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FAIR TRADE COMMISSION
REPUBLIC OF KOREA

Competition Assessment Toolkit

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Korea Fair Trade Commission

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I. Overview of Competition Assessment

1. Meaning of Competition Assessment

Competition assessment is a process through which a government or regulatory body analyzes and evaluates how new or existing regulations designed to achieve specific targets may affect competition and then seeks an alternative that will minimize any potential impact on competition while still achieving the designated policy objective in an efficient manner.

When competition is accelerated, improved products and services are offered in terms of price, variety, and quality. Additional business opportunities are likewise created and economic growth and efficiency are maximized. The assorted rules and regulations introduced by a government or public agency are typically aimed at a specific public policy goal but may intentionally or unintentionally result in a range of unintended effects. The execution of such regulations without considering the operations of the market system may hinder the achievement of the original target or even bring about an adverse result.

A particular regulation may prevent a new supplier from entering the market, limiting the number of competitors, excessively infringe upon competitors' independence of action, and thus weaken their overall competitiveness and incentive to participate. In addition, consumers may be denied the access and information necessary for selecting an optimal alternative in terms of price and quality. Competition consequently withers, which may in turn wield an adverse influence on technological innovation due to higher prices and lower quality. In sum, well-timed analysis, assessment, and adjustment are prerequisites to designing and applying a new regulation in order to prevent or at least minimize these unintended effects.

Generally speaking, a regulatory agency whose sphere is limited to specific industries or economic activities is primarily focused upon specific policy goals; they do not deliberate on how their actions may or may not affect competition. However, this must be undertaken during the early stages of planning and introducing a new regulation.

As part of achieving the target of a regulation aimed at a specific purpose, such as consumer safety or environmental protection, exactly how the proposed regulation will affect the activities and motivations of the economic subjects must be understood. Otherwise, the preferred goal may not be achieved or unintended effects may emerge. When the government introduces or revises a regulation, market participants do not act in the same manner as they had done previously. A new regulation alters the market environment and participants adapt themselves by adjusting their decisions and actions. This is why the effect of a regulation on the behavior of participants must be understood. In this regard, competition assessment can be seen to aid in the efficient achievement of a preferred policy rather than restricting or impeding a regulatory agency's policy enforcement capability.

A number of developed economies recognize competition assessment as a crucial element of the process of regulatory impact analysis. As a rule, the unit proposing a regulation should be responsible for its enforcement. OECD prepared its 2007 Competition Assessment Toolkit and recommended all members follow the methodology and procedures it specified. Subsequently, a number of countries including the UK, Australia, and Spain have modeled proprietary competition assessment toolkits on the OECD techniques and required each department within their respective governments to enact that system.

South Korea also requires each agency to address “Effect on Market Competition (Fair Competition)” as part of the regulatory impact analysis of a proposed regulation. As the competition policy agency in South Korea, the Fair Trade Commission performs strict competition assessment. This toolkit presents the competition assessment procedures, inter-agency role assignments, and assessment methodology for promoting efficient competition assessment.

2. Procedures for Competition Assessment

In principle, competition assessment shall be applied to all classes of rules and regulations proposed by the central or local governments, as well as by non-governmental regulatory agencies and/or self-regulatory bodies. As a result, all new or existing regulations requiring regulatory analysis reports must undergo competition assessment by the Fair Trade Commission.

This toolkit provides procedures and methodology helpful for the efficient and consistent completion of competition assessment. Since every regulation has a unique impact on competition, each competition assessment must be performed at a level proportionate to the severity of the effect on competition. This permits limited resources to be applied to in-depth analysis and a diligent search for alternatives where they can have the greatest benefit.

This toolkit follows the two-stage assessment procedure proposed by OECD. The first stage is an initial check to determine if a regulation may entail a negative impact on competition and to determine if the next stage of in-depth assessment is warranted. The preliminary assessment is performed through a checklist of questions from the four areas that were suggested by OECD. These questions center on whether a regulation has a negative impact on entry of competitors, overall competitiveness, introduction of competition, and consumer choice. If any one of these is judged to be negatively affected, the regulation in question should undergo in-depth assessment. This preliminary assessment procedure is aimed at winnowing out those regulatory efforts containing little or no impact on competition, thereby reducing the number of regulations placed under the in-depth assessment. This would be a significant advantage since government departments and regulatory agencies routinely propose a considerable number of regulations.

This preliminary assessment does not require data analysis or in-depth logical examination. Nor does it seek to specify any negative impact on competition. The existence of a particular negative impact will be closely investigated as part of the in-depth analysis. The preliminary assessment simply asks if there is a possibility or a likelihood of a negative impact on competition.

For the in-depth assessment, no single methodology or procedure is universally preferred. Since every regulation is unique in its character and impact, presenting one canonical methodology applicable to all bills is not simply challenging, it is undesirable. Depending on the issue in question, the appropriate data or analysis technique differs. Thus, providing assessment personnel with a reasonable level of discretion is advisable. Nonetheless, setting guidelines for assessment methodology and procedures remains meaningful in order to ensure that the assessments do not suffer any degradation of consistency depending on the knowledge and will of competition assessment personnel.

To ensure efficient in-depth assessment, a variety of analytical instruments need to be applied to logically predict the impact of a regulation. The ability to search out issues that may arise from a regulation is required, as well as skill at collecting and analyzing useful data in the most appropriate manner possible. To develop such abilities, practitioners should analyze a number of examples on their own to accumulate experience and request assistance from related experts or researchers from professional research institutes as needed.

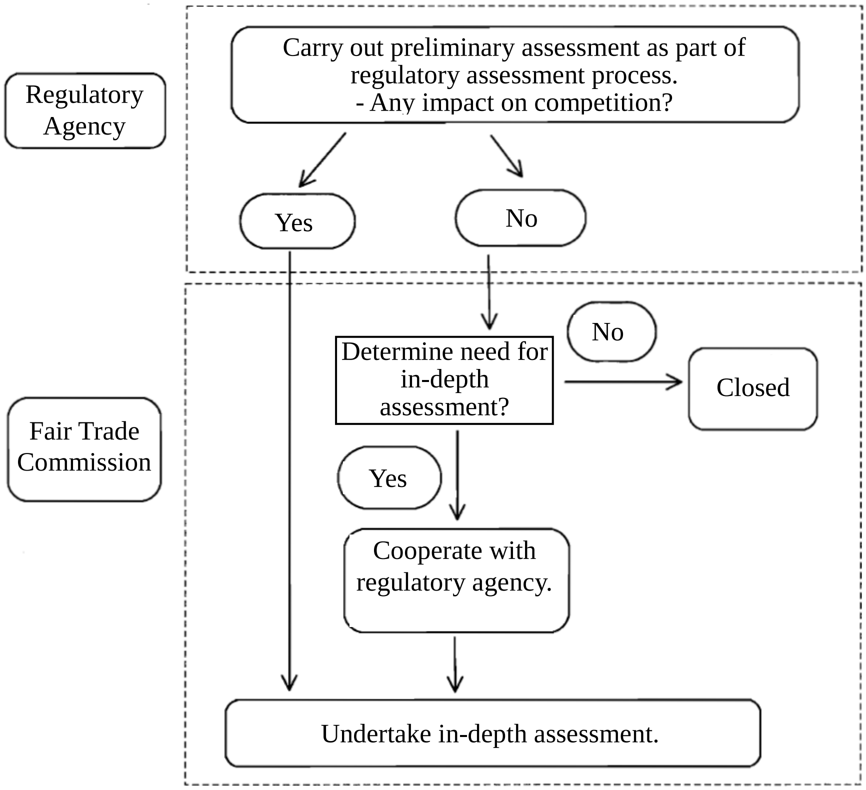
It is necessary to define precisely who shall be responsible for competition analysis. In the majority of developed economies, an agency that proposes a regulation is either compelled to carry out such analysis as part of the regulatory analysis processes or is considered the first choice to do so. Nonetheless, an agency tasked with competition oversight frequently provides the proposing agency with expertise and advice related to the regulation, since the agency may lack experience or awareness relevant to competition assessment or the agencies involved may differ in depth of analysis or methodology. The proposing agency should lead the assessment. Given that it retains the most information on the regulation, it can best harmonize new and existing regulations. Also, the overall number of regulations to be assessed generally exceeds the capacity of a competition oversight agency. The former simply draws on the professional knowledge and competencies of the latter. In other words, the two agencies synergize their respective resources and competencies.

Under the present domestic system, "Impact on Market Competition (Fair Competition)" is included as an item on the regulatory analysis report and the proposing department is obliged to complete this section. Likewise, all regulations undergo competitive analysis by the Fair Trade Commission. Note, however, that most of the competitive analyses performed by a proposing agency over the course of preparing a regulatory impact analysis tend to give little weight to the analysis results and thus fall considerably short of the level of assessment required in developed economies or suggested by OECD. This means that the bulk of meaningful assessment is essentially performed by the Fair Trade Commission. In the long run, both the regulatory agency and the Fair Trade Commission should ideally divide their roles to allow the former to carry out the competition assessment, as is done in developed economies, while the latter selects which bills most seriously impact competition and provides advice and assistance to the regulatory agency. However, most regulatory agencies lack sufficient experience and awareness of competition assessment. Thus, it is recommended that the Fair Trade Commission lead the assessment process for the time being, with regulatory agencies expanding their roles gradually over time.

To this end, this toolkit suggests that the agency proposing regulation be responsible for the first of the two preliminary assessment stages, i.e., the preliminary assessment proposed by this toolkit as part of the process of preparing the "Impact on Market Competition." The proposing agency should answer each question of the preliminary assessment either positively or negatively and concisely specify the rationale.

In addition, the Fair Trade Commission should ideally be responsible for the in-depth assessment performed at the second stage. The result of the preliminary assessment performed by the regulatory proposal agency should be sent to the Fair Trade Commission. The Commission would then in turn review the results of the preliminary assessment and determine if assessment should proceed in greater depth, even if no in-depth assessment was deemed necessary by the proposing agency. In the meantime, the regulatory agency and Fair Trade Commission should cooperate in the seamless exchange of assistance and opinions.

<Competition Assessment Procedures>



II. Preliminary Assessment

1. Overview of Preliminary Assessment

The preliminary assessment is the process of determining whether a regulation will result in any negative impact on competition. This process requires neither close analysis nor data analysis. It can be considered the process of identifying those regulations requiring in-depth competition analysis. The preliminary assessment is made up of a checklist containing the following questions (for each question, detailed sub-questions are provided):

1. Does the regulation limit the number or the range of the suppliers?
2. Does the regulation limit the ability of suppliers to compete?
3. Does the regulation block the introduction of positive competition by a supplier?
4. Does the regulation limit the ability of a consumer to choose or change suppliers or limit the information available to consumers?

The person in charge of the preliminary assessment shall respond positively or negatively to each of the four questions above. That person is recommended to provide the grounds for their opinion. A brief explanation will suffice. Any information or opinions offered by the proposing agency may be a boon to the efficiency of any in-depth assessment that may follow. If the answer to a question remains unclear, detailing the source of the uncertainty and requesting assistance from the competition oversight agency and/or a specialist are recommended. The following will more concretely present and explain the sub-questions supporting these four questions:

A proposed regulation may touch on several of these questions. Conversely, the checklist does not cover every possible impact of a bill on competition and in practice a regulation may affect competition for reasons other than those specified by the checklist. In this case, the person in charge of the preliminary assessment shall explain the related reasons and causes.

Preliminary Assessment Checklist

1. Does the regulation limit the number or the range of the suppliers?

- Are any exclusive rights given to a specific company to provide products or services, or does the regulation give rise to or reinforce any such exclusive rights?
- Is there any type of quota which may limit the number of suppliers?
- Is any license or authorization procedure introduced, or are existing business conditions intensified?
- Does it limit the capacity of a specific type of supplier to provide products or services?
- Does it excessively increase the cost of entry or exit?

2. Does the regulation limit the ability of suppliers to compete?

- Does it regulate or significantly affect the price of a product or service?
- Does it limit the freedom to sell a product or service?
- Does it limit the freedom to advertise a product or service?
- Does it set a product quality standard that gives preference to specific suppliers over others or that exceed the level satisfactory to

many well-informed consumers?

- Does it notably increase the production costs of specific suppliers over that of others?

3. Does the regulation block the introduction of positive competition by a supplier?

- Does it establish a new self-regulatory or self-regulatory system?
- Does it demand or promote the exchange or revelation of information on yield, pricing, revenue, or costs of a supplier?
- Does it exempt specific industries or suppliers from competition law?

4. Does the regulation limit the ability of a consumer to choose or change suppliers or limit the information available to the consumer?

- Does it restrict the consumer's ability to select or change suppliers?
- Does it restrict the supply of appropriate and useful information to the consumer?

2. Restriction of the Number or the Range of Suppliers

This question is designed to ascertain if a newly proposed regulation will affect the ability of a new competitor to enter the market or result in the expulsion of existing companies. The more suppliers are present in a market, the more active competition becomes. Therefore, the majority of regulations that limit the number of suppliers, either directly or indirectly, tend to affect competition. For doing so, they should undergo in-depth assessment. If few suppliers participate in a market, a particular supplier will secure demand with greater ease and experience less pressure from competition; eventually, this can increase market power (the extent to which a company can raise prices or reduce costs beyond what they could do in a perfectly competitive market) over the end user. In addition, if the number of suppliers is low, it facilitates tacit coordination or communication of principle strategies over costs and other key aspects of their business, thus increasing their likelihood of escaping competition.

The question here is not simply how many suppliers will participate in a market, but also whether there are any obstacles to the range or field of business of existing suppliers.

Regulations may limit entries in two general ways: one is the establishment of a system that directly limits the number of companies or selects or limits specific companies. The other does not directly limit market entry by specific suppliers but rather imposes excessive charges or obligations for market entry, which then results in indirect disruption or expulsion of suppliers.

The following are the detailed questions related to limiting the range of companies:

- Are any exclusive rights given to a specific company to provide products or services, or does the regulation give rise to or reinforce any such exclusive right?
- Is there any quota that limits the number of suppliers?
- Is any license or authorization procedure introduced, or are existing business conditions intensified?
- Does it limit the capacity of a specific type of suppliers to supply products or services?
- Does it excessively increase the cost of entry or exit?

Are any exclusive rights given to a specific company to provide products or services, or does the regulation give rise to or reinforce any such exclusive right?

The government often grants to specific suppliers the exclusive right of supply of specific goods or services, such as mining rights or licenses to operate expressway service areas. This frequently occurs when converting public monopolies into private monopolies by privatizing a public enterprise. If this privatization does not allow new competitors to enter the market, the new private entity will possess an exclusive right.

The same phenomenon occurs during the distribution of the right to utilize broadcast frequencies. The government generally permits a specific company the exclusive use of a particular frequency band. Another example is the granting of an exclusive right to use state-owned lands. Furthermore, the patent system can be considered to represent the bestowal of an artificial monopoly.

Most of these monopoly-granting incidences have reasonable grounds. For mining, if multiple companies are allowed mining rights in a limited area, the resource may be rapidly depleted. With regard to frequencies, if a specific band is shared, then none may use it efficiently due to mutual interference. The patent system was introduced to support the incentive for innovation.

Nonetheless, a company will achieve monopoly status if it is granted an exclusive right. A regulated private monopoly generally raises prices in order to maximize its exclusive interest and has little incentive to offer economies or increase quality and selection. The nature and degree of the negative impact on competition will vary on a case-to-case basis. In addition, it may or may not be a simple matter to design a method to achieve the original target while mitigating this negative impact. This establishes the basis for in-depth assessment.

Not only regulations that grant a new exclusive right but also those that expand or fortifies existing exclusive rights shall be subject to assessment. One example would be the granting or extending of an exclusive right to an existing company without additional open competition by the time the right is due. Extending an exclusive right in one area (either material or geographical) to another area would be another example.

Is there any type of quota which may limit the number of suppliers?

At times the government determines in advance the number of suppliers in a particular market. Members of certain professions such as doctors or lawyers are certified by the government and the total number of suppliers of these services is set based upon this licensing. Limiting the number of students at colleges of medicine or law yields the same effect by predetermining the number of such professionals. The government may limit the number of pharmacies by region or per 100,000 people. It may also determine the allowed number of taxis in a city and adjust that number depending on traffic conditions or driver income.

A number of valid reasons may exist for limiting the number of suppliers in a field. In the case of professionals, it is done to sustain the suppliers' capacity and service quality at a high level. If there is a surplus of suppliers, quality will decline and illegal transactions may arise in response to reduced profitability.

Limits on participating suppliers are often placed not by the government but by a business association; on occasion this regulatory right is consigned to a group by the government. The number of professional sports franchises is controlled by the existing teams. Although not granted direct control, professional groups such as the Korean Bar Association or Korean Medical Association enjoy great influence on determining the number of students granted entry to law schools or colleges of medicine.

Predetermining a group of suppliers is often considered reasonable, but clearly it systematically controls the entry of a new supplier. Although there may be a number of existing companies in competition with one another to a certain extent, that competition may be dampened by lessening the competition pressure arising from the entry of new competitors.

Therefore, a need exists under special circumstances to define the ultimate goal of limiting the number of suppliers and ascertain if that is the only available means of achieving the goal in question. Alternatives with fewer side effects on competition should be explored.

Is any license or authorization procedure introduced, or are existing business conditions intensified?

The two questions already discussed correspond to cases of predetermining a number of suppliers; in contrast, this question relates to cases where conditions and procedures affect the entry of new suppliers to the market even though no limit was set in advance. Some suppliers may be undergoing training to be doctors or lawyers, whereas others may require approval by the government to enter the telecommunications or broadcasting industries. Some may not be allowed to enter a market until their factories or other facilities satisfy a range of safety standards. Most licensing-style entry control systems are appropriate examples. A change from a report or registration system to a licensing system means that entry conditions have become stricter and there is a higher likelihood of limitations being placed on the number of suppliers.

※ Example: Waste Reclamation Business

A new regulation was introduced designed to integrate the interim waste treatment business (focused on recycling) into the waste reclamation business. These had previously operated separately under a licensing system and a report system, respectively. In sum, this bill was aimed at strengthening entry control by including the currently reporting waste reclamation specialists in with the waste treatment license holders and requiring them to pass through a prior business plan review process and comply with facilities and equipment standards and corresponding regulations. From the point of view of promoting competition, it is undesirable to place two types of companies under different levels of regulations even though they are essentially operating within the same field of business and engaging in competition with one another. Therefore, applying an identical level of regulation is reasonable. In this case, however, the two businesses are to be integrated under the stricter of the two sets of regulations. If such a measure were taken out of a need for integrated control to allow systematic recycling oversight, then it is an expression of administrative opportunism. If regulating cement reclamation companies more strictly is unavoidable due to environmental concerns, however, then the new stricter regulation should be selectively applied only to those markets where a licensing system can be introduced. Generally speaking, introducing a more flexible regulation is desirable when integrating two similar fields unless there are special reasons; stricter regulation may be selectively applied to those sectors where a reason to do so is manifest.

Telecommunications or broadcasting licenses create conditions similar to the case of presetting a number of suppliers. In other words, to support the efficient use of limited electromagnetic frequency resources, the number of suppliers must be controlled. Even if a sufficient number of suppliers are allowed in the market, a potential supplier must still meet governmental requirements; on occasion only the most efficient or socially desirable among the applicants may be selected as a new supplier. The government approval or authorization required in the above example may be related to quality control. At times, whether or not a manufacturing applicant has appropriate environmental controls or even simple feasibility is the criterion for judgment. If this approval or authorization process is imposed injudiciously in the face of seemingly reasonable backgrounds, market competition will be weakened. The impact may be as far-reaching as social welfare since fewer suppliers would be attracted.

Does it limit the capacity of a specific type of supplier to provide products or services?

This question addresses whether a specific business will be discriminated against by the control of market entry and/or range of business. Procurement procedures by local governments such as construction contracts are often open exclusively to local companies. Professional occupations often require specific academic backgrounds from applicants. Previous experience in a particular field of business is commonly a prerequisite or important criterion for awarding a contract. Government enterprise aid programs are usually available only to venture companies.

Some regulations discriminate against new participants and even against existing large-scale companies. Developed economies have at times prevented existing companies from making use of particular electromagnetic frequencies. Blocking large companies from entering specific markets in a variety of ways is a further example of this phenomenon.

At times a supplier of a product or service is prohibited from entering additional product or service markets. For example, both terrestrial broadcasting and cable broadcasting companies are forbidden cross-border operation or ownership.

※ Example: Local Construction Industry Protection System

The system for protecting local small and medium-sized construction companies through construction projects commissioned by public institutions including the central or local governments is divided into the Local Industry Exclusive Bidding System and the Obligatory Local Common Contract System. The former is allows only local companies to participate in construction projects in their region, whereas the latter allows only consortiums made up of local and extra-regional firms. This type of regulation erodes competition and protects the grandfather rights of a handful of local companies. Over the long run, it weakens local companies' competitiveness, contradicting the original policy goal.

Some countries operate similar limited competitive bidding systems for small-scale construction projects, but few maintain this local protection system. The United States runs a system wherein a fixed portion of total procurement is assigned to small and medium sized enterprises including a "Set-Aside" system wherein bidding for a comparatively small amount of contracts is open only to small and medium-sized enterprises. Japan has a different system through which assigning a predetermined fraction of a total procurement amount to small and medium enterprises is recommended. Germany bans any special privilege for local companies under their own rules. Through their program, Germany protects special privileges to small and medium enterprises but rejects any regional discrimination.

Does it excessively increase the cost of entry or exit?

Approval or certification may not be required for entry, but some form of entrance levy is often requested. A new team entering a professional sports league must pay a franchise fee determined by the association. This is a form of self-regulation, but existing teams are entitled to do so. In some cases, a given amount of capital is requested in lieu of an entrance fee. A set level of capital is a prerequisite for establishing universities or venture capital firms. Regulations on securing a specific amount of capital or depositing a portion of that capital in banking organs do not induce direct expenditures such as entrance fees, but do actually increase the entry costs for small-scale companies which may suffer from underfunding.

※ Example: Firefighting Facilities Construction

For anyone wishing to register a firefighting facilities construction enterprise, the provision to banking organs of more than 30% of the legal capital required or a Fire Guarantee as collateral or as a deposit (or investment) of cash was proposed. This regulation was a reaction to the growing number of companies becoming insolvent by expending their capital after registration. By requiring the deposit of a portion of their legal capital, this bill was designed to stem the influx of poorly- or un-qualified companies and ensure sincere efforts on the part of firms. Electrical facilities, IT and general construction fields all demand the deposit or investment of part of a firm's legal capital in banking organs or business groups. This prerequisite may block the entry of small companies and protect the grandfather rights of existing companies. Stricter monitoring and harsher punishment for substandard construction would be more effective means than establishing capital to achieve the policy goal of preventing an influx of poor or disqualified companies and ensure sincerity.

※ Example: Prerequisites for Establishing a University

Anyone wishing to obtain authority to found a university must receive approval from the College Establishment Review Committee. The minimum capital for an educational institution is set at KRW 10 billion for universities, KRW 7 billion for colleges, and KRW 4 billion for graduate schools. Any regulation which mandates raising these minimum capital requirements should be scrutinized to determine if it is truly effective in preventing the entry of subpar universities or if it may actually create an excessive barrier to entry.

If the costs for new suppliers increase considerably due to the introduction of a regulation, their entry may be restricted and a great number of smaller organizations may additionally be expelled from the market. Consequently, the number of suppliers may decrease. For example, if a new regulation were to mandate the introduction of expensive new facilities to reduce the emission of contaminants, an enormous burden would be imposed on small companies and could lead to their departure from the market.

3. Restriction of Supplier Competitiveness

Suppliers compete in different areas including price, quality, and selection, all in an environment of limited demand. Any regulation may limit an aspect of their ability to compete, such as their capacity to capture market share from competitors.

This question is discriminated from the one above in that the former refers to the market structure, i.e., number and range of market participants, whereas this one investigates whether a particular regulation prevents suppliers from freely taking advantage of the competitive means at their disposal, despite there being no changes to the market structure. More specifically, the following questions shall be used to determine if a regulation gives rise to one of these issues:

- Does it regulate or significantly affect the price of a product or service?
- Does it limit the freedom to sell a product or service?
- Does it limit the freedom to advertise a product or service?
- Does it set a standard for product quality that gives preference to specific suppliers over others or that exceeds the level satisfactory to many well-informed consumers?
- Does it notably increase the production costs of specific suppliers over those of others?

Does it regulate or significantly affect the price of a product or service?

This question deals with whether a regulation restricts the capacity of one or all suppliers to freely set their prices or if it strengthens a previous regulation that does so.

The principle arena of competition is price. Price controls by the government typically restrict the capacity of one or all suppliers to compete with rivals. In the case of electricity monopolies, the government can control the price to restrict any monopolistic abuses. At times, the government controls prices when it judges one dominating company to be excessively controlling the market despite the introduction of competition. Telecommunications and broadcasting are examples of such cases.

If a regulation restricts the ability to reduce costs, it will naturally have a negative impact on competition. Restricting the freedom to set prices may also be a problem. Mandating that a single price be applied nationwide to mail or electricity also effects the capacity to respond to competitors.

The price ceiling system, which prevents a price from rising above a certain level, may adversely affect competition as well. As an example, this system is currently applied to medicines. If a price is reduced, the ceiling follows. This complicates price recovery, making suppliers reluctant to cut prices. It may also spark collusion between suppliers since they commonly regard a ceiling to be the reasonable price for a good or service.

There are a number of items such as cigarettes, medicines, and books whose retail prices are determined by the manufacturers or the government, thus restricting retailers' ability to set prices. In the case of books, the discount rate of Internet sales is limited. In the case of telecommunications, service bundling is often controlled.

Does it limit the freedom to sell a product or service?

Along with price, suppliers make many decisions which can be controlled. Numerous examples can be found of restricting the production or sales volume of an individual company, the sales of specific products, or the manner of selling products. In certain circumstances, hours of operation or the frequency or period of discounted sales are controlled. Cigarettes may be retailed by authorized outlets only, and medicines are dispensed exclusively by approved pharmacies.

Does it limit the freedom to advertise a product or service?

Advertisement and promotional activities are an important aspect of introducing new companies or products to consumers. In particular, in order to introduce their products to consumers, advertisement is essential to efficient companies selling products at a lower cost or with exceptional quality. These activities are socially desirable.

Generally speaking, the more information a consumer has available, the fiercer competition becomes. Since a consumer will without fail select a product with a lower price and higher quality, suppliers naturally engage in active competition over price and quality.

However, a good deal of regulation is dedicated to advertising and promotion. In many nations, cigarettes and alcohol may not be advertised; ditto for prescription medicines in order to prevent unqualified consumers from using them improperly. Hospitals, doctors, and lawyers are all restricted from advertising their services, including offering inducements to consumers. They are allowed to advertise under certain conditions, but only after a review by independent entities to prevent any mistaken, exaggerated, or false advertisements. A ban or restriction on advertisement may also be self-imposed. Some professional groups such as lawyer’s associations have forbidden advertising through joint resolution. Restriction on advertisement, be it via self-regulation or the by government, can contribute to providing more accurate information to consumers.

However, the actual target of these limits is often reducing the opportunities for new entrants to advertise in order to protect the grandfather rights of existing suppliers and restrict competition. Advertisement has both positive and negative effects; hence the need to ascertain the impact of specific regulations on advertisement on a case-by-case basis.

※ Example: Self-regulation on the Content of an Advertisement

Recently, an association of private educational institutes established the “Private Institute Advertising Self-regulation” effort to prevent inappropriate advertising in the private educational industry. It requested authority from the government for approval. This regulation bans blanket advertising expressions such as “48 students from X Institute passed the entrance exam of XX University in 2008,” requiring a detailed addendum such as “Based on those who passed the entrance exam from among students who received at least one course at our institute for more than one month over the preceding three years.” In this example, the regulation has a positive impact in terms of providing more accurate information to the consumer and reducing the probability of allowing tacit collusion. Conversely, banning announcements such as the number of students who passed or lesson fees could easily restrict competition.

Does it set a product quality standard that gives preference to specific suppliers over others or that exceeds the level satisfactory to many well-informed consumers?

Product quality of can be regarded as an overarching concept that includes a variety of features such as function, design, convenience, safety, and amount of emissions. A new medicine is required to be examined strictly for safety and efficacy. Also for safety, some vehicles are obliged by law to be equipped with airbags. Strict regulation is in place on the chemical contents of mineral water, groceries, and cookies for both safety and health. The contents of broadcasts and newspapers are perpetually monitored and supervised.

Every country enforces a great number of exacting regulations on product quality. These contribute significantly to national health, safety, environmental protection, and ethics. It should be noted, however, that the issue at hand is not the regulation itself but its potential to unnecessarily restrict competition. Consumer welfare is proportional to level of quality, with competition and price weakening and rising, respectively, apace with improving quality. This may in turn adversely affect consumer welfare. For example, requiring small vehicles to be equipped with airbags will enhance safety but increase the vehicle cost; thus eventually compromising consumer's welfare.

An excessive quality standard may threaten the lifeline of smaller companies. If enormous facility investment is necessary to meet stricter environmental standards, those smaller companies unable to do so may be expelled from the market and competition may be weakened as a result. Forcing the provision of meals on flights could extinguish the low-priced airline market and reduce diversity in terms of both quality and price. Some consumers who prefer cheaper, lower-quality products will suffer due to the lack of selections.

Whenever harmful materials are found in a specific consumer item, the corresponding regulations tend to be tightened due to the resulting public and political pressure. In such cases, there is a need to analyze how the stricter regulation affects competition and explore alternatives which minimize the unintended effect on competition.

※ Example: Talc in Cosmetics

The detection of asbestos in certain baby powder products made from talc triggered a sweeping public outcry; in fact, questions were raised regarding the safety of talc cosmetics. As a result, a regulation was proposed to lower the allowable level of talc to one stricter than that of other developed economies. This is an example of raising a quality standard beyond reasonable boundaries due to a public overreaction to a safety issue. The concern was the asbestos present in talc, but other contents such as iron and lead were not excluded from the heightened standards. The stricter regulations will doubtlessly give rise to cost increases in cosmetic production and considerably weaken the competitiveness of smaller companies, thereby diminishing competition in the market. Since asbestos was at the root of the trouble, adding a simple condition of zero allowable detectable asbestos would have sufficed. In short, to minimize the risk that excessive regulation will restrict competition it is recommended to narrow the scope of the regulation to exclusively the source of the issue.

Does it notably increase the production costs of specific suppliers over those of others?

If a regulation increases a company's costs, that company's competitiveness will be restrained. In the case of a discriminatory regulation on new participants in the market, it will cause difficulty for a new supplier in wielding effective competition pressure on existing suppliers after its entry, even though the regulation does not go so far as blocking new entries.

One recurring issue is grandfather clauses. These force a new regulation to be applied to new entries while its execution is waived or postponed for existing ones. Assigning airport gates to airlines takes into consideration the grandfather rights of existing companies. Installing sprinklers is required in new buildings only. Most environmental regulations are applied only to new entries, or a grace period is granted to existing participants.

A grandfather clause may have a solid foundation in reason. If a new regulation were applied to all existing companies, they may have to replace existing facilities with new ones, which may excessively increase their costs. A new entry may be less significantly affected by this strengthened regulation since it must already invest in fresh facilities. Nonetheless, a grandfather clause gives rise to cost imbalances between existing and new market participants, which in turn may weaken competition and block market entry. It can also delay facilities renewal or investment by existing companies. To establish reasonable grandfather advocacy, there is a need to compare the impact on competition with the cost increases arising from a proposed regulation.

※ Example: Postpartum Care Centers

Since incidents such as the Gosibang Fire (a catastrophic fire in a low-cost housing complex) emerged as major social issues, the demand for stricter safety controls has increased. As part of this movement, a regulation requiring that new postpartum care centers be installed on or below the second floor of buildings was proposed. Existing centers located above the second floor will not be affected by this new regulation. Typically, rental fees are inversely proportional to floor level; thus, such a regulation would increase the entrance costs of new participants and apply a grandfather clause to existing centers. In the end, it can be considered to reduce the business range, increase the costs, and weaken the competitiveness of new entrants in a discriminatory fashion.

※ Example: General Hospitals

With hospitals now allowed to pursue international patients, a regulation preventing high-end general hospitals from filling more than 5% of their beds with international patients was proposed. This regulation would limit the business field of large-scale, high-end general hospitals in a discriminatory fashion because general clinics were exempted. This unfair regulation may trigger distorted competition in the medical service market for international patients. This example is a typical case of large-scale companies being discriminated against in favor of new or small-scale companies.

4. Weakening Suppliers' Incentive to Compete

This question is designed to determine if a regulation weakens the incentive to engage in competition even though it does not restrict the ability to do so. Energetic competition in various fields such as price, supply, quality, variety and innovation improves consumer and social well-being. If the will to compete is weakened, prices increase and diversity and innovation may not be maximized. The incentive to compete is weakened when suppliers engage in manifest or tacit agreements to avoid competition or when a dominating company strengthens its market power to the point where it is able to prevent competition. There is a need to determine if a proposed regulation raises the possibility of the preceding concerns. Specifically, the following questions may be raised:

- Does it establish a new self- or co–regulation system?
- Does it demand or promote the exchange or revelation of information on yield, pricing, revenue, or costs of a supplier?
- Does it exempt specific industries or suppliers from competition law?

Does it establish a new self- or co–regulation system?

Self-regulation means that suppliers in the same field regulate their own activities free from government interference; co-regulation indicates that they are under the direct or indirect control of the government.

Rival suppliers often collectively operate a variety of professional groups, including business associations. These organizations usually establish rules that should be observed by members and then monitor their activities. A business association has distinct advantages in terms of upgrading efficiency. They are often able to achieve standardization, reduce overall costs through joint purchasing, or reduce distribution costs by operating shared distribution networks. They can also improve productivity by circulating information on market conditions or new technologies.

Of course, self-regulation may become a cause for concern when it weakens competition among members. Specifically, it may prevent individual price discounting and control new entry. In short, such self-regulation can be beneficial to members but harmful to consumers.

In view of the efficiency of self-regulation in terms of market function and convenient control of industry, the government may recognize and grant authority to self-regulating organizations but should simultaneously examine if the rules or regulations they enact will restrict competition.

Does it demand or promote the exchange or revelation of information on yield, pricing, revenue, or costs of a supplier?

If rival companies share too much information, it may encourage collusion. For example, if refining or petrochemical companies make their prices public, competition may be promoted. When a company cuts its prices, however, then others will rapidly follow suit since they can easily gain access to their competitor’s pricing policy. In such a situation, the first company will be unable to profit from its discounting and will become more reluctant to do so in the future.

Although a regulating agency is unable to artificially block competitors' exchange of information, controlling it at least until procedures can be established through a business association established for the purpose of information exchange should be a matter of course. Clearly, such exchanges improve efficiency.

If the government or self-regulating institutes determine and broadcast a specific price or business method as a standard procedure, it may also hinder efficient decision making or reduce incentives for competition. Some professional groups dealing with legal or medical services establish best practice regulations or rules for their members.

※ Example: Sharing Information between Competitors

In 1993, rival agencies in Denmark decided to collect and publish the cross-company trade prices of different classes of ready-mixed concrete. Within a year of the broadcasting of these data, the prices of the two classes of products had increased by 15-20%. The price revelation promoted collusion and increased prices. The Anesthetist Union in the State of Goiás, Brazil distributed a price list for anesthetic treatment services to all anesthetists in that state. The Brazilian Competition Council found them guilty of price adjustment. The American Medical Association has consistently argued that physicians are entitled to compare reimbursement rate data from medical insurance as a group. There are concerns over this measure likely allowing these physicians to control their medical fees.

Three companies -Orange France, SFR, and Bouygues Telecom- were slapped with a stiff penalty for sharing strategic information on membership subscriptions and withdrawals by the French Competition Council (Conseil de la Concurrence). The council cited that this behavior had distorted competition by reducing uncertainty regarding the strategy of rivals and eroded each individual company’s commercial independence [Source: OECD Competition Assessment Toolkit].

Does it exempt specific industries or suppliers from competition law?

In order to promote competition, the competition law, i.e., the Fair Trade Law, forbids a variety of anti-competitive acts. Therefore, a specific regulation must have a clear and justifiable reason for excluding particular markets from this act. In other countries, dockworkers unions, cooperatives, the insurance industry, and/or the transportation industry have been exempted from competition laws or on occasion granted special privileges. However, most of these occurrences were subject to criticism for promoting anti-competitive practices by weakening competition and increasing prices.

The governmental agencies in charge of promoting and regulating particular industries control aspects of competition through regulation. However, areas or activities other than those specified in those regulations should be governed by general competition law.

5. Limiting Consumer Choice and Information

The questions up to this point have examined if a specific regulation harms competition between suppliers. In this section, it is to be determined if a specific regulation impacts competition from the perspective of the consumer. When a consumer is able to freely select the most desirable product or service, competition will operate efficiently. Therefore, there is a need to ascertain if a regulation restricts a consumer's ability to choose suppliers or access required information.

- Does it restrict the consumer's ability to select or change suppliers?
- Does it supply appropriate and useful information to the consumer?

Does it restrict the consumer's ability to select or change suppliers?

More often than not, limits are placed on a consumer's ability to change products or suppliers. A supplier is allowed to demand a long-term contract that forbids a consumer to shift to a competitor for a given period. This occurs when consumers are unable to refuse the supplier's request for a long-term contract due to the supplier's substantial market power. In particular, if a monopolistic supplier is able to foresee the entry of a new competitor to the market, it will make use of this type of contract to protect its monopoly status and mitigate competition.

Switching costs often exist which restrict the ability or introduction of consumers changing suppliers, even though products or suppliers are allowed to be switched. Without being permitted to retain their accustomed telephone number, for example, a consumer would feel reluctant to switch phone providers. Banning mobile telephone service companies from providing the consumer with end-of-contract subsidies as per one regulation also incurs costs for the consumer in switching service providers. In different countries where competition has been introduced in the electricity market, many systems exist to discourage consumers from switching service companies, e.g., allowing switching only in certain months or providing them with loyalty rebates to reduce the number of switching consumers.

Does it restrict the supply of appropriate and useful information to the consumer?

Under normal conditions, competition can be invigorated only when a consumer is aware of a supplier and the price and quality it has to offer. If elements prevent essential information from being provided to the consumer, efforts should be made to eliminate or minimize those conditions. One good example of this is when the Korea National Oil Corporation announces the prices of petrochemical products being sold by domestic gas stations.

A regulation controlling the advertising or promotional efforts of a supplier may restrict the information available to a consumer. Any ban on comparison or unverifiable advertising may restrict competition by limiting the information provided to the consumer, even though it may be aimed at preventing such negative effects as misunderstandings or falsification.

III. In-depth Assessment

1. Overview of and Procedures for In-depth Assessment

In-depth assessment as the second stage of competition assessment serves the following purposes:

First, it examines in detail exactly what impact a regulation would have on competition
Second, it seeks alternatives which not only achieve the policy objective of the bill but also minimize any unintended effects.

This toolkit proposes the following five-stage analysis procedure for in-depth assessment:

1. Understand the regulation
2. Define the relevant market
3. Examine the status of the relevant market
4. Analyze the overall impact on competition
5. Present alternatives

Generally speaking, there is no one single method that perfectly suits the competition assessment needs of every regulation. The ideal assessment and analysis methods vary case by case.

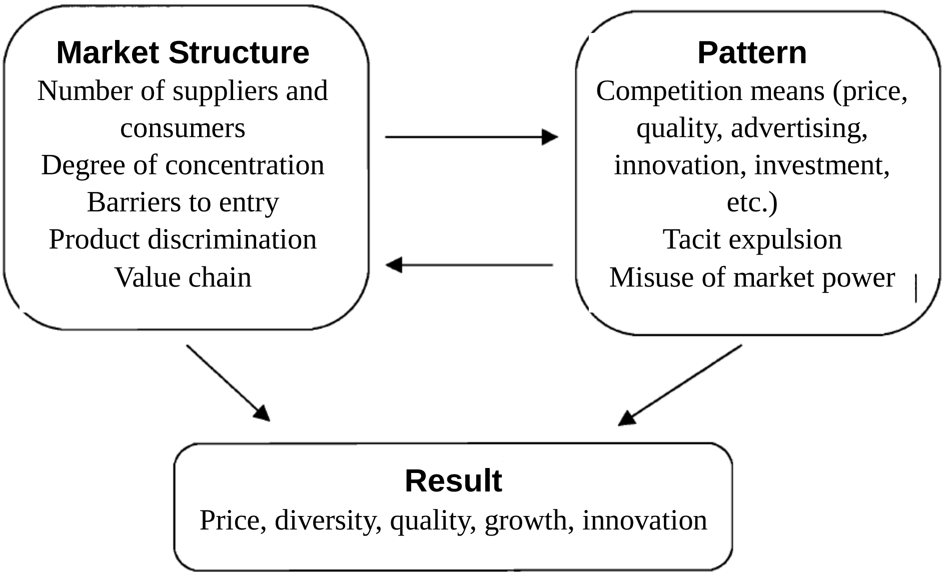
A five-stage procedure is proposed to ensure consistent assessment which will be expanded and improved as competition assessment experience continues to be accumulated.

Depending on the characteristics of a particular regulation, the analysis at each stage may differ; certain stages may be bypassed or additional ones introduced. Meanwhile, an in-depth analysis shall be performed proportionate to the gravity of each case. The competition assessment of regulations is an essential part of regulatory impact analysis, but dedicating disproportionate resources to regulations of little impact is not recommended. Causing delayed competition assessment to obstruct a regulation that should be introduced expeditiously is another pitfall, since assessment resources should be allocated appropriately to the situation. Therefore, the value of customizing the level of analysis based on the importance and impact of a regulation becomes evident. The level of analysis merited shall be consistently and reasonably determined through extensive future experience.

To come to a full understanding of how a specific regulatory proposal affects competition, it must be made clear how the competitive mechanisms in the relevant market are operating and which elements would be affected by the regulation. Based on such understanding, a logical analysis of how a regulation would affect both those patterns and the result of competition can be performed.

For the purposes of the analysis described above, a basic framework for understanding a market or industry will generally be required. The “Structure-Pattern-Result” analysis framework that is conventionally used for the competition analysis of a market is a key model. The basic framework of competition assessment is illustrated in the following figure:

<Structure-Pattern-Result Analysis Framework>



Awareness of market structure illuminates the current form of the market. Pattern describes the patterns of competition between participants, particularly suppliers. Market structure affects pattern. For example, the fewer the competitors there are in the market, the lower their responsiveness to price competition tends to be. On the other hand, pattern reciprocally affects structure. If a supplier sets a low price or enhances the loyalty of consumers to block new entry, new entry will be restricted over the long run.

Once the structure and pattern are fixed, the various index levels for measuring the market result can be identified as well, thus enabling measurement of the result of competition. The competition assessment of a regulation is the process of determining how it will affect the market, both directly and indirectly, and whether or not the market result and policy objective will eventually be achieved to a given extent. This analysis may be utilized to uncover any potential issue with a proposed regulation and seek an alternative in order to minimize that concern. The following is a description of the analysis procedure at each stage.

2. Step-by-step Analysis Method

(1) Understanding the Regulation

The competition assessment of a regulation begins from understanding the contents of that specific regulation. All the details must be fully grasped, including what distinguishes it from the previous regulatory systems.

Making the policy objective of the regulation specific and clear is crucial. This is essential because the competition assessment is not limited to simply analyzing how the regulation affects competition, but goes further in seeking alternatives that can achieve that target with the least possible impact on competition. Most existing regulations were introduced to resolve particular issues; hence the need to completely understand the essence of the issue in question. If the person in charge of the in-depth assessment is not thoroughly familiar with the issue, they should consult the originators of the regulation.

The goals of regulation are generally ensuring safety, promoting national health, pursuing environmental protection, maintaining standards of quality, enhancing enterprise competitiveness, protecting small-scale retailers, and promoting competition in the market; specifying the purpose to the fullest extent possible is recommended.

After clearly determining the objective target of a regulation, there is a need to resolve whether that target is socially justifiable. For example, if the objective is expected to harm consumers in order to increase the profits of small suppliers, it must be questioned if this is justified. Some regulations are proposed for administrative convenience or for governmental market control, both undesirable. If the person in charge of the in-depth assessment deems the target of a bill to be unjustified, consultation with the proposing agency is recommended to amend the target.

It must be understood why existing regulations are considered insufficient for addressing the issues in question or for achieving the policy goal. At the same time, it must be made clear why the new bill is considered more efficient for these purposes. This process is designed to assist in understanding the logical connection between the regulation and its policy objective, i.e., the conspicuous causal relationship between the two. This is to explain specifically how the new bill is expected to contribute to achieving the target. This causal relationship should be as accurate as possible. A good example would be to explain exactly why the particular requirements for a specific license are necessary for reaching the planned target and the detailed ways in which they contribute to the effort.

If a regulation adds little to the attainment of a target but entails a relatively large impact on competition, the introduction of the regulation is on the whole undesirable. After systematically analyzing the impact on competition, this impact should be compared with the value of its contribution to the target. How much nearer a regulation brings a policy objective should be measured quantitatively to the fullest degree possible.

※ Understanding the regulation

- ○ What are the detailed contents of the regulation? What would change compared to existing regulations?
- ○ What issue is raised by the bill, and what objective is it pursuing?
- ○ Is the target socially justifiable?
- ○ What are the problems with solving the issues raised or pursuing the target based on the existing regulations?
- ○ How and how much would the regulation contribute to achieving the target?

(2) Definition of Relevant Market

This is the process of identifying and describing the market that is either directly or indirectly affected by a regulation. Defining the relevant market is part of the process of determining the scale of the competition assessment to follow in the next step. Note, however, that defining the relevant market involves more than simply determining the scope of analysis. This is a fundamental task for understanding both the impact of the regulation as well as the logical causal relationship of that impact.

According to overarching competition policy, the determination of the regulatory acceptability of a merger or of the misuse of market power begins by defining the relevant market. Of course, competition assessment contains functions suiting the purposes of this competition policy beyond market definition.

For competition policy, the end role of market definition is to establish a specific company’s market power and whether a conglomerate would exercise greater market power after it is formed. However, market power is not the exclusive target of competition assessment. Any regulation may impact competition even in the absence of an imbalance of market power in favor of one company. For example, if an elevated quality standard increases costs for all companies, this cost increase will be passed on to end users even in highly competitive markets; the benefits of price competition will accordingly diminish, thereby affecting market outcome.

In terms of competition policy, the similarity or substitutability of products is important. At the same time, in the case of competition assessment, whether substituted goods affect the market for a product and how they affect both the upstream and downstream markets must be understood as well.

The market shall be defined within the geographical boundaries of products. A product’s market can be divided into the direct market and those which it indirectly affects. The methodology of the competition policy may be used to roughly define the directly affected market. It questions if demand will be significantly shifted to other products when an imaginary monopolistic company raises a price by a meaningful amount for a given period. If so, then both the product with the higher price and its alternatives are considered to share the same market. The convertibility of supplies can play an important role in decision making.

For competition policy, judging whether two products are in the same market is essential, but not so much so for competition assessment. Understanding why and how much each market of different products affects the other is more important.

Defining which market is indirectly affected is a process of identifying and clarifying the market related to the product in terms of supply and demand. Note that both are substitute or complementary goods. There is also a need to examine the upstream and downstream markets of the directly affected product, i.e., the entire supply chain of the market affected by the regulation.

Nevertheless, there is no need to enumerate every market or product that may be directly affected or deemed to be connected. Since this process defines the scope of analysis, the markets or products to be analyzed should be identified in relation to the proposed regulation. If a regulation is judged to have little or no potential to have an impact even though it is horizontally or vertically connected to a directly relevant market, then that market may be safely passed over. A detailed investigation of every relevant market may impose an excessive burden on the analysis.

(3) Understanding the Status of the Relevant Market

This process is aimed at illuminating the current status of the relevant markets included in the scope of analysis as determined in the previous stage. Here, available data are used to the greatest extent possible in order to organize and understand the directly affected markets.

There is no need to arrange or specify any market element bearing little or no relation to the competition assessment of proposed regulations. Instead, only those factors pertinent to the impact analysis should be sifted out from among the elements describing the current market status.

To understand the status of the market, data is typically used to detail it as much as possible. Note, however, that the effort does not stop after explaining only the quantifiable aspects; there is also a need to describe the patterns and features of the relevant market qualitatively. All market features that are expected to be affected by the discrepancy with other markets triggered by a regulation must be explored. Consequently, the aims and content of the competition assessment can be said to be defined comprehensively through this process. A close analysis is not required here; rather, this is the process of identifying the agenda and object to be addressed in the subsequent assessment.

Careful attention should be paid to the following two points when identifying the market elements to be cited in the assessment report:

First, while determining the market status, no market element should be excluded that would be significantly affected by the proposed regulation

Second, do not waste resources by specifying superfluous market elements.

The two points above may at times seem contradictory. In short, as many elements as possible should be described so as not to omit any critical point, although this may demand time and energy. Accordingly, the assessor's subjective decision-making, experience, and ability are all essential.

(4) Competition Effect Analysis

This is the process of analyzing the negative impacts and effects of proposed regulation on competition. Use of the “Structure-Pattern-Result” framework as described earlier is recommended.

First, which of the many elements related to market structure and pattern are directly affected by the regulation must be identified. In this case, the analysis should begin with those elements of competition described in the preliminary assessment. For example, if only certain businesses are required to be licensed, among the structural elements of the market it is the entry barrier which will be directly affected. Self-regulation that promotes the exchange or broadcast of pricing information will lead to competitors jointly adjusting their prices; thus it would affect price-setting patterns.

After revealing the elements directly affected by the regulation, how the structure and the pattern affect one another must be explored. For example, if an entry barrier is formed as a new structural element, the competition pattern of competitors may change as a result. Furthermore, a company with substantial market power will likely attempt to limit competition from smaller companies by expelling them from the market. Since new entries are prohibited, that company will tend to grow to monopolize the market. This pattern change will in turn affect the market structure over time. In essence, the market grows more concentrated in the face of weakening competition.

After understanding how a regulation will affect the interaction between the market structure and pattern, it can be predicted in which forms and directions the market result will evolve. In other words, which element of the result indices will be adversely affected should be identified. For example, a regulation limiting new entries could increase prices, restrict diversity, and weaken innovation in the long run. It is recommended to establish the reasoning to support this impact on the result and present it quantitatively to the greatest degree possible.

※ Competition Assessment

1. Identifies the structural and pattern elements that are directly affected by the regulation
2. Examines the impact on market competition through the interactions between market structure and pattern.
3. Identifies any adversely affected result index and makes clear the causation and degree of the impact.

Several cases will now be analyzed to illustrate what should be noted during the competition assessment process.

As for the regulation limiting the location of a postpartum care center to the second floor of a building or below, quantitatively citing the amount to which it will increase costs for new entry and whether this may adversely affect market entry is recommended. An overly-critical mindset should be guarded against, i.e., identifying only the negative possibilities. In the next step, presenting alternatives, how well a regulation would approach its policy target will be compared with the side effects it would have on competition; if such comparison is not logically clear, however, opt for the quantitative effect.

Dealing with the regulation raising the minimum capital required for establishing a university from KRW 1 billion to KRW 1.5 billion, it should be examined if this would truly alter the decision to establish such an institution. As for the construction of firefighting facilities, the exact amount the entrance fee would grow as a result of the capital deposit requirement should be identified.

When a regulation increases an entrance fee, after discovering exactly how much this fee will be increased, it should be determined if this is grave enough to harm the competition structure. This not a simple undertaking, but comparisons can be made using indices such as average company revenue or profit margins. In addition, investigating examples of previous new-entry failures or expulsion of existing firms can help predict how the altered entrance fee increase would affect entry.

Mandating the installation of airbags in small vehicles is another kind of quality regulation. Such a rule would increase vehicle prices and deny vehicles to consumers preferring low-cost models, eventually reducing the scale of the small-vehicle market. Vehicle suppliers would shift their focus to medium or full-sized vehicles and away from sub-compacts. A supplier concentrating on economy vehicles may suffer more as a result, and the small-vehicle market structure would likely become more concentrated even though the regulation does not affect entry or exit.

Finally, price, as a market result index, could increase by more than the cost of the airbag installation. Safety may improve, but a market reduction and distortion may also occur. A reduction of the small vehicle supply may adversely impact diversity and technological innovation as well.

The notion that open information will unfailingly promote competition is mistaken. Publishing the initial cost of apartment units or announcing on the Internet the gasoline prices at particular gas stations may promote competition by providing additional information to the consumer. Meanwhile, it may also weaken a supplier's incentive to apply a price cut, since a change in one company's pricing is easily mimicked by competitors. Due to such listing, the prices of suppliers may converge at a similar level. That level cannot be assumed to generally be lower than it would have been otherwise. This situation must be examined to determine if tacit collusion will be promoted as a result.

Regarding online book sales, their discount rate is often restricted to a certain level (e.g., a 20% reduction from the offline price). Sometimes this restriction is a self-imposed regulation by publishing companies or a response to the demands of the large offline bookstores. This regulation may be useful in preventing price discounts even though room for them exists due to lower online-sales costs. Ultimately this gives rise to competition pressure by online bookstores on brick and mortar stores. Although the fact that more purchases are made via the Internet is socially desirable, this regulation may delay the shift to online sales. If retail prices fell due to intensified competition, some sectors insist that the compensation paid to authors would shrink. It should be noted, however, that prompting improved retail management will not disrupt the incentive for authorship since any earnings surplus in the retail field does not return to the writers. In fact, authors would actually be compensated more due to an increase in sales volumes.

(5) Proposal of Alternatives

Most regulations are designed to seek particular policy objectives. If they are desirable for society, then they should be introduced. If the targets are less important for national well-being, or in the case where the regulations would be ineffective in achieving their goals, then the social benefit obtained would be insignificant. If a bill has numerous unintended consequences in terms of competition, the social benefit of approaching the original target may be disproportionate to the social loss arising from restricting competition. In this case, the introduction of such a bill is undesirable. Although a regulation contributes to achieving a target, an inescapable restriction of competition is justified only if the social benefit of achieving the goal outweighs the social loss arising from that restriction.

More often than not, precisely comparing the social benefit of achieving a target with the social loss arising from unintended effects is difficult. Therefore, using quantitative evidence whenever possible to support this qualitative assertion is advisable.

If the social benefit of seeking the original target is judged to be greater than the social loss arising from hindering competition, the regulation should be introduced. Otherwise, alternatives to minimize or assuage the side effects on competition should be sought. Just a simple supplementation or the addition of conditions may neutralize all side effects, or alternatives to completely replace the regulations may be proposed. Even when the social benefit of seeking the original target is judged to be the priority, seeking supplementary measures to mitigate the impact on competition is still recommended.

Establishing alternatives is often more a matter of appending than replacing a regulation. It is a process of adding detail to the regulation or providing certain conditions that minimize hidden side effects overlooked during the process of devising the bill. For example, member companies may open their information to consumers when they share information with each other via the Internet as part of self-regulation.

Careful attention should be paid to the following throughout the process of seeking out and analyzing alternatives or supplementary measures:

- All the elements identified in the competition assessment which result in unintended effects should be specified and a manner of minimizing the impact of each element should be sought.
- The effect on competition should be assessed for each alternative. In short, the direct or derivative effect of the supplemented regulation on market structure and pattern should be analyzed.
- The alternatives should not be exceedingly comprehensive; their scope of application and object shall be limited to the extent necessary for achieving a target. They should not constrain a supplier’s activities or decisions unrelated to the target.

If the fact that cosmetic talc contains asbestos is the issue in question, then that asbestos should be the sole object of regulation. Overzealous tightening of the standards for other ingredients in the talc may cause costs to increase and eliminate smaller companies. The broadcasting and telecommunications markets use a variety of entry and interference controls for specific market areas, justifying a wariness of competition-restriction activities designed to take advantage of their market power in one area to monopolize other markets. Nonetheless, regulating the competition-restricting activities of one specific dominant company is more reasonable than reducing the overall number of companies by limiting the market range.

○ Proposed regulations should be specific and should be made clear

Any seemingly arbitrary or subjective decision by regulatory agencies can be excised. Subjectivity or ambiguity by a regulator is disruptive to competition. Uncertainty triggered by regulations may inhibit new entries to the market. Moreover, if a company is unaware of what it may or may not do, it will be unable to engage in vigorous competition. Taking price regulation for an example, a regulation as simple as one saying, “The government will reduce the price” is unacceptable. Subjective decisions by the regulating agencies may give rise to rent-seeking activities by companies and uncertainty of future market status. What standard and methods will be used to set and alter the price in question should be clearly delineated.

○ A regulation shall not discriminate against a supplier to the greatest extent possible.

A discriminatory regulation protects the grandfather rights of some suppliers and causes them to shelter under the protection of the regulation, thus suppressing the incentive to compete.

○ The period of a regulation should be made clear.

When and under which conditions a regulation will be changed or abolished should be made explicit. Citing the following is the minimum clarification recommended: “The regulation will be abolished or at minimum reviewed when the original target is achieved at the xxx level or when issues are resolved at the xxx level.” An even better inclusion would be a sunset clause which sets the period of application and specifies the manner for reviewing the regulation when it expires. For example, the procedures for assessing the relevant market status and determining the extension of a regulation until a date one year from its original expiration may be specified.

Regarding grandfather clauses, a grace period should be set to allow existing companies to acclimatize themselves to a new regulation in place of unconditionally exempting them from the regulation. For example, a regulation banning free or excessively discounted cellular telephones is aimed at preventing indiscreet handset exchange when demand explodes in the market. Thus, applying the grandfather clause simply until the demand is stabilized is more reasonable.

At this point, selected points of argument in setting alternatives for several common patterns of regulations will be presented.

If a regulation is accompanied by an exclusive right, a monopoly will inevitably be created. Nonetheless, measures to minimize its side effects may be considered. Prices may simultaneously be controlled in order to prevent excessive profit through the monopoly. In this case, however, the resulting side effects of the controls must also be assuaged. Price controls often harm business independence due to intervention by the government. Moreover, conflicts regarding reasonable price levels may give rise to social concerns. At times controls may lessen quality, disrupt investment, or prevent technological innovation. Therefore, whether price regulation should or should not be introduced must be considered.

Even when a monopoly is eventually to be allowed, competition must be promoted ahead of time to the greatest extent possible. No restrictions should be set in order to allow as many companies as possible to participate in the process of granting exclusive rights. Auctions or bidding is not only a transparent bidder-selection method, but also a system whereby the resulting monopoly profits may be absorbed into the social surplus. If any subjectivity is involved in bidder selection, unnecessary rent-seeking may arise, or companies without any grandfather right may be excluded.

When granting an exclusive business right, the proper design of the right is essential. In the case of the electricity supply industry, controlling entry may be considered reasonable in order to prevent social losses due to excessive entries and overlapping investments, particularly since the industry is significantly affected by economies of scale. However, this is applicable only to a given transmission area. Therefore, from the point of view of generation or transmission, competition may occur, and it is also highly effective. As a result, granting a monopolistic right to specific companies purely in the region of transmission where such a monopolistic right is justifiable is appropriate. In terms of telecommunications, regulating local communication network areas, which are strongly affected by the essential facilities and economies of scale, is reasonable.

Maintaining quality is often stressed when restricting entry to a professional occupation. Nevertheless, setting the number of entries in advance is unjustifiable; rather, setting a certain quality standard and granting licenses only to those who reach that standard is more reasonable. The government is clearly controlling market operations if it directly controls the supply in the market. If the government limits the numbers in a professional occupation when demand is increasing and suppliers' profit is increasing accordingly, the amount of trade will not increase; instead, the surplus profit of existing suppliers will surge. If the government does not control the number of suppliers but rather sets a qualification standard, additional competent people will be drawn to licensing to meet the demand. The government will have an easier time increasing supply through this method than by changing a quota which tends to become fixed since changing it often sparks a social debate.

One of the circumstances for controlling a price directly or indirectly is when specific companies control a market. Market power cannot justify price collusion. In the case of the mobile communications market, selective price control over dominating companies may actually block competition in price. The dominating companies under control are in this case unable to efficiently reduce their prices. Meanwhile, other companies do not attempt to actively join in price competition for fear of disrupting the asymmetrical regulation system.

Even in markets with higher concentrations of suppliers, avoiding direct control as much as possible over the competitive means of a supplier, such as price, quality, and product design, is recommended. Instead, lowering the entry barrier is preferable in order to trigger competitive pressure and address or eliminate the fundamental source of imbalance between firms. For example, preventing cigarette retailers from setting cigarette prices on their own may not be justified. Such an effort could stem from the notion that a reduction in the price of cigarettes may boost consumption, but this can be controlled to a sufficient extent by a cigarette tax. Competition between retailers can improve efficiency in the retail business arena.

Imposing entrance fees or requiring minimum capital to prevent the influx of unacceptable suppliers does not guarantee achieving the original target; instead, it merely excessively restricts new entry. This is because higher entrance fees do not invariably guarantee the entry of excellent suppliers. Setting a specific quality standard is more reasonable than establishing an entrance fee system.