

# WORLD TRADE ORGANIZATION

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**Working Group on the Interaction  
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## COMMUNICATION FROM KOREA

The following communication, dated 16 September 1997, has been received from the Permanent Mission of Korea with the request that it be circulated to Members.

### INSTRUMENTS, STANDARDS AND ACTIVITIES OF KOREA'S COMPETITION POLICY

#### I. Introduction and Development of Competition Law

1. When the Government of the Republic of Korea began to pursue its economic development policies in the early 1960's, the nation suffered from an absolute shortage of capital and other resources. Under such circumstances, the only policy option available for the economic development and growth was a strategy that would lead to unbalanced economic development where a few selected industries were targeted as an engine for growth and a particular emphasis of the trade policy was placed on the promotion of exports. Having opted for that policy direction, Korea succeeded in achieving a remarkable economic development. However, it was not without a cost. Due to the export-oriented trade policy, imports were rather restricted and thus domestic markets often fell into monopolistic and oligopolistic control. Economic power and wealth began to be concentrated.

2. Such side effects of Korea's unbalanced economic development on its market began to emerge as social issues even at the early stage of the implementation of the strategy. It was only in 1975 that the first legislation designed to contain these negative effects was introduced. However, the new law, Price Stability and Fair Trade Act, regulated only the arbitrary setting of prices by monopolistic enterprises in an effort to ensure price stabilization. In this sense, the law was quite short of a true competition law.

3. A competition law in its real sense, which regulates monopolies and oligopolies, was enacted in December 1980. The primary goal of this law, the Monopoly Regulation and Fair Trade Act, is to promote free and fair competition, through which it aims at encouraging innovative business activities, protecting consumers and promoting a balanced development of the national economy. This Act has undergone five revisions since its enactment and its regulations on the restrictions of economic concentration have consistently gained strength with each revision.

#### II. Institutional Development of the Fair Trade Commission

4. In 1981, the Fair Trade Commission (FTC) was established under the now-defunct Economic Planning Board to administer the Monopoly Regulation and Fair Trade Act. In 1994, the FTC was made an independent central agency under the Office of the Prime Minister. In 1996, the status of the Chairman of the FTC was elevated to the ministerial level.

5. The FTC is composed of a Commission and a Secretariat. The Commission is composed of nine Commissioners, a Chairman, a Vice-Chairman, three standing and four non-standing Commissioners. The Secretariat is composed of six bureaus, 30 divisions and four regional offices.

### III. Competition Law of Korea

#### Relationship between competition policy and trade policy

6. As the underlying objective of Korea's competition law is to help establish a pro-competitive market structure and to enhance economic efficiency, the focus of its competition policy is basically limited within its national boundary.

7. With the deepening integration of the world economy, however, anti-competitive practices in Korea's market may pose substantial barriers to the enhancement of competitiveness of Korean companies in international trade. Thus, establishing grounds for fair competition within Korea's market has deep implications for its international trade. That is precisely the reason why Korea's competition law has become increasingly related to trade policies. Furthermore, the prohibition of discriminatory treatment and the restrictions on the abuse of market-dominating position under Korea's competition law have a practical effect of improving access of foreign trading partners to the Korean market.

#### Main features of Korea's competition law

8. Almost all provisions of Korea's competition law are related to trade policy in the sense that they aim at "establishing playing fields for fair competition". The Monopoly Regulation and Fair Trade Act, the primary competition law of Korea, has two main functions: one is to improve market structure and the other is to improve business practices.

##### A. Improvement of market structure

9. The Act includes the following provisions designed to make the market structure more efficient:

10. First, to prevent the formation of monopolistic and oligopolistic market structures, the FTC identifies firms which have market-controlling power, on a yearly basis, and designates them as "market-dominating enterprises". The firms so designated become subject to specific regulations by the FTC on any abusive acts.

- For example, companies are designated as market-dominating enterprises in a market in which total value of sales turnover amounts to Won 100 billion (approximately US\$110 million) or more, if a company has a market share of 50% or more, or if the top three companies in a certain market occupy 75% or more of the total market share.

In addition, the FTC is mandated to formulate policies aimed at improving competition in markets where monopolistic or oligopolistic structures have prevailed for a long time.

11. Abusive acts covered by the Act are as follows:

- Act of unreasonably determining, maintaining or altering the price of commodities or charge of service;
- Act of unreasonably controlling the sale of commodities or provision of services;
- Act of interfering with business activities of other enterprises;

- Act of impeding the market entry of new enterprises; and
- Other acts that are likely to restrain substantially competition or significantly prejudice consumer interests.

12. Second, to prohibit the creation of new monopolies and oligopolies, companies with total value of assets or sales turnover (including those of subsidiaries) in excess of Won 100 billion are required to report to the FTC when they are involved in business mergers and other similar acts such as stock acquisition and participation in the establishment of new enterprises. When such reported acts turn out to be anti-competitive or to have been taken through coercive or unfair methods, they are not allowed.

13. Third, large business groups in Korea (better known as "chaebol") have recklessly expanded business through the fleet-like expansion of subsidiaries, often threatening the survival of companies that did not belong to those particular business groups. In many cases, these recklessly large investments weakened the group as a whole and ultimately brought about significant damage to the national economy as well. Therefore, the FTC designates the top 30 business groups as "Large Business Groups" and prohibits them from making such cross capital-investment as acquisition or ownership of each other's stocks. Their debt guarantees for subsidiaries should not exceed 100% of their own capital. Furthermore, their total amount of capital investment in other enterprises is required to be no more than 25% of net assets.

14. Fourth, to promote competition in the economy as a whole, government agencies concerned are required to consult in advance with the FTC when they prepare legislation that may negatively affect competitive conditions in markets. Furthermore, the FTC is making its utmost efforts to remove anti-competitive factors from existing laws and policies through close coordination with relevant ministries.

*B. Improvement of business practices*

15. First, unreasonable collusive acts, such as bid rigging, which restrain competition in a certain market have the effect of raising or maintaining prices at levels higher than they would be under normal competition. The Act prohibits enterprises from agreeing with other enterprises to take such collusive acts that would substantially restrict competition in any market. Such acts include:

- Pre-determination of price and terms of transaction;
- Control of production and ex-factory volume;
- Restriction on facility investment and types and specifications of products;
- Establishment of companies for the purpose of carrying out or managing jointly main parts of enterprise; and
- substantial suppression of competition in particular business fields through interference with, or restriction on business activities of other enterprises.

16. Second, the FTC strives to eradicate unfair business practices in the market and to improve laws and policies concerned. The types of unfair business practices subject to regulation by the FTC are as follows:

- (a) Unfair business practices involving other enterprises:
  - Acts of unreasonably refusing to deal with, or discriminating a certain business counterpart;
  - Acts of making transactions with an aim of unfairly excluding competitors;
  - Acts of unfairly attracting or coercing competitors' customers;
  - Acts of abusing superior position in transaction;
  - Acts of making transactions under conditions to bind unfairly business activities of business counterparts or hindering their business activities; and
  - Acts of assisting specially interested persons or other companies by unfairly providing assets, capitals or manpower.
- (b) Unfair business practices towards consumers, such as acts of making any representations or advertisements which may deceive or mislead consumers.

17. Third, the FTC prohibits producers and sellers of products from determining, in advance, the prices for each sales level and forcing such prices on resellers. Such practices hinder free price competition among sellers and interfere with the formation of fair market prices.

18. Fourth, the signing of certain international contracts by enterprises or trade associations that contain unfair terms is not allowed under the Act. Unfair terms of international contracts subject to this regulation are undue collusive acts, unfair business practices, and resale price maintenance. Such contracts, if allowed, may have adverse effects on fair competition in the Korean market.

#### IV. Role of competition law in Korea

19. When the competition law in its real sense was enacted in 1980, Korea's per capita income reached only US\$1,500. In fact, Korea was one of the few developing countries which adopted competition law at that stage of economic development. The introduction of competition law was intended to tackle the possible abuse of monopoly and oligopoly which resulted from unbalanced economic growth strategy that had been pursued over the previous 20 years. Despite its rather short history of 17 years of implementation, Korea's competition law has considerably contributed to transforming its monopolistic and oligopolistic domestic market into a more competitive structure and to eliminating restrictive business practices.

20. It should be noted that, although competition law was introduced in 1980, it took almost ten years before the competition regime settled in Korea. Only from the early 1990's onwards - Korea's per capita income reached US\$5,800 in 1990 - the FTC found itself in a position to vigorously enforce the law. In fact, this interval period of approximately ten years served as a period for improving public awareness of competition policy and for assisting adjustment of enterprises thereto.