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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN KOREA

-- 2011 --

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Executive Summary

1. This report addresses events that have occurred from Jan. 1, 2011 to Dec. 31, 2011. The Korea Fair Trade Commission (the “KFTC”) continued to focus its efforts on the effective implementation of 13 laws including the Monopoly Regulation and Fair Trade Act.

2. In 2011, stabilizing people’s livelihood became every Korean government agency’s agenda of focus. The KFTC, too, is more determined than ever to deal with anti-competitive business practices, such as cartel and abuse of market dominance, especially on people’s daily necessities.

3. Another area of priority following cartel and market dominance regulation watch in 2011 was to build fair partnerships between large and small firms. To this end, the Commission laid a legal ground for ‘shared growth’ between the two parties by amending the Subcontracting Act and establishing the Fair Trade in Large-Scale Distribution Business Act. The Commission worked to facilitate the voluntary signing of the Fair Trade Agreement especially between large firms and small/medium subcontractors.

4. The agency also has not lost its focus on the consumer policy area ever since it took the management authority over the Framework Act on Consumers and the Korea Consumer Agency in 2008.

5. Public documents, including more detailed descriptions of full texts of many matters referred to in this Annual Report, are available on the KFTC’s website in English at eng.ftc.go.kr.

1. Changes to Competition Laws and Policies, Proposed or Adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Introduction of Consent Resolution Scheme

6. In order to embrace Consent Resolution scheme, the Monopoly Regulation & Fair Trade Act (MRFTA) was amended on December 2, 2011 and its sub regulation on April 2, 2012, respectively.

7. Consent Resolution has been under consideration separately from the KORUS FTA since 2005 as part of efforts to advance competition regime and business climate in the country. In September 2006, the Korean government announced its plan to employ the scheme through the Business Climate Improvement Policy Package. The system was already adopted by many developed countries such as the US (Consent Order, in 1915) and the EU (Commitment Decision, in 2004) and proved its effectiveness and legitimacy. Especially Korea and the US have agreed to mandate the introduction of Consent Resolution in the FTA.¹

1.1.2 Exclusion of Cartel Leniency to recidivists

8. Leniency system was much more stimulated in 2011 to deal with cartels. Among the 34 cartel cases where a surcharge was imposed, the Leniency program played a pivotal role in 29 cases or 85%. This may support the view that the scheme in the country is in its full-blown stage.² On the other hand, however,

¹ Each Party shall provide its authorities responsible for the enforcement of its national competition laws with the authority to resolve their administrative or civil enforcement actions by mutual agreement with the subject of the enforcement action. A Party may provide for such agreements to be subject to judicial approval. (KORUS FTA, Article 16.1, 5.)

² The Leniency system was much stimulated and applied to 52% of the cases where surcharges were imposed during the period from 2005 to 2011 when the Leniency was redesigned for transparency and predictability enhancement.

criticisms emerged that some companies exploit the scheme by repeating cartel activities then applying for the leniency again. Responding to this, the KFTC revised its system at the end of 2011 not to provide any surcharge reduction benefit to a party who received a KFTC cartel remedy commits the same kind of cartel within the next 5 years or to a company that received a KFTC leniency benefit commits any cartel within the next 5 years.

1.1.3 Amendment of the Guidelines for the Merger Review

9. The KFTC overhauled its the merger review guidelines on December 28, 2011 by reflecting recent global discussions. Important amendments are as follows:

10. First, combinations between firms that have no supplementing or substituting relations in their area of business became subject to a simplified review where investigation goes on under the presumption of no anti-competitiveness in a case until found responsible. Second, as regards the criteria to see if a merger creates any form of dominance, the KFTC amended the criteria to recognize it a dominant position if a company can practically influence an acquired firm's management operation together with other parties, though not by solely controlling the firm, by means of an agreement to jointly exercise veto or possession of veto against main business projects.

11. In assessing anti-competitiveness of a horizontal merger, the amendment also mandated to consider competition-restrictive effects from increased purchasing power of merging parties in addition to unilateral effect and coordination effect. As for a differentiated product market, the new amendment clarified the importance of measuring the kind of competition between the merging parties themselves by using tools like product similarity, purchase switching ratio, etc.

1.1.4 Establishment of the M&A Remedy Guidelines

12. The KFTC established the M&A Remedy Imposition Guidelines on June 22, 2011 to provide guidelines on imposing remedies on anti-competitive corporate merger deals and other important aspects to consider.

13. The Guidelines placed priority on structural measures over behavioral remedies, considering that the former has lower market intervention than the latter while keeping the market structure competitive more effectively. The Guidelines proposed principles of effectiveness, proportionality, clarity, and feasibility as basic factors to consider in imposing a remedy and analyzed remedy types at a more specific level, presenting type-specific remedy imposition criteria, etc.

14. The provided remedy imposition standard regarding anti-competitive merger deals of the Guidelines enhanced legal clarity and predictability of KFTC remedies, for business circle.

1.2 Other relevant measures, including new guide lines

1.2.1 Tackling Unfair Practices by Large-Scale Stores in Retail Industry

15. After the 1996 Uruguay Round opened up the doors to the Korean services market and the subsequent two rounds of global economic crises, Korea's retail industry structure was rearranged with large-scale stores in the center. In Korea, the combined market shares of the top 3 businesses in each of the major retails such as department stores, Super Supermarkets(SSMs), and TV home shopping networks all reach above 80%, and such excessive economic power concentration has become a major hindrance to fair and free competition. There are possibilities that large-scale stores could be engaged in various unfair trading practices against supplies using purchase power as leverage. Recently the excessive level of sales commission demanded by large-scale stores has become a big issue in Korea.

16. The KFTC had tirelessly endeavored to enact a special law to remedy harms resulting from abuse of their superior position in trade by large-scale stores, and such efforts have culminated in the enactment of the Fair Transactions in Large-Scale Retail Industry in 2011. The main contents of the legislation, brought to effect on January 1st of 2012, are rectifying unfair trading practices and expediting shared growth between large-scale stores and suppliers. The law has great significance in that it is the first legislation for the retail industry in the world to reflect the specifics of business practices in the retail industry.

1.2.2 Against Unfair Subcontracting Practices Introduction of Punitive Damage Compensation

17. As a follow-up measure to the shared growth policies, the KFTC pushed forward the amendment of the Fair Transactions in Subcontracting Act and its related systems. Various institutional tools were provided through the 2010 and 2011 Amendments of the Subcontracting Act for SMEs to directly benefit to eradicate the three most serious unfair practices, namely non-written order placement, unfair subcontracting payment cut, and compulsive technology takeover. To reinforce the bargaining power of SMEs which are often placed in an inferior position to their larger counterparts and provide a safe environment for self-ruled fair transactions, existing policies were amended or supplemented, including the introduction of subcontracting presumption system to prevent non-written order placement (Jan. 25, 2010), granting subcontractors and associations a right to apply for subcontracting payment adjustment (subcontractors on Apr. 1, 2009; associations on Mar. 29, 2011), banning on compulsive technology takeover (Jan. 25, 2010), and adopting a punitive (treble) damage system (Mar. 29, 2011).

1.2.3 Enforcement against Unfair Practices in Labeling & Advertisement and Franchise Business by Lowering Threshold for Filing Criminal Accusation

18. The Guidelines for Filing Criminal Accusation of Fair Trade Act Violation were amended in order to enhance deterrence against potential offences by inviting more active efforts to file a criminal accusation to the public prosecutor's office of false labelings or advertisements and franchise law violations. Since these offences gravely damage consumer's activity and safety.

19. The Commission lowered the threshold for filing accusation regarding violations of the Labeling and Advertisement Act and Franchise Act to 2.5 points from 2.7 set previously.³

20. Also, in the Guidelines, filing criminal accusation against the offenders can be facilitated regardless of criminality scores if the case is viewed to have a grave effect on consumer life, health and safety; include any kind of intentional violating activities; have a serious social damage due to property losses of the vulnerable classes; or involve attempts obstructing KFTC investigation.

1.2.4 Establishment of Guidelines for Standards Setting Organization (SSO) Operation

21. Businesses holding patents in standardized technologies increasingly caused more problems by abusing their essential patents to hinder market competition. In response, the KFTC established [Guideline for Standards Setting Organization (SSO) Operation for Self-Monitored Compliance with the Monopoly Regulation and Fair Trade Act (MRFTA)] in November 2011.

22. The Guideline for SSO is an exhortative guideline to help standardization organizations prevent the violation of the MRFTA. The guideline mainly applies to agreements between businesses in the process of standardization, and the practice of intellectual property rights. The guideline explicates the

³ In the Guidelines for Report, scores are calculated for each case by considering its violation details and seriousness. And it basically guides people to report a case if its score exceeds a report threshold.

main types of MRFTA violations and proposes principles and detailed measures of management for preventing such violations. It also illustrates actual cases of violations, such as collusion for price and other terms and conditions of business, exclusion of competing businesses by limiting participation in SSOs, and limitation of the use of patents. The guideline defines the range of participants and discussion agenda for self-observance of the MRFTA as well as detailed measures related to intellectual property rights and license policies.

23. The Guideline for SSO is expected to prevent abuse of essential patents such as deceptive patent ambushing. The KFTC plans to continue to watch for abuse of patents and respond with a strict and just enforcement of the law to establish an order for fair trading of intellectual property rights.

24. The agency also supplied a guideline for SMEs to prevent damage, with model examples of actual contracts that can be referred to when making patent and licensing agreements. Due to their lack of legal expertise, it is likely for SMEs to sign under disadvantageous conditions when signing licensing agreements with large firms. For example, a large firm that had a licensing agreement with an SME may still ask for royalties even after the license became invalidated. By introducing and suggesting ways to deal with major types of breaches of the MRFTA related to licensing agreements in the guideline with a focus on actual cases, the Commission hopes to facilitate fair licensing practices.

1.2.5 Enlarged Consumer Dispute Settlement Guidelines for New Products

25. The KFTC has set forth the Consumer Dispute Settlement Guidelines to facilitate dispute resolution between consumers and enterprisers. The Guidelines are twofold: for general consumer dispute settlement and product item-specific settlement.

26. In 2011, the product item-specific section was amended to extend a part storage period by 1 year from the previous rules and clarified the starting point of the part storage period as the point when a company ceases to manufacture the product in question. The Guideline added new product items that gained wide popularity among consumers such as smart phones, dental implants, plastic surgeries, social commerce, chauffeur services and telecommunication-package products.

2. Enforcement of Competition Laws and Policies

2.1 Anti Cartel Regulation

2.1.1 Summary of Anti-Cartel Regulation

27. As a result of placing extra focus on cartel monitoring in daily product prices in 2011, the KFTC detected more cartels and imposed more remedies than any other year before in such products as soybean milks, cheeses, instant coffee mix, and other processed foods; oil, life insurance, ATMs, wallpapers, karaoke machines, medicines, LCD, etc. Among them, major cases are oil refineries' cartel not to compete with each other for gas stations, life insurers' price cartel in individual insurance policies (life insurance, pension policy, education policy, etc.) and pharmaceutical companies' cartel to delay market release of generic medicines.

2.1.2 Oil Refineries Cartel Case

28. 4 oil refineries (SK Energy, GS Caltex, Hyundai Oilbank, S-OIL) that manufacture and sell petroleum products in Korea were competing intensely each other for gas stations to have an exclusive right to post one brand only. However, since the late 1990s refineries started to feel greatly burdened in the competition for gas stations; even though the supply of petroleum products of the refineries had greatly increased, demand had decreased, on the contrary, and the cost of operation had increased largely due to

sales promotions for luring gas stations. To this end, the 4 refineries held a meeting in March 2000 to put a restraint on the competition over gas stations and to maintain the status quo of market share among the 4 companies. The companies agreed to keep the vested rights of the refinery whose brand was initially posted up in a gas station, and allow the changing of brands to another refinery only when the initial refinery agrees to it.

29. From 2000 to May of 2011, for about 10 years, the 4 refineries refused to do business with gas stations who want to change their supplying refinery unless the present refinery agreed to such transactions. For cases in which a refinery (A) inevitably agreed to change a gas station branded for another refinery (B), the refinery (B) would allow one of its gas stations with the same trade amount of the changed gas station to do business with the refinery (A); such a system made it possible to maintain stable market shares among the 4 companies.

30. Due to the abovementioned collusion among the 4 oil refineries, there were few changes in the affiliation of gas stations to refineries over 10 years; as a result, the market shares of the 4 companies were kept stable.

31. Before the agreement in 2000, the 2 companies with relatively low market shares would offer to supply at a lower price to gas stations that belong to other companies which brought down the supply price as a whole as well as the consumer price. However, after the agreement there was no reason for the companies to lower the price of supply, which in turn brought the consumer price to levels higher than before.

32. The KFTC concluded that the collusion by the 4 oil refineries constituted an act of controlling transactional counterparts of improper concerted acts which corresponds to Article 19 (1) 4 of the MRFTA. The Commission imposed a ban on controlling transactional counterparts and exchange of information, and a total of 434 billion KRW in surcharge.

33. This case is significant in that severe measures were taken on practices that violated the rights of gas stations and consumers by limiting the change of affiliation using a mutual non-aggression agreement and precluding mutual competition. Also, the measures taken are expected to foster an environment where gas stations can freely choose refineries that offer better price and other conditions, which will also work to lower the consumer price by stimulating competition in the petroleum products distribution market.

2.1.3 *Life Insurance Companies Cartel Case*

34. 16 life insurance companies, including Samsung Life Insurance and Kyobo Life Insurance, have mutually determined the assumed interest rate⁴ and market rate⁵ of individual insurance policies from 2001 to 2006. As a result, the businesses colluded to prevent for leaving of insurance holders and to secure a stable profit margin by determining the rate of interest at a lower level than when there is competition.

⁴ Assumed interest rate is a component of the insurance fee of products with fixed-interest rate, which affects the fee by up to 85%; a 1%P difference in the assumed rate will cause a 8%~36% difference in the insurance fee.

⁵ Market rate is a factor that decides the amount of future refund in products with floating rate, and the two are positively related; if the market rate arise the claim payment increases, and if it decreases the claim payment decreases.

35. Samsung, Daehan, Kyobo, Heungkuk, Jeil(Now Allianz)⁶, and Donga⁷ first discussed and decided the rate of interest and relayed the decision through steward companies.

36. After such a structure was set in place, the process was altered so that each company could forward and exchange its decision on the interest rate before ultimately deciding the interest rate. Such exchange of information was not difficult through various cooperation networks of the life insurance industry.

37. This case was particular in that the companies used systematic and collective cooperation as well as unofficial and private exchange of information such as phone calls for their collusion, based on the periodicity and repetitiveness of the determination of interest rates.

38. The KFTC decided that the respective collusion of the 16 companies violated Article 19 (1) 1 of the MRFTA, and imposed a remedial order that banned collusion and the exchange of information as well as a surcharge of 365.3 billion KRW.

39. The KFTC uncovered and remedied the long-term conventional practice of insurance companies colluding in the individual policies market to prevent loss of profit, which went against the declaration to liberate insurance prices in April 2000. The orders given have succeeded in overthrowing the old practice of collusion of the insurance industry, and have attacked the foundations of the unfair insurance fee determination. It is expected that the measures will strengthen the competitiveness of the insurance industry by stimulating price competition, and as a result lower the insurance fee that holders must pay.

2.1.4 *Pharmaceutical Companies' Cartel Case*

40. The Commission has imposed a corrective order together with a surcharge of 5.34 billion KRW against the collusion GSK (GlaxoSmithKline), the 4th largest multinational pharmaceutical company, and Dong-a Pharmaceutical Corporation, a domestic generic pharmaceutical company on October 24, 2011. The background and summary of this case are as follows.

41. New medicine patentees in the pharmaceutical market enjoy high profits during the production period when the product is protected by the patent; but once the generic medicine is released to market, the price of the drug plunges, resulting in a lower market share for the original patent holder. GSK was a patentee for Zofran, an antiemetic agent (alleviate nausea), and had a 47% share of the domestic antiemetic market. However, Dong-A Pharmaceutical Corporation released Ondaron, a generic form of Zofran in the market, at prices as low as 76-90% of Zofran's price, triggering strong competition and a patent dispute between GSK and Dong-A Pharmaceutical Corporation.

42. Both parties agreed to the following conditions in 1999 to end to the patent dispute. ①Dong-A Pharmaceutical Corporation will withdraw Ondaron, a generic form of Zofran, from the market and will not compete with GSK in the antiemetic and antiviral agent market hereafter. That is, Dong-A Pharmaceutical Corporation will not develop, manufacture, or sell any product capable of competing with Zofran, an antiemetic and Valtrex, an antiviral agent. ②GSK will provide Dong-A Pharmaceutical Corporation with economic profits such as the dealership of Zofran in Korea's national hospitals and the exclusive dealership of Valtrex. Such an agreement was maintained and implemented up to October 2011.

43. The KFTC found that such an agreement breached the MRFTA based on the following grounds.

44. Firstly, such an agreement was made with the intention of sharing the profits or advantages realized from avoiding competition.

⁶ Former Allianz Life Insurance

⁷ Now merged into Keumho (Now KDB) Life Insurances

45. Secondly, such an agreement limited competition by removing Ondaron, the lower priced generic, from the market and preventing future competitive pharmaceutical products from being marketed by Dong-A Pharmaceutical Corporation. Consequently, consumers had no choice but to purchase the expensive medicines instead of the lower-priced generics, and the average price of medicines in the market subsequently rose.

46. Thirdly, such an agreement went beyond the scope of GSK's due exercise of patent right. GSK limited the market entry of generics even after the patent expiry date (January 25, 2005), and prohibited the development, manufacture, or sales of competing products (even those products with different chemical components from Zofran and Valtrex). Even it was confirmed that GSK had filed the patent suit in order to put itself in a favorable position for the agreement with Dong-A without any evidence that Dong-A actually infringed on GSK's patent.

47. This incident is the first case in which the KFTC imposed disciplinary measures against a new drug patentee that induced a generic manufacturer not to release the generic medicine to the market in return for monetary rewards, which allowed the patentee to maintain its monopolistic position in the market. The KFTC showed that such an agreement in due course of patent dispute settlement may significantly harm to competition and it is an illegal business practices.

2.2 Abuse of Market Dominance & Unfair Trading Practice Monitoring

2.2.1 Summary of Monitoring

48. To inject more competition into monopolistic markets, the KFTC has been intensifying its analytical and research efforts in concentrated industries. And any kind of attempts to abuse market dominance and pursue unfair trading practices found in the process have been strictly punished.

49. The year 2011 also saw dynamic KFTC monitoring activities against abuse of market dominance. In the field agricultural products, for example, Zespri, one of the world's largest kiwi exporters, received KFTC remedial orders for competition law violation.

50. The KFTC also gave remedial orders to and imposed a total of KRW 11 billion in surcharges on 6 pharmaceutical companies, including 5 multinational ones – Janssen Korea, Ltd., Novartis Korea, Ltd., Sanofi-Aventis Korea, Ltd., Bayer Korea, Ltd., Astrazeneca Korea, Ltd. – and CJ Cheil Jedang Corp for inducing customers unlawfully.

51. Also, the Commission issued a remedial order and imposed a surcharge of KRW 659 million on Ottogi, Ltd., for fixing the retail prices of mayonnaise, glass noodles, sesame oil, and dried noodles, and barring retail stores from selling at lower prices(RPM).

52. Six hundred illegal trading cases incurred punishments heavier than a KFTC warning in 2011. This makes up 59% of the total of 1,017, cases regulated by the KFTC in the year. If looked further into more specific types of violation, abuse of transactional leverage (282 cases, 47%) and unlawful customer solicitation (182 cases, 30.3%) accounted for the majority. In the year, the KFTC issued 137 remedial orders and 109 warnings and approved 32 self-remedy plans by companies.

2.2.2 Zespri Case

53. Zespri Group Ltd (Zespri) was in discussion with Shinsegae Food Co., Ltd, a logistics subsidiary of E-mart Co. Ltd (E-mart) which is a super supermarket, about direct transactions connected with kiwi sales in March 2010. Zespri sought to prohibit sales of Chilean kiwis at E-mart stores as a condition for direct transactions with Zespri. Chilean kiwi sales at E-mart in 2009 reached approximately 1.6 billion KRW, but E-mart stopped selling Chilean kiwis at its stores in 2010.

54. Zespri discussed such direct transaction conditions with Lotte Shopping Co., Ltd (Lotte Mart) which is a super supermarket in January 2011, and proposed that Lotte Mart not sell Chilean kiwis while being supplied with New Zealand kiwis. Lotte Mart thereby concluded a direct transaction agreement with Zespri (April 07, 2011) that prohibited the sale of Chilean kiwis. Lotte Mart resumed selling Chilean kiwis when Zespri's unfair behavior was publicly reported through the media (April 25, 2011).

55. Zespri's exclusive transaction restriction blocked the sale of Chilean kiwis in about 55% of kiwi distribution channels. The price of Zespri-distributed green kiwis sold at E-mart in 2010 rose by an average of 13% because the cheaper Chilean kiwis were no longer available.

56. On the contrary, for A Company and B Company, domestic giant marts that dealt with both Chilean and Zespri kiwis, there was almost no change in the Zespri green kiwi's price in their marts as shown in the following table.

57. Such measures are significant since this is a typical case of limitation of competition in which a competitor excludes other competitors from the market to maintain and enhance its market share; and thereby, the strict measures were imposed on those actions through which the largest kiwi exporter in the world deprived domestic consumers of their right to choose the lower-priced Chilean kiwis. There is also great significance in disclosing and correcting unfair practices that restricted the price reduction effects of the Korea-Chile FTA. It is expected that greater price competition will result in lower prices once Chilean kiwis are distributed freely in the super supermarkets.

58. Such exclusive actions by Zespri caused the Chilean kiwi market share to fall from 7.5% to 5.9% in the distribution channels for large-scale marts. Zespri was able to maintain its exclusive position as the brand kiwi in the giant mart distribution channels by prohibiting Chilean kiwis from being sold in the large-scale marts like E-mart. It is judged that if Chilean kiwis had been sold continuously since 2009 in E-mart with its symbolic position as Korea's number one mart, lower-priced Chilean kiwi sales would have been expanded in other super supermarkets.

2.2.3 Unfair Inducement of Customers by 6 Pharmaceutical Companies

59. The Commission imposed a corrective order with surcharges of 11 billion KRW on August 31, 2011 against the practices of presenting illegal rebates by the pharmaceutical companies Janssen Korea Ltd, Novartis Korea Ltd, Sanofi-Aventis Korea Ltd, Bayer Korea Ltd, AstraZeneca Korea, and CJ Cheiljedang Corporation. The details of the case are as follows.

60. The six pharmaceutical companies indirectly provided the economic profits equivalent to 53 billion KRW for hospitals, clinics, and doctors by paying money under the pretext of meals, entertainment, golf invitation, fees for lectures or consultations, or others to increase the prescriptions of their pharmaceutical products during the period from August 2006 to March 2009. They provided some entertainment including meals, get-together party expenses, transportation fees, accommodation and spa expenses, movie watching, etc. holding sales promotions under the pretext of product demonstrations, seminars, symposia (34.9 billion KRW), paid money for "lecturer's or consultation fees (10.9 billion KRW), and presented rebates on the pretext of other academic contests or market surveys (7.2 billion KRW).

61. The KFTC found that such an agreement breached the MRFTA based on the following grounds.

62. First, the market competition for the price and quality of pharmaceutical products was adversely affected by the rebates in this case where the medicines were chosen only by the doctors' prescription while the patients did not have any right of selection.

63. Second, those rebates were reflected in the pharmaceutical price and caused the customers (patients) to shoulder the burden for the increased price of medicines, increasing the financial burden on the National Health Insurance Corporation. The benefit of the discounted price of medicines was given unfairly to the medical institutes instead of the patients.

64. Third, financial resources were wasted on something that had nothing to do with the development of the pharmaceutical industry. The opportunity for development of new medicines that could have been realized if the money given as rebates had been invested in R & D was lost.

65. The Commission judged that such practices of rebates went against Clause 1.3 (Unfair attraction of customers) of Article 23 "Prohibition of unfair business transaction" of Monopoly Regulation and Fair Trade Act, and prohibited the practices concerned by levying total surcharges of 11 billion and 15 million KRW, 2.5 billion and 57 million KRW on Janssen Korea Ltd, 2.3 billion and 53 million KRW on Novartis Korea Ltd, 2.3 billion and 9 million KRW on Sanofi-Aventis Korea Ltd, 1.6 billion and 29 million KRW on Bayer Korea Ltd, 1.5 billion and 12 million KRW on AstraZeneca Korea, and 655 million KRW on CJ Cheiljedang Corporation.

66. These rulings are significant in that the illegal rebate practices made secretly by some members of the pharmaceutical industry were found and penalized. In addition, it was confirmed through this incident that the reputed multi-national pharmaceutical companies had been practicing such illegal actions as providing unfair rebates. The Commission is planning to give warnings to such illegal business practices in the pharmaceutical industry and to promote the industry's future efforts to create a fair competition environment.

2.3 Statistics

2.3.1 Case-handling Performance in 2011

67. Looking over the period from 2009 to 2011, statistically, there was no big change in the numbers of total annual case handling but the numbers of corrective orders were reduced and the numbers of cases where surcharges were imposed began to decrease but rose again in 2011. In light of the importance of cases and legal and economical analysis, surcharges were much higher than in the past. The influence of the cases on society was not accurately reflected in the data since only the number of cases or corrective orders were recorded. The numbers of cases handled by the Commission remains high.

[Table 1] Case Handling Achievement by Type of Measures Taken (Above warning, case)

Type/ Year	'81-'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11
Accusation (Surcharges)	193 (8)	22 (3)	23 (9)	11 (1)	18 (4)	22 (2)	12 (2)	47 (3)	48 (11)	33 (9)	43 (8)	19 (3)	38 (22)
Corrective order (Surcharges)	3,255 (347)	441 (46)	347 (72)	497 (90)	449 (33)	478 (89)	756 (272)	644 (154)	928 (315)	735 (130)	486 (70)	276 (62)	370 (134)
Correction Recommendation (Request for correction)	1,447 (34)	35 (-)	88 (4)	115 (5)	104 (2)	101 (1)	163 (-)	179 (1)	124 (-)	77 (1)	85 (-)	66 (-)	62 (-)
Warning ¹⁾	4,771	520	3,475	2,013	2,133	2,388	2,419	2,515	2,124	2,275	2,633	1,774	1,842
Total	9,667	1,018	3,933	2,636	2,704	2,989	3,350	3,385	3,224	3,120	3,247	2,136	2,312

Note 1- Inclusive of mediation, numbers of surcharge cases, and self-correction

68. Total cases handled in 2011 were 3,505, and the cases that were considered unlawful and corrective measures taken above warning reached 2,312 or slightly more than the 2,136 cases handled in 2010.

69. In addition, total surcharges imposed in 2011 were 601.7 billion KRW; those levied in 2010 were 608.1 billion KRW, which was a sharp increase from the 371 billion KRW in 2009.

70. Looking into the cases above warning by type of violations, most violations increased; Violations of economic power concentration restriction increased from 26 to 77, unfair labeling or advertising rose from 246 to 327, unfair provisions in agreement skyrocketed from 31 to 194, and violations of the Electronic Commerce Transactions Act jumped from 261 to 326. On the other hand, the abuse of market dominance, unfair transaction, door-to-door sales and unfair franchise transactions were reduced from 2010.

[Table 2] Corrections by Type of Violation (Above warning ¹⁾, cases)

Type/ Year	'81-'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11
Abuse of market dominance	26	2	0	4	0	1	0	0	2	38	5	2	7	0
Violation of enterprise combination limitation	225	19	48	45	46	43	36	17	60	53	27	23	21	21
Violation of economic power concentration	101	27	19	16	80	29	149	108	24	44	116	41	36	77
Unfair Joint practices	235	34	47	43	47	23	35	46	45	44	65	61	62	71
Prohibited act of trade association	546	93	117	88	100	91	62	57	58	58	98	107	62	85
Unfair transaction practices	3719	172	121	169	210	123	298	481	370	715	565	446	364	279
Subtotal	4,852	347	352	365	483	310	580	709	559	952	876	680	552	533
Unfair labeling or advertising ²⁾	(644)	343	309	328	339	558	436	513	425	304	327	300	245	327
Unfair provisions of agreement	471	255	56	100	175	114	79	144	119	93	190	164	165	194
Unfair subcontract practices ³⁾	1,997	316	303	3,137	1,637	1,590	1,657	1,749	1,978	1,545	1,458	1,472	669	802
Violation of Electronic Commerce Transactions Act ⁴⁾	-	-	-	-	-	98	96	125	170	207	189	197	262	326
Violation of door-to-door sales ⁴⁾	-	-	-	-	-	24	116	63	84	65	44	84	67	15
Violation of franchise business ⁴⁾	-	-	-	-	-	1	20	43	47	46	95	366	165	111
Others ⁵⁾	2	-	5	11	7	13	13	12	34	30	0	26	3	4
Total	7,322	1,261	1,025	3,941	2,641	2,708	2,997	3,358	3,416	3,242	3,179	3,289	2,128	2,312

Note ¹⁾ Inclusive of numbers of mediation and surcharges imposed

²⁾ (): Cases of unfair transactions under Monopoly Regulation and Fair Trade Act prior to the Establishment of the Labeling and Advertising Act (Thus it should not be counted for total.)

³⁾ Inclusive of unfair international contract and resale maintenance practices

⁴⁾ Violation of laws enforced after 2002

⁵⁾ Non-submittal of data, decline of examination, non-performance of corrective measures, etc.

2.3.2 Court Litigation regarding KFTC decisions in 2011

71. The number of cases which were referred to the appellate court (Seoul High Court) was 42 in 2011, up by 10 cases from the previous year. But the ratio of cases where respondents were dissatisfied with the KFTC decisions went down from 17.02% to 10.00% year on year. Dissatisfaction rate rose reflecting KFTC's effort toward stronger respondents' defense rights and reasonable and transparent case handling, which is attributed to companies appealing against decisions for fear of financial burden from surcharge payment, damaged public reputation and resulting civil/criminal lawsuits filed against them.

[Table 3] MRFTA violation cases referred to the appellate court for the last 5 years (Unit: Cases)

	2007	2008	2009	2010	2011
MRFTA violations	680	407	222	188	404
Decisions appealed to court	38	38	35	32	40
% of cases referred to court	5.59%	9.37%	15.77%	17.02%	10.00%

Note: It was calculated based on the date of issuance of KFTC decision. To avoid double counting, a case involving multiple respondents was regarded as a single case.

3. The Role of Competition Authorities in the Formation and Implementation of Other Policies, e. g. Regulatory Reform, Trade and Industrial Policies

3.1 Fair Trade between Large and Small Firms in Subcontracting and Distribution

72. Small and medium-sized enterprises (SMEs) make up an absolute majority⁸ of the entire Korean businesses, and play a key role for sustainable growth of the Korean economy by creating jobs and boosting the dynamics of the industry. Despite such important roles SMEs play, the polarization between SMEs and large corporations is growing more extreme, and unfair subcontracting practices are still going on.

73. The Korean government proposed the <Large firm-SME Shared Growth Policy Package> on September 29th 2010 to ameliorate imbalanced and unfair subcontracting practices between them, and thus improve the competitive edge of not only corporations but the nation as a whole. To help create a healthy industrial environment of mutual growth, the Shared Growth Policy Package included various measures such as establishing subcontract payment adjustment process, ban on arbitrary payment cut and non-written order placement, SME technology protection enhancement, expansion of the Subcontracting Act application to cover more indirectly-contracted firms.

74. Considering subcontractors' inferior transactional position that makes them difficult to take any formal action against their client, the KFTC has selected some areas of focus, which have heavier rate of subcontract transactions or higher risk of law violation than others, to conduct ex-officio investigations.

75. In June 2011, dawn raids were conducted on 10 construction businesses to uncover illicit activities of 6 of the businesses, which were either fined or given remedial orders. Three of the six businesses were punished for demanding unfair subcontract payment and the other three for some payment issues such as non-payment of arrears of interest.

76. After the shared growth policy package was introduced in September 2010, dawn raids were conducted in November 2011 on 20 businesses to examine the implementation status of newly introduced

⁸ The number of SMEs of Korea stands at 30.66 million, accounting for 99.9% of the entire industry (May, 2011; Korea Federation of Small and Medium Businesses <SME status indication>).

changes such as the revised Subcontracting Act. The investigations were focused on the three major unfair trading practices, - setting an unjust subcontract payment (including subcontract payment reduction), compulsory technology takeover, and issuing no written document. The investigation found many of the businesses had been engaged in any of the three offences above. Accordingly the KFTC has taken necessary measures against them and plans to complete these actions within 2012.

77. In 2011, the KFTC took actions on 807 cases for subcontract violation, including the number of cases incurred penalties based on KFTC written inquiry result, showing a 20.6% increase from 669 counts in 2010. In the year, 12 cases were referred to the prosecutors, 37 received KFTC remedial orders and 2 were fined, among others.

3.2 Reform of Anti-Competitive Regulation

3.2.1 Review & Consultation on Anti-Competitive Regulations

78. Once a government sets up a law or regulation, it is extremely difficult to amend them thereafter. So the creation or reinforcement of competition-restricting regulations should be prevented beforehand through advance consultations. In this context, all other government agencies in Korea were made to consult the KFTC when they try to establish or amend regulations possibly containing anti-competitive factors under Article 63 of the MRFTA.

79. Through such preliminary discussions, the KFTC has stopped a total of 102 sets of competition-limiting rules that might have existed otherwise for the recent 3 years (2009~2011) – in 2009, 27 sets of regulations were blocked; 2010, 46; and 2011, 29.

80. The year 2011 saw dynamic activities to build new legislations in favor of the socially disadvantaged including SMEs to exempt them from due competition. But the Commission successfully safeguarded free competition from such anti-competitive aspects in legislations via in-depth discussions with concerned government bodies or sometimes via economic analysis by itself.

81. For instance, the Commission advised the Ministry for Foods, Agricultural, Forest and Fisheries regarding its proposed law amendment that tried to introduce to the Act on Distribution and Price Stabilization of Agricultural and Fishery Products, a price stabilization order that limits flexibility in agro-fishery products' winning-bid prices and ways of trading. The KFTC counseled the Ministry to tighten the threshold of triggering the price stabilization order up to only when consumers are disturbed from pursuing normal purchase activities or producers are interrupted to do normal production efforts. And the advice was accepted by the Ministry.

82. Plus, the Commission also presented an adverse opinion against the Ministry of Environment's attempt to amend the Act on the Promotion of Saving and Recycling of Resources to allow only mutual aid associations to pursue waste collection and recycling business. The KFTC viewed the proposed amendment anti-competitive for it would fortify entry regulations. This advice was accepted and the corresponding provisions were removed.

3.2.2 Competition Assessment to Prevent New Anti-competitive Regulations

83. KFTC efforts to preclude competition-restricting regulations go beyond preemptive consultations against anti-competitive laws. At the end of 2008, the Guidelines for Writing Regulation Effect Analysis of the Prime Minister's Office were amended. The new version stated the KFTC to analyze each government agency's regulation establishment or reinforcement for its possible impact on competition. Accordingly, the KFTC has begun competition assessment for every legislative change since 2009 and informed its outcome to concerned government agencies and the Regulatory Reform Committee for adjustment.

84. In 2011, a total of 415 sets of proposed law amendments were assessed for their impact on competition and 13 of them were viewed to be potentially competition restrictive. The KFTC offered market-friendly solutions to those cases and successfully precluded anti-competitive regulations.

85. One among them was the case regarding the country's authorized e-data center designation system. The Framework Act on Electronic Transactions, which manages the e-data center designation, was to be amended to allow only those who, before applying for the designation, presented a business plan clarifying investment schedule, etc. and received an approval for it. This was seen as an attempt by an administrative organization to control market entry depending upon its own decision. The proposed amendment was found to be an anti-competitive regulation posing a crucial obstacle to free market entry in concerned sectors. Another case is related to the Enforcement Decree of the Medical Devices Act amendment. A proposed amendment was to regulate medical device sellers giving freebies and making representations or advertisements thereof. The KFTC viewed freebie giving and advertising thereof belonged to effective business efforts to let more consumers know a new start-up or new products and pointed out banning such an effort completely would undermine enterprisers' competition ability and free market entry.

3.2.3 *Reform of Monopolistic Regulations*

86. The KFTC has reduced entry regulations that excessively disturbed free market entry with a view for a more pro-competitive market structure and further stimulated economy. Entry regulation refers to the kind of rules or regulations that limit the freedom of or right to enter a certain industry and operate a business therein. Business approval, license, and registration are examples of such entry regulations.

87. Entry regulations or regulatory entry barriers seriously damage market's economic vitality and job creation since they tend to guarantee over excessive profits lopsidedly to companies already operating in the market while nipping opportunities for innovative start-ups to fulfill their potentials. For that reason and for continued economic growth, unreasonable regulatory entry barriers must be removed.

88. In 2011, the KFTC continued its effort to carry forward a project which is called 3-Tier Entry Regulation-Easing Project. In 2009, with an understanding that the Korean economy needed to shed regulatory entry barriers and add more competition, the KFTC has eased entry regulations in 3 phases. For the project, the agency collected experts' views, analyzed markets to sort out main problems and requested professional experts to look further into them. Now the Commission arranges public hearings or dialogues with stakeholders or concerned government bodies and works with the Presidential Council on National Competitiveness and the Prime Minister's Office for coordination, in order to come up with improvement strategies.

89. For the 1st tier, in September 2009, the KFTC successfully carried out strategies for 26 problems involving regulatory entry barriers or protracted monopoly identified as requiring an urgent action. During the 2nd phase, the Commission recognized 35 additional tasks to be done in areas such as healthcare, retail distribution, air transportation, and other service sectors and regulatory entry barriers. In April 2010, the agency finalized and implemented strategies for 20 of them.

90. The 3rd tier started in the second half of 2010 to tackle issues especially in service sectors closely linked to people's daily lives such as healthcare, culture and tourism, etc. Strategies were announced for 19 issues found problematic in August 2011.

[Table 4] Improvement Strategies by Each Tier

Tier	Date of Announcement	Improvement Strategies Executed
1 st	Sep. 2009	Invited the private sector to the credit card delivery service Expanded liquor brewery license Increased designated liquor tax-cork makers
2 nd	Apr. 2010	Increased designated inspection agencies or instruction agencies Eased LPG import business registration requirements Increased designated agencies inspecting diagnostic radiation-generating devices Expanded whole-sale market corporation designation system Increased designated agencies inspecting anti-diagnostic radiation-generating devices
3 rd	Aug. 2011	Eased threshold for emergency medical facility floor size Initiated partial transferring of copyright Expanded travel agency designation system devoted to attracting Chinese tour groups Abolished dentist's dental technician office designation system

91. For instance, in the past it was necessary for opening a dental technician office to have a designation or consent from a dentist which is acting as an entry barrier. In Aug. 2011, the KFTC provided competition perspectives on this issue to the Ministry of Health & Welfare and help the Ministry to revise a provision of an enforcement regulation so that the designation system should be abolished.

3.3 Consumer Protection & Empowerment

3.3.1 Price Competition Pushed by Consumers Armed with More Information

92. Product quality or price comparison data helps consumers make a reasonable decision and ultimately push enterprises to rationalize price and supply amount. To this end, the KFTC uses various means, such as providing price information, supporting data production of consumer organizations and establishment of consumer information portal site to reach various consumers.

- **More Price Information Available on Everyday Products**

Since December 2009, the KFTC has offered price information of daily products at the Korea Consumer Agency's website, T-Price⁹ (<http://price.tgate.or.kr>). Instant noodles, detergents, and other key necessities' price information was updated weekly to support consumers' reasonable consumption choices and retailers' price competition. The scheme is meaningful for both the consumer policy and competition policy fronts.

The scheme was officially launched after a 3-month of pilot operation during which the Commission gradually added items and retailers subject to data provision. From March 26, 2010, after the pilot run, actual price information on 80 different product items on the shelves of 136 retailers nationwide was open public. In 2011 the scheme was expanded to offer data on 110 product items (384 products) of 165 retailers.

From 2011, the KFTC has updated weekly which retailer provides a product at the lowest price and which retailer provides what kind of discount events like buy one, get one free. Consumers can simply visit the T-Price website and check price difference between or within SSMs, department stores, convenient stores, etc.

⁹ The abbreviation of the Trust Price for Consumers.

In the year, as well, the Commission worked with well-known Korean web portals such as Naver and Nate to post price data and developed a T-Price application for smart phone users.

- Support for Consumer Groups' Product Comparison Data Production

Product quality or price comparison data helps consumers make a reasonable decision and ultimately push enterprises to rationalize price and supply amount. Accordingly, the KFTC has compared diverse products' price and quality and made public the outcome in cooperation with consumer groups since 2008.

Consumer groups should participate in a public competition to become a KFTC partner agency and receive financial assistance. Selected groups have provided 5~10 product items each year to compare and post the outcome at their own homepages or the T-gate which is the Korea Consumer Agency's webpage, for the public. In 2011, our focus was on comparing regular products and high-priced premium products among people's daily necessities such as milks, juices and powdered milks. As a result, it was found that premium milk, powdered milk and sausage products were more expensive than their corresponding normal products but not much better in their quality in many cases.

[Table 5] List of Comparison Data Produced by Consumer Groups

Year	Product Items subject to Comparison
2008	5 items : Sunscreen, MP3 player, Internet security software, Home blood pressure meter, Computer monitor
2009	8 items : Hearing aid, Toothpaste, Eggs, Gas mileage by car, Multivitamin, Infant atopic dermatitis treatment, Men's cosmetics, School uniform
2010	10 items : Light bulb, Environmentally friendly wallpaper, Bicycle & Bicycle helmet, Environmentally friendly shampoo-treatment-bodywash, Rice wine(Makgeolli), Hair dye, Printer toner, Bottled water, Menstrual pad, Antibacterial vinyl
2011	9 items : Milk, Juice, Powdered milk, Sausage, Variable universal insurance, Tablet PC, Salt, Walking shoes, Sportswear

- Establishment of Comprehensive Online Consumer Information Portal (Smart Consumer)

One of the most important achievements in 2011 is the creation of a comprehensive online consumer information portal called Smart Consumer. Smart Consumer is a portal that helps consumers have a quick look at various kinds of information scattered across many other individual public organizations' websites. The name Smart Consumer was chosen through a public contest in December 2011. The Smart Consumer building project is a 2-year project structured in 2 phases. The 1st phase was completed in 2011 and in January 2012, public services will be officially launched.

In the 1st stage in 2011, the KFTC built online links with 40 websites of 22 organizations including the Ministry of Land, Transport, and Maritime Affairs and the Korea Food and Drug Administration and made public useful information on product safety or recall of automobiles, food and drugs, industrial products, etc.; information on products or services possibly harmful for consumers; consumer damage alert; other useful data for consumer counsel and damage redress; and actual transaction prices of oil and apartments.

The Commission's effort to further upgrade the country's product comparison data quality resulted in the Korean version of Consumer Report which makes an integral part of Smart

Consumer. Consumer Report expanded the horizon of comparison data provision which was done by consumer groups previously and limited to a few items such as foods or low-priced consumer goods. In 2012, the KFTC plans to offer quality comparison data on more expansive durable goods like TVs, and strollers, following diverse needs of consumers.

In 2012, the 2nd phase of Smart Consumer (sophistication) will be in place to give more diversified and useful information to consumers. In addition to the current links with 40 websites of 22 organizations, the KFTC will increase the number to 100 sites by the end of 2012. Korean version of Consumer Report will come in a mobile phone-based application during the 1st half and be further developed to have some distinctive functions compared to foreign ones. For instance, consumers will be invited to do the comparison themselves by clicking a menu called Data DIY¹⁰.

3.3.2 *Consumer Empowerment*

- Betterment of Consumer Damage Redress & Dispute Settlement Scheme

Applications to the KFTC for consumer dispute mediation have grown each year. However, the Settlement Commission comprising 5 to less than 9 members has dealt with all of the cases, raising efficiency issues. Responding to this, the KFTC amended the Framework Act on Consumers to divide the Settlement Commission into the Dispute Settlement Counsel with 5 to 9 members and the Settlement Bureau having 2 to 4 members. The former mainly deals with large-scale cases and the latter takes relatively minor cases (meaning cases with recommended settlement amount of under KRW 2 million by the Korea Consumer Agency or consumer groups).

Article 68 of the Framework Act on Consumers defines the collective dispute settlement scheme that in case where damages occur to multiple consumers in identical or similar forms, national governments, local governments, the Korea Consumer Agency, consumer groups, enterprisers, etc. can apply for collective dispute settlement together. There had been no rule on the extension of the collective dispute settlement period before the 2011 amendment. The new law revision allowed period extension twice within 30 days in total, preventing excessive delay while still enabling in-depth case management. The Enforcement Decree of the Framework Act on Consumers was also amended to ensure effective collective settlement procedures. It stated that 3 or less representing parties chosen directly by the parties involved in a collective settlement can pursue any kind of mediation activity, excluding important decisions such as the withdrawal of settlement application, and acceptance or refusal of mediation results which can be decided under a written consent from the parties.

- Enhanced Consumer Damage Prevention & Redress

With a view to expand consumer damage redress and alleviate financial information asymmetry, the KFTC has endeavored to thoroughly review adhesive contract provisions on soaring number of financial instruments. And the Korea Consumer Agency, controlled by the KFTC, also plays its part of mediating consumer disputes.

Recent amendments of the Financial Investment Services and Capital Markets Act, Specialized Credit Financial Business Act and Banking act have made the Financial Service Commission notify the KFTC of every adhesion contract it is informed including those on financial

¹⁰ A method to enable potential consumers of a product, who will buy or use the product in the future to share the stories of those who already used it.

investments, credit card, banks, and saving banks so that the KFTC can review and rectify any unfair provisions it discovers.

The KFTC completed review on about 1,657 cases of adhesion contracts notified, held 8 rounds of adhesion contract review advisory meetings and requested the Financial Service Commission to fix unfair provisions. Most of KFTC advices were accepted and followed. In July 2012, the Commission reviewed 461 bank contract cases and ordered some banks to amend contract clauses on exemption, shifting responsibilities solely onto customers, omitting a separate notification when contracts are automatically renewed and on competent courts, among others.

The KFTC established and encourages the use of a model adhesion contract form for the finance sector in an attempt to prevent unjust contracts from being generated and used widely.

As to the expenses required to establish the right to collateral security, for instance, the Commission modified the existing model adhesion contract on banks, which previously made both banks and consumers consult each other to pay for the expense. But the new amendment made banks bear such right establishment costs and banks and consumers split stamp taxes half and half, relieving financial consumers' burden to a great extent.

- Intensive Law Enforcement on Adhesion Contract to Prevent Multiple Unspecified Consumer Damages

Given the nature of an adhesion contract that is usually prepared solely by enterprisers in a unilateral manner, such contracts are highly likely to be lopsided and impact all consumers who pursue trade based on them. Recognizing this and to preclude consumer damages caused by unfair adhesion clauses and build sound trading environment, the KFTC has reinforced its control over unfair adhesion provisions while encouraging people to use model adhesion contracts it provided.

When monitoring adhesion contracts, the KFTC placed its focus on daily products and areas with severe consumer damages. The KFTC has been swift in enforcing adhesion contract regulations but also has encouraged enterprisers' sense of responsibility in this regard and their self-motivated improvement efforts.

As a result, in 2011 the KFTC amended 194 sets of unfair provisions including Apple Korea's iPhone warranty clauses, 14 online service providers' privacy clauses along with their way of managing private information, 41 nursing homes' contract provisions, 18 fitness clubs' membership contracts, etc.

Plus, in the year, the Commission established a model adhesion contract for reasonable agreement practices between poultry farmers and business operators therein along with 2 sets of standard exclusive contracts for the entertainment industry and a standard rent-a-car contract form.

4. Resources of Competition Authorities (Annual Budget, Number of Employees)

93. As of late 2011, the number of employees of the KFTC is 514, and annual budget KRW 78.8 billion (about \$71 million). The budget has been on the steady rise since 2006, which is mainly due to the KFTC taking over the operation of the Korea Consumer Agency from the Ministry of Strategy and Finance in 2008.

[Table 6] Number of Employees & Annual Budget (as of Dec. 31 2011)

	Employees	Budget (KRW hundred million)
2011	514	788
2010	493	710
2009	493	729
2008	493	677
2007	504	547
2006	486	387
2005	484	348
2004	469	288
2003	416	264
2002	416	246
2001	416	220

94. As of Aug., 2011, Here is how KFTC employees are organized by the type of work.

[Table 7] Employee organization by type of work of HQ (as of Aug. 2012)

Type of work	Employee	Type of Work	Employee
Senior staff, etc.	16	Total number	97
		(M&A)	8
Administrative work	100	MRFTA (Market dominance abuse & Unfair trade practices)	37
		(Cartel)	35
Committee proceeding & litigation matters	40	Consumer protection	56
Advocacy efforts	17	Subcontract transaction & Franchise business	43