & effective remedies

- ▶ Not eligible : Cartels & behaviors for which KFTC are required to file referral with Prosecutor's office
 - * Application expected for Merger, Abuse of dominance cases

- ▶ Contents of Written application
 - ▶ Facts which can specify the alleged behaviors, Remedies for restoration of market competition & consumer damages, etc.

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Introduction of Consent decree system (2)

- ▶ Solicitation of interested parties' opinions no less than 30 days
 - ▶ Also, obliged to consult with Prosecutor & relevant ministries
- ▶ Compulsory compliance fine : Max. KRW 2 million (USD 1,900) per day if fails to comply with consent decree
- ▶ Withdrawal of consent decree : (1) when remedy become inappropriate due to significant changes in circumstances, (2) failure of comply with consent decree with no justification, etc.
- ▶ Consent decree can't be used as a ground for alleging violation of competition law

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Case : *Gas station allocation cartel*

- ▶ 4 Oil companies colluded not to compete for gas stations previously contracted to rival oil companies.
 - ▶ According to the cartel, oil companies could not get new contracts with (used-to-be) rival's gas station without consent from originally contracted oil companies
- ▶ Market share remained stable btw 2000 & 2010
 - ▶ SK(36.0% → 35.3%), GS(26.5% → 26.8%), HDO(20.9% → 18.7%), S-Oil(13.2% → 14.7%)
- ▶ Administrative fine : Total \$402million (May 2011)
 - ▶ 3 companies were referred to the Prosecution Office

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Case : Reverse Payment in Pharmaceutical

- ▶ Reverse payment agreement *btw* multinational company (“A”) & Korean local company (“B”)
- ▶ “B” launched generic version of anti-nausea drug (cheaper than original produced by A) in ‘98
- ▶ “A” filed a patent infringement suit against “B” in ‘99
- ▶ “A” proposed providing “B” with exclusive rights to market its original drug and another new drug if “B” stopped selling the generic drug → *agreed*
- ▶ Administrative fine : Total USD 4.7million (Dec. 2011)

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Supports for *private enforcement*(1)

- ▶ Current : Representative action system (opt-in class action system)
 - ▶ Each claimant needs to formally express entrustment to the representatives and proved any individual evidence such as receipt for purchased products to prove individual damages
- ▶ For more compensatory justice & deterrence effect
- ▶ *Initiatives (1)*
 - : Support for cost of litigation (representative action) involving cartel & unfair advertising case
 - * eg : advertisement costs for collecting harmed consumers by consumer org. would be subsidized for a recent cartel case

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Supports for *private enforcement*(2)

▶ *Initiatives (2)*

: Improving *Association lawsuit system*

* Association lawsuit : opt-out class action mechanism eligible for qualified consumer organization, etc.

- ▶ (current) Only injunctive relief is allowed within association lawsuit system
- ▶ Inclusion of damages claim in association lawsuit system would be reviewed

**Discussion on introduction of opt-in class action system in Competition law (Dec. 2011)

- (*pros*) compensatory justice, effective deterrence, etc
- (*cons*) excessive litigation, over-deterrence, burden of business