



ROUNDTABLE ON ELECTRONIC COMMERCE

-- Note by Korea --

This note is submitted by the Korean Delegation to the Committee on Competition Law and Policy FOR DISCUSSION at its forthcoming meeting on 24-25 October 2000.

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I. Introduction

1. E-Commerce has been growing explosively in advanced countries, based on the advances in Information Technology as well as its advantages of reduction in distribution costs and expansion of consumer choice. The center of E-Commerce has been shifting from B2C to B2B, and all business sectors are actively moving to maximise their competitiveness by utilising B2B e-commerce. Now, B2B e-commerce is not a matter of choice. It has settled as a method of business operation sought by all corporations. Korea has also witnessed the emergence of various e-marketplaces that engage in B2B e-commerce (As of Aug. this year, roughly 170 B2B e-marketplaces are in operation or under construction). The number is expected to go up sharply in the future.

2. The Korea Fair Trade Commission (KFTC) has continued its competition advocacy role in this field, improving relevant regulations in logistics sector to prevent regulations applied to conventional businesses from posing an obstacles to the advances in e-commerce. In addition, it has enacted and enforced the Guidelines for Consumer Protection in the Context of Electronic Transactions, reflecting consumer opinions and the OECD Guidelines issued in Dec. 1999. The Guidelines are designed to block consumer frauds, which can easily arise due to the characteristic of e-commerce that does not involve face-to-face interactions.

3. It is necessary for competition authorities to closely analyse the unique nature of e-commerce, its trend in transaction, market structure and future prospects with a view to actively tackle possible consumer injuries and anti-competitive conducts in this area. The KFTC basically believes that conventional competition law can be applied to e-commerce as well. However, it deems that further studies are in order, clarifying the specific ways to apply competition law, since e-commerce constitutes an emerging market and competition authorities have little experiences in this field.

II. General Competition Issues

1. *Market Distinction between E-commerce and Traditional Outlets*

4. While e-commerce is growing fast in Korea, it is still at the fledgling stage. In addition, there are only a handful of competition law enforcement cases in this area. As such, there are no clear standards in distinguishing the two markets. However, the followings should be taken into account, using the concept of substitutability, the general criteria for defining relevant market under competition law.

- Reliability of settlement tools in online transactions, including credit cards and electronic cash;
- On the consumer behaviour side, the existence of consumers who are busy and thus have relatively little time to spend in shopping;
- Ease or difficulty of Internet access based on age groups.

2. *Expansion of Geographic Market*

5. Most online sellers are currently at the stage of installing e-commerce infrastructure including delivery system, which limits the scope of geographic market. However, the size of geographic markets is expected to increase in the future. On the international front, foreign markets could be included in

geographic market, when the problems of delivery time and cost, of taxation including tariff, and of language barriers in transnational transactions are resolved.

6. Domestically, the concept of relevant geographic market can be divided further into the market from the consumer perspective and the market on the supplier side. For example, geographic market could be expanded if a consumer makes purchase from Seller B instead of Seller A who is geographically more proximate in spite of price differences, delivery costs or delivery time. In this regard, products in the file format are highly likely to see the increase in the size of geographic market, since they can be delivered online. From the supplier side, geographic market could increase in size if suppliers establish sales websites in various locations. However, problems of price differences, delivery costs or delivery time should first be resolved in this case as well.

3. *Price Dispersion*

7. In Korea, the phenomenon of price dispersion has occurred in B2C e-commerce. This seems to result from the difficulty in perfect information sharing on price, given the initial stage of development on both the supplier and consumer sides, and the priority placed on convenience over price dispersion by consumers using B2C e-commerce. Therefore, the role of competition agency at the current stage would be offering sellers with incentives to provide information to consumers. Such phenomenon is likely to disappear when transparency in price is enhanced, competition is promoted, and asymmetry in information is removed as the B2C e-commerce market takes hold in Korea.

4. *Cases of Anti-competitive Conducts by Traditional Distributors against E-commerce Rivals*

8. To date, there have been no cases where the KFTC detected and took steps against anti-competitive conducts of traditional distributors against e-commerce rivals. However, the conflicts between the association of publishers and Internet firms over the fixing of book prices recently sparked heated debates in Korea. In addition, there was a case where a car manufacturer banned its dealers from engaging in transactions with online companies. In this case, dealers concerned were not in independent operation but were only assigned with management, which is not covered by Korea's competition law. If the dealers had been like those of foreign ones, the KFTC would have rendered different judgement concerning the case. The KFTC plans to vigorously enforce competition law against conducts of conventional distributors or manufacturers obstructing the sales activities of online companies, such as the suspension of product supply by manufacturers to interfere with the discount sales of Internet firms.

III. Network Dominance

1. *Creation and Strengthening of Dominant Position through Network Effects and First Mover Advantages*

9. The creation and/ or strengthening of dominant position through network effects and first mover advantages could be governed by Article 3-2 (Prohibition of Abuse of Dominance) of the Monopoly Regulation and Fair Trade Act (MRFTA). In this respect, the KFTC recently commissioned a consulting service on the current status in essential facility sectors and the necessity for amending the legal framework in order to introduce the essential facility doctrine under the MRFTA. More specifically, the Commission sought to outlaw the blockage of access to networks by network owners/ operators when these networks constitute an essential element of operation for rival firms.

2. *IPR protection*

10. Article 59 of the Monopoly Regulation and Fair Trade Act stipulates that this Act shall not apply to any acts which are deemed as an exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act, or the Trademark Act. However, the application of this Article is confined to the legitimate exercise of intellectual property rights. If the exercise of an intellectual property right falls within the ambit of an undue exercise or abuse of intellectual property rights, thereby restricting competition, the Korea Fair Trade Commission can apply Article 23 and/or other related provisions of the Monopoly Regulation and Fair Trade Act. There have been several cases where the Korea Fair Trade Commission has taken such measures. For example, the copyright contract between "Mincom" and Applied Learning International Inc. of America had a clause stipulating that "Mincom cannot establish sub-agents without a written agreement of Applied Learning International". It was deemed as an unfair trade practice and the Korea Fair Trade Commission ordered a correction of that clause.

11. In a related move, the KFTC enacted the Guidelines on Review of Undue Exercise of Intellectual Property Rights in Aug. this year, designed to prevent the abuse of IPRs including BM patents in the field of e-commerce. The Guidelines provide specific examples on undue exercise of IPRs including BM patents, such as the abuse of dominance, transactions with conditions attached, improper concerted acts, etc.

3. *Problems of Free-riding and Exclusive Dealings of B2B Exchanges*

12. The issues of determining the anti-competitiveness of exclusive dealings by B2B exchanges as an entry barrier to network and the extent of exclusivity for the purpose of protection against free-riding could be governed by the essential facility doctrine. That is, refusal to deal by B2B exchange against a third party could not be justified when the B2B exchange concerned is essential for the business of the third party, there is no other alternative distribution channels, and it is legally or economically impossible to establish a new exchange.

IV. *Enhanced Opportunity for Co-ordinated Effects*

13. It is a lot easier in B2B markets and exchanges to exchange information on price, production, cost, and strategy formulation and detect cheating than in the offline environment. This opens the door for increased possibility of strategic cartels. In this regard, the followings could influence the creation of cartels: whether the information exchanged is already available; when the information is exchanged; whether the exchange of information on rival firms could be blocked because of security devices such as firewalls, etc. Given this, further reviews are necessary to find out whether it is technically feasible to suppress chat rooms and erect Chinese walls to prevent participants learning in a timely fashion about each others activity, or whether these measures could timely and effectively tackle the problem at hand.