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Global Forum on Competition

SERIAL OFFENDERS: WHY SOME INDUSTRIES SEEM PRONE TO ENDEMIC COLLUSION

Contribution from Mongolia

-- Session IV --

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BUSINESS COLLUSION IN MONGOLIA

-- Mongolia --

1. What is the cartel?

1. It is defined by other countries and international organizations, as follows. For OECD, as stated in the Guidelines of Board, "Cartel is to make an agreement between competitors and undertake measures to limit competition in the market in order to set the negotiated price, participate in tender with pre-agreed price, limit production to quotas and divide the market in terms of customers, suppliers, territory and commercial group". As defined by ICN (International Competition Network), cartel is an agreement among companies to not compete with each other in the market.

2. But the cartel includes direct involvement and indirect involvement in conspiracy, which is silently supporting and following the collusion agreement. In general, serious and light forms are 2 main types of cartel.

i) Serious form of cartel

- Controlling the price /It also includes effectively setting the price issue/
- Limiting production
- Market share
- Defining terms of trade.

ii) Light form of cartel involves cases like establishing the company jointly.

2. How does the cartel affect the consumers?

3. In consequences of cartel, the product with high prices and less innovation will be created in the market. According to study of John Connor, as a result of cartel, prices are increased by 18% in domestic market about 30% in the international market.

4. The markets of developing countries are negatively affected by cartel, particularly international cartel. According to the market study, the loss of importing market of developing countries reached up to \$81,1billion in result of the cartel, during 1990s.

3. How does the cartel affect the business?

- Business operations of any company are obstructed, and reduced freedom to work with their own desire.
- Negative effects to the company's management and the development of new technologies.
- Reduces the competitiveness of the company.
- Once the competitiveness is reduced domestically, the international competitiveness is dramatically harmed.

4. How does the cartel affect to the national economy?

- Cartel denies new initiatives. It negatively affects the development of new technologies and human capital, which are the main factors of economic growth. Thus, it will affect negatively on economic growth and weaken the entire economy.
- Cartel leads to misallocation of resources. Thus, the employment will be affected.
- Makes the overall economy instable. Consequently, the implementation of structural changes in the economy will face difficulties.

5. Cartel causes massive loss and damage in the market; therefore, the competition authorities are emphasizing the regulations on cartel. For example, South Korea views the cartel as a number one enemy of economy and the United States considers the cartel as a criminal offense. Therefore, the cartel regulations become global trending topic with competition law and policy.

6. Detecting cartel and imposing rational judgment are most significant and complex issues. As international practice, the commonly used methods to control cartel are the staffs of competition authorities are granted exclusive rights to investigate the activities of the cartel by law; institutionalizing professional personnel and special units to investigate and control the cartel; rewarding those who informed true and important information for exposing cartel; leniency program to pardon anyone who exposed own involvement in the cartel. Rational judgment of the cartel refers to be higher than benefit from cartel and costs for exposing cartel case. In addition to financial penalties imprisonment penalties are undertaken in international experience. The punishment imposed by imprisonment is considered as more efficient way in the United States.

7. Cartel is not defined in the Competition Law of Mongolia, but there are some provisions that prohibit acts of cartel. There are two main types of cartel.

- i) Direct prohibition of cartel.
- ii) Prohibition any business action that is contrary to the public interest or is to create conditions to restrict competition.

5. Cartel cases commonly occur in petroleum product market in Mongolia

8. The AFCCP has detected this type of collusion for 2 times among petroleum product traders.

9. Petroleum product market is 100 percent imported products so the State has been regulating this sector by undertaking measures of tax cuts and concessional lending, etc.

10. The price of petroleum products is one of the most important factors affecting prices of other consumer goods. Therefore, in order to not cause price increase in the market, Government enforces tax policy to regulate the price increase in the market.

11. But companies are taking advantage of official meetings organized by Government body to discuss about market regulations, as to set their retail price for products.

12. Today Mongolian Petroleum product retailers are maintaining same price in the market and not giving opportunity to consumers to make a choice by price factor.

13. This is an indication that involves cartel action behind this same price, but it is still limited access to the evidence.

6. Another sector which has common cartel cases is Cable TV industry.

14. Competition among companies providing cable television services to apartments is becoming more intense as much as development of construction sector in Mongolia.

15. But this competition is carried out through unfair, conspiring ways; therefore, it is leading to consequences to limit choices of consumers.

16. The construction company deals with cable TV service provider to install infrastructure of only one company in the building and limiting access of other companies into the building.

17. This cartel proposal is made by cable TV service providers by offering to set up communication networks free of charge to construction companies.

18. In order to expose cartels in Mongolia, the Leniency program, which is one of the best international practices and Guideline to rewarding informing bodies are adopted and being implemented.

19. But it is difficult to detect the cartel on the basis of direct evidences; therefore, it is in doubt that whether Mongolian judicial system would accept indirect evidences to detect the cartel.

20. Therefore, it is very important for competition authorities to learn from each other on detecting business collusion and to prove this kind of illegal activities by different methods.