

**ERIA Discussion Paper Series****Development of Competition Laws in Korea**Hwang LEE<sup>§</sup>

*Professor of Law, Korea University School of Law/ICR Law Center,  
Korea*

November 2015

---

---

**Abstract:** *Economic development policies that were export-focused and biased toward unbalanced growth were initially implemented through government-led initiatives in Korea since the 1960s. These resulted in many problems as well as a big success. Korean competition policies were born and developed to take the role of correcting and complementing economic development policies. Today competition policies have become a major force in Korea's economic policy. Many parts of industrial policies were replaced by sectoral competition policy in substance. After the 2008 global financial crisis, Korea is faced with new challenges. Recent economic difficulties seem to ask for a bigger role to protect SMEs and fairness in society to address so-called bipolarisation. The economic policy to improve productivity in the name of so-called 'creative economy', designed to overcome limits of existing growth strategy, requires proper regulations against abuse of IPRs to supplement strengthened protection of intellectual property rights. All in all, Korea's antitrust policy remains generally very active in building sound market competition.*

**Keywords:** Competition Policy, Competition Law, Korea

**JEL Classification:** K21, L40, L43

---

---

---

<sup>§</sup> Many parts of this article have been taken from the author's existing publication: Korea Fair Trade Commission and ICR Law Center (2014), *Korea's Developmental Experiences in Operating Competition Policies for Lasting Economic Development*. Seoul: KDI.

# **1. Introduction of Competition Law in Korea**

## **1.1. Background**

In a narrow sense, competition law enforcement means the legal system of investigative, corrective, and restrictive measures imposed on conducts that violate the competition law. In Korea, this is the Monopoly Regulation and Fair Trade Act ('MRFTA'). In a broader sense, it encompasses enforcement of other competition-related laws, in addition to the MRFTA, including the Fair Transactions in Subcontracting Act, the Fair Transactions in Franchise Act, etc. Interpretations of competition policies can also include the planning and execution of economic policies associated with general market competition, including fair competition policies. Competition law enforcement can further represent consumer protection policies based on the Consumer Protection Act. In this paper, the notion of competition law is cited in a broader sense, including other competition-related laws, and the MRFTA, which is the core legislation of competition laws in Korea.

The MRFTA was enacted in December 1980 and took effect in April 1981. At the time, only 10 developed countries in the world—including the United States (US), Germany, and Japan—had competition laws in effect within their respective legal systems. Hence, it is a rare and unique choice that Korea adopted competition policies at a time when it is at its development stage, whereas the majority of developing countries overlooked competition policies in the interest of spurring economic development. Yet, Korea actively sought to supplement and overcome the limits of typical development strategies and apply a new paradigm in economic development by use of competition policies. Hence, it pursued the application of competition policies based on market tools. Korea's introduction and operation of competition policies is significant in that it enhanced industrial dynamism while also forming a foundation for lasting economic development. Cases such as Korea's, where organic integration of economic development policies and competition policies yielded considerable results, are rare. In comparison to other Asian countries that implemented competition policies in the late 1990s by external demand or for the purpose of enlisting in the World Trade Organization (WTO), Korea's unique process and

experiences in self-introducing competition policies has special significance.

## **1.2. Objectives**

It is hard to say that the principal objective of Korea's competition policies was to establish market competition or enhance consumer welfare when the competition law was first introduced. The direct purpose was more likely to establish fair trade and to correct the negative effects of economic concentration in large conglomerates, which were initially formed through government-led efforts to maximise return on investment by concentrating the country's scarce resources at the time. Faced with social issues, it tried to address the important issues of protecting the interests of small and medium-sized enterprises (SMEs) and of consumers, as exemplified in the Three-Powder monopoly case<sup>1</sup> in the 1960s. More directly, skyrocketing inflation following the oil crisis in the 1970s became the main drive for the establishment of competition policies. In other words, in the early stages, securing fairness of transactions for SMEs and consumers in the market was the primary objective for Korea's competition policies.

As competition policies began to serve their legislative intent, social support began to grow. With such support, competition policies began to expand beyond maintenance of fair trade in the markets, which was geared toward its more standard objective of promoting economic efficiency and consumer welfare. Especially since the 1997 financial crisis, competition policies moved to the forefront as the only solution to harmonise the internal changes caused by market liberalisation and the external changes caused by global trends of open trade.

As a result of such developments, it can be said that currently two major directions coexist in the objectives and enforcement of competition policies in Korea: one, a focus on traditional efficiency concerns of the competition law, and two, a focus on fairness concerns for 'SMEs' and for consumers. A new direction that arose in recent years is the revival of fairness concern to protect the SMEs in reaction to the so-called

---

<sup>1</sup> In this case, some large manufacturers of essential daily items such as cement, flour, and sugar collectively raised prices. Many people considered it was a manifest harm to consumer interests by large conglomerates.

bipolarisation, especially after the global economic crisis in 2008.

## **2. Contribution of Competition Policies to the Development of Korea's Market Economy**

The implementation of competition policies played an important role in breaking away from government-led economic development strategy in the 1960s and 1970s when fostering monopolisation was considered a valid measure for industrial policy purpose. This implementation also allowed Korea to officially adopt market competition as a fundamental principle in its economy. Since their introduction, Korea's competition policies have been essential in establishing and proliferating competition principles.

### **2.1. Changes in Perception of the Economic Development Paradigm**

Competition policies have served as the basic foundation of Korea's free market economy and have raised awareness on the importance of innovation and market competition. In the past, the Korean government had pursued unbalanced growth strategy, which entailed promoting large conglomerates to accelerate growth in key industries, intending such growth to lead to general economic development. The concentration of human and capital resources in a select number of enterprises was considered an effective measure in the social and economic circumstances at the time. It was expected to expand the scope of beneficiary to include SMEs and consumers. This 'trickle-down effect' is generally accepted to have had a positive impact in the early stages of economic development.

However, as the economy grew in scale and quality, the government's planned allocation of resources and the compressed growth-focused model reached their limits. Against the backdrop of international calls for change in Korea's economic development in the 1980s, mainly led by WTO's free trade pressures, Korea needed to adopt a fundamental change. Moreover, Korea underwent major political changes in the 1980s when a dictatorial government collapsed and political democratisation took

place. Hence, there began to form a consensus that individuals and corporations, rather than the government, should lead economic development.

The competition policies administered during these changing times helped address the inconsistencies of traditional economic policies. The competition policies further helped earn the trust of the general public during the late 1997 financial crisis when regulatory reform and liberalisation policies were rapidly implemented. As a result, Korea was able to continue its economic growth into the 21st century.

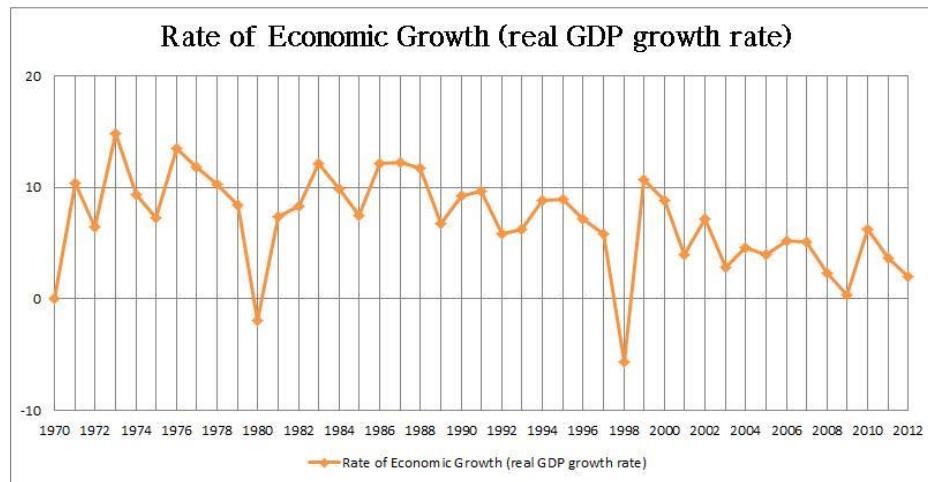
## **2.2. Vitalising Market Competition and Economic Development<sup>2</sup>**

Through the implementation of competition policies, Korea was able to consistently monitor and correct the formation of monopolies, prevent abuse of market-dominating positions, and mitigate any anticompetitive or unfair acts. It meant to counter the side effects of a large, conglomerate-focused economy. The process of Korea's economic development shows a simple description of such performance. Figure 1 shows that at the time of rapid political changes in Korea (1980), the economic growth rate that had been fluctuating at around 10 percent suddenly spiralled down into a negative growth. After an aggressive recovery, the economic growth rate became negative again during the 1998 financial crisis. This negative economic growth rate quickly recovered and subsequently remained at around five percent annually (excluding the period in and around the 2008 financial crisis), but with a gradual trend of decline. Hence, Korea's economic development and survival through economic crises can be explained in association with the implementation of competition policies.

---

<sup>2</sup> Joseph Seon Hur (2004), 'The Evolution of Competition Policy and Its Impact on Economic Development in Korea', in *Competition, Competitiveness and Development: Lessons from Developing Countries*. Geneva: UNCTAD.

**Figure 1: Rate of Economic Growth (real GDP growth rate)**



*Source:* Bank of Korea, National Income, 2013.

### **3. Enforcement of the MRFTA**

#### **3.1 Enforcement System**

The principal objective of Korea's competition policies is currently to establish market competition and to enhance consumer welfare. To carry out such functions, the Korea Fair Trade Commission ('KFTC') was established. As the principal agency responsible for implementing competition policies, the KFTC deals with issues of competition law enforcement and development of competition policies.

The KFTC is a quasi-judicial and quasi-legislative body in the form of an independent regulatory commission. It enforces the MRFTA and other competition-related laws by establishing legal standards and making decisions on what measures to take against various anti-competition conducts in the market.

To enforce compliance of corrective measures, the KFTC utilises various legal schemes—cease and desist orders, corrective measures, announcements of violation of law, surcharges and other monetary sanctions, criminal punishment and damages, filing of civil damages lawsuits, leniency program, and other compliance programs, and Consent Orders that was most recently introduced. Distinctly, administrative proceedings under the MRFTA guarantee a system of due process in line with judicial

proceedings.

The policies and the enforcement procedures are being further developed through the contribution of the courts in the form of court review of the legality of KFTC decisions in cancellation lawsuits (appeals). Many violations of the MRFTA are also subject to criminal sanctions in cases where administrative sanctions are not sufficient and the violation is deemed objectively gross and considerable. For criminal sanctions, the KFTC files a criminal complaint at its discretion with the Prosecutor's Office and criminal action may be brought in the courts. Also a few other government agencies, including the Prosecutor General and the Head of the Small and Medium Business Administration, can request the KFTC to file a criminal complaint.

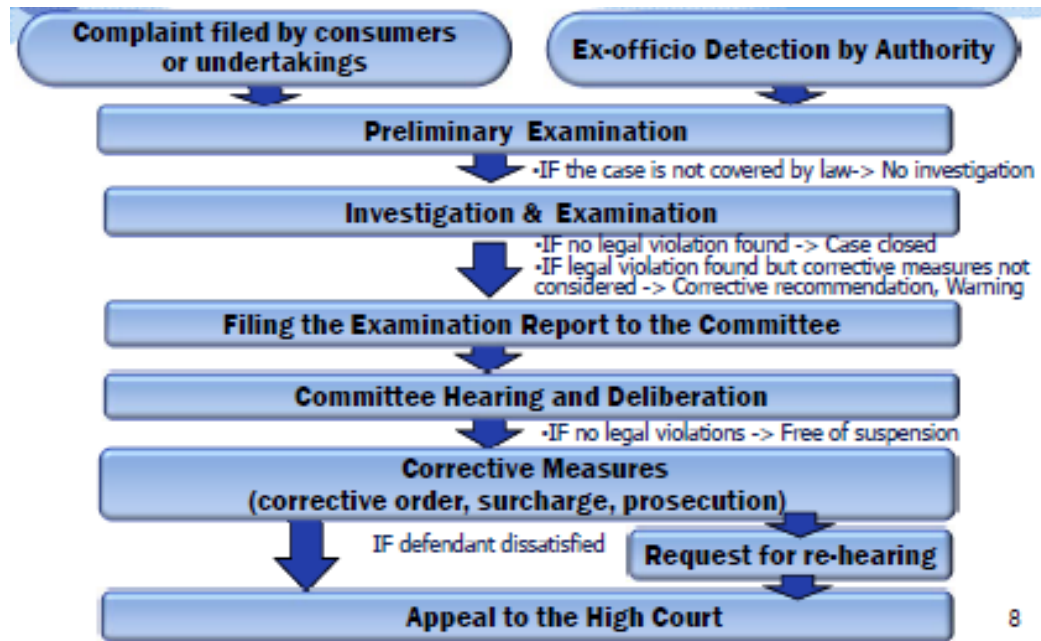
As private damage actions (the classic example of private enforcement) gradually increase, the role of the courts in competition policies is also increasing. Currently, most damage actions for violations of the MRFTA are follow-up litigations brought after the KFTC confirms illegality through a decision. Several measures were installed to promote such private enforcement. Further, the KFTC makes proactive efforts to cooperate with international competition authorities through international organisations. By collaborating in enforcement investigations or initiatives, it has substantially contributed to raising the level of its own enforcement. The KFTC also implements a unique form of systematic competition advocacy in general government policies, legislation, or other bodies of law. This has engendered significant results.

The current procedure to handle cases at the KFTC is illustrated in Figure 2.<sup>3</sup> It was designed based on the adversarial system to guarantee the rights of self-defence for the defendant. However, there is a growing demand for more advanced and complete procedural rights that are fully comparable with the procedures before the judicial courts.

---

<sup>3</sup>See Case-handling Procedures & Institutions in the KFTC, available at KFTC homepage. [http://eng.ftc.go.kr/bbs.do?command=getList&type\\_cd=55&pageId=0304](http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=55&pageId=0304)

**Figure 2: Case Handling Procedure**



Source: [http://www.apeccp.org.tw/doc/Workshop/w2014/14\\_cplg1\\_015.pdf](http://www.apeccp.org.tw/doc/Workshop/w2014/14_cplg1_015.pdf).

### 3.2. Competition Law Enforcement, by Category

The enforcement of Korea’s competition law can be classified into four major categories: (i) prohibitions against abuse of market-dominating positions, (ii) restrictions on mergers with anticompetitive effects, (iii) prohibitions against cartels, and (iv) prohibitions against unfair trade practices. In addition to these prohibitions, the enforcement of Korea’s competition law extends to a broad range of issues, including restraint on excessive economic concentration, competition policies regulating large conglomerate–SME relationships, and consumer protection.

In a general perspective, above categories can be reorganised to show the competing focus of objectives and enforcement: (i) a focus on traditional efficiency concerns derived from competition law, and (ii) a focus on fairness concerns relating to large conglomerates, SMEs, and consumers. The KFTC has developed the legal standards for unlawful conducts regulated under each major category. The KFTC has also continued to improve the analytical methods for assessing the economic effects of said unlawful conducts.



### *3.2.1. Improvement of Monopolistic/Oligopolistic Market Structures and Prohibition against Abuse of Market Dominance*

On monopolies and abuse of market-dominating positions, the KFTC established and executed various measures to ease the structure in markets that have seriously high concentration of monopolistic enterprises. For this purpose, the KFTC has strictly utilised its powers as a central government agency with significant influence on economic policy.

In addition to efforts to improve the structurally monopolistic markets, tools to correct the abusive acts of market-dominating enterprises were actively implemented. The most important landmark case was the 2001 POSCO case, in which the Supreme Court of Korea departed from a long history of enforcement based on principles of unfairness and moved forward to the direction to require sophisticated showing of the anticompetitive effects and intent of the acts concerned. It was established that the mere proof of unfairness was not enough to support the violation of abuse of market dominance. Since then, the general practice in Korea's competition community has been to regulate cases of abuse of market-dominating positions using an effects-based approach instead of form-based approach.

A significant number of cases were dealt with afterwards. For instance, the investigations and remedial decisions concerning multinational information technology (IT) firms—including the cases of Microsoft, Intel, and Qualcomm—produced considerable effects in promoting market competition in the IT industries.

Despite such developments, it is still hard to say that enforcements against abuse of market-dominating positions are actively pursued at the level of the US or European Union (EU) enforcements. This is primarily due to Korea-specific economic circumstances in which market concentration is wide. Yet, on the whole, it is true that Korean enforcement has made a wide turn toward US-style enforcement in which anticompetitive effects is considered as a core requirement to establish abuse of market-dominating positions. This is hoped to enhance market competition while establishing a market economy in line with other developed countries.

### *3.2.2. Restrictions on Anticompetitive Mergers*

It is generally observed and agreed that merger reviews carried out by the KFTC are at par with the highest international standards through utilisation and development

of advanced and customised economic analytical methods. Since the 1997 financial crisis, the KFTC reinforced an active review of anticompetitive mergers in an actively changing economic landscape in which large-scale mergers were intensifying an already monopolistic market structure. Though such initial efforts were not entirely successful and ended up paving the way for intensified monopolies in certain cases, the KFTC eventually began to order bolder structural remedies in merger reviews, such as in the Samik-Youngchang Musical Instruments Company case in 2004. Since then, the sophistication of KFTC's merger review capacities has considerably grown, along with the number of behavioural and structural regulations of mergers ordered by the KFTC, leading to substantial contribution to the economy.

### *3.2.3. Prohibitions against Cartels*

One of the most significant and remarkable achievements made by the KFTC was the tough regulation over hard core cartels. Traditional thoughts about cooperation among businesses together with government-led industrial policy have resulted in the development of cartels. Its harmful effects became evident after the traditional development strategy encountered certain limitations in the 1980s.

The 1997 Asian financial crisis was a turning point for active cartel regulation in Korea, an area of enforcement considered to have led the most significant achievements in vitalising market competition. A new social awareness for the need of an efficient market economy led to a consensus that cartels need to be eradicated. After the KFTC publicly declared that cartel is the number one public enemy, there has been a continuous flow of large-scale cases against cartel. Since then, cartel cases took a large part of cases in which surcharges were imposed, and a large portion of the total amount of imposed surcharges (72.5%) was actually collected. Effective work of the leniency program associated with such cartel regulation has also substantially contributed to such achievements. Since the 2000s, the KFTC has successfully pursued major cases of extraterritorial application on international cartels, such as the 2010 Air Freight Rate International Cartel case.

Active enforcement of prohibitions against cartels has led to substantial contribution in correcting anticompetitive conducts that are harmful to the market, and in leading market participants to comply with appropriate standards.

#### *3.2.4. Prohibitions against Unfair Trade Practices*

Competition policies that broadly define acts interfering with fair transactional order as unfair trade practices and that set standards for unfairness are frequently found in developing countries in the Asian region. When considering the circumstances and development background of the Korean economy, regulations of unfair acts have played an important and dominant role in competition policies. Since the distinction between anticompetitive acts and unfair acts are often blurry and the latter is theoretically considered to include the former types, in cases of anticompetitive acts of market-dominating enterprises, it was easier to prohibit clear unilateral violations by determining unfairness through passing any complicated economic analysis of anticompetitive effects. This was generally acceptable because in the earlier stages, anticompetitive acts in the market were numerous, limiting the possibility of harm from enforcement errors. Also, this line of policy enabled the efficient allocation of KFTC's limited resources at a time when it did not have enough capacities and manpower for proper competitive analysis. It may also be added that a deeply Confucian society was more willing to embrace notions of fairness in transactions aside from recognising the economic benefits to be gained by limiting anticompetitive acts.

Until present, thousands of cases of unfair trade practices were successfully dealt with. Such enforcement has been credited for deterring the exploitation of SMEs by large conglomerates or corporations against consumers, and for allowing a level playing field for SMEs to compete against large conglomerates. Hence, it is generally accepted that, against a backdrop of a developing economy lacking the system and resources to effectively enforce competition laws, such a legal scheme made significant contributions in correcting anticompetitive and unfair acts in the market, ultimately boosting and expanding market competition.

However, since the market becomes more competitive and the risks of enforcement error grow bigger, the KFTC becomes more cautious about regulation over unfair trade practices. In fact, huge numbers of this kind of cases exhaust the resources of the KFTC too much, and a demand for efficient enforcement becomes another justification for such a caution.

### *3.2.5. Active International Cooperation for Policies and Enforcement*

The KFTC participates in many international cooperation activities; multilateral and unilateral cooperation. Multilateral cooperation is conducted through international entities, such as the Organisation for Economic Co-operation and Development (OECD), International Competition Network (ICN), WTO, United Nations Conference on Trade and Development (UNCTAD), and Asia-Pacific Economic Cooperation (APEC). Through such cooperation, mutual collaboration and know-how related to competition policies and specific cases are exchanged. Unilateral cooperation mostly occurs through the Competition Chapter of Free Trade Agreement (FTA) treaties enacted with other countries, such as the US and EU. Once FTA treaties with China and Japan reach a settlement, unilateral cooperation should become even more active.

With an increasingly globalised economy, it has become important to cooperate with foreign competition authorities for effective enforcement of measures against anticompetitive acts, and this necessitates internal and extraterritorial applications. It has been proved important to utilise international networks to form a uniform approach in enforcement that reflects global trends.

### *3.2.6. Competition Advocacy*

A unique aspect of Korean competition policies is that the KFTC works in collaboration with other government entities to create a pro-competition environment, improve anticompetitive laws, and spread the reach of its compliance programs. This has led to a systematic improvement of enforcement and to the development of a culture of legal compliance.

The KFTC pursues the following major functions in competition advocacy: improvement of anticompetitive laws, deregulation, and expanding the reach of its corporate compliance programs. Most importantly, the MRFTA has granted the KFTC the authority to put forth its opinions to improve the laws against anticompetitive acts of other government entities, and actively provide its opinion on various laws in the process of legislation. To ensure maximum effectiveness, all government entities must notify and consult with the KFTC when enacting or revising competition laws. Another noteworthy result is the KFTC's contribution to relaxing the unreasonable or excessive competition regulations in major industries.

### *3.2.7. Regulation of Excessive Economic Concentration*

The KFTC has launched intensive measures to deal with excessive economic concentration. These measures aim to correct unreasonable business practices and corporate governance structures of uniquely Korean forms of large conglomerates (*chaebols*), which are considered harmful to the general economy in some aspects. These measures include ex-ante measures, such as restrictions on cross-shareholding, limitations on total investment, and prohibitions against debt guarantees among affiliated companies. The KFTC also focuses its efforts on ex-post monitoring of the market through measures that require disclosure of market-relevant information.

### *3.2.8. Regulation of Large Conglomerate–SME Relationships*

After the 2008 global financial crisis, the so-called bipolarisation of Korean economy and society became a very serious issue. For sustainable economic growth, integrating the Korean economy and society was considered absolutely required. At the centre of measures to address the problem was the competition policy; it aimed to protect economically disadvantaged parties from abuse by large businesses. Such efforts have been mainly concentrated on issues of establishing fairness in subcontracting transactions, improving unfair trade practices in the large-scale retail industry, and establishing fair transactions in the franchise industry.

Recently the Enforcement of Fair Transactions in Subcontracting Act, enacted in 1984, has drawn fresh and large attention. Systematic investigations of industries were carried out on a regular basis. A series of collaborative growth agreements among diverse transaction parties, i.e. big firms and SMEs, were being actively pursued at voluntary basis. The Large-Scale Retail Fair Trade Practices Act was enacted to correct the blatant exploitation in this industry. The KFTC also enforces the Fair Franchise Transactions Act to regulate unfair trade practices by franchisors.

There has been intensive debate regarding the extent of such fairness policy that some critics argue to have potential to undermine economic efficiency. Future development in this area needs to be carefully watched.

### *3.2.9 Promotion of Consumer Policies*

The KFTC has been dedicated to establishing consumer rights and power to enhance market competition. The KFTC intervenes in all issues of consumer protection and supervises the Korea Consumer Agency—an independent body in

charge of consumer protection.

The KFTC's most significant contribution in this area has been the Adhesion Contract Act, which corrects and deters the inclusion of unfair terms in contracts fixed and offered by corporations to consumers. It regularly inspects and corrects unfair terms in adhesion contracts and has widely publicised a series of Standard Terms for Adhesion Contracts.

## **4. Economic Development and Competition Policy<sup>4</sup>**

### **4.1. Goals of Competition Law Enforcement in Developing Countries**

Competition laws can be classified into the following style categories: US style, European style, or developing country style (Asian style). US antitrust laws almost solely focus on economic efficiency or consumer welfare. On the other hand, European competition laws emphasise competition as a process in conjunction with issues of economic efficiency and internal market integration while not losing attention to other related aims. However, while still in the process of developing, EU competition laws have become significantly closer to the US model (which is focused on economic efficiency) after its modernisation efforts in 2004.

Although not considered a major international force in competition enforcement, the approach to competition laws by Asian developing countries is different from those of the US and EU. While essentially enforcing against acts that affect market competition and consumer welfare (e.g., pursuing traditional measures of prohibiting abuse of market-dominating positions, and restricting anticompetitive mergers and cartels), the level of sanctions have been considerably low. On scope, enforcement efforts have often been concentrated on the regulation of unfair trade practices, which are judged based on abstract determinations of unfairness. It is also a general practice to pursue noneconomic goals, such as economic welfare, SME protection, and fairness of business practices in the context of competition policies.<sup>5</sup> According to the ICN,

---

<sup>4</sup> Refer to the following: Hwang Lee (2011), 'Globalization and Development of Korean Competition Laws', in Chang Ho Yoon, Ji Sang Chang and Jong Min Kim (eds.), *Competition Policy in Korea*. Seoul: Hyeongseol Publishing Company, pp. 387–428.

<sup>5</sup> Refer to the American Bar Association, which categorises policy objectives for competition law

the goals of competition laws have 10 different variations in the international community.<sup>6</sup>

From the vantage point of Western traditional competition laws where consumer welfare is prioritised, such competition policies could lead to the pursuit of superficial justice as the major focus instead of the promotion of market competition in the economy. However, when economic efforts are concentrated on macroscopic development, the microscopic effects of vitalising market competition cannot always be clearly seen. The problems that competition policies of developing economies need to address are different from those of developed economies. For instance, the competition policies of developed countries pursue stabilised operation of the economy, enhancement of consumer welfare, and creation of jobs. In comparison, developing countries tend to focus more on fast economic growth. Also, in developing countries where there is lack of technology and capital, competition policies and free competition being guaranteed to enterprises in superior positions may undercut the autonomous development of the national economy.

It is further pointed out that the lack of human resources, capital, and systematic foundations necessary to enforce competition laws—in combination with the inefficiency of examining countless violations—create distinct circumstances for developing countries. Apart from this, many developing countries are in dire need of democratisation and social unification. As a result, some criticise the idea of implementing competition laws solely in pursuit of short-term economic efficiency.

On the other hand, others argue that, in contrast to Korea's experience since the 1970s and unlike in the past, globalisation and the development of international economy in the 21st century have made the implementation of competition laws and policies more advantageous for long-term economic development of many countries. Unlike in the past when open trade was non-existent, government-led unbalanced

---

in different countries into three categories. American Bar Association (2003), *Reports on Antitrust Policy Objective*, pp.11–19, available at <http://www.abanet.org/antitrust/at-comments/2003/reports/policyobjectives.pdf>

<sup>6</sup>International Competition Network (2007), *Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies*. Presented at the 6th Annual Conference of the ICN held in Moscow in May 2007, pp. 5–38, available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc353.pdf>

growth or export-focused economic development cannot achieve their intended effects because of the current economic environment under WTO, which is characterised by trade liberalisation and internal market integration. Therefore, it is argued that developing countries need to establish market systems that are in line with those of developed countries, as well as a system of competition policy that can control such market systems. With successful operation of such systems, developing countries can draw foreign investments, which can compensate for their lack of resources and enable them to build a capital base.

#### **4.2. Korea's Experience: Economic Development and Competition Policy**

The role and level of contribution of competition laws in a developing country's economic development are considerably controversial issues. With many developing countries preferring Korea's line of strong industrial policies, a full-scale adoption of competition laws is a rather difficult challenge, especially when lacking confidence in the possible results. This is all the more true for developing countries that lack normal functioning markets. Yet, the international circumstances that these countries face today are clearly different from those of the 20th century. Today, economic development needs to concentrate more on quality rather than on quantity.

In the case of Korea, economic development policies that are export-focused and biased toward unbalanced growth were initially implemented through government-led initiatives. In this process, many discrepancies and problems emerged, and competition policies were constantly checked and utilised as a means to overcome such problems through enactment, change in the direction of, or change in the level of enforcement of competition laws. As a result, competition policies have played an important role in complementing macroscopic economic policies to the point that competition policies have currently become a major force in Korea's economic policy. Still many argue that the developmental experiences of export-oriented economies like Korea and Japan cannot be directly applied to developing countries.<sup>7</sup>

---

<sup>7</sup> Refer to Kenneth M. Davidson (2011), *Economic Development, Competition, and Competition Law*, AAI Commentary. <http://www.antitrustinstitute.org/sites/default/files/Davidson%20Economic%20Development.pdf>



In summary, Korean competition policies were born and developed to take the role of correcting and complementing economic development policies, based on the success of industrial/economic development policies customised to Korea's circumstances. Eventually, competition policies provided an alternative system of overcoming Korea's economic difficulties.

Ultimately, from the standpoint of a developing country pursuing economic development, the most important issue is to evaluate its circumstances and implement appropriate economic development strategies. However, at a certain point of development, if such strategies do not incorporate the free market principles, problems will inevitably arise. Competition policies (as the essence of a market economy) can help correct and complement these problems. Constant examination of the problems and a search for alternatives should highlight the importance of competition policies. Korea's experience in competition policies shows that economic crises arise when competition policies fail to fulfil their role, which is to complement and/or substitute development policy. Eventually, however, the economy prevails over crises through implementation of competition policies. This was true during the economic crises in the late 1970s and late 1997. A similar process contributed to the overcoming of economic difficulties during the 2008 global financial crisis.

The importance of national champions (that may be able to spread positive effect on the domestic economy) and international competitiveness have been emphasised in many Asian countries, including Korea, in this age of global competition. While such theories have valid aspects, from a competition policy perspective, they can be dangerous. It is doubtful whether a national champion that is created and grown without active competition is sustainable in the long run. If domestic consumer welfare is sacrificed in pursuit of industrial policies, the benefits and disadvantages must be closely evaluated and compared. In Korea, recent studies show that the trickle-down effect of large conglomerates has drastically decreased and that the benefit of growth largely remains within large conglomerates. Hence, the effects of industrial policies differ in each stage of economic development, and the countermeasures need to change along with them. The importance of competition policies can be further explained in terms of their ability to provide an analytical framework to evaluate particular project.<sup>8</sup>

---

<sup>8</sup>A successful case of industrial policies in the analytical framework of competition policies is the

In the end, it is critical to understand and utilise the mutual complementary effects between economic development policies (or industrial policies) and competition policies.

## 5. Recent Issues on Enforcement Procedures<sup>9</sup>

The most serious and debatable points in Korean competition laws are about the standard of liability, either efficiency or fairness, and the methodology of how to ease the so-called bipolarisation. Another serious issue is the dissatisfaction of businesses and the practicing bar about procedural rights before the KFTC. The case-handling procedures at the KFTC and the appeal system against KFTC decisions have emerged as intense topics. Many experts and companies are asking for the introduction of more sophisticated procedures for both investigation and adjudication at the KFTC, arguing that the current procedures do not guarantee full opportunities for self-defence. In addition, the current exclusive jurisdiction of the Seoul High Court for appeals against KFTC decisions is under challenge, due to criticism that antitrust appeals should not be an exception but a general rule—that appeals against government agency actions go to the courts of first instance. The criticism over KFTC procedures is expected to function as a pressure to make KFTC procedures more similar to judicial procedures. However, it is also recognised that improving this issue has certain limitations while the KFTC is obligated to process thousands of complaints every year. Clearly, the KFTC is overloaded.

---

case of Airbus Project and the EU government support. As part of collaborative research and development (R&D) policies (carried out since 1984), the EU implemented promotion strategies for a national champion in the aviation industry. This case gathered interest as there was a remarkable contribution of competitive analysis in designing and pursuing this successful project. For specific discussion, refer to Kab Soo Lee (2007), 'The 3 Case Studies: The Theory and Practice of EU R&D Policies', *The Journal of Contemporary European Studies*, Vol. 25, No.2.

<sup>9</sup> This part is largely taken from the author's existing article. 'Overview of Current Antitrust Enforcement in Korea', *Competition Policy International*, 12 September 2014. Text available at <https://www.competitionpolicyinternational.com/overview-of-current-antitrust-enforcement-in-korea>

On criminal enforcement, the exclusive authority of the KFTC to make referrals to the prosecutor's office for criminal accusation was taken away due to the concerns over inactive enforcement. In addition to the KFTC, the Public Procurement Service, the Small and Medium-sized Business Administration, and the Bureau of Audit and Inspection were also granted the authority to request criminal referrals. While the amendment is expected to check the authority of the KFTC and invigorate criminal enforcement, there also exist concerns that this may cause over-deterrence because even minor violations of the law like unfair trade practices could, in theory, be criminally prosecuted. It is left to be seen how actively this new measure will be utilised. Despite these changes for the effective enforcement of the KFTC's leniency program, leniency applicants are provided with an exemption to criminal enforcement.

## **6. Conclusion**

Korea's antitrust law enforcement has been well known for its sincere efforts to realise active market competition in a culture and economy that respects government policy leadership and the *chaebols'* efficiency. The contribution should be highly appreciated; however, many experts question whether the old development strategy is fully overcome and market competition is respected enough to replace old regime.

Moreover, recent changes of administration and economic difficulties required significant changes in the competition policy area to support SMEs and help boost a 'creative economy.' It led to an emphasis in the enforcement of restrictions against unfair trade practices to protect SMEs and of regulation against the abuse of intellectual property rights (IPRs). Enforcement of traditional antitrust laws that emphasised efficiency, especially regulations against abuse of market dominance, has been weakened in exchange. At the same time, the KFTC's role of competition advocacy to ease market concentration and make general economic policies more competition-oriented has become relaxed, too, to go along with government policy to revive the economy. It is to be seen whether such changes would prove successful.

Overall, even after such problems as described above, it can be said that Korea's antitrust policy remains generally very active in building sound market competition.

The KFTC keeps pushing to regulate cartels and anti-competition mergers. Careful monitoring of IPR licensing practices is taking place. The KFTC's role in international policy leadership, especially in Northeast Asia, is another aspect to be noted. Private enforcement of cartel prohibition has begun to work.

## ERIA Discussion Paper Series

No.	Author(s)	Title	Year
2015-78	Hwang LEE	Development of Competition Laws in Korea	Nov 2015
2015-77	Farish A. NOOR	Shared Cultures and Shared Geography: Can There Ever Be a Sense of Common ASEAN Identity and Awareness	Nov 2015
2015-76	Naomi HATSUKANO	Improving the Regulatory and Support Environment for Migrant Workers for Greater Productivity, Competitiveness, and Social Welfare in ASEAN	Nov 2015
2015-75	Jose Miguel R. de la ROSA	Engendering ASEAN Identity: The Role of Film	Nov 2015
2015-74	Mely CABALLERO-ANTHONY, Paul TENG, Goh TIAN, Maxim SHRESTHA, Jonatan LASSA	Linking Climate Change Adaptation and Food Security in ASEAN	Nov 2015
2015-73	Patarapong INTARAKUMNERD	Thai Automotive Industry: International Trade, Production Networks, and Technological Capability Development	Oct 2015
2015-72	VO Tri Thanh, NGUYEN Anh Duong, BUI Trinh	Trade in Value Added: The Case of Viet Nam	Oct 2015
2015-71	Javier LÓPEZ-GONZÁLEZ and Przemyslaw KOWALSKI	Global Value Chain Participation in Southeast Asia- Trade and Related Policy Implications	Oct 2015
2015-70	Lili Yan ING and Miaojie YU	Intensive and Extensive Margins of South-South-North Trade: Firm-Level Evidence	Sep 2015
2015-69	Mari PANGESTU and Lili Yan ING	ASEAN: Regional Integration and Reforms	Sep 2015

No.	Author(s)	Title	Year
2015-68	Toshitaka GOKAN, Ikuo KUROIWA, Nuttawut LAKSANAPANYAKUL and Yasushi UEKI	Spatial Patterns of Manufacturing Agglomeration in Cambodia, Lao People's Democratic Republic, and Thailand	Sep 2015
2015-67	Phoumin HAN and Venkatachalam ANBUMOZHI	Policy Effects on Total System Energy Efficiency: Comparisons of Advanced and Developing Economies in the EAS region	Sep 2015
2015-66	Venkatachalam ANBUMOZHI and Ponciano S. INTAL, Jr.	Can Thinking Green and Sustainability Be an Economic Opportunity for ASEAN?	Sep 2015
2015-65	Tereso S. TULLAO, Jr., Miguel Roberto BORROMEO, Christopher James CABUAY	Framing the ASEAN Socio-Cultural Community (ASCC) Post 2015: Quality and Equity Issues in Investing in Basic Education in ASEAN	Sep 2015
2015-64	Han PHOUMIN	Renewable Energy Policies and the Solar Home System in Cambodia	Sep 2015
2015-63	Sudarno SUMARTO and Sarah MOSELLE	Addressing Poverty and Vulnerability in ASEAN: An Analysis of Measures and Implications Going Forward	Sep 2015
2015-62	Rafaelita M. ALDABA	The Philippines in the Electronics Global Value Chain: Upgrading Opportunities and Challenges	Sep 2015
2015-61	Olivier CADOT and Lili Yan ING	Non-tariff Measures and Harmonisation: Issues for the RCEP	Sep 2015
2015-60	Jacob KUMARESAN and Suvu HUIKURI	Strengthening Regional Cooperation, Coordination, and Response to Health Concerns in the ASEAN Region: Status, Challenges, and Ways Forward	Sep 2015
2015-59	Kaliappa KALIRAJAN, Kazi Arif Uz ZAMAN, Gaminiratne WIJESEKERE	Strengthening Natural Resources Management in ASEAN: National and Regional Imperatives, Targets, and Opportunities	Sep 2015
2015-58	THAM Siew Yean and Andrew KAM Jia Yi	Trade in Value Added: The Case of Malaysia	Sep 2015
2015-57	S. KUMAR	Engendering Liveable Low-Carbon Smart Cities in ASEAN as an Inclusive Green Growth Model and Opportunities for Regional Cooperation	Sep 2015

No.	Author(s)	Title	Year
2015-56	Shandre THANGAVELU	Services Productivity and Trade Openness: Case of ASEAN	Aug 2015
2015-55	Lili Yan ING and Chandra Tri PUTRA	Imported Inputs in Indonesia's Product Development	Aug 2015
2015-54	Cassey LEE	The Objectives of Competition Law	Aug 2015
2015-53	Burton ONG	Competition Law and Policy in Singapore	Aug 2015
2015-52	Robin SAKAMOTO	Investing in Higher Education, and Its Potential Impact on Research and Development for Technological Upgrading, Innovation, and Competitiveness	Aug 2015
2015-51	Xiao JIANG and Jose CARABALLO	The Employment Effects of GVCs on Asian Countries and the Phenomenon of Value-Added Erosion	Aug 2015
2015-50	Mun-Heng TOH	Singapore's Participation in Global Value Chains: Perspectives of Trade in Value-Added	July 2015
2015-49	Ben SHPEHERD	Developing Domestic and Export Markets and Levelling Up Trade in Value-Added: Lessons Learnt	July 2015
2015-48	Siwage Dharma NEGARA	How Labour Market Policies Affect Innovation and Trade Competitiveness	July 2015
2015-47	Hank LIM, Bernard AW, LOKE Hoe Yeong	AEC Scorecard Phase IV: Furthering the Implementation of the AEC Blueprint Measures The Singapore Country Report	June 2015
2015-46	Saowaruj RATTANAKHAMFU, Sumet ONGKITTIKUL, Nuttawut, LAKSANAPUNYAKUL, Nichamon THONGPAT, Natcha O-CHAROEN	Thailand Country Study ASEAN Economic Community Blueprint Mid-term Review Project	June 2015
2015-45	Koji KUBO	Evolving Informal Remittance Methods of Myanmar Migrant Workers in Thailand	June 2015

No.	Author(s)	Title	Year
2015-44	Philippa DEE	Monitoring the Implementation of Services Trade Reform towards an ASEAN Economic Community	May 2015
2015-43	Shandre THANGAVELU	FDI Restrictiveness Index for ASEAN: Implementation of AEC Blueprint Measures	May 2015
2015-42	Rully PRASSETYA and Ponciano S. INTAL, Jr.	AEC Blueprint Implementation Performance and Challenges: Standards and Conformance	May 2015
2015-41	Ponciano INTAL Jr.	AEC Blueprint Implementation Performance and Challenges: Trade Facilitation	May 2015
2015-40	Fukunari KIMURA, Tomohiro MACHIKITA, and Yasushi UEKI	Technology Transfer in ASEAN Countries: Some Evidence from Buyer-Provided Training Network Data	May 2015
2015-39	Dionisius NARJOKO	AEC Blueprint Implementation Performance and Challenges: Services Liberalization	May 2015
2015-38	Kazunobu HAYAKAWA, Nuttawut LAKSANAPANYAKUL, Shujiro URATA	Measuring the Costs of FTA Utilization: Evidence from Transaction-level Import Data of Thailand	May 2015
2015-37	Kazunobu HAYAKAWA, Nuttawut LAKSANAPANYAKUL, Pisit PUAPAN, Sastra SUDSAWASD	Government Strategy and Support for Regional Trade Agreements: The Case of Thailand	May 2015
2015-36	Dionisius NARJOKO	AEC Blueprint Implementation Performance and Challenges: Non-Tariff Measures and Non-Tariff Barriers	May 2015
2015-35	Kazunobu HAYAKAWA, Tadashi ITO, and Fukunari KIMURA	Trade Creation Effects of Regional Trade Agreements: Tariff Reduction versus Non-tariff Barrier Removal	Apr 2015
2015-34	Kazunobu HAYAKAWA, Tadashi ITO	Tariff Pass-through of the World-wide Trade: Empirical Evidence at Tariff-line Level	Apr 2015
2015-33	Kazunobu HAYAKAWA, Nuttawut LAKSANAPANYAKUL, and Shujiro URATA	Firm-level Impact of Free Trade Agreements on Import Prices	Apr 2015
2015-32	Ponciano INTAL, Jr.	AEC Blueprint Implementation Performance and Challenges: Investment Liberalization	Apr 2015



No.	Author(s)	Title	Year
2015-31	Emily Christi A. CABEGIN	The Challenge of China and the Role of Deepening ASEAN Integration for the Philippine Semiconductor Industry	Apr 2015
2015-30	Venkatachalam ANBUMOZHI, Alex BOWEN and Puthusserikunnel Devasia JOSE	Market-Based Mechanisms to Promote Renewable Energy in Asia	Apr 2015
2015-29	Venkatachalam ANBUMOZHI	Low Carbon Green Growth in Asia: What is the Scope for Regional Cooperation?	Apr 2015
2015-28	Tan LI and Larry D. QIU	Beyond Trade Creation: Free Trade Agreements and Trade Disputes	Mar 2015
2015-27	Mai Anh NGO	Exporting and Firm-Level Credit Constraints – Evidence from Ghana	Mar 2015
2015-26	Sunghoon CHUNG, Joonhyung LEE, Thomas OSANG	Did China Tire Safeguard Save U.S. Workers?	Mar 2015
2015-25	Esther Ann BØLER, Beata JAVORCIK, Karen Helene ULLTVEI-MOE	Globalization: A Woman's Best Friend? Exporters and the Gender Wage Gap	Mar 2015
2015-24	Tristan Leo Dallo AGUSTIN and Martin SCHRÖDER	The Indian Automotive Industry and the ASEAN Supply Chain Relations	Mar 2015
2015-23	Hideo KOBAYASHI and Yingshan JIN	The CLMV Automobile and Auto Parts Industry	Mar 2015
2015-22	Hideo KOBAYASHI	Current State and Issues of the Automobile and Auto Parts Industries in ASEAN	Mar 2015
2015-21	Yoshifumi FUKUNAGA	Assessing the Progress of ASEAN MRAs on Professional Services	Mar 2015
2015-20	Yoshifumi FUKUNAGA and Hikari ISHIDO	Values and Limitations of the ASEAN Agreement on the Movement of Natural Persons	Mar 2015
2015-19	Nanda NURRIDZKI	Learning from the ASEAN + 1 Model and the ACIA	Mar 2015
2015-18	Patarapong INTARAKUMNERD and Pun- Arj CHAIRATANA and Preeda	Global Production Networks and Host-Site Industrial Upgrading: The Case of the Semiconductor Industry in Thailand	Feb 2015

No.	Author(s)	Title	Year
CHAYANAJIT			
2015-17	Rajah RASIAH and Yap Xiao SHAN	Institutional Support, Regional Trade Linkages and Technological Capabilities in the Semiconductor Industry in Singapore	Feb 2015
2015-16	Rajah RASIAH and Yap Xiao SHAN	Institutional Support, Regional Trade Linkages and Technological Capabilities in the Semiconductor Industry in Malaysia	Feb 2015
2015-15	Xin Xin KONG, Miao ZHANG and Santha Chenayah RAMU	China's Semiconductor Industry in Global Value Chains	Feb 2015
2015-14	Tin Htoo NAING and Yap Su FEI	Multinationals, Technology and Regional Linkages in Myanmar's Clothing Industry	Feb 2015
2015-13	Vanthana NOLINTHA and Idris JAJRI	The Garment Industry in Laos: Technological Capabilities, Global Production Chains and Competitiveness	Feb 2015
2015-12	Miao ZHANG, Xin Xin KONG, Santha Chenayah RAMU	The Transformation of the Clothing Industry in China	Feb 2015
2015-11	NGUYEN Dinh Chuc, NGUYEN Ngoc Anh, NGUYEN Ha Trang and NGUYEN Ngoc Minh	Host-site institutions, Regional Production Linkages and Technological Upgrading: A study of Automotive Firms in Vietnam	Feb 2015
2015-10	Pararapong INTERAKUMNERD and Kriengkrai TECHAKANONT	Intra-industry Trade, Product Fragmentation and Technological Capability Development in Thai Automotive Industry	Feb 2015
2015-09	Rene E. OFRENEO	Auto and Car Parts Production: Can the Philippines Catch Up with Asia	Feb 2015
2015-08	Rajah RASIAH, Rafat Beigpoor SHAHRIVAR, Abdusy Syakur AMIN	Host-site Support, Foreign Ownership, Regional Linkages and Technological Capabilities: Evidence from Automotive Firms in Indonesia	Feb 2015
2015-07	Yansheng LI, Xin Xin KONG, and Miao ZHANG	Industrial Upgrading in Global Production Networks: The Case of the Chinese Automotive Industry	Feb 2015
2015-06	Mukul G. ASHER and Fauziah ZEN	Social Protection in ASEAN: Challenges and Initiatives for Post-2015 Vision	Feb 2015

No.	Author(s)	Title	Year
2015-05	Lili Yan ING, Stephen MAGIERA, and Anika WIDIANA	Business Licensing: A Key to Investment Climate Reform	Feb 2015
2015-04	Gemma ESTRADA, James ANGRESANO, Jo Thori LIND, Niku MÄÄTÄNEN, William MCBRIDE, Donghyun PARK, Motohiro SATO, and Karin SVANBORG-SJÖVALL	Fiscal Policy and Equity in Advanced Economies: Lessons for Asia	Jan 2015
2015-03	Erlinda M. MEDALLA	Towards an Enabling Set of Rules of Origin for the Regional Comprehensive Economic Partnership	Jan 2015
2015-02	Archanun KOHPAIBOON and Juthathip JONGWANICH	Use of FTAs from Thai Experience	Jan 2015
2015-01	Misa OKABE	Impact of Free Trade Agreements on Trade in East Asia	Jan 2015

Previous year of ERIA Discussion Paper, can be downloaded at:

[http://www.eria.org/publications/discussion\\_papers/FY2014/](http://www.eria.org/publications/discussion_papers/FY2014/)  
[http://www.eria.org/publications/discussion\\_papers/FY2013/](http://www.eria.org/publications/discussion_papers/FY2013/)  
[http://www.eria.org/publications/discussion\\_papers/FY2012/](http://www.eria.org/publications/discussion_papers/FY2012/)  
[http://www.eria.org/publications/discussion\\_papers/FY2011/](http://www.eria.org/publications/discussion_papers/FY2011/)  
[http://www.eria.org/publications/discussion\\_papers/FY2010/](http://www.eria.org/publications/discussion_papers/FY2010/)  
[http://www.eria.org/publications/discussion\\_papers/FY2009/](http://www.eria.org/publications/discussion_papers/FY2009/)  
[http://www.eria.org/publications/discussion\\_papers/FY2008/](http://www.eria.org/publications/discussion_papers/FY2008/)