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OECD Reviews of Regulatory Reform: Korea
Progress in Implementing Regulatory Reform
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Summary

Introduction

Korea was among the first countries to undergo a regulatory reform review (2000). In recent years, the government has been very active in implementing measures to promote regulatory reform, competition policy and market openness, and modernising the regulatory framework for information technologies. This Monitoring Exercise identifies some of the lessons learned about implementation and indicates what more can be done in light of current challenges. Progress in regulatory and structural reform has played an important role in the speed and strength of Korea's recovery from the 1997 crisis. A whole-of-government approach supported at a high political level sustains a strategic view of regulatory reform as an investment in the development of the country. Strenuous efforts have allowed the country to cope successfully with the crisis and to ensure long term growth. The move towards technology intensive products highlights Korea's economic achievements.

Commitment to high-quality regulation

Korea has made impressive progress to improve its regulatory framework. Korea's regulatory quality system has been developed and consolidated since the 2000 OECD Review and the recommendations in that report have helped guide the Korean government in pursuing further reform efforts. The commitment to a "participatory society" has promoted a transparent regulatory regime. Policy has shifted to user-oriented regulations, refocusing the government's role on strategic issues. The Regulatory Reform Committee, which has functioned since 1998, and the Regulatory Reform Task Force (since 2004), both under the direction of the Prime Minister, set regulation policy, review regulations, evaluate progress, and co-ordinate across relevant government ministries. The Internet is used extensively to improve access to regulations, and is linked to efforts to reduce administrative burdens. The emphasis has shifted from a quantitative reduction of the overall stock of regulations to an effort to further promote regulatory quality. To consolidate these gains, an explicit statement would support the reform efforts and hold them more accountable against a benchmark for performance, for example using the OECD's 2005 Guiding Principles for Regulatory Quality and Performance.

Implementation would benefit from a review of the possibilities for further co-ordination of the many agencies working on regulatory reform. The responsibilities of the Regulatory Reform Committee could be broadened to include more policy areas, such as taxation and subsidies, and industrial and regional development policies. The growing number of bills introduced by congressmen which are exempt from the regulatory quality process is a

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concern which could be remedied by a permanent mechanism in the National Congress to assure oversight of the quality of laws. Even if the possibilities of consultation have greatly increased, there remains scope for discretion and the quality of consultation processes varies widely across agencies. The consultation process should be made more uniform and effective. While substantial progress has been made in reducing bureaucratic discretion, for example with the new guidelines published by MOLEG, the possibilities remain, including administrative guidance.

Korea has already made significant steps to simplify and cut its regulations in recent years. However, further work is needed, together with an analytical methodology for measuring administrative burdens that would help identify priorities for reform. An effective regulatory impact analysis system calls for better training at national and local levels, and clear political support to promote a change in administrative culture, lest RIA become a routine formality rather than an instrument for policy decision-making.

Competition policy

Commitment to market principles at the highest political level has provided strong support for competition policies, reforms of the financial sector and corporate governance, and for opening markets to trade and lowering barriers to foreign investment. Significant progress has been achieved in terms of shifting the focus of the Korea Fair Trade Commission (KFTC) towards core competition problems and increasing its ability to enforce competition policy, even if further challenges remain.

The core of the KFTC's latest reform programme has been its launch of the 2003 "Three Year Market Reform Road Map" ("Road Map"). One foundation of this programme was an Index developed by the Korea Development Institute to measure transparency, fairness and competition of firms and markets in Korea. The Road Map concentrated on three general areas. First, it focused on strengthening business transparency and accountability by modifying corporate laws, authorising lawsuits against business misconduct, protecting minority shareholder rights, reinforcing auditor independence, and tightening the control of insider misconduct. Second, the Road Map revised the KFTC's own regulations of conglomerates in ways that were intended to encourage more transparent structures. The third area was traditional competition policy topics such as doubling the financial penalty against cartel violations, streamlining merger review with pre-notification, retiring anti-competitive regulations and strengthening consumer rights. This plan was embodied in legislation in 2005. The KFTC staff structure was reorganised to reflect these changes, notably by reducing the staffing that administers the regulation of cross-holdings among affiliates.

However, the KFTC still lacks a "dawn raid" power to enter premises and take possession of evidence. Increased use of criminal sanctions in hard-core cartel cases, to make the threat

of individual liability more realistic, depends on co-operation with prosecutors. Eliminating constraints in professions remains a challenge. The KFTC shares regulatory responsibilities with other agencies. Generally co-operation has been smooth, but there have been occasional tensions in sectors such as insurance and cable television which have exposed businesses to some uncertainty.

Market openness

Korea maintains a firm commitment to attract more foreign direct investment and further liberalise the market. Improvements in regulatory procedures, greater engagement of the business community and streamlining of procedures in customs and public procurement contribute to this end. The Korea On-line E-Procurement System (KONEPS) has enhanced transparency and efficiency. Korea has also made efforts to change the negative public perception towards imports, foreign firms and foreign investment, and has introduced a framework to reward public servants who promote Foreign Direct Investment. Invest Korea is a one-stop shop for foreign investors, and the Office of the Investment Ombudsman assists foreign investors on problems after establishment.

Strengthening efforts to alleviate the perception of *de facto* discriminatory effects against foreign goods, companies and investment remains a major challenge, as changing mindsets necessarily takes time. As in other OECD countries, some negative perceptions persist among the media and the public. Laws and legal instruments may not always be sufficient to improve investors' confidence, as there is also a perception among some foreign investors that officials sometimes interpret and apply regulations more strictly for foreign firms. This calls for further efforts to adapt the administrative culture and to better communicate with the public on the importance of regulatory reform and market openness. There is also a perception among foreign investors that certain standards are specific to Korea and differ from international references, in spite of progress in recent years. Further improvements in terms of transparency and decision making from the perspective of market openness will support the implementation of regulation interpretation and guidelines in a non-discriminatory manner. Translating public notices and consultation procedures in foreign languages would be beneficial, and would serve as a signal of the government's commitment towards an open market. There is still scope for further strengthening efforts to avoid unnecessary trade restrictiveness and promote international standard harmonisation and conformity assessments. While FDI is allowed in most sectors, 26 have limitations on foreign participation and 2 – television and radio broadcasting – are fully restricted. Sectors of services as well as agriculture represent specific challenge areas. The current negotiation over the Free Trade Agreements could potentially represent a powerful tool to address this challenge although care is necessary so that the results of FTAs do not lead to trade diversion.

Telecommunications

Since 2000 the telecommunications sector in Korea showed continued rapid growth, especially in broadband penetration where Korea now ranks the highest among OECD countries. It is also the 9th largest telecommunication market among OECD countries.

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Sector liberalisation has produced notable benefits in terms of improved services, lower prices, and innovation. Korea is also among the leaders for wireless broadband as well as digital multimedia broadcasting. Positive reforms have taken place to create a competitive market. Korea Telecom was fully privatised in 2002, a goal that many other OECD countries with state-owned operators have not yet managed to complete. A number of the recommendations made in 2000 have been implemented or partially implemented, even if scope for further improvement remains.

Korea has made impressive progress in developing its telecommunication infrastructure and service markets, with significant emphasis on the information society and IT sector. Korea performs generally well in terms of overall price comparisons, but prices for international calls tend to be among the highest in the OECD. The implementation of market-oriented tools and institutions tends to lag behind. Korea is still not emphasising sufficiently the use of market mechanisms to develop a digital economy. The clarification of the roles between policy making, pushing the development of the sector, and implementing a regulatory framework, remains insufficient, despite the devolution of some technical decision-making functions to the Korea Communications Commission. The reliance on *ex ante* regulatory schemes and tools remains insufficient, and has at times allegedly included the use of administrative guidance.

Despite significant progress, KCC, the sector regulator, can still not be considered as an independent regulator in its full right. This does not mean that deregulation cannot take place, but market developments could be harmoniously supported by a more efficient and transparent regulatory framework, with greater independence, clarifying opportunities for investors, both domestic and foreign. This would help in promoting further opportunities for all participants in this dynamic market and for better serving the consumers' interest. Given the perspective of sectoral convergence, it would be advisable to consider a possible joining of the KCC and the Korea Broadcasting Commission. A comprehensive review of legislation to create a single legal framework for the communication sector would represent a useful step and also serve to create a well-balanced market. Foreign ownership restrictions also remain an issue.

Tertiary education

For innovation and productivity to grow, especially in the service sector which is only about 60% as productive as the OECD average, there needs to be qualified human capital. While Korea's primary and secondary education levels are excellent, as demonstrated by the PISA scores at the international level, there is still scope for improving the quality of tertiary education to ensure the adequate supply of high-skilled human capital. There is evidence of skill mismatch, as workers at both low and high skill levels are in short supply. Complaints are also being voiced by companies about the quality of domestic tertiary education. Korea also represents 5% of foreign student flows to the OECD area, with however a very modest role as a destination for students.

In this context, severe competition to get into prestigious universities has social consequences and affects secondary education, given the need for private tutoring. Higher education is also not prepared for demographic changes, which will imply for the first time

in Korean history, a shrinking college age population, with a potential decline of the student population in the future. These issues are further exacerbated by the population concentration in the Seoul Metropolitan area.

Korea has embarked upon efforts to improve the global competitiveness of its tertiary education system by simplifying and clarifying regulations, eliminating obsolete regulations, and improving co-ordination across ministries. Further efforts call for regulatory reforms affecting institutional autonomy of public universities, including moving to a legal status as school corporations outside the formal government structure. Overall, an effective system for quality assurance and public accountability would serve the whole system. The regulatory framework for private universities would benefit from stronger transparency and accountability measures as well. The Ministry of Education itself could then focus less on detailed regulation and more on strategic leadership and monitoring the performance of the tertiary education system.

Lessons for the future

The Korean monitoring exercise reveals the impressive progress that has been made by Korea in a very short time period in adapting and modernising its regulatory framework towards consultation and transparency, improving competition in domestic markets and further consolidating market openness. Such rapid change may give rise to social concerns, with questions about what could be the acceptable rate of change in terms of institutional structures and methods of government. By OECD standards for regulatory quality, Korea is on track, but progress in certain areas seems to be more apparent than in some others. This may certainly test the capacity for reform of entire sectors of the administration and society.

A high quality regulation approach requires a whole apparatus for implementation. In the administrative sphere, several parts of the report highlight the possible risks of “gaps in implementation”, as working level officials need to adopt new methods of working and of interacting with society. Capacity building, including at the local level, is a critical factor to ensure that changes decided at the national level can effectively be implemented. This also requires upgraded skills and new working methods. The ambitious goal of a “participatory society” requires further efforts for public administrations to reach out to the public, to operate transparently and to increase their capacity to listen to the demands of the wider public. Transparency is important, as it represents a social investment, an intangible asset in the form of current and future trust in public institutions, tools and policies.

Beyond the administrative sphere, this monitoring exercise highlights the challenge of reaching out to a wider public, to communicate the benefits of regulatory reform and building consensus for action. There is a need to publish a government strategy on consultation, but also to show the public that their comments are being heard, or not (and why).

This report has identified a number of areas where further regulatory reform and the application of high quality regulation principles could help Korea better prepare for the future. Regulatory reform can help structural change in the economy, promoting a more integrated policy approach, as well as fostering market openness. This would improve the situation of Koreans as citizens, workers and consumers. Awareness of the need for action

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is high, and regulatory policy is relatively strong. However, all other OECD countries are moving as well, since regulatory reform is a dynamic field. All are further advanced in 2007 compared with the mid 1990s. If Korea is to continue closing its gap in relation to the most advanced countries, it needs to make even faster progress, to ensure smoother market processes, better regulatory tools and more open institutions.