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## **Global Forum on Competition**

### **THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES**

#### **Contribution from Korea**

-- Session IV --

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## THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

-- Korea --

### 1. Background for discussion

1. The integration between competition policy on the one hand and consumer policy on the other is recently emerging as a major issue for discussion at home and abroad in that the two policies have complementary roles to ensure a functioning market mechanism and integrated implementation of the two policies can contribute to advancing their shared goal of consumer welfare.

2. On the international front, competition authorities of other countries have adopted this as a major agenda to seek specific ways to connect the two policy areas. In fact, within the OECD, the Committee on Consumer Policy and the Competition Committee already held a workshop under the theme of “Interaction between Competition Policy and Consumer Policy” in October 2003 where member countries exchanged ideas and shared experience concerning the issue.

3. In Korea, its competition authority, the Korea Fair Trade Commission (KFTC), has steadfastly made efforts to link competition policy to consumer policy. In Korea, the authority of consumer policy had been enforced under two jurisdictions of the KFTC and the Ministry of Finance and Economy (MOFE). However, through amendment of the Framework Act on Consumer of 2006, the KFTC came to have the jurisdiction over consumer policies concerning consumer information, education and safety along with its original mandate to oversee trade practices. In addition, the authority over the Korea Consumer Agency (KCA), a quasi-government organization to carry out policy analysis, damage redress and provision of information and education to protect rights and interest of consumers, has been transferred to the KFTC. Furthermore, recently, the MOFE’s jurisdiction to integrate, coordinate and assess consumer policy was transferred to the KFTC, through which the consumer policy enforcement system has been integrated within a single institution. This change was possible thanks to the perception that it is more efficient for the KFTC to integrate and coordinate consumer policy as well as enforcing it, and it is more effective to integrate responsibility for the enforcement of competition policy and consumer policy within a single institution to promote consumer welfare. The following is KFTC’s experience in integrating the two policy areas and its future strategy to promote it.

### 2. Relationship between competition policy and consumer policy

4. It is widely believed that competition policy and consumer policy make up for each other in pursuit of their common goal of consumer welfare. Yet, whether it is theoretically or practically, the case has not been vindicated. Therefore, it is important for countries with various institutions to share their experience and continue to have discussions so as to vindicate the relationship between the two policies.

5. In Korea, over the course of reorganization of consumer policy enforcement system since 2004, examination on the relationship between competition policy and consumer policy has been conducted actively. In addition, the idea was prevalent that while the two policies are in complementary and at the same time, in conflicting terms, for a single institution to integrate the two policies and enforce them together is effective to enhance consumer welfare. Accordingly, the KFTC, which had been the competent

authority to enforce consumer policy, was handed down the authority to consolidate, coordinate and assess consumer policy from MOFE, thereby getting rid of overlapping and inefficiency in policy enforcement, and eventually advancing consumer welfare. As a result, the KFTC became to have the whole enforcement authority in consumer policy and the jurisdiction over the KCA.

In the Seoul Competition Forum in September 2007, those in charge of policies from China, the UK, the US and Canada were unanimous in saying that competition policy and consumer policy share a common goal and integrating and enforcing them together will enable them to employ various policy instruments in an integrated manner to promote effect of policies and efficiency of enforcement bodies.

### **2.1 *Complementary relationship***

6. Competition policy and consumer policy share an ultimate goal. However, either competition policy or consumer policy alone has limitations to achieving the goal. For one thing, competition policy can extend the scope of choices available to consumers, but can not guarantee consumers make a reasonable choice due to information asymmetries. That is, even if fair and free competition ensures supply of various products in the market, when consumers can not make effective choices in selecting the best products by price, quality and service, competition among enterprises will fail to translate to advancing consumer welfare. While competition policy can be effective in widening the scope of choices for consumers, decreasing product prices and enhancing product quality, it is provision of information and other consumer polices that enable consumers to make a reasonable choice, which in turn serve as the pressure to facilitate competition among enterprises in price and quality. This way, the two policies play complementary roles for each other to achieve their common goal.

### **2.2 *Conflicting relationship***

7. Basically, competition policy and consumer policy have a high probability of being complementary to each other and thus are less likely to clash. However, when it comes to actual policy enforcement, the possibility of conflicts between them can not be ruled out completely. In particular, regulations under the name of consumer protection could restrict competition, conflicting with competition policy. Cases in which consumer policy enforcement leads to negative effects on competition policy are as follows.

8. First, establishment of minimum standards such as standardized contracts and safety standards that enterprises should abide by can restrict competition. Of course, such minimum standards contribute to protecting consumers from enterprises' unfair trade practices and hazardous products. However, in case of setting such standards excessively, they can restrain new entrants' access to the market and incur excessive social costs, ultimately undermining consumer interests.

9. Second, promoting self-regulations through the introduction of codes of conduct among enterprises can restrict competition. Codes of conduct refer to a collection of best practices that enterprises should observe by a minimum standard stipulated by laws. This self-regulation and implementation by enterprises is one of the recommended efforts to ensure consumer protection. But it should be noted that under the same terms of transactions, such self-regulations can restrict competition among enterprises.

## **3. *Current status of integration of competition policy and consumer policy***

10. For its part, the KFTC has made various attempts to integrate competition policy and consumer policy so far. Considering that the two policies are being enforced under separate teams within the KFTC, the focus of integration efforts is more on between tasks than on between organizations. In addition, the integration between competition and consumer policies has taken place in a way that ensures consideration of each policy perspective in mapping out either policy, and the following are noteworthy cases of its kind.

### **3.1 Consideration of consumers in competition policy enforcement**

#### **3.1.1 Selection of investigation cases in areas closely related to consumers**

11. A typical case of integration between the two policies can be seen in selecting a competition law violation where a priority is given to a case which has a significant effect on consumers. As the KFTC is strengthening regulations on cartels recently, it is focusing its investigation efforts on consumer goods rather than raw or intermediate materials so as to prevent consumer damage.

Case 1 – Corrective order on cartel concerning essential consumer goods such as flour and laundry detergent

12. The KFTC established establishment of competition order in areas closely related to people's lives as its policy objective. To this end, it has conducted investigation by virtue of its authority into commodities market which has a great risk of cartel due to a high level of monopolization. In 2006, the KFTC investigated into flour market ( $CR_3=75\%$ ) with its authority to impose a surcharge of USD 45,871,104 on eight flour manufacturing companies for their collusion in price and supply volume that began in 2000. In addition, the KFTC analyzed latest development in laundry and dishwashing detergent market (laundry detergent  $CR_3=82.3\%$ , dishwashing detergent:  $CR_3=85.5\%$ ) to detect a price cartel by four companies including LG Household & Health Care and Aekyung that has lasted since December 1997 and impose a surcharge of USD 43,317,485.

#### **3.1.2 Consideration of consumer welfare in competition law enforcement**

13. The KFTC conducted assessment on effects of law enforcement after imposing corrective measures on competition law violations in an area closely related to daily lives of consumers in order to inform consumers of damage done by cartel to them and effect of the KFTC's corrective measures.

Case 2 – Post-assessment on school uniform cartel case

14. In 2001, the KFTC imposed an order to cease therefrom and a surcharge of 11.5 billion won on three school uniform manufacturers for their price cartel. Later, the KFTC carried out post-assessment and announced the result on the case. As a result of comparing uniform prices before and after imposing corrective measures, the KFTC found that the breakup of the cartel led to decreases in school uniform prices, with 17%~19% for winter uniform and about 20% for summer uniform, which translated into an estimated benefit to consumers of 60 billion won (winter uniform: 30,000 won per piece \* 1.5 million pieces = 45 billion won and summer uniform: 10,000 won per piece \* 1.5 million pieces = 15 billion won). This corrective measure led to active joint purchase of school uniforms and a damage compensations suit by 3,525 parents, who won the suit to receive a compensation of about 58,000 won per person (in total, USD 211,305).

### **3.2 Consideration of competition in consumer policy enforcement**

#### **3.2.1 Efforts to redress consumer damage incurred by competition law violations**

15. The KFTC's administrative measures on competition law violations have limitations that they can not remedy consumers' financial damage but instead redress consumer damage indirectly by imposing sanctions against law violators. Therefore, the KFTC has sought various systems to facilitate redress of consumer damage.

## Collective Consumer Dispute Mediation System

16. Above all, the KFTC adopted the Collective Consumer Dispute Mediation System in 2007 and has been implementing the System in order to ensure an effective redress of consumer damage for areas where damage is incurred against a majority of consumers. A case can be filed by more than 50 consumers who suffered the same damage to the Consumer Dispute Settlement Commission of the Korea Consumer Agency. And when the Commission makes a judgment on the case and the accused enterprise agrees to the decision, the case is deemed as settled. During some six-month-long operation of the System, nine cases were filed and seven of them were settled, with most of the disputes concerning apartments. This system is being successfully established as an effective remedy for small-sum damages to multiple consumers.

**Application and settlement status as of January 2008**

Types of industry	No. of application (applicants)	No. of settlement
Apartment	9(3,119)	6
Goods	4(882)	-
Rental service	1(3,109)	1
Communications	1(80)	-
Total	15(7,190)	7

## Consumer Complaints Management System (CCMS)

17. Furthermore, the KFTC is implementing a system to certify the CCMS designed to help undertaking autonomously manage consumer complaints. To further spread the CCMS, the KFTC is implementing the system from September 2005 in which in case a company operating the CCMS applies for the KFTC's certification, the KFTC assesses the applicant's system by core factors to grant certification. So far, 16 out of 62 companies with CCMS have been granted a certification from the KFTC. In assessing a CCMS, the KFTC considers whether the applicant has violated competition law, not just consumer law, based on the perception that no matter how well-equipped its system for consumer protection is, if the applicant violates competition law, it can not be a company that truly serves consumers.

**Current status of CCMS management as of January 2008**

Types of industry	No. of companies with CCMS	No. of companies with certified CCMS
Industrial products	7	2
Finance	14	6
Food	24	5
Energy	1	-
Distribution	4	1
Clothes	1	-
Communications	2	1
Automobiles	1	-
Chemicals	1	-
Service	2	-
Pharmaceuticals	2	-
Electronics	2	1
Total	62	16

Assistance to lawsuits related to consumer damage

18. Currently, in Korea, as class action lawsuits or Parents Patriae Actions to redress consumer damage have yet to be introduced, efforts to help consumers get remedy for their damage through legal suits are in dire need. This issue was raised when the KFTC detected a cartel of collective price raise by four local oil refining companies and imposed surcharge in February 2007, and subsequently, consumer organizations filed a damage compensation suit under Article 56 of the Monopoly Regulation and Fair Trade Act. In order to provide assistance to such legal actions, the KFTC is to induce the KCA to set up and implement a support team for consumer damage suit. Through this, the KFTC is planning to support consumers by providing materials related to investigation or various consultation within the legal boundary to keep trade secrets of enterprises so that consumers have an easier access to suits deemed to promote public good.

19. Also with the aim of advancing consumers' rights and interests, the KFTC plans to link consumer dispute settlement to its case-handling function. Specifically, cases aiming at redressing damage among reported cases as competition law violations to local offices of the KFTC are to be transferred to the Consumer Dispute Settlement Commission, and for cases that failed to be settled, the KFTC plans to handle them for themselves.

3.2.2 *Consumer orientation project*

20. In the past, the Korean government employed a producer-oriented economic policy with which it took the initiative in supporting and developing industries. This policy that championed only the supply side of the market economy, however, was criticized for undermining development of the national economy by sacrificing interests of the other important side, consumers. To address the concern, the need of policies to invigorate competition between producers and to ensure a functioning market economy through consumers' reasonable choices was raised. In response, the KFTC began to implement projects to ensure "consumer orientation," in which it review the government's policies and institutions for each sector from consumers' point of view and seek ways to improve them.

21. First of all, the KFTC designated five industries including telecommunications, finance, public service, education, legal and medical service as warranting improvement in terms of consumer orientation, and it established plans for market research, government policy and institution study, and methods to improve them for one or two industries on an annual basis. For instance, in 2006, the KFTC chose telecommunications and public service to review their consumer orientation, and medical service for 2007. As a result, the KFTC identified areas to improve for each industry, with pricing plans and cartel regulations for telecommunications and structural and preliminary regulations on prohibiting competition and advertisement regulations for medical service, pushing forward institutional reform in concerted efforts with relevant government agencies or teams within the KFTC.

**Measures to secure consumer orientation for telecommunication service (2006)**

No.	Institution	Measures for improvement	Reference
1	Pricing plan	To cut telecommunications fees	
		To review the government's pricing control in a way to promote market competition	
		To induce simplification and systemization of telecommunications fees	
		To ensure pricing plan disclosure	
		To strengthen control over pricing plan names not to mislead consumers	
2	Regulations on unfair practices	To set a separate criteria for unfair practices concerning consumer protection in IT other than "Types and Criteria of Prohibited Practices of Telecommunications Business Operators"	
		To incorporate downstream distribution such as agencies of common carriers to regulation scope	
3	Mobile content	To include a special clause for adolescents	
		To set a criteria for mental damage compensation	

**Measures to secure consumer orientation for medical service (2007)**

No.	Institution	Measures for improvement	Reference
1	Lifelong licensing of medical workers	To convert to renewal-base licensing system through regular assessment	
2	Prohibition on analogous medical treatment	To selectively permit for proven areas via certification	
3	Advertisement control	To increase proportion of consumer representatives in the Review Board To enlist the Internet for review	
4	Selective medical treatment	To rescind it from the law to liberalize it	
5	Structural and preliminary regulations on prohibiting competition	To change it to case-base and post regulatory system	
6	Expansion of consumer information in medical service	To expand the scope and items for assessment	
7	Medical dispute settlement system	To enhance expertise in dispute resolution and settlement system	

**4. Challenges to integration of competition and consumer policies**

22. Nowadays, as for integration of competition policy and consumer policy, the debate on whether it is necessary or not is over. Rather, the relevant question to ask for now is how to facilitate it. The KFTC so far mainly focused on connecting the two policy areas while handling competition law violations and redressing consumer damage, during which it made various attempts and experienced many trials and errors.

23. Last year, as the amendment of the Framework Act on Consumer equipped the KFTC with the authority to enforce consumer policy and the jurisdiction over the KCA was transferred to the KFTC, now the KFTC can seek ways to integrate the two policy areas not just at task level but also at organization level. Besides, the ongoing active support for suits to redress consumer damage is expected to further facilitate integration of the two policy areas.

24. Surely, to that end, it is necessary to step up efforts to figure out the state of integration of the teams responsible for the two policies within the KFTC and boost it further, along with efforts to share tasks efficiently and strengthen cooperation between the KFTC and the KCA. And to set up a system to analyze and use the KFTC's experience in integration of policies is yet another challenge.