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CONTRIBUTION FROM KOREA

-- Advocacy role of the Korea Fair Trade Commission in Regulatory Reform - (Session II) --

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ADVOCACY ROLE OF THE KOREA FAIR TRADE COMMISSION
IN REGULATORY REFORM - (Session II)

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I. Introduction

Korea's experience on regulatory reform is very unique in terms of its process, institutional arrangement and its outcome. This uniqueness is explained by the KFTC(Korea Fair Trade Commission)'s pivotal role in reforming wide-range of anti-competitive regulations. The current framework on regulatory reform has taken root in the government of Korea successfully by the KFTC's enthusiastic initiatives for facilitating active competition in the market. Another characteristic of Korea is the fact that corporations, consumers and experts group in academia got joined together, which became a prime power for the success of regulatory reform.

Although Korea's regulatory reform has been driven by other ministries since the early 1980s, the result fell short of expectation. The fundamental reason lies in the fact that regulatory reform was on the hands of the engaged industrial ministries which are regulating authorities themselves and likely to be influenced by interest groups.

In the past, the KFTC had concentrated on the enforcement of competition law, such as prohibiting cartels and abuse of market dominant power. However, recognizing that enforcement of competition law alone cannot promise a fully functioning market with the regulations by sectoral ministries, the KFTC turned its attention to the policy sphere of competition advocacy role as the regulatory reform. Only after the KFTC became in charge of designing the overall reform scheme, such an effort resulted in the well-organized institutional arrangement. The KFTC's neutral status, which is not captured by the interest groups, and its know-how which had been accumulated by long experience on market analysis made this possible.

'Committee on Regulatory Reform' under the arm of Presidential office has been the center for pushing ahead continuous and thorough reform, where businesses, consumers, regulatory body, competition authority and experts group get together and cooperatively proceed the reform.

The KFTC, as a Korean competition authority, mainly aims at maximizing the market performances by remedying market failures. In Korea, however, such a policy goal was hard to achieve partly owing to the old entrenched practices in private business sector accustomed to government intervention and guide. In this light, the KFTC was forced to extend its domain as a so-called 'market creator' rather only remained as 'market watcher'. As a consequence, the KFTC, whose primary mandate is enforcing competition law and policy, was forced to extend its concerns to regulatory reform, privatization of SOEs, and intervention to the policy making procedures.
II. KFTC’s Resources to Play an Advocacy Role

All the staff members of the KFTC are engaged in the regulatory reform process and the KFTC, with its human resources, has reviewed the governmental regulations which may affect the market. Noticeably, in the year of 2001, Clean Market Project was launched as a core policy of the KFTC, with an aim to investigate the violations against the Korean competition law, and carry out the regulatory reform and improve the comprehensive market structure as well. Punishment alone cannot fundamentally improve the market structure and long-time business practices. To overcome these limitations, the KFTC has been conducting in-depth analyses and regulatory reviews in six major markets: private educational institute, information telecommunications, medical pharmaceutical, wedding funeral services and the mass-media such as newspaper and broadcasting industries.

The KFTC established a permanent organization for regulatory reform in the Competition Policy Bureau. This body, from the pro-competitive perspectives, has been reviewing various kinds of regulations imposed by other administrative agencies. The most prominent achievement was the enactment of the Omnibus Cartel Repeal Act (OCRA), which was made public in February 1999. This successful enforcement of the OCRA resulted in the elimination or improvement of 20 cartels, including those that set remuneration for 9 professional occupations such as lawyers, certified public accountants, licensed to accountants, etc.. Although the KFTC once faced with much difficulties in enacting the OCRA, for instance strong resistance from interest groups. However, the OECD Recommendation on Prohibition of Hard-core Cartels (98.4.18) provided backing for this undertaking.

III. Institutional Arrangements

Competition advocacy refers to all the efforts aimed at establishing the principles of a market economy in the government decision-making, enforcement, and deregulation processes. This includes urging public enterprises and corporations undergoing privatization to undertake restructuring measures in a pro-competition manner and eliminating economic regulations that reduce consumer welfare. For the efficient competition advocacy role, competition authorities need to be empowered with the appropriate authorization and resources to have its own voices in the governmental decision making procedure. The KFTC’s independent and higher status in the government structure, with its techniques and experience on market analysis, makes it possible to disseminate the competition principles in the process of regulatory reform.

In order to play an effective competition advocacy role, competition authorities should be equipped with the necessary resources and authority. In addition, they should be able to take part in the government decision-making process in a timely fashion.

In this regard, the Korea Fair Trade Commission (KFTC) not only holds the characteristics needed to be an effective competition advocate, but also offers other important capabilities as well.

A. Competition advocacy tool in the government policy making procedure

Institutional arrangements are composed of two dimensions; ex-ante and ex-post ways. Firstly, to block establishing the unduly regulation in advance is more important and effective for ensuring competition than once regulation is established.
1) consultation on enact of acts and decrees which restrain competition

The Korean Competition Law (Monopoly Regulation and Fair Trade Act) requires other ministries to have prior consultation with the KFTC on whether their proposed acts and decrees have any clause having anti-competitive effects on business, which is very unique as an Competition advocacy role in Korea. As such, Korea’s general competition law only stipulates the competition advocacy role of the competition authorities. Such a role is deemed one of the core functions of the KFTC. With respect to the consultations on legislation, in the last year, the KFTC has put forth its opinions on 60 (12.5%) of the 481 requests made by relevant government agencies for the enactment and revision of legislation. Of that, the KFTC’s views and suggestions were reflected in 51 (85%) of those changes in legislation. As such, the KFTC has helped oppose and prevent the introduction and amendment of anti-competition legislation, thereby achieving, in effect, regulatory reform. The percentage of acceptance (85%) indicates that other ministries regard the KFTC’s opinions as important.

2) cabinet meeting

The KFTC consistently inputs competition perspectives into major policy making procedures such as cabinet meeting as a regular member. After the 4th Revision of the MRFTA in 1994, the KFTC gained full independence as a central administrative body under the Office of the Prime Minister and its status and functions were strengthened and the number of personnel considerably went up (number of staff was 343 as of 1995). Policies, once formulated, are difficult to change. In this regard, the KFTC Chairman can ensure that the views of the competition agency are reflected in the policy-making by attending and expressing his opinions at the Cabinet Meetings. The Cabinet meeting is of great importance, in that it incorporates the different opinions of ministers from the competitive point of view. Based on the authority and capacity provided by law, the KFTC has successfully fulfilled the role of a competition advocate.

B. Ways to Ensure Competition Principles in the Regulatory Reform Procedure

1) KFTC’s Experiences as Regulatory Reform Body

Since 1990s, a number of committees relating regulatory reform were newly established. At that time, reform drive lacked specialties in market analysis and techniques for reforming the regulations having possible anti-competitive effects. To ensure competition even after regulations are once set up, the KFTC established an internal organization called ‘committee on economic regulatory reform’ (97.4-98), which dedicated to the economic regulations rather than social. The committee successfully performed far-reaching reform against pervasive and deep-seated regulations with the KFTC’s own staff members. This was historic in that the meaningful achievements done by the committee firstly prompted the trend of regulatory reform to spread out throughout government agencies.

2) Participating Committee on Regulatory Reform as a Main Member

Afterward, the committee was expanded and elevated under the leadership of Prime Minister, and naturally the KFTC played an important role as a standing commissioner. In its efforts to infuse competition perspectives to other ministries, the KFTC have designed its own guidelines that is to eliminate anti-competitive regulations such as entrance barriers, price control and regulations on business activities.
IV. KFTC’s Competition Advocacy Role in the Privatization Procedure

The KFTC also has a keen interest in the privatization of state-owned enterprises (SOEs). Privatizing backbone industries that operate under state monopolies could help produce private monopolies instead of state monopolies. In recognition of this possibility, the KFTC has actively pursued pro-competition policies, including those that promote deregulation.

Privatization of SOEs aims at making the market mechanism work in the public sector and thus to enhance its efficiency of the economy as a whole and ultimately to contribute to the national budget. Creating competitive conditions is the key to enhancing efficiency. Therefore, in order to prevent the transmission of public inefficiency into private monopoly, it is critical to secure market competition.

The current program for privatization and managerial renovation of state owned enterprises (SOEs) in Korea, commenced since 1998, is different from that of the past in that the task of privatization has been executed not by existing but by a newly established organization. The Ministry of Planning and Budget (MPB) played a central role in analyzing the target SOEs in advance and holding hearings. Based on this process, the MPB finalized and announced the 1st privatization plan of SOEs’ and the 2nd privatization and managerial renovation plan respectively in July 1998 and August 1998. An organization responsible for performing privatization of SOEs, the Committee on privatization of SOEs was created in the MPB. This committee is composed of Minister of MPB as a chairman, vice-chairman of the KFTC, vice-governor of Korea Development Bank and 2 commissioners from the private sector. Since its establishment in September 1998, the committee has been convened eight times so far and dealt with major issues, such as improvement of regulation related to privatization and overseeing the privatizing process. The KFTC has performed competition advocacy role from the stage of drafting the privatization policy. On each ministry’s front, a task force team headed by a high-level official is responsible for technical works related to privatization, such as the detailed time schedule and method of selling SOEs, planning strategy, etc..

From the experience on privatization of SOEs, the KFTC has learned that securing transparency in the process of privatization, and the announcement the gradual privatization schedule is important in order to provide predictability to enterprises preparing for privatization. The cases also indicate that it is desirable for competition authority to intervene at an early stage of decision-making on privatization and the importance of structural measure such as vertical separation.

V. Policy Implications and Lessons reaped from Korea’s Experience on Competition Advocacy Role in Regulatory Reform

The experience of the KFTC as a competition advocate has several implications.

First, countries that pursue an economic policy focused on industrial policy are likely to breed anti-competitive governmental regulations. This was the case with Korea, where a government-driven growth strategy was adopted and anti-competition regulations established. Though this could be overlooked at the initial stage of development, it eventually distorted market structures and negatively affected economic development. The lesson is that every effort to build a market economy should be undertaken in the initial stage of development. This can be achieved through the introduction of competition policies, with the competition authorities taking on an active competition advocacy role.
Second, it is critical to confer full authority to competition agencies to allow them to serve as effective competition advocates. Because developing countries, in particular, are facing special challenges in the promotion of a free market, the role of such competition advocates is essential to overcoming those challenges.

Third, regulatory reform body should continuously develop its own deregulation logic for securing their regulating power. This procedure cannot be completed in a short span of time, rather it is to be proceeded in a gradual manner with consistency.

Lastly, regulatory reform efforts usually lose its compelling power, because reform efforts are often hindered by political popularity and strong resists from the interest groups. Thus it must be backed up by the political support from general citizen and the top government leader.