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ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Korea --

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More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.

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KOREA

1. So far, there have been various discussions made concerning functions and roles of competition authorities. The main focus has been about whether it is appropriate for a competition authority to take control of competition and consumer policies together or to operate them separately. In fact, functions and types of organisations are varies. Some antitrust authorities enforce both competition and consumer policies while the others are in charge of competition policy only. For instance, the Australian antitrust authority plays a role of both a competition authority and a consumer protection agency. Meanwhile the US has a separated system, the FTC and the DOJ, and only the FTC is in charge of consumer protection works.

2. In Korea, similar to that of Australia, the Korea Fair Trade Commission is taking control of works for both consumer protection and competition protection. However, other than the function of protecting consumers, the KFTC has other duties that can be hardly found in other competition authorities. For example, the KFTC is additionally in charge of enforcing regulations on subcontract issues, Franchise businesses, and businesses in the distribution sector.

3. The KFTC has experienced changes in its organisation and function after reflecting requests from those being subject to the regulations. One of major changes is that jurisdiction over consumer policy was transferred from the Ministry of Strategy and Finance to the KFTC, and its cartel division has been reinforced particularly concerning bid-rigging parts. In the followings, I am going to briefly touch on the two aspects of changes to the organisational structure.

1. Transfer of control of consumer policies

4. Competition policies and consumer policies are basically different in their objectives but the two policies have similarities in that they ultimately aim to benefit all market players by making market functioning properly. That is, when competition policy helps consumers have access to excellent goods and when consumer policy induces consumers' reasonable choices, then it will lead to fierce competition among businesses. As such, competition policy and consumer policy are organically interconnected and therefore forms an endless virtuous cycle under which consumer benefits can be maximised.

5. The KFTC has exerted efforts to get functions related to consumer policy transferred under its control, in a bid to achieve its ultimate goal of increasing consumer benefit. As a result, the amendment in Sep 2006 transferred the jurisdiction over the Consumer Protection Agency, the central organisation for consumer protection, to the KFTC. In Feb 2008, the KFTC received the authority to operate the Consumer Policy Committee which previously installed under the Ministry of Finance and Economy, as well as the authority to enforce the Framework Act on Consumers, the Product Liability Act and the Consumer Cooperatives Act.

6. Concerning the transfer of jurisdiction over consumer policy to the KFTC the Consumer Protection Agency and consumer organisations at that time preferred remaining under the jurisdiction of the Ministry of Finance and Economy which is in charge of budgetary affairs and has relatively bigger authority comparing to other government agencies, so it was not easy to transfer the jurisdiction to the KFTC. However, the KFTC persuaded stakeholders opposing the transfer by

explaining that it would be more effective when competition policy and consumer policy are managed under one authority.

7. The transfer enabled the KFTC to establish “a basic plan for consumer policy” which became the master plan for the national consumer policy. The basic plan for consumer policy is confirmed after undergoing the examination and resolution process of the Consumer Policy Committee which is a government committee installed to review and make decision on basic policies aiming to improve consumer benefits and their daily lives.

8. After the transfer of jurisdiction over consumer policies, the Consumer Counselling Center began providing its service in 2010. The service was provided through a comprehensive system joined by the Korea Consumer Agency, consumer groups and local governments to counsel consumer complaints more easily and swiftly deal with the cases. Information collected in the course of counselling has been shared with the KFTC, which can be interpreted as a public and private co-operation concerning consumer policies. In particular, the KFTC made unfair businesses in the market to be spotted much easier by conducting and announcing a quarterly analysis on types of consumer complaints counselled and then has utilised the information for its competition policy enforcements.

9. In 2012 the KFTC set up a website (smartconsumer.go.kr) called “Smart Consumer” where comparative information on product, price information, safety and recall related information by sectors, and information acquired from consumer counselling are gathered and offered. “Smart Consumer” collects consumer-related information which was provided separately at individual websites including 102 webpages of 68 organisations such as the Ministry of Land, Transport and Maritime Affairs, and the Korea Food and Drug Administration. Especially “Smart Consumer” provides a Korean Consumer Report in which comparative information on price and quality of various products is disclosed to help consumers to make reasonable choices.

10. Based on this, the KFTC became able to enforce various policies connecting competition and consumer policies together. For instance, the KFTC selects products closely related to consumers such as daily necessities when enforcing cartel law, and has supported proceedings of collective dispute resolution to relieve damages of the large number of consumers caused by competition law violations such as cartel.

11. As such, the transfer of jurisdiction over consumer policy to the KFTC was not just about reorganisation, rather by unifying the operational process of consumer policy the transfer has brought about practical changes enabling the KFTC to perform duties of generalising and adjusting consumer policies.

12. Given the KFTC’s enforcement experiences so far, it is viewed that there have been mutual synergy generated as the KFTC has taken control of both competition and consumer policies. In short, introduction of various policy instruments for consumers has helped the KFTC to figure out consumer complaints easier and utilise the findings when enforcing competition law thus ultimately contributing to consumer benefits.

2. Prevention of bid-riggings in public procurement

13. After its first extra-territorial application of competition law against the graphite electrode case in 2003, the KFTC has made efforts to reinforce law enforcements against cartels. In 2005 there was just one division in charge of cartel investigation and the KFTC expanded it to the Cartel Investigation Bureau and in 2008 the KFTC newly installed the international cartel division to prepare itself for increasing international cartel cases due to the globalisation of economy.

14. Recently the strengthening of cartel investigation bureau has been focused on bid-rigging investigation.

15. Previously Article 19-1 of the Monopoly Regulation and Fair Trade Act stipulated 8 types of cartels but there was no concrete applicable provisions concerning bid-riggings. However as the number of cases relating to bid-rigging is on the rise, in 2007 amendment was made to the Act to include bid-rigging into the category of cartel conducts in a bid to regulate bid-riggings.

16. In addition, the amendment allows the KFTC to request other government agencies, local governments, and government-invested institutions to submit documents on bids or to make other requests for co-operation. At the same time the amendment demands public institutions to hand over a certain amount of information on tenders to the KFTC.

17. The information submitted has been utilised by the Bid Rigging Indicator Analysis System (BRIAS) introduced in 2006 to root out bid-rigging conducts. The BRIAS is designed to calculate the probability of bid-riggings by giving weightings to factors including bid-winning probability, the number of bidders, bid price, competition methods, the number of unsuccessful bids, and hikes in reserve price and transition into private contracts.

18. In 2010 the KFTC pushed forward with the implementation of a system predetermining the amount of damage. The system demands public procurement agents to add provisions on predetermination of the amount of damage to be compensated by bid-riggers to companies affected by the bid-rigging conducts to the annex of a contract related to public tenders. The system was made to prevent bid-riggings by noticing tenderers that when rigging bids, there would be risks of paying large sums of compensation for damage as well as being subject to administrative sanctions.

19. The KFTC has made various efforts to introduce the system such as holding consultation meetings with other relevant government bodies and public procurement agencies. Thanks to the efforts, two public corporations including the Korea Electric Power Corporation and the Korea Water Resources Corporation implemented the system in 2011 and as of now almost all public corporations such as the Korea Railroad Corp, the Korea Expressway Corp and the Korea Land and Housing Corp introduced the system.

20. When fully implemented, the system is expected to increase the number of claims for damage which now stands at just 6% of the entire bid-rigging cases due to difficulties in calculating the amount of damage and also to prevent bid-rigging beforehand.

21. Also in 2013 the KFTC newly installed the bid-rigging investigation division to handle bid-rigging conducts more effectively. After that, the number of cases handled has increased significantly. As of September this year, the KFTC detected a total of 48 cartels and imposed about 1 trillion won (equivalent of 1 billion \$) against the cases and most of the cases were bid-rigging conducts.

3. Conclusion

22. The KFTC needs to put efforts for harmonisation between consumer and competition policies and at the same time performs various duties simultaneously unlike other antitrust agencies around the world, so it is expected that there would be changes in the organisation and the functions in the future. Since the regulation on owner families' seeking of private benefits, the regulation on new circular shareholding and larger corporate groups, and the regulation on subcontracting have their unique policy objectives, the KFTC will make efforts to harmonise competition law and the above mentioned policies.