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## Global Forum on Competition

### IMPROVING INTERNATIONAL CO-OPERATION IN CARTEL INVESTIGATIONS

#### Contribution from Korea

-- Session II --

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## IMPROVING INTERNATIONAL CO-OPERATION IN CARTEL INVESTIGATIONS

-- Korea --

### 1. Overview of Global Cooperation against Cartel

1. Cooperation mechanisms between anti-trust agencies against cross-border cartels can be categorized according to the following three criteria – i) the nature of the basic framework for such collaboration; ii) types of information to exchange; and iii) investigation phases.

2. First, according to the nature of its basic instrument, cooperation is classified as a formal type structured under legal provisions or agreements and an informal type formed without any formal instruments or agreement. Second, cooperation mechanisms could also vary depending upon the kinds of information exchanged - whether it is public/ confidential or agency information. Third, each investigation phase - the pre-investigatory phase, investigatory phase, and post-investigatory phase - involves different cooperative methods and scopes as well.

### 2. KFTC Cooperation with Other Competition Agencies

#### 2.1 *Formal/Informal Cooperation*

3. The KFTC has officially built cooperative ties with FTA signatories such as Chile, Singapore and EFTA having Competition Chapter; with the European Union under the intergovernmental agreement; and other nations such as Australia, Mexico, Canada, Russia, Rumania, CIS, and Turkey having agency-to-agency arrangements or Memorandums of Understanding.

4. In addition, the Commission has expanded its collaboration in line with the “OECD Recommendation concerning co-operation between member countries on anti-competitive practices affecting international trade”.

5. Informal cooperative structures without formal instrument are also pursued in parallel for more effective cartel investigation and enforcement. For example, Commission officials are telephoning, emailing or interviewing face-to-face with their counterparts in other country agencies to discuss issues from their ongoing investigations

#### 2.2 *The Kinds of Information Exchanged in Cooperation*

6. The KFTC has no legal ground or agreement authorizing confidential information exchange with other anti-trust agencies as of now. However, such data could be shared if an enterpriser who submitted amnesty/leniency application to at least two competition authorities gives a waiver allowing his/her data to be discussed, exchanged and shared.

### **2.3 *Investigation Phase in Cooperation***

7. In the pre-investigatory phase, preliminary information is exchanged and on-the-spot investigation plans are coordinated, etc. For example, in the investigations into the international air-cargo surcharge cartel as well as the CDT and CRT glass cartel cases, the KFTC conducted dawn-raids simultaneously with its foreign counterparts after consultations.

8. In the investigatory phase, competition authorities in different jurisdictions but dealing with the same cartel case discuss their prosecution progress and coordinate witness interview schedules with each other.

9. Immediately after on-spot investigations, related information is notified to the competition agency in the jurisdiction of the investigated. This is to inform the counterpart agency of any development that could affect its national interests, improving the predictability of situation and cooperative ties. The KFTC normally informs the name of its investigating divisions, companies under investigation, case title, ground for investigation, its process, relevant provisions of the Korea Fair Trade Act, etc.

## **3. Case Examples of KFTC Cooperation with Other Agencies**

### **3.1 *International Air-Cargo Surcharge Cartel***

10. In February, 2006, the KFTC launched on-spot raids simultaneously with Country A and B after consulting with their officials in charge while maintaining information exchange to complete the case effectively in November, 2010.

11. In March, 2009, The Commission had interviews with Country B officials and discussed the cartel structure in Country B's international air cargo area, applicable laws and regulations, prosecution progress, etc.

12. In November, 2009, KFTC officials consulted with Country A officials via conference calls about legal issues regarding conflict of jurisdiction and prevention of double surcharge counting.

13. As the examination report was sent to the company in question, eleven different competition agencies having jurisdiction over the investigated were also notified of the report release in November, 2009.

### **3.2 *International Copy Paper Cartel***

14. The KFTC shared information with anti-trust agency officers in Country C which dealt with that same case at the same period of time and closed the case efficiently in December, 2008.

15. In April, 2007, the KFTC received documentaries from Country C's competition agency which submitted it to its national court. Based on these, the Commission investigated the firm's Korean branches and offices.

16. In July, 2007, the KFTC received a waiver from the self-informant allowing the exchange of every list and detail of the data he/she submitted originally to the Country C's agency for leniency.

17. In April, 2008, among the documents submitted to the Country C authority, any material the Commission failed to get was requested and analyzed.

18. In August, 2008, the Commission requested the self-informant's affidavit turned in to Country C as it was read in court and made public, then carried out further investigation focusing on the Korean market

19. In October, 2008, discussions went on with Country C officials about investigation progress; evidences; enforcement timing; possible impact of measures, if taken by one side, on the other's prosecution, etc.

### **3.3 *International CDT(Color Display Tube) Cartel***

20. In November, 2007, simultaneous and unannounced on-the-spot inspections were carried out in cooperation with Country A and B officials via coordination efforts in advance. With such a joint investigation, the KFTC was able to get the 2nd leniency applicant, who further helped facilitate KFTC investigation. In addition, other controversial issues were also discussed such as indirect sales and internal sales(captive sales) with officials in other jurisdictions.

### **3.4 *International CRT(Cathode Ray Tube) Glass Cartel***

21. In December 2011, The Commission investigated enterprises concerned simultaneously (Mar. 2009) via coordination with Country A officials beforehand, closing the case efficiently.

22. The KFTC notified the start of the investigation and its final results to the competition authority in the jurisdiction of the investigated. Other information was also shared such as possible investigation outcomes, and timing.

## **4. Conclusion**

23. Formal and legal cooperative mechanisms should be in place to expand cooperation between competition agencies in cartel investigation. More essential aspect, however, is deemed to solidify trust-based network among jurisdictions. The KFTC has experienced itself how effective it was to communicate with other national anti-trust agencies in dealing with cross-border cartel cases.

24. Considering that, in cross-border cartel cases, the evidence required for conviction is scattered in different jurisdictions, competition authorities are expected to coordinate their dawn-raids simultaneously. Also, it will be a good solution if competition agencies obtain a waiver from self-informants permitting broader intelligence exchange.

25. In parallel with formal cooperation, the KFTC will further informal cooperation such as phone conversation, email exchange, and face-to-face meetings that are more helpful for actual case handling.