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Competition Policy in Regulated Sectors:
Focusing on the Institutional Design of the Relationship between
Competition Authority and Sectoral Regulators

규제산업의 경쟁정책:
각 산업의 감독당국과 경쟁당국 간 관계에 대한 제도 설계를 중심으로

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Current Division of Roles between Competition Authority and Regulatory Authorities of Korea and its prospects

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I

Division of roles between competition authorities and regulatory authorities : Possible classifications

- Division of roles between competition authorities and regulatory authorities vary among countries according to their social and cultural background and industrial development level.
- 3 types of role division possible by the OECD standard

Competition Authority	Regulatory Authority	Countries
Competition law enforcement + Economic regulation*」	Technical regulation**」	Australia, New Zealand, Denmark, Netherlands, Norway
Competition law enforcement	Technical regulation + Economic regulation	Japan, Germany, EU
Competition law enforcement	<ul style="list-style-type: none"> • Technical regulation + Economic regulation, • Concurrent competition law enforcement with competition authority in part 	U.S., UK

〈RELATIONSHIP BETWEEN REGULATORS AND COMPETITION AUTHORITIES, OECD, '99.6〉

* Regulation on price/production volume, number of enterprisers and market entry/exit (Regulations other than competition law enforcement)

** Establishment of accounting standard, safety standard, regulation on technical standards/compatibility

Korea's division of roles between the two authorities is similar to Japan, Germany and EU.

II

Discussion on the division of roles between competition authorities and regulatory authorities across the countries

- U.S., UK and OECD recently discussing redistribution of roles between competition authorities and regulatory authorities and improvement of regulatory quality

《U.S.》

- Antitrust Modernization Commission Report ('07.4)
 - Application of competition law in regulated industries without exception
 - Competition authorities have the overall authority to conduct merger reviews in regulated industries as well
 - Recommends regulatory authorities not to review competition authorities' economic analysis of mergers in regulated industries

- International Competition Policy Advisory Committee (ICPAC) Recommendation
 - Competition authorities must exclusively exercise the authority to conduct merger reviews based on its long experience and expertise in competition law enforcement ('00.2.)

《UK》

- Don Cruickshank Report ('00.3)
 - Disapprove unnecessary exemptions when enforcing competition law in financial sector
 - Enactment of regulation by financial authorities must consider its effect on competition
 - In the monitoring and review process, the Competition Commission, not Minister of administrative agency, must be the final judge in determining public good
 - Mergers disapproved by the competition authority must not be permitted

《OECD》

- Guiding Principles on Regulatory Quality and Performance (2005)
 - Consider efficiency and competition promotion when introducing new economic regulations
 - Abolish related regulations unless there is clear evidence supporting them as the best way to pursue public good
 - Regular cost-benefit analysis of economic regulations

□ Implications

- Even countries with strong tradition of industry-specific independent regulatory commissions are emphasizing the role of competition agency in regulated industries
 - Improve regulatory quality by enhancing the function and role of the market by limiting ex ante regulations and reinforcing ex post regulation

III

Current discussion and status of division of roles between competition authority and regulatory authorities in Korea

□ Discussion on division of roles

- In the '90s, privatization of state enterprises led to introduction of competition in regulated sectors, which used to be perceived as natural monopolies, and industry-specific regulatory authorities emerged. As a result, some regulatory authorities tried to expand into areas over which the KFTC has jurisdiction.
- * Korea Communications Commission(KCC, 1992), Financial Supervisory Commission (FSC, 1998), Korea Broadcasting Commission(KBC, 2000), Korean Electricity Commission(2001)

- In some sectors, the KFTC and regulatory authorities have established division of roles through consultations.

《Energy sector》

- Business overlaps removed as the Ministry of Commerce, Industry and Energy gave up regulation on anti-competitive practices of electricity providers (reflected the KFTC's opinion when revising the Enforcement Decree of the Electric Utility Act in 2001)

《Communications sector》

- MOU signed between the KFTC and the Ministry of Information and Communication (MIC) ('99, '01), overlapping regulations apparently removed through the coordination of the Office for Government Policy Coordination

- However, some regulatory authorities/research institutes have recently argued that the KFTC's authorities of regulating anti-competitive practices, mergers, labeling and advertising must be transferred to related regulatory authorities in light of the unique characteristics of the concerned industries.

《Financial sector》

- Korea Institute of Finance argued for the need to make the FSC the sole regulator of unfair practices by financial institutions and to involve the FSC in the review of anti-competitiveness in mergers between banks ('07.4).

《Broadcasting sector》

- KBC tries to exclude KFTC's intervention in mergers, labeling and advertising of broadcasting companies through revision of the Broadcasting Act.
- ☞ Need to seek ways to divide regulatory authorities rationally between the two authorities

□ **Current status of role division**

《Merger & Cartel》

- Consensus on the clear division of roles between the KFTC and regulatory authorities

- The MRFTA is fully applicable to merger reviews, but merger review process in financial and communications sectors is stipulated as part of permission/approval process under individual laws.

- FSC Chairman/MIC Minister consult in advance with the KFTC regarding approval of merger, stock acquisition/business transfer between financial companies/telecommunications service providers → KFTC's merger review and notification of the result → Approval by

FSC Chairman/MIC Minister or imposition of remedies decided by KFTC [Article 4 (4), Article 24 (3) of Act on the Structural Improvement of the Financial Industry, Article 17 (3) of Telecommunications Business Act]

- No case of cartel regulation by regulatory authorities other than KFTC
 - When KFTC and MIC disagreed on the jurisdiction over regulation on cartel of telecommunications businesses, KFTC assumed the sole jurisdiction through the coordination by the Office for Government Policy Coordination ('03.12)

《Unfair trade activities》

- Business overlaps between the KFTC and regulatory authorities possible

《Adhesion contract & Labeling and Advertising》

- Business overlaps between the KFTC and regulatory authorities possible
 - Adhesion Contracts Act and Fair Labeling and Advertising Act, under KFTC's jurisdiction, are the general laws for regulation on unfair adhesion contracts and unfair labeling and advertising.
 - But in some industries (financial, healthcare, food) individual laws regulate adhesion contracts and labeling and advertising in consideration of their unique characteristics.

IV

Suggestion for dividing roles between competition authorities and regulatory authorities

1. Principles and standards for role division

① Separation of industrial policy and competition policy

- Implementation of the two policies by the same agency undermines policy goals and increases inefficiency

Industrial Policy	Competition Policy
<ul style="list-style-type: none">• Establishment/maintenance of entry/exit barriers• Protection/promotion of infant industries• Protection/prevention of exit of late-comers• Applied only to certain industries• Basically anti-competitive in nature	<ul style="list-style-type: none">• Reduction/removal of entry/exit barriers• Protection of competition, not competitors• Applied non-discriminately to all industries• Primary goal is to promote competition

② Effective achieving regulatory objectives

- Divide roles in a way that can achieve regulatory objectives most efficiently considering two authorities foundation purpose and comparative advantage in terms of expertise

	Competition Authority	Regulatory Authorities
+	<ul style="list-style-type: none"> • Superior in statutory interpretation/ application and economic analysis as a quasi-judicial body • No conflict between two clear goals of "competition promotion" and "consumer protection" • Free from the interest of certain industries/enterprisers 	<ul style="list-style-type: none"> • Have in-depth information on concerned industries through real-time information collection from daily ex-ante regulation • Long-term and comprehensive consideration for industrial development
—	<ul style="list-style-type: none"> • Lack of in-depth understanding on certain industries • Lack of long-term consideration for industries 	<ul style="list-style-type: none"> • Possible conflict between goals due to the pursuit of both industrial development and consumer protection • Concern for regulatory capture by certain industries/enterprisers

	Technical Regulation	Economic Regulation	Competition Law Enforcement
Role Division	Whole responsibility is on regulatory authorities	Enforced in principle by regulatory authorities <ul style="list-style-type: none"> • Competition authorities have complementary role in terms of competition promotion 	Whole responsibility is on competition authorities
Examples	<ul style="list-style-type: none"> • Establishment of technical standards • Maintenance of financial soundness • Establishment of accounting standards 	<ul style="list-style-type: none"> • Approval on rates • Entry regulations (e.g. No. of enterprisers) • Regulation on access to and use of networks 	<ul style="list-style-type: none"> • Abuse of market dominance • Cartel/Merger • Vertical Restraints

**③ Protection of rights and promotion of convenience for regulatees
(☞ separation of ex ante regulation and ex post regulation)**

- Permission/approval, industrial promotion/fostering business and competition law enforcement by separate agencies

* When competition law is enforced by regulatory authorities, with greater discretionary authority on business permission/approval, industrial promotion/fostering policies, regulatees normally give up expressing dissatisfaction for the fear of suffering disadvantages later.

- Multiple agency-related regulations are likely to have overlaps ☞ streamline regulatory procedures through elimination and integration of overlapping regulations.

④ Efficiency of consumer rights protection

- The most efficient way is to have competition authorities oversee general infringement of consumer rights across all industries and have regulatory authorities handle industry-specific matters.

[Example]

- This principle was reflected when adjusting roles in the amendment of the Enforcement Decree of the Telecommunications Business Act ('04.3)

KFTC	MIC/KCC
• regulation on cartel, abuse of dominance, vertical restraints	• regulation on undue charging, industry-specific user discrimination

⑤ **Establish close consultation mechanism between competition authorities and regulatory authorities**

- Establish various consultation channels between the two authorities
 - ☞ Although it is desirable to minimize the grey area where the two authorities' regulations overlap, it is virtually impossible to remove it completely under the regulatory system.
 - ☞ From a long-term perspective, improve statutes and build consultation channels at various levels for coordination of roles

[Example]

- Communications sector: Business consultation body between KFTC and MIC (KCC) established ('06.6)
 - * 4 consultation meetings held till today

- Financial sector: KFTC and FSC in discussion on removal of overlapping regulations and role division through a consultation channel formed in Apr. '07
- Personnel exchanges between the two authorities for promotion of understanding on each other's role and function