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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN KOREA

-- 2009 --

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

1.1 Revision of MRFTA and Enforcement Decree

1. In 2009, the Korea Fair Trade Commission (KFTC) launched revision of the Monopoly Regulation and Fair Trade Act, the general competition law of Korea, to create better environment for "active market economy". One of the biggest achievements was to abolish *restriction on total amount of equity investment*, major ex-ante regulation, to boost investment sentiment of the business while introducing *business group status disclosure system* to strengthen ex-post monitoring of the market. In addition, deregulation effort is currently underway on holding companies to facilitate business groups' conversion into holding companies with simple and transparent shareholding structure.

2. Moreover, through amendment of the MRFTA and its enforcement decree, M&A notification period limit was scrapped, joint leniency application permitted and the rules for imposing administrative penalty elevated into enforcement decree.

- Abolition of total equity investment ceiling & Introduction of business group status disclosure system (Mar. 25, 2009)

3. Under the total equity investment ceiling system, companies belonging to a business groups whose affiliates' asset is 10 trillion won (about $ 8.7 billion) or more were prohibited from investing more than 40% of their net asset value in other companies. This system was introduced back in 1986 to prevent economic power concentration on *Chaebol* which emerged during the period of rapid economic growth and its adverse impact on market competition. The system was abolished for policy purposes in 1998 and then re-introduced in 2001. The system, however, came to be recognized as a typical example of excessive government regulations that restricted business activity as companies' focus shifted from business expansion based on borrowing into strong profitability in the face of the trend of market opening and ever-growing competition in the global market.

4. In response, the KFTC devised the "3-year-roadmap for market reform" in 2003 to relax the total equity investment restriction by, for example, reducing the scope of its application, which ultimately was aimed to change into self-regulation of the market. Against the backdrop, the newly launched government decided to scrap the system to boost companies' investment sentiment and vitalize the economy. And with the passage of the bill on abolition of the system in the National Assembly on March 3, 2010, its 20-year-history has finally come to an end. Abolition of the total investment ceiling system is expected to show strong commitment of the government to lifting unreasonable regulations, encouraging companies to make more investment.

5. In addition to the effort to relax ex-ante regulations, the KFTC introduced disclosure system for business groups subject to cross-shareholding limitation to strengthen self-regulation of the market. The existing disclosure system was aimed to show status of individual companies, not business groups as a whole. The newly introduced disclosure system, on the contrary, is intended to show overall condition of a business group clearly, strengthening self-monitoring function of the market and inducing companies' voluntary effort toward enhanced transparency. Under the new disclosure system, a company belonging to a business group whose affiliates have 5 trillion won (about $ 4.3 billion) or more asset in total is required to reveal information on the concerned business group such as its overall condition, shareholding status, transaction with a person with special interest, etc.

6. Furthermore, the KFTC tried to revise the MRFTA to permit a holding company to own a financial institution. The draft amendment submitted by the KFTC in July, 2009 is now pending in the

National Assembly. If the bill passed, the improvement made to the holding company system should encourage a large business group to convert into the holding company system, thereby enhancing transparency of ownership structure and governance of Korean business groups.

- Abolition of time limit for pre-merger notification (Mar. 25, 2009)

7. Regarding M&A transaction, the MRFTA mandated M&A notification to be filed within 30 days from the date of M&A completion, i.e., stock certificate issuance, M&A registration or completion of payment for business transfer. However, "large business groups" defined as having the total asset or turnover (including affiliates') of 2 trillion won (about $ 1.7 billion) or more were required to notify M&A transaction before the completion of the deal. In this case, an M&A transaction needs to be notified to the KFTC within 30 days after the date of stock acquisition, merger, business transfer contract or decision at shareholders' meeting to participate in establishment of a company.

8. Setting period limit in prior notification, however, was likely to impose unnecessary burden on companies. Recognizing this, the KFTC has decided to lift the 30-day-period restriction and let M&A notification be filed at any time before the transaction is completed.

- Introduction of joint leniency application system (May 13, 2009)

9. Cartel schemes, grave antitrust violation that hampers operation of market price function, are hard to uncover as they get sophisticated in response to tightened enforcement. Faced with the problem, the KFTC adopted Cartel Leniency Program in 1997 under which cartel participants come forward and offer cooperation in investigations of the KFTC for immunity from or reduction of sanctions including surcharge. The leniency program has been continuously improved to enhance predictability and transparency since its adoption. As a result, the percentage of cartel cases uncovered and led to surcharge imposition utilizing the program has been on the rise.

10. For instance, in 2009, the program was improved to allow joint leniency application. Before the improvement was made, multinational companies with many branch offices across the world were reluctant to apply for leniency as application by multiple enterprises were not permitted. With the revision of the Enforcement Decree of the MRFTA, however, affiliates in practical parent/subsidiary relation are permitted to jointly apply for leniency for exempted or reduced surcharge. It is expected that companies including multinationals operating multiple branches will be encouraged to apply for leniency application with the revised rule of the program.

- Elevation of rules on administrative penalty into enforcement decree (May 13, 2009)

11. Imposition of administrative penalty for failure to comply with obligations prescribed in the MRFTA regarding disclosure, M&A notification, etc. were regulated under the relevant notifications. But there was a question raised on whether it was desirable for rules on administrative penalty imposition, which has great impact on people's interests, to be provided in a notification. In response, the KFTC elevated key aspects of the rules into the Presidential Decree in 2009 to enhance transparency and predictability of their operation.

1.2 Revision of notification and guidelines regarding the MRFTA

12. In 2009, besides the MRFTA and its enforcement decree, various notifications and guidelines regarding enforcement of the MRFTA were amended. The following is the key substance of the amendment.

1.2.1 Revision of guidelines for review of the abuse of market dominant position (Oct. 6, 2009)

13. The KFTC amended provisions on abuse of patent litigations, one of several types of business obstruction, in the Guidelines for review of the abuse of market dominant position, creating institutional grounds to enable flexible response to various intellectual property rights abuse (hereinafter, IPR abuse). Based on this, the KFTC is planning to make overall revision into the "Guidelines on reviewing undue exercise of IPR" in 2010 to strengthen law enforcement against IPR abuse.

14. Here is the provision before and after the amendment.

Before the amendment IV. 3. d. (6) A company filing for an IPR infringement lawsuit against other companies to undermine their competition ability, knowing the concerned behavior of the companies does not violate its own patent rights
After the amendment IV. 3. d. (6) A company hampering business activities of other companies by unduly using patent infringement litigation, patent invalidation procedures or other judicial or administrative procedures regarding IPR

15. The KFTC saw the existing provision as excessively restricting the scope of application and criteria for determination of illegality, making it hard to address newly emerging IPR abuse practices. For this reason, the provision was amended to expanded the scope of behavior regulated under the provision from "patent infringement litigation" to "abuse of judicial or administrative procedures regarding IPR" so that the KFTC responds to abuse of IPR along with patent rights, and abuse of administrative procedures governed by the Korean Intellectual Property Office and Korea Food & Drug Administration as well as litigations.

16. In addition, the existing provision required as a criterion on determining on litigation abuse, the recognition of a person who files a lawsuit that the behavior at issue does not constitute violation of patent rights. The mandate to prove subjective recognition, however, was likely to excessively restrain law enforcement. Therefore, the amended provision was revised to include more inclusive requirement "unduly" to take into consideration other matters such as patent invalidation as well as subjective purpose of the filing of litigation.

1.2.2 Revision of Notification on Implementation of Cartel Leniency Program (Aug. 20, 2009)

17. First, with the amendment of the Enforcement Decree of the MRFTA which enabled joint leniency application, Notification on implementation of cartel Leniency Program was revised to prescribe the specific conditions and procedures on joint application.

18. Second, under the amendment, involvement in concerted act shall be immediately stopped once leniency application is made unless it is an exceptional case. The existing notification required the concerned cartel conduct to be discontinued until the final decision by the Committee, which gave room for applicants to exploit the provision by continuing the cartel act until the last phase of an investigation.

19. Third, to promote application from more companies, the amended notification provides further expanded number of cases where applicant status can be transferred, e.g., the first applicant's voluntary withdrawal from application, cancelation of applicant status, etc.

1.2.3 Revision of Guidelines for Cartel Review (Aug. 21, 2009)

20. The KFTC revised the Guidelines for cartel review to boost transparency and predictability of law enforcement against cartel.

21. First of all, it newly established example provisions for each of the nine types of cartel conduct to help companies and consumers understand specific behavior categorized into each type of cartel conduct.

22. Furthermore, provisions on circumstantial evidence have been reinforced. The MRFTA provides that even if there is no direct evidence on collusive agreements, high probability of such agreement judged from circumstantial evidence is enough to assume there was a cartel agreement. Regarding this, cartel review Guidelines stipulate examples of cases which can constitute circumstantial evidence. With the revision, part of the examples has been revised. For instance, the existing condition "where there was a secret meeting and behavior was coordinated after such a meeting" was revised into "where behavior was coordinated after a meeting or communication", reflecting the reality of technology development which has made possible communication without face-to-face contact through phone calls, emails or instant messenger.

1.2.4 Revision of rules on the FTC's committee operation and case handling procedure, etc. (Mar. 27 and Aug. 20, 2009)

23. The KFTC amended Rules on Committee operation and case handling procedures to provide respondents more opportunity to state their opinions in terms of both quality and quantity, thereby enhancing procedural fairness and proficiency of the committee proceedings.

24. For this purpose, first, it revised the Rules to stipulate cases where the Committee hearing can be extended, allow an Examiner and respondent to seek an extended hearing, and have opinions of an Examiner on corrective measures (excluding the benchmark surcharge imposition rate, benchmark surcharge amount, surcharge aggravation/reduction rate and final surcharge amount) be served to a respondent.

25. In addition, the KFTC clarified the scope of respondents' business secrets given protection and applied the definition of "business secret" provided in「Unfair Competition Prevention and Trade Secret Protection Act」to the concept of "business secret" under the Rules to improve its protection mechanism. Where there is concern over respondents' business secrets revealed, necessary measures can be taken for information protection, e.g., ordering other enterprisers in competitive relation to leave the hearing room temporarily.

26. To secure stronger position for a complainant, it was decided that launch of a case investigation shall be reported to a complainant within 15 days from the receipt of a complaint, and where an Examiner makes a decision different from the complainant's, the decision made and detailed grounds for such decision shall be notified to the complainant.

2. Enforcement of competition laws and policies

2.1 Enforcement against abuse of market dominance

2.1.1 Abuse of market dominance by Qualcomm (Jul. 23, 2009)

27. Qualcomm, which secured monopoly power after its CDMA (Code Division Multiple Access) technology was adopted as the standard in the mobile communications market, engaged in anticompetitive

practices in downstream markets such as modem chip and RF chip markets based on its monopoly power in the upstream market, i.e. CDMA technology market. In response, the KFTC imposed corrective measures on the company.

28. With inclusion of its CDMA[1] patented technology into the standards of the mobile communications industry, Qualcomm gained monopoly power in the technology market. The company accounts for 99.4% of the domestic CDMA modem chip[2] market by vertically integrating and operating manufacturing and sales business of CDMA modem chips. Qualcomm maintained and strengthened its monopoly power by providing discriminative royalties and loyalty rebates, continuing royalty imposition even after patent expiration and carrying out other numerous practices. As a result, it was able to exclude its competitors which were restricted from entering the domestic modem chip market, maintaining near-monopoly-level market share. The following is the findings of the case.

29. First, Qualcomm licensed its core CDMA mobile communication technology to domestic handset manufacturers and imposed a higher, discriminatory royalty rates for handsets that use competitors' modem chip.

30. Second, from July 2000, Qualcomm has provided rebates to local handset makers on the condition that these manufacturers purchase most of the required modem chips and RF chips[3] from Qualcomm. In other words, once the producer purchased its chipset requirement from Qualcomm more than a certain level, Qualcomm provides more rebates for the amount exceeding the given threshold, thereby excluding competitors from the market.

31. Third, Qualcomm has included and maintained the provision that requires its licensee to pay royalties even after its patent expires based on the CDMA patent licensing contract signed in 1993.

32. Based on the findings, the KFTC imposed surcharge of KRW 273.2 billion (about $ 237 million) and issued corrective order on Qualcomm to ban i) imposing discriminatory royalty rates against domestic handset makers using non-Qualcomm chips ii) providing conditional rebates in exchange for using its own chips and iii) charging royalties for expired patent technology.

2.1.2 Abuse of market dominance by Hyundai Mobis (Mar. 18, 2009)

33. This is the case where the KFTC took corrective measures against Hyundai Mobis, an affiliate automotive parts supplier of Hyundai/Kia Motors, dominant players in the domestic CBU (Completely Built Unit) market, for abusing its market dominance by prohibiting 1,400 independent components dealers nationwide from selling "generic parts"[4] that are in direct competition with "original parts[56]".

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1 The CDMA technology refers to one of the many technologies developed to allow several transmitters to send as much signal as possible over a bandwidth of limited frequencies. When sending audio signal in digital format, it is given a shared code and transmitted together with several other signals over a single communication channel. The receiving terminal uses the code to separate specific signal and convert it to audio signal.

2 A modem chip, the core equipment of a handset, equivalent to the CPU of a computer, modulates human voice into digital signal, and digital signal into analogue signal to make it comprehensible to people.

3 A radio frequency (RF) chip receives radio waves from base station and modulates high frequency waves into low frequency to enable modems to process it, or modulates low-frequency into high frequency waves for base station transmission.

4 The word, generic parts, is not appropriate here because it implies inferiority in quality compared to original parts. However, this report will use this word as it is commonly used in market.

34. Auto parts are categorized into manufacturing parts used in the assembly of CBUs and repair parts used to repair and maintain the function of automobiles. The KFTC defined "domestic repair auto parts" as the relevant market in this case, as the two products (manufacturing and repair components) are totally different from each other in efficiency and transaction parties. It also determined that Hyundai Mobis was a dominant player in the domestic repair auto parts market on the following grounds. First, Hyundai Mobis, which accounted for 50% of the repair parts market, was considered to have dominant position under the MRFTA. Second, Hyundai Mobis is an affiliate of Hyundai/Kia Motors - dominant players in the CBU market with 75% share of the registered vehicles on the road. Third, entry barrier for the relevant market was high. Fourth, Hyundai Mobis was significantly large in size compared to its competitors'. Fifth, the examinee was leading price-setting policies in the relevant market.

35. Hyundai Mobis engaged in the following practices to restrict distribution of competing components, thereby gaining control of the components distribution channel and strengthening the dominance of original parts in the market. First, it produced and distributed to components dealers across the nation "Operation Manual of Components Dealers", an operational guide book for independent dealers, which stipulated the provision prohibiting the dealers from purchasing and selling generic parts. In addition, the "Dealer Contract" revised early 2008 included a new provision on "compliance obligation to maintain distribution structure" and incorporated this provision in "Dealer Operation Rules" for better control on the transaction of generic parts. From 2008, "dealer grading system" has been officially introduced as a tool to sanction dealers selling generic parts.

36. The success of auto components suppliers depends on securing wide distribution network near auto repair stores and making timely supply of products. Small-/mid-sized components manufacturers, which have difficulty building distribution network of independent dealers, have no choice but to use other manufacturers' dealers (like Hyundai Mobis) or secure the market through non-dealer stores. Given the structure of repair auto market, the practice of Hyundai Mobis of banning its dealers from selling competing components was highly likely to exclude its competitors from the market by cutting off their distribution channels.

37. For this reason, the KFTC imposed KRW 15 billion (about $13 million) in surcharges and a cease-and-desist order to stop the control of Hyundai Mobis over component dealers that handle competing products. At the same time, Hyundai Mobis was levied a notification order to inform its dealers and component support centers of the remedies imposed by the KFTC as well as a newspaper announcement order and an education order.

2.2 Cartel enforcement

2.2.1 Beverage companies' cartel (Aug. 14, 2009)

38. This the price-fixing case of five beverage companies-Lotte Chilsung Co., Ltd., Coca Cola Beverage Company, Haitai Beverage Co., Ltd, Donga Otsuka Co., Ltd., and Woongjin Foods Co., Ltd.-

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5 The so-called 'original parts' are repair components supplied to Hyundai Mobis by parts manufacturers and hologram-labeled by Hyundai Mobis to be sold through dealers. However, original parts do not undergo official quality testing and are not certified by government or any accredited bodies. On the other hand, generic parts refers to all of the off-the-shelf or recycled components that compete with original parts but do not include illegal products that violates trademark, design and other intellectual property rights or whose quality is defective.

6 While there is yet to be a credible, objective quality assessment on original and generic parts, a number of experts agree that generic parts are on a par with original parts in quality. While there are differences in price by component type, in general, the price of generic parts is about 30%~83% of that of original parts.

which collusively raised beverage prices by (i) reaching an agreement on price raises and deciding the method (e.g. the No. 1 company raises first while others follow suit) or timing (Feb. 2008, Feb. 2009, etc.) through a meeting or communication of presidents or senior executives and (ii) specifying plans such as timing, product items or rate of price hikes through working-level meeting and checking each other for the implementation.

39. Under the finalized scheme, Lotte Chilsung Co., Ltd. having the biggest market share prepared a price raise plan about a month before the others, who then prepared their plans based on Lotte Chilsung's.

40. The soft drinks market is divided into the submarkets of: (i) fruit drinks (or juice), (ii) carbonated drinks, and (iii) non-fruit and non-carbonated drinks. The 5 beverage companies effected price increases of approx. 10% for fruit drinks and approx. 5% for carbonated and other drinks during February and March 2008. In September 2008, they sought, but withdrew, another increase of approx. 10% for fruit, carbonated and other drinks. In February 2009, they successfully increased prices of fruit, carbonated and other drinks by approx. 10% again.

41. The KFTC concluded that the agreement among the 5 beverage companies was to collusively raise prices, which was evidently anticompetitive, without efficiency-enhancing effects. This was because a price cartel only causes direct harm (i.e. higher price) to consumers and fails to bring about any efficiency-enhancing effect.

42. On this ground, the KFTC issued an order to prohibit undue concerted act through information exchange, imposed surcharge of KRW 25.5 billion (about $22 million) against three companies, except for the two which applied for leniency, and filed a complaint with the prosecution against representatives of Lotte Chilsung and Haitai Beverage. This case is significant in that corrective measures were taken against a so-called "intelligent cartel" in which the participants collectively raised prices by pretending as if the price leader presents a price increase plan and the rest follow it.

2.2.2 Marine hose cartel (May 13, 2009)

43. The following major marine hose manufacturers had elaborately engaged in cartel activities in bidding between January 4, 1999 and June 9, 2006: Bridgestone Corporation, Yokohama Rubber Company Ltd. (both in Japan), Dunlop Oil & Marine Ltd. (the UK), Trelleborg Industries SAS (France), Parker ITR S.r.l., and Manuli Rubber Industries S.p.A. (both, in Italy).

44. During the period, the abovementioned companies formed a so-called "Marine Hose Club" to agree on their respective share in the world market. The purpose of the Club was to secure their respective market share and maximize profitability through constant price increases. The Club members formulated operational rules for cartel and appointed an expert consultant ("Coordinator") to operate a highly systematic cartel.

45. The Club members also agreed not to intrude the other members' home market ("Home Market Respect Policy"). Accordingly, in Japan, the UK, France, and Italy, each Club member was able to monopolize its home market.

46. Upon receipt of quote requests or information on bids from customers around the world, each Club member immediately informed the Coordinator. The Coordinator determined, and informed the Club members of who should be a successful bidder ("Champion") in a particular bid and false bid prices to be offered by the rest as losing bidders. The Club members participated just as the Coordinator instructed, and the agreed cartel materialized. In the meantime, any violation of the rules would carry a penalty. For instance, if any Club member disregarded the Coordination's instruction and offered a lower bid price to win the bid, the Coordinator gave disadvantages to the violating Club member in the following bid.

47. The Coordinator was informed each month of orders received by the Club members for monitoring purposes and prepared and sent back to the Club members a report based on the order data ("Market Share Report"). Comparing the market share in the Market Share Report and the previously agreed share, the Coordinator determined who should be the Champion in the upcoming bid. If any Club member claimed connection with the relevant customer based on the customer's preferences or existing business relationship, the Coordinator took it into consideration.

48. Since 2000, the Club members had paid fees of 50,000 US dollars respectively per year (or 300,000 US dollars in total) for the Coordinator's service. In order to make the payments look lawful, the Coordinator established a consulting company in name only. Each Club member entered into a consulting agreement with the paper company, under which the Club member paid service fees. This made the payment for cartel coordination look lawful.

49. The above mentioned practices of the examinees - determining false bid prices for losing bidders in advance, determining a Champion, and agreeing on market share in advance - all are in violation against Article 19 of the MRFTA.

50. In response, the KFTC imposed corrective orders and surcharges of KRW 557 million (about $0.5 million) in total on 5 of the 6 companies, with the remaining one applying for Leniency Program.

51. The international marine hose cartel, the first-ever international bid rigging case uncovered and corrected by the KFTC, shows the KFTC's strong commitment to enforcement against international cartels. The KFTC's measure in this case is the fifth after its US, EU, UK, and Japanese counterparts, which reassures that participation in an international cartel can be punished in multiple countries.

2.2.3 LPG cartel (Dec. 2, 2009)

52. This is the price-fixing cartel case among 6 LPG suppliers - 2 importers and 4 refiners purchasing from the 2 importers 50% or more of their requirements. They, through information exchange and communications, agreed on a LPG selling price range on a monthly basis a total of 72 times during the period from January 2003 to December 2008.

53. First of all, the 2 importers identified in advance each other's price through telephone communications or meetings between the pricing staff or discussed the volume of price increase or decrease to maintain their respective LPG selling price ranges. As a result of the 72 pricings, the average price gap between the 2 importers was merely KRW 0.01 both for propane gas and butane gas. The propane gas price gap, in particular, had been uniformly KRW 0.2 (in 51 pricings) from January 2003 to March 2007 and, from April 2007 to May 2008, completely zero except for only one pricing.

54. When the 2 importers determined their LPG selling price, they immediately faxed the price information to the 4 refiners that they had businesses with. It was then not difficult for the refiners to figure out the importers' selling price offered to refueling stations. This flow of price information resulted in no or little gap between the importers' and the refiners' selling prices offered to refueling stations.

55. In sum, the 2 importers and the 4 refiners used LPG transactions existing since before the introduction of free pricing system, as principal means of collusively fixing and maintaining prices. They held meetings of sales officers or managers from time to time to confirm their commitment to 'high price & less competition' scheme and keep their solidarity.

56. The KFTC concluded that keeping sales prices essentially the same directly restricted price competition without any efficiency-enhancing effect. For this reason, it issued order to ban collaborative interaction though information exchange, imposed surcharges of KRW 669 billion (about $580 million)

and filed a complaint with the prosecution. The harm from this cartel was all the more serious in that the 6 companies accounted for 100% of the LPG market in Korea, which gave them market dominance to determine LPG prices at their discretion. The KFTC also determined that more companies needed to enter the LPG market for stronger competition and requested the relevant government agencies to relax the entry regulations. In response, the agency took measures by allowing joint use of storage facilities and extending rental period of surplus space of government storage facilities.

2.3 M&A enforcement

2.3.1 Acquisition of Haitai Beverage factory by Lotte Beverage (Mar. 18, 2009)

57. Lotte Chilsung Beverage Co., Ltd., an affiliate of Lotte, a large business group, established a wholly-owned subsidiary named CH beverage Co., LTD., a production company to be in charge of beverage sales after the merger. On 31 Dec. 2008, CH beverage signed a contract to acquire a factory located in Ansung City, Korea from Haitai Beverage, and on 8 Jan. 2009, the KFTC was notified of the given merger.

58. The KFTC studied functions and utility, price, manufacturing process and consumer preferences of beverage products made by the merging parties, and defined the three separate relevant markets by types of beverages - juice beverage, carbonated beverage and functional beverages market. Based on this, it reviewed potential anti-competitiveness of the transaction.

59. In juice beverage market, the anti-competitive concerns were determined to be substantial based on the following factors.

60. First, as a result of the merger, the merging company would lead the market with market share exceeding 60% compared to 23% of the second player, Haitai Beverage. Given its market share and the gap with the second player, the merger was presumed to be anti-competitive pursuant to the MRFTA. Second, it is recognized that Lotte Chilsung Beverage is likely to raise price or control volume by adjusting its production based on expanded capacity. Third, Lotte Chilsung Beverage, as the leading domestic beverage company, has in place the technology and know-how in product development and manufacturing, and diversified product portfolio. As the beverage market is very much segmented, diverse product lineup is key in leading the market, and helps strengthen market dominance. Fourth, beverage production requires substantial capital investment as well as time and money in raising consumer awareness. This is why new entrants mainly go into functional beverage market while serving as original equipment manufacturers in juice and carbonated beverage market. Such situation limits new market players from creating workable competition.

61. Moreover, the KFTC determined a higher possibility of coordinated interaction with competitors on the following grounds.

62. First, the likelihood of coordinated interaction is very high in juice beverage market. The price or quality gap between products is not substantial in juice market while manufacturing process and distribution channels are relatively simple, all creating circumstances favorable to cartel behavior. Second, based on the contract between concerned parties, most of the products made in target factory would be purchased by Haitai Beverage as an OEM customer after the merger. This means that production facility would be shared between Lotte Chilsung Beverage and Haitai Beverage. Third, Lotte Hotel Co., an affiliate of Lotte Chilsung Beverage, owns 19% of shares in Haitai Beverage, which means that the existing influence already enjoyed by Lotte over Haitai Beverage could heighten the possibility of coordinated interaction.

63. The KFTC has approved the given merger on the condition that the involved parties implement the following obligation. First, for the coming 5 years, Haitai Beverage and other drink companies will be given priority in juice supply from Chilsung Beverage. Second, a monitoring body consisting of at least 5 persons who are not employees of Lotte business group should be established, and monitor the implementation of the KFTC measures for the coming 5 years. Third, Lotte Chilsung should report the factory price of juice beverage products every quarter for the next 3 years.

2.3.2 Acquisition of Paradise Duty Free Shop by Lotte Hotel (May 4, 2009)

64. In April 2009, Hotel Lotte Co., Ltd. (hereinafter, Lotte) that runs duty free stores in Seoul, Busan, Jeju, Incheon and Gimhae International Airport signed a Memorandum of Understanding to acquire the duty free business of Paradise Global Co., Ltd. (hereinafter, Paradise) that operates duty free stores in Busan and Daegu International Airport. In May 2009, the KFTC was requested a pre-merger review of the proposed transaction.

65. The KFTC defined the relevant market as 'duty free shop market,' judging that the merging parties' duty free stores are distinct from other retail distribution sectors and create a very different product market. The geographic market is defined as Busan and Gyeongnam region where the involved parties are running off-airport duty free stores. The geographic market is defined as Busan and Gyeongnam region where the involved parties are running off-airport duty free stores.

66. The KFTC expected the given merger to create anti-competitive effect such as price increase and less consumer choice on the following grounds. First, the merger would remove competition as the leading player takes over the strong competitor, which would make the combined market share of Lotte and Paradise 97%. Second, the KFTC studied product discount rates and sales promotion expenses by store, and found out that the Lotte store in Busan offers the highest discount rates and spends most in sales promotion expenses out of all 7 Lotte stores nationwide, which means that the Busan region is the most competitive market prior to the merger. Given that the discount rates of Paradise are higher than the Lotte store in Busan, it is highly likely that the merger would immediately raise the price level of the Paradise store to the level of Lotte Busan store. Third, the KFTC found out that the sales price of liquor products was substantially raised after Lotte started monopolizing alcoholic beverages in Incheon International Airport from March 2008. Such circumstances further support a very high likelihood of price increase under the merger in question. Fourth, there is very little chance of new players coming into market. To open a duty free store, permission from the Customs Service is necessary. Especially, given that the eligibility criteria for off-airport duty free store are very rigorous, the KFTC believes that it would be impossible to be granted a license in Busan/Gyeongnam region.

67. As a result, the KFTC prohibited the given merger, judging that behavioral or partially structural measures would not be able to remove the anti-competitive effects of the merger.

2.4 Enforcement against unfair trade practices

2.4.1 Beverage suppliers' resale price maintenance Case (Oct. 28, 2009)

68. The KFTC uncovered that four beverage suppliers-Lotte Chilsung Co., Ltd., Coca Cola Beverage Company, Haitai Beverage Co., Ltd., and Dongya Otsuka Co., Ltd.- had engaged in minimum resale price maintenance (Company, Haitai Beveunt stores including large-scale marts and distributors. For this, it issued corrective order and imposed surcharge of KRW 940 million (about $0.8 million).

69. Lotte Chilsung Co., Ltd. and Coca Cola Beverage Company, through regular on-site inspection or price discussion, forced large-scale stores, etc. to stick to resale price (or consumer sale price). For their discount events, in particular, large-scale stores, etc. had to consult with Lotte Chilsung Co., Ltd. and get

its approval before they offered consumer sale prices. Furthermore, Lotte Chilsung Co., Ltd., Haitai Beverage Co., Ltd., and Donga Otsuka Co., Ltd. carried out exhaustive on-site inspection of their distributors to make sure that the distributors adhere to the preset price lists. In implementing RPM, the suppliers contained RPM provisions in the distributorship agreement, which served as grounds for termination of the agreement or other disadvantages if the distributor offered a lower price. In addition to RPM, Lotte Chilsung Co., Ltd., through exhaustive on-site inspection, required their distributors to observe the pre-assigned territory of trade.

70. The KFTC found that the beverage suppliers' compelling large-scale marts and distributors, etc. to resell beverage at or above the preset price through discussions, agreements or assignments constituted RPM (Article 29 (1) of the MRFTA). Moreover, Lotte Chilsung Co., Ltd.'s assigning distributors' territory of trade was considered as limiting the territory of trade.

71. This behavior (i) directly restrained beverage price from falling, (ii) furthered price cartel among beverage companies or distribution companies, and (iii) reduced the margin pressure on the beverage suppliers from distribution companies, lessening price competition and undermining consumer interest in the beverage market. Hence, the KFTC issued corrective order and imposed surcharge of KRW 940 million (about $0.8 million).

2.5 Statistics on case-handling performance and lawsuits regarding KFTC decisions

2.5.1 Case-handling performance in 2009

72. The number of cases dealt with by the KFTC in 2009 was 4,664, which was 2.3% up from 4,556 in 2008. Among the total, 3,084 cases were found in violation of the law and given warnings and more severe corrective measures in 2009. This was a slight increase of 0.5% from 3,070 of the year before [Table 1].

Table 1. Case-handling performance by type of corrective measures
(subject to warning or graver measures) (Unit: Case)

Type \ Year	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09
Reference to Prosecution	22	23	11	18	22	12	47	48	33	43
(Surcharge)	(3)	(9)	(1)	(4)	(2)	(2)	(3)	(11)	(9)	(8)
Corrective Order	441	347	497	449	478	756	644	928	737	487
(Surcharge)	(46)	(72)	(90)	(33)	(89)	(272)	(154)	(315)	(132)	(70)
Corrective Recommendation	35	88	115	104	101	163	179	124	77	85
(Request for Correction)	(-)	(4)	(5)	(2)	(1)	(-)	(1)	(-)	(1)	(-)
Warning[1]	520	3,475	2,013	2,133	2,388	2,419	2,515	2,124	2,223	2,469
Warning or Above	1,018	3,933	2,636	2,704	2,989	3,350	3,385	3,224	3,070	**3,084**
Other Measures	652	735	711	385	957	949	1,052	1,256	1,486	1,580
Total	1,670	4,668	3,347	3,539	3,946	4,299	4,437	4,480	4,556	**4,664**

Note 1. Including mediation and administrative fines imposed.

73. The number of cases handled for violation of MRFTA stood at 1,240 in 2009, accounting for 26.6% of the total. In 682 cases of them, illegality was found and warning or graver measures were taken [Table 2].

74. Among cases subject to warning or more sever measures for violation of the MRFTA, the number of cases on unfair trade practices decreased from 565 to 446, which seems to result from the

increase in dispute settlement by the Korea Fair Trade Mediation Agency. Violation of rules to curb economic power concentration showed sharp drop from 106 cases in 2008 to 41 in 2009. According to analysis, this is attributed to successful operation of disclosure system for business groups subject to total equity investment ceiling. In the mean time, the number of cases in market dominance abuse, cartel and prohibited activities of enterprisers' organizations that cause grave anti-competitiveness showed only slight change with each falling from 5 to 2, 65 to 63 and 98 to 107, respectively [Table 2].

Table 2. Enforcement performance of MRFTA violations
(subject to warning or graver measures) (Unit: Cases)

Type \ Year	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09
Market Dominance Abuse	0	4	0	1	0	0	2	38	5	2
M&A Rules Violation	48	45	46	43	36	17	60	53	27	23
Economic Power Concentration	19	16	80	29	149	108	24	44	116	41
Undue Concerted Acts	47	43	47	23	35	46	45	44	65	63
Prohibited Acts of Enterprisers Organization	117	88	100	91	62	57	58	58	98	107
Unfair Trade Acts	121	169	210	123	298	481	370	715	565	446
Subtotal	352	365	483	310	580	709	559	952	876	682
Total Cases Handled	685	706	772	673	948	1,064	1,036	1,648	1,546	**1,240**

75. The total amount of surcharge imposed for violations of the MRFTA in 2009 was KRW 366.1 billion (about $320 million), a drastic increase from KRW 254.6 billion (about $220 million) of 2008. Qualcomm faced the largest amount for its abuse of market dominant position, as much as KRW 273.2 billion, followed by 5 beverage manufacturers and sales companies with KRW 26.3 billion for collusion, and as much as KRW 20.4 billion of surcharge was imposed on 7 pharmaceutical companies for unfairly alluring customers [Table 3].

Table 3. Surcharge imposition performance by type of MRFTA violations
(Unit: Cases, KRW million)

	Market Dominance Abuse		Economic Power Concentration		Undue Concerted Acts		Prohibited Acts of Enterprisers Organizations		Unfair Trade Acts		Total	
	Case	Surcharge	Case	Surcharge	Case	Surcharge	Case	Surcharge	Case	Surcharge	Case	Surcharge
2000	0	0	5	690	12	198,812	7	102	21	25,861	45	225.465
2001	2	5,663	2	302	7	27,704	25	6,384	45	121,601	81	161.654
2002	0	0	14	8,906	14	53,109	19	276	35	20,507	82	82,798
2003	0	0	4	1,612	9	109,838	10	1,028	8	37,141	31	149,619
2004	0	0	1	739	12	29,184	14	330	62	5,586	89	35,839
2005	0	0	4	3,671	21	249,329	10	947	229	4,979	264	258,926
2006	1	32,490	2	552	27	110,544	5	806	111	11,548	146	155,940
2007	25	24,176	0	0	24	307,042	7	273	260	89,221	316	420,712
2008	1	26,616	0	0	43	205,743	16	709	40	21,557	100	254,625
2009	2	288,225	2	303	21	52,903	9	492	27	24,247	61	366,170
Total	36	380,454	62	29,758	254	1,432,408	144	12,478	1,044	566,233	1,540	2,421,331
Percentage	2.3%	15.7%	4.0%	1.2%	16.5%	59.2%	9.4%	0.5%	67.8%	23.4%	100%	100%

2.5.2 Lawsuits regarding KFTC decisions in 2009

76. The number of cases which were referred to the appellate court was 35 in 2009, down by 3 cases from the previous year. But the ratio of cases where respondents were dissatisfied with the KFTC decisions went up from 9.37% to 15.77% year on year. Dissatisfaction rate rose despite KFTC's institutional 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. Higher dissatisfaction rate, however, does not have to be seen negatively given that it shows companies' heightened awareness of their rights and strengthened constitutional rights to claim.

Table 4. MRFTA violation cases referred to the appellate court for the last 5 years
(Unit: Cases)

	2005	2006	2007	2008	2009
MRFTA violations	411	309	680	407	222
Decisions appealed to court	17	22	38	38	35
% of cases referred to court	4.14%	7.12%	5.59%	9.37%	15.77%

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.

77. Of those referred to the appellate court, rulings were made on 70 cases in 2009. Among them, KFTC decisions on 51 cases (72.9%), were fully endorsed by the court, 14 (20.0%) partially endorsed, and 5 (7.1%) rejected. Compared to the previous year, full endorsement was up 9.7%p, partial endorsement down 6.3%p and rejection down 3.4%p.

Table 5. Appellate court rulings on KFTC decisions of 5 years
(Unit: Cases,%)

	Fully Endorsed	Partially Endorsed	Rejected	Subtotal
2005	15(48.4%)	8(25.8%)	8(25.8%)	31
2006	34(53.1%)	14(21.9%)	16(25.0%)	64
2007	23(52.3%)	12(27.3%)	9(20.4%)	44
2008	36(63.2%)	15(26.3%)	6(10.5%)	57
2009	51(72.9%)	14(20.0%)	5(7.1%)	70
Total	159(59.8%)	63(23.7%)	44(16.5%)	266

3. The Role of competition authorities in the formation and implementation of other policies, e. g. regulatory reform, trade and industrial policies

3.1 Project of overhauling entry regulations

78. Entry regulations refer to those designed to restrain enterprises' freedom to participate in a certain type of industry and run business activities through limiting the number of enterprises or setting a set of standards for entering the industry. As of September 2009, out of economic regulations of 2,197 cases registered with the Regulatory Reform Committee, 768 cases or 35% are entry regulations and most of them are disproportionately concentrated on healthcare, environment, logistics and transportation sectors.

79. While entry regulations are often justified for the cause of enhancing social welfare by preventing excessive competition, as a matter of fact, they cause inadvertent adverse effects as well including undermining consumer welfare and blocking opportunities for innovative companies to realize their potential from the outset as the regulations often serve as a safeguard for monopoly of existing dominant firms and thus keep active competition from taking place. The KFTC recognized that for Korea to take off to a truly advanced market economy, most urgent is to overhaul various entry regulations to shift the economy into a more pro-competitive structure, and based on this recognition, it embarked upon the project to improve entry regulations.

80. This project, which consists of three stages, was launched with the 1st stage started in 2009. As part of the 1st stage of the project, the KFTC held an expert meeting in April 2009 to select a total of 60 regulations to improve, and by outsourcing research and collecting stakeholders' opinions on the selected tasks, it finally confirmed improvement measures concerning 26 priority tasks. During this stage, the KFTC set out a basic direction of overhauling regulations out of sync with global standards to revitalize the market, and pursued three fundamental principles; first, expand private sector's role through reducing public monopoly, second, rectify the long-sustained entrenched power of monopoly and third, facilitate new businesses' market entry through easing unreasonable entry barriers.

81. First of all, the KFTC endeavored to reduce the public monopoly sector to expand private sector's role. For instance, the KFTC allowed private city gas providers to participate in LNG charge station business that had been monopolized by Korea Gas Corporation. Also, the KFTC enabled private delivery service providers to enter the credit card delivery market previously monopolized by post offices. Next, the KFTC expanded the scope of the bicycle race and boat race operators that had been limited to regional public corporations to the private sector. The KFTC also promoted competition in the environment-related inspection and safety education markets, i.e. technology diagnosis regarding waste treatment facility, fire extinction equipment checkup, inspection of special medical equipment quality, education on anti-fire mgt. officials, hazardous material mgt. officials and safety education on hazardous chemicals, by shifting the public institutions-dominating monopoly into a registration- basis market structure.

82. Next, the KFTC sought to address long sustained entrenched power of monopoly and promote competition in its place. For starters, it pursued to promote competition in the tax cork market where for the past 37 years, just two enterprises (Samhwa Crown & Closure, Sehwa Metal Industry) dominated to supply tax corks, by designating an additional maker. By assessing the effect from additional designation, the KFTC would later decide whether to make an extra designation or not. Next, the KFTC paved the institutional groundwork for new enterprises to enter the designated storage area[7] market that was effectively monopolized by the Customs Trade Service.

83. Lastly, the KFTC tried to facilitate entry of new businesses to market by easing unreasonable entry requirements. For starters, the KFTC raised incentives for large cargo shippers to participate in joint-venture shipping company business by raising large cargo shipper's stake ownership ratio limit from 30% to 40%. Previously, shippers of large cargo (iron ore, coal for power generation, natural gas, crude oil) or corporations controlled by large cargo shippers had been prohibited from entering the shipping market. Next, the KFTC greatly lowered the liquor production facility's capacity standard among requirements for the liquor-manufacturing license to encourage small-scale liquor producers to enter the market, contributing to development of the liquor industry through active competition among firms and thus diversification of produced liquors[8].

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7 This refers to a place where any cargo required of intensive examination (arms, swords, etc.) are stored and inspected.

8 More specific matters concerning the easing of capacity requirements for liquor production facility are to be determined through revision of the Enforcement Decree of the Liquor Tax Act by Dec. 31, 2010.

84. The KFTC will proceed with the 2nd and 3rd stages to overhaul entry regulations. For the 2nd stage of the improvement project, a total of 35 tasks ranging from healthcare, to distribution to aviation & transportation, i.e. service and public monopoly sectors, were selected for the overhaul. Afterwards, KFTC determined improvement measures for 20 priority tasks in April, 2010 after independent research and opinion gathering from the relevant government agencies.

3.2 Competition impact assessment

85. With amendment of the *Guidelines on Producing Regulation Impact Assessment Report of* the Prime Minister's Office, starting 2009, the KFTC conducted competition impact assessment on regulations crafted or reinforced, and presented its opinions to relevant ministries and the Regulatory Reform Committee to reflect them on their work. In July 2009, it developed a manual for competition assessment for working-level officers based on the *OECD Competition Assessment Toolkit* and distributed it to each ministry.

86. In 2009, the KFTC carried out competition impact assessment on a total of 333 laws and regulations, and 10.5% or 35 regulations were deemed to have potential to constrain market competition, proposing market-friendly alternatives to relevant ministries and thus preventing potentially anti-competitive regulations in advance.

87. For instance, the KFTC saw that the prohibition on establishment of post delivery clinics at a three-story or higher building was anti-competitive, discouraging new players from entering the market given that 89% of the existing post delivery clinics are located at the 3rd floor or higher. So it presented an alternative idea of easing the regulation by strengthening safety facility requirements. In addition, the KFTC pointed out that the draft bill to strengthen requirements for university establishment by raising a university's minimum profit-purpose property limit from KRW 10 billion (about $8.7 million) to KRW 15 billion (about 13 million) would make difficult small-scale school foundations to establish a university and negatively affect the market competition, i.e. school tuition fee hikes.

3.3 Prior statutory consultation

88. The KFTC is well aware that the government's laws or regulations are very difficult to change once they are established. With the recognition, it is endeavoring to prevent anti-competitive regulations from being enacted or reinforced from the outset through preliminary consultation with the relevant authorities pursuant to Article 63 of the MRFTA which requires prior consultation with the KFTC for other government agencies' enacted or reinforced laws with potential anti-competitiveness.

89. Through the prior consultation on potentially anti-competitive regulations, the KFTC managed to keep a total of 82 anti-competitive regulations from enactment or reinforcement for the latest three years (2007~2009). By year, the figure marked 25 in 2007, 18 in 2008 and 19 in 2009 while by type of regulation, entry regulations stood at 18 (22%), business activity regulations at 10 (12.2%), price regulations at 6 (7.3%), consumer right restriction at 16(19.5%), cartel concern at 5 (6.1%) and others at 27 (32.9%).

90. In particular, in 2010, the KFTC is going to compile *the Guideline on assessing anti-competitiveness of laws* which would contain standards and cases for review of anti-competitiveness of laws and regulations during the first half and distribute it to administrative bodies. Down the road, the KFTC expects that by utilizing the review guideline, enactment or reinforcement of anti-competitive laws will be prevented.

3.4 Improvement of anticompetitive regulations

91. Making efforts to prevent potentially anti-competitive regulations from being created, the KFTC also has led government efforts to improve anti-competitive regulations already in place. In late 1997, through the Omnibus Cartel Repeal Act, the KFTC abolished 20 legal cartels under 18 laws, and in 2004, it improved 56 anti-competitive regulations, 51 anti-competitive rules and notifications in 2005 and in 2007, 23 regulations explored through the survey of the demand for regulatory reform.

92. In particular, the KFTC has been trying to reform anti-competitive regulations in ordinance of local governments starting 2007 in order to keep regulations removed or eased at the central government level from being resurrected into decrees or rules at the local government level. In 2009, the KFTC managed to sort out 1,441 anti-competitive decrees and rules of local governments to agree to improve 850 of them with relevant authorities.

4. Resources of competition authorities (annual budget, number of employees)

93. As of late 2009, the number of employees of the KFTC is 493, and annual budget KRW 72.9 billion (about $63 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 2007.

Table 6. Number of Employees & Annual Budget (as of Dec. 31 2009)

	Employees	**Budget** (KRW hundred million)
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., 2010, there were 30 attorneys and 78 economists in the KFTC. Here is how KFTC employees are organized by the type of work.

Table 7. Employee organization by type of work (as of Aug. 2010)

Type of work	**Employee**	**Type of Work**	**Employee**
Senior staff, etc.	16	Total number	97
		(M&A)	8
Administrative work	90	MRFTA (Market dominance abuse & Unfair trade practices)	37
		(Cartel)	35
Committee proceeding & litigation matters	40	Consumer protection	53
Advocacy efforts	27	Subcontract transaction & Franchise business	31

5. Competition policy report on 5 industries

95. Since 2008, the KFTC has been issuing annual competition policy report on selected major industry. The report contains the relevant industry's market structure, competition pattern, competition-restraining regulations, enterprises' anti-competitive practices, consumer complaints and damage cases, analyzes anti-competitive factors and explores policy implications from an antitrust law perspective, which makes it a useful reference material for establishing desirable competition order in the future. In 2009, the reports were dedicated to five industries that include non-life insurance, film, and oil industries. Among them, the ones on film, oil and pharmaceuticals were written based on the information and market study results the KFTC obtained during its case-handling process in the concerned industries. Non-life insurance was included, as the industry, closely related to ordinary people's livelihood, was highly concentrated with subsidiaries of large business groups participating in the market. And gas was covered based on the recognition that the industry, as a typical network industry, had been subject to heavy government and monopoly regulations in every aspect from procurement to wholesale to retail under the government policy for supply-demand balance and price stability.

Summary of Competition policy report on the pharmaceutical industry

1. Market structure and relevant institution of the pharmaceutical industry

The Korea pharmaceutical market is generally considered competitive with the production by the top 10 companies (KRW 3.5 trillion, about $3 billion) accounting for 28.5% of the total (as of 2006). But when defined by drug effectiveness, the ethical drug market was found to be dominated by top-ranking companies including multinational pharmaceutical companies with monopoly/oligopoly position.

The pharmaceutical market is heavily regulated by the government over the entire process of production/manufacturing and distribution/sales as it is closely related to lives and health of the people. For example, a general hospital with 100 beds or more is mandated to purchase medicines from wholesalers under the *"wholesale purchase obligation"*. In addition, prices of drugs covered by insurance are strictly controlled under *"transaction price repayment system"* where the difference between the designated ceiling price and actual transaction price is repaid to patients and medical institutions or pharmacies. Generic drug prices are set based on the *"tiered pricing system"*. Under the pricing mechanism, the first generic drug of the same substance is priced at 68% of the original drug price, and prices of the second to fifth generic drugs are determined at the lower price between 85% of the highest ceiling and the lowest ceiling of the registered drug prices. Prices of the sixth drugs or lower-tiered drugs are set at the lower prices between 90% of the lowest ceiling and 85% of the highest ceiling price.

2. Major antitrust issues : need to prevent anticompetitive practices exploiting IPR

With the expected introduction of the "approval-patent linkage system" under the Korea-U.S. FTA, close monitoring and enforcement by a competition agency is needed to prevent patent owners' anticompetitive behavior aimed to delay or hamper the release of generic drugs. In addition, effective response needs to be prepared for IPR abuse such as imposition of unlawful licensing condition, licensing denial, abuse of patent infringement lawsuits and settlements, etc.

Examples of anticompetitive acts based on "approval-patent linkage system"

- Delaying approval of generic drugs by registering patents unrelated to the concerned drugs
- Restricting new entry of generic drugs to the market by raising a litigation even though the concerned drugs do not infringe patents
- Delaying or inducing withdrawal of sales of generic drugs by paying financial compensation to generic drug makers after filing a patent infringement lawsuit against the concerned drugs

3. Major anticompetitive issues: need to monitor against practice of unduly luring customers & strengthen effect of fair trade regulations

Unlike OTC (over-the-counter) drugs, final purchase choice of ethical drugs is made by doctors who prescribe drugs, not consumers who actually pay for the prices. Pharmaceutical companies, therefore, competitively pay rebates to doctors or medical institutions with prescription authority to increase prescription of their own products while restricting their prescription of their competitors' drugs. In the process, promotion competition rather than price or quality competition gets stronger in pharmaceutical market which naturally leads to higher share of selling and administrative expenses (around 35.2%) than in other manufacturing industries (around 12.2%, as of 2005).

The practice of paying unlawful rebates is regarded as rent-seeking behavior which is distinguished from rebates aimed for discounts, as it pursues monopolistic/oligopolistic profits through unreasonable ways instead of price or quality competition. In other words, ultimate consumers cannot enjoy benefits such as price discounts while medical institutions receiving benefits of rebates. Rebate costs are passed onto medicine prices, and doctors' prescription is made based on rebate payments rather than consideration of suitability for patients' condition, deteriorating consumer welfare. With the recognition, the KFTC issued corrective order and surcharge payment order against 17 pharmaceutical companies which provided unlawful rebates for medical institutions which unduly enticed customers, and filed complaints with the prosecution against 5 companies in the two rounds of crackdown in 2007 and 2009.

Elimination of unlawful rebate payment and the consequent enhancement of transparency in distribution of medical products require constant market monitoring and strengthened substantial effect of fair trade regulation. Even though the Korea Pharmaceutical Manufacturers Association and Korea Research-based Pharmaceutical Industry Association operate fair trade regulations currently, the regulation does not have real effect. Therefore, outside experts and consumer groups need to be involved in review and operation of the fair trade regulation so that the regulation has more substantial effect.

4. Other antitrust issues

First, regarding distribution regulation, the *wholesale purchase obligation* applied to general hospitals has anticompetitive effect as it prohibits pharmaceutical companies from entering the distribution market. The obligation system also causes unlawful practice of large-sized companies where practical sales business occurs between pharmaceutical companies and large hospitals while wholesalers serve just as nominal bookkeepers.

Second, drug price regulations such as *actual transaction repayment* have anticompetitive aspects. In particular, such regulations lower incentives for hospitals or doctors to buy cheaper drugs, further increasing rebate competition among pharmaceutical companies.

Lastly, with the increase in co-promotion or co-marketing tactics, there is a need for close analysis on how such cooperation in marketing impacts market competition.