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Focusing on the Institutional Design of the Relationship between Competition Authority and Sectoral Regulators

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Competition Law and Policy in Korean Energy Markets

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I. Introduction

1. Background

The economy of Korea has rapidly developed and along with it its energy industry has similarly grown up in terms of infrastructure and security. Though it has no geographical links to nearby countries that would allow it to rely on imported electricity or pipelined natural gas, Korea has rapidly built an infrastructure fit for diverse portfolio of energy supply (fossil fuel, gas, hydro and nuclear energy). In this process state monopoly and sectoral regulation played an indispensable role.

The role of the state as the main provider of energies essential for economic growth, however, has been challenged recently and that of market mechanism emphasized gradually. Throughout the 1990s, a consensus is found worldwide that the liberalization of the network-bound energy industries like electricity and natural gas is not only possible but is highly desirable from an economic and political point of view.[1] It indicates a paradigm shift from state-controlled to competition-based regime. Attempts to reform regulatory regime of Korean energy markets reflect increased confidence in market principles.[2] For that, Korea Anti-Monopoly Act, enacted in 1980, made a great contribution.

In Korea, there has been an extensive discussion since 1990s, pros and cons to issues, in what scope, when, and how the energy market reform should take place. The

[1] Peter D. Cameron, Reforming Energy Markets: A Review Article, 18 J. Energy Nat. Resources L. 353, 2000.

[2] Jeong-Shik Shin, Seong-Ho Choi, Restructuring of Energy Network Industries: Current Situation and Policy Tasks Ahead, Journal of Regulation Studies Vol. 13 No. 1, June 2004, pp. 131.

government of the former President Kim Dae-Jung set out ambitious plans to reform public sectors including electricity and natural gas industry. However, the plans have been stalled after Mr. Rho of Uri Party won the presidential election in December 2002. The liberalization of energy industries recently gained again much attention in terms of upcoming presidential election at the end of 2007.

2. Characteristics and Problems of State-Controlled Energy Markets

The dependence of electricity and natural gas supply on fixed networks (transmission and distribution lines or pipelines) has been recognized as one of the main factors supporting legal monopolies and making entrants into energy markets unfeasible. Moreover, technical complexity of power demand-supply coordination and high dependence of natural gas on sources abroad, the fear of wasteful competition or social needs to afford universal services, etc. have led to the conclusion that those sectors need an active and 'competition-substitutive regulation' instead of free market forces.[3] It has long been widely accepted that the public interests, i.e. ensuring sustainable energy supplies, guaranteeing reasonable rate, can not be sufficiently covered by competition principles.

Thereby resulted pervasive regulation in energy network industries entails, however, in-efficiencies on the one hand, and increases uncertainty of energy supplies on the other hand. First, state-owned companies are vulnerable to organizational or operational inefficiencies[4]; they could not maintain optimal capacity or respond rapidly to market fluctuations. These inefficiencies are passed on to customers via cost-based pricing.

[3] Büdenbender, ENWG – Kommentar zum Energiewirtschaftsgesetz, 2003, Einl. Rn. 12; Nobert Eickhof, Zur Legitimation ordnungspolitischer Ausnahmeregelungen, ORDO 44, 1993, p. 204.

[4] For example, KOGAS, the biggest single buyer in the world LNG market, imports natural gas at unreasonably high prices, taking Asian premium into consideration. But in-efficiency is hardly identified in Korean energy industries.

Secondly, upstream markets (exploration and production of oil and gas fields abroad) of Korean electricity/gas industry remain poorly developed, because the exiting monopolist tends to be satisfied with staying at its stable domestic market.

II. Transition from Regulation to Competition

1. Normative basis of Energy Reform

Paradigm shift toward competition has a constitutional justification. The Constitution of Korea promulgates explicitly a free market economy as primary economic order in conjunction with the guarantee of private ownership and the freedom of economic activities (§119 I).[5] Therefore the state has responsibility for ensuring competition as much as possible. Market functions in this context on two wheels; property right and free contract. Contracts can be made use of given private ownership; competition is made possible in terms of free contract.[6] In this context, the marketization of electricity/gas industry contains following implications:

- Privatization of state-owned electricity and gas monopolies (transformation onto the private ownership),
- Introduction of competition by allowing new entrants and protection of level playing field by asymmetry regulation (conditioning free and fair contract system)
- Elimination of anti-competitive regulation, e.g. rate regulation (flourishing effective competition)

Free market economy allows, however, some exception; a regulatory interference is anticipated when the market mechanism is deemed to be unapt to accomplish the

[5] Won-Woo Lee, Economic Regulation and Public Interests, Seoul Law Journal, Vol.47 No.3, 2006, pp. 97. He explains public interests as a highly ranked integrating principle of market mechanism and regulation.

[6] Fritz Rittner, Vertragsfreiheit und Wettbewerbspolitik, in: FS Sölter (1982), S. 27, 30.

wanted results. This is the case of natural monopolies including electricity and natural gas. The concept of natural monopolies in Korea is being reappraised in terms of technological developments and new competition theories.[7] Above all, no factors other than transmission-distribution networks or gas pipelines would render a rationale for extending network monopolies to irrelevant service areas. Natural monopolies and thereby resulting comprehensive sector-specific regulation can be justified only to the extent that access to bottleneck facilities like transmission grid or gas pipelines appears to be essential for economic competition. So it can be argued that generation/sales parts of electricity and imports/sales parts of natural gas should be separated and privatized for further liberalization of these industries.

2. Hopes and Fears behind Liberalization

In a course of energy market liberalization, however, we are facing some hopes and fears. This is the issue of possible economic effects of energy liberalization.

The liberalization of energy markets like other network industries aims to bring energy prices to a competitive level. Every nation that has tried and has been trying energy market reform is likely to have this positive expectation. If more suppliers or network (pipelines) operators instead of monopolistic incumbent compete on the merits, it is more likely to result in larger room for consumers to choose their favorite transaction partners.

The risk that the dependence of national energy sources solely on foreign countries is likely to increase can be argued, but it can be also reduced by means of exploration and production of oil/gas fields abroad which rigorous domestic competition tends to force.

Experiences of other countries that have opened their energy markets since last

[7] Peter D. Cameron, Competition in Energy Markets, 2002, pp. 7.

decades appear to be somewhat confusing in this regard.[8] Their liberalization processes is not long enough to allow any definitive answer. Price effect varies with the social and political environment notwithstanding complex economic conditions. There can be found no evidence showing that liberalization would entail necessarily serious risks to public interests.[9] The examples of U.S. and United Kingdom verify contrary results despite their inherent restraints.[10]

Moreover, price decrease is not the only goal of market liberalization; more convenient services from various service providers can be important as much as price.[11] So the motor force of energy liberalization seems to be the faith in market principles, not any strict evidence quantified by comparative analysis. It does not mean, of course, that comparative studies of other advanced energy markets are of no use.

III. Developments of Korean Energy Market Reform

1. Electricity Market

(1) Overview: Market Structure and Regulation

It can be said that competition does not exist, nor functions at any stage of the electricity markets of Korea. Generation, Transmission, distribution and sales of electric power are fully monopolized in Korea. Although there are totally six generation firms in operation, these are 100% subsidiaries of the incumbent monopolist in that sector, Korea Electric Power Corporation (hereafter "KEPCO"). KEPCO is publicly owned;

[8] For introductory analysis of energy reform experiences in US, United Kingdom, EU and Japan, see Won-Hyuk Lim, Electric Power Sector Restructuring: Major Issues and Policy Alternatives, KDI Policy Study, 2004.12., pp. 28.

[9] Skeptical to that market and competition could realize every kind of values embedded in the public utilities, Tony Prosser, The Limits of Competition Law, 2005, pp. 24.

[10] Moon-Ji Lee, The Retail Competition in the Electricity Business can Coexit with Protection of Vulnerable Residential Consumers, Journal of Regulation Studies Vol. 15 No. 1, June 2006, pp. 55.

[11] Hyun-Jae Kim, A Study on the Effects of the Liberalization of Electricity Supply Business and Optimal Market Structure, Research Paper, Korea Energy Economics Institute, 2005.12., pp. 57.

the Korea government and the Korea Development Bank, which is also public corporation, have respectively 21.12% and 29.95% (totally 51.07%) of KEPCO's capital stock (dated 12.31.2006).

The Electricity Business Act (hereafter "the Act") classifies electricity businesses into five categories: generation, transmission, distribution, sales and local provisions (the Act §2 I). The Ministry of Commerce, Industry and Energy (hereafter "the Ministry") may grant individual license for each services with considering financial capacity, technical ability and service coverage etc. The Act allows new entry into transmission or distribution field. But the authorization has been made so restrictively that until now no additional transmission or distribution operator was given a license except for District Electricity Power Businesses (hereafter "DEPBs") to be mentioned below.

It is notable that more than two separate licenses can not be given to a single provider (the Act §7 III). It could be understood as a preliminary step in order to separate the vertically-integrated KEPCO and introduce competition in each service sector. According to the appendix II of the Act, however, KEPCO is presumed to have obtained a general license for all the service levels of electricity.

The obligation to provide universal service contained in the Act (the Act §6) makes rate regulation necessary on the basis of historical costs. In this context, wholesale and retail price is subject to the approval of the Ministry (the Act §16).

It is crucial for pro-competitive environments that any willing newcomer is granted access to the energy bottleneck facilities of the incumbent, especially transmission and/or distribution lines. Among these, the Act imposes on the network operators, in fact KEPCO, the obligation of unbundling of transmission and distribution grids on a non-discriminatory basis (the Act §20 I). The access obligation, however, could not play

a practical role in facilitating effective competition at all.[12] The main reason is that no additional entrant has been authorized for wholesale or retail business of electricity. Though access to the energy networks is essential for third party entrants to compete with incumbent, any new entrant has not come true yet.

(2) Restructuring Plan – just one step

Despite of strong resistance mainly from KEPCO's labor union, the competition-oriented approach spread out into the industry and academics in Korea. Technological innovation makes power transaction more convenient and reduces power transaction costs. It can not be overlooked that the theoretical contribution of respected economists arguing that competition will not only enhance efficiency of power generation and administration but ensure sustainable supply of electricity.[13]

In January 1999, the government announced "the Basic Plan to Restructure Electricity Industry" guided mainly by competition and efficiency consideration. According to the plan, the generation part of KEPCO was to be separated into six subsidiaries, which were to be privatized by the end of 2002 (introduction of competition into generation market). Next step was that the wholesale part of KEPCO was to be put into competition in terms of unbundling of transmission lines by the end of 2008 (entry of new wholesale suppliers). Under the plan, transmission facilities would further be operated under the state ownership. Finally, regional monopolies in the retail level were to be resolved and the freedom to choose among suppliers was to be given to end-users since 2009 (start-up of retail competition).[14]

Under the plan, six generation subsidiaries were split off from KEPCO in April 2001,

[12] Only DEPBs mentioned below and industrial users of large scale could benefit from this unbundling.
[13] Jeong-Shik Shin/Seong-Ho Choi, Supra, p. 138.
[14] Shin-Jong Kim, Restructuring Electricity Industry and the Role of the Korea Electricity Commission, Energy Focus Vol.3 No.1, 2006, pp. 94.

Korea Power Exchange ("KPX") as a wholesale market operator was established to clear power transactions between KEPCO and its full subsidiaries in March, and Korea Electricity Commission ("KOREC")[15] began its role to create environment for fair competition and protect the interest of users. Subsequently, the government pursued, as scheduled, the privatization of five power subsidiaries except for 'Korea Hydro and Nuclear Power Co.' and choose 'Korea South-East Power Co.' as its first candidate. The procedure, influenced by the California blackouts in early 2003 and the depression of stock market, stayed inactive and stopped since June 2004. After that, Joint Working Group composed of labor union, employers and government recommended the suspension of the separation of KEPCO's power distribution section and its transformation to 'department system' in order to facilitate inner competition.

Another change to note is that since 2004 District Electric Power Businesses (DEPBs) became to participate in the electricity market as a provider of electricity with consumers within the authorized specific area (the Act §2 10-2, 7 IV). The private DEPBs should have their own generation and distribution facilities. Twelve (12) providers have gained the license for the DEPB as of December 2006. The introduction of these new participants into the electricity market may stimulate retail competition to some extent, but its pro-competitive effect is limited from the outset.[16]

(3) Brief Comments

Korean electricity markets are far from being competitive as a whole. The above mentioned reform failed. The main reasons seem to be structural. Although six generation subsidiaries are in activities, they lack independence from KEPCO and still remain public enterprises. Retail market is also de facto monopolized by KEPCO which

[15] The KOREC is composed of not more than 9 commissioners (the Act §53).
[16] For details, see Hyun-Jae Kim, Supra, pp. 20.

is not sufficiently restrained by several private DEPBs. Unbundling of network facilities for third party access made little sense.

Since the last decade, there are new impulses forcing electricity markets toward competition. First, there are consumer complaints about the poor range of choice and high prices of electricity. Second, it is noted that private energy companies, like SK, GS groups, hope to enter electricity and gas markets with a view to complete their vertical integration and to take full use of economies of scale and scope. Finally, KFTC tries more vigorously to apply competition law principles to these regulated monopolies in recent years.

2. Gas Market

(1) Overview: Market Structure and Regulation

Natural gas is one of the most used fuels in Korea, accounting for approximately a quarter of its primary energy. Except for around 2% of this gas, 98% is imported and imported volume is gradually increasing.[17]

Natural gas market can be largely divided into import, wholesale and retail market. The import and wholesale market is monopolized by Korea Gas Corporation (hereafter "KOGAS"), which is the state-owned importer and wholesale distributor of LNG in Korea. After the revision of the Petroleum Act in January 2001, large industrial users, like K-Power, GS, KEPCO's power subsidiaries, have become to import LNG directly from sources abroad only for self-use. Through this deregulation, import competition for natural gas became possible in an extremely restricted range. At wholesale level, any

[17] An annual volume of 430 thousand tons of natural gas is produced domestically from December 2003 from the East Sea gas reserve. Gas demand is growing rapidly due to environmental regulations and increasing national income. Gas demand has increased by an average of 8.9% annually from 1996 to 2001. LNG demand for household and industry has mainly increased, while LNG demand for power generation has slowed down.

additional market entry can not be expected in the near future.

Retail distribution is also locally monopolized by 26 Private City Gas Distributors with exclusive licenses. Unlike KOGAS, however, they are privately owned. Four corporate groups, namely SK, LG, Daesung and Samchully, have a combined share of more than 90% of the LNG retail market. The Natural Gas Business Act (hereafter "the Act") grants authority to the Minister and Regional Authorities to approve wholesale and retail price for gas respectively (the Act §20 I). The Minister of Commerce, Industry and Energy has to make consultation with the Minister of Finance and Economy in approving wholesale price for gas according to the Prices Stabilizing Act. No obligation to grant access to third party is provided in the Act.

(2) Liberalization Process

In the late 1990s, the inefficiencies and moral hazard of public corporations had been criticized and IMF crisis in 1997 gave a definitive moment for overall restructuring of public sector.

In November 1999, the government announced a detailed Plan to restructure the natural gas industry. According to the plan, the import and wholesale distribution part of KOGAS was to be split into three subsidiaries, one of which retained publicly owned for a certain period and the remaining two subsidiaries were scheduled to be sold out to private investors. For the purpose of ensuring fair competition among three subsidiaries to be separated, the government took into account of equal division of gas volumes acquired from KOGAS's long-term contracts and reasonable allocation of LNG ships. KOGAS was to operate LNG terminals in Incheon and Pyeongtaek and pipelines to the end of 2002 and to adopt the Open Access System (OAS) for new potential entrants. 'Korea Gas Exchange' for transactions between importers and wholesale distributors,

and ‘Korea Gas Commission’ for uniform rate regulation was to be established.

Although a series of draft Acts for the reform of natural gas industry were delivered to the National Assembly in November 2001, it decided to suspend their passage in October 2002. After the Participatory Government began in February 2003, the liberalization process stopped without alternative. Unlike electricity reform, any legislative outcomes did not resulted.

(3) Brief Comments

Various reasons can be presented for this total failure of gas reform. Above all, a firm belief in market system lacked. It is the same now as it was. Arguments against gas liberalization listed below remain effective[18]:

- Korea does not have its own gas fields and therefore depends for its demands entirely on imports;

- KOGAS is the biggest buyer in the world gas market and enjoys a bargaining power resulting in better contractual terms;

- There are fears of price hikes in the post-privatization.

IV. Relationship between Sectoral Regulator and Competition Authority

1. Role Changes of Sectoral Regulator in the Liberalization Process

Traditional rationales to justify natural monopolies and ex ante sectoral regulation are getting weaker. As liberalization proceeds, the issue of concurrent jurisdictions between Sectoral Regulator and Competition Authority arises.[19]

Generally speaking, the scope and role of sectoral regulation depends on the phase

[18] Won-Hyuk Lim, Public Enterprises Reform and Privatization in Korea, KDI, 2003.12, p. 57.
[19] Exemplary are the cases concerning several cartels between major telecommunications operators. See Commission Decision, Nr. 2005-130, 2005.8.18.; Nr. 2005-331, 2005.12.15.; Nr. 2006-253, 2006.11.2.

that effective competition prevails. As competition develops, the nature and scope of sectoral regulation varies; it can be divided into following three phases.

At the first phase, characterized by state-ownership and prevalent competition-substitutive regulation, there is narrow room for competition. Here the Sectoral Regulator has de facto an exclusive and comprehensive jurisdiction over market entry, import or export, prices and trade terms, etc.[20] This regime is then justified when complex facts need to be collected and determined and the Sectoral Regulator is better situated than the competition authority to make these determinations.[21]

The second phase, where privatization and deregulation is implemented for market creation, entails necessarily some jurisdictional conflicts between Sectoral Regulator and Competition Authority. Here the focus is put on the issues of assessing and remedying market power of the incumbent.[22] Ostensibly, industry regulation and competition law have their objectives to preserve effective competition in common. However, the approaches seem to be somewhat different. The Sectoral Regulator may put ex ante regulation into use, like rate regulation, unbundling of bottleneck facilities in order to guarantee fair competitive conditions between incumbents and new entrants, all of which may seem to restrain free business activities in a short term perspective. In supplement to this sectoral regulation, Competition Authority intervenes in some anti-competitive practices of dominant undertakings on a case by case basis.

Finally, once effective competition is firmly established in the energy markets, namely when there is not any corporation with significant market power, the intervention of the Sectoral Regulator into the normal activities of energy suppliers

[20] Exclusionary abuses can not be found because there are no competitors to exclude.
[21] Hervert Hovenkamp, Federal Antitrust Policy, 2006, pp. 713.
[22] Alfred E. Kahn, Market Power Issues in Deregulated Industries, 60 antitrust L.J. 857 (1992).

should be refrained. Withdrawal of ex ante regulation entails correspondingly a more reliance on active enforcement of competition law. The Sectoral Regulator retains exceptionally their role for public interests, especially security, universal obligation, strategic energy storage, and so on.

2. The Practice of the KFTC in Energy Markets

(1) Matters under Jurisdiction of the KFTC

The KFTC, a sole general competition authority in Korea, has a broad jurisdiction over all competition issues of overall industries. In addition, the KFTC is in charge of establishing fair trade in subcontractor relationship and adhesion contracts etc. The Anti-Monopoly and Fair Trade Act (hereafter "the Act") foresees no sectoral exemptions.

The KFTC, which is understood as an Independent Regulatory Commission or Quasi Judicial Organization, issues regulations and guidelines, reviews appeal against its first decision notwithstanding cease and desist order (the Act §36, §37-3). Furthermore, the KFTC has an exclusive authority to bring the case to the criminal court; any offense in violation of Articles 66 and 67 can be prosecuted only after a complaint is filed by the KFTC (the Act §71 I). The KFTC is composed of nine commissioners including a chairman, a vice-chairman. Four commissioners are non-standing members.

(2) Practices of the KFTC in Electricity and Gas Markets

As above mentioned, electricity and gas markets in Korea remain fully monopolistic structure, so cartels and business concentrations (M&A) between competitors had rarely arisen in the past.[23] There are only a few cases to be mentioned concerning abuse of market dominance, unfair trade practices in vertical relations.

[23] Oh-Seung Kwon, Electricity Industry and Fair Trade Act, Seoul Law Journal, Vol. XLVI No. 1, 2005.3., p. 201.

From 1987 the KFTC began to apply the Act actively to public sectors including electricity and gas. In September 1987, the KFTC made investigations ex officio in those sectors, ordered 5 publicly-owned companies including KEPCO, and took some corrective measures. Since 1993, when the 4th Privatization Plan of Public Enterprises had launched, the KFTC nominated and noticed several public companies as market dominant and established newly a 'Monopoly Administering Unit' (present 'Monopoly Regulation Team') under the Monopoly Division (present 'Competition Law & Policy Enforcement Bureau') that are expected to exclusively regulate unfair trade practices of public enterprises having market power. After comprehensive investigation, the KFTC for the first time imposed upon 4 public companies totally about 1.5 Million dollar surcharge in 1998.[24]

As for KEPCO, the KFTC pronounced some provisions contained in electricity supply contracts as invalid according to §3-2 of the Act, because they were unilaterally formed to the detriment of consumer.[25] In other cases, the KFTC challenged unfair refusal to deal and discrimination in favor of an affiliate by KEPCO and ordered corrective measures.[26] Recently, Korea South-East Power Co., one of KEPCO's power subsidiaries, was sanctioned because of its abuse of superior position to subcontractors.[27] As for KOGAS, there was a case concerning unfair support of affiliates[28]; several Private City Gas Distributors were challenged because of abuse of superior position or unfairly restrictive trade terms.[29]

3. Current Status of Jurisdictional Relationship in Korean Energy Markets

[24] KFTC, White Paper on Fair Trade, 1999, p. 146.
[25] Commission Decision, Nr. 95-15, 1995.4.4.
[26] Commission Decision, Nr. 96-5, 1996.1.23.; Nr. 2001-042, 2001.3.31.
[27] Commission Decision, Nr. 2007-078, 2007.2.7.
[28] Commission Decision, Nr. 2004-028, 2004.2.2.
[29] Commission Decision, Nr. 2002-355, 2002.12.23.; Nr. 2003-188, 2003.11.15.

(1) Status Quo

As a general matter, the relationship between sectoral regulation and competition law becomes realistic when the regulatory authorities control market entry, restrain price or force some practices that competition law ordinarily prohibits. The more the Sectoral Regulator interferes with the market process, the less room for competition law. In this context, the jurisdictional conflict appears to reveal different contours according to the above mentioned three phases of liberalization.

As mentioned above, the electricity and natural gas industries remain in the first stage of developments; competition doesn't work, and every important decision firms make is subjected to close scrutiny of the Minister of Commerce, Industry and Energy. The Ministry grants exclusive licenses, approves rates of electricity and gas. It has no jurisdiction over competition issues because of non-existence of competition itself. So jurisdictional overlapping exits only to a very limited extent.

(2) Prospect

Dual jurisdiction and thereby resulting conflicts are likely to arise remarkably in the second phase. In this phase, issues of market power of an ex-monopolist will be of primary importance.

Where the introduction of competition remains incomplete, the Sectoral Regulator needs to intervene into the market process to the interests of customers. The fundamental question here is whether the presence of market power itself justifies governmental price control, or enforcement of competition law will suffice. As for exclusionary practices of bottleneck owners by means of denying rivals an equal opportunity to compete, potentially ubiquitous in the recently deregulated industries, the Sectoral Regulator should continuously involve in the questions of the proper terms of

access to transmission grids or pipelines, separation of accounting, etc.[30]

What matters here is whether the conduct challenged is effectively regulated, or it needs additional intervention of the Competition Authority.[31] Regulatory efficiency appears to depend on the paradigm of the relevant authorities. In Korea, the Ministry has deeply imbedded preference for regulation whereas the competition authority tends to favor the free and fair competition. This fundamental distinction in regulator's mindset will not simply disappear although liberalization of electricity/gas restarts in the near future. That means, the Ministry's concept toward regulation threatens to impede the goal of promoting competition and deregulation in these industries. This is the main reason for jurisdictional allocation in favor of the Competition Authority.

Dual jurisdiction of the same sector by two separate authorities can be justified partly because the two distinct authorities possess expertise in separate areas and partly because these authorities have somewhat different objectives. Here it should be clarified in advance, what kind of risks the pursuing liberalization would entail and which regulatory instrument is to create, strengthen or to repeal in the new market environment.[32] Only to the extent that the two authorities pursue different but economically desirable function, the negative consequences of the overlapping jurisdiction may be tolerable. In this case, what matters is regulatory cooperation.

In this context, it is essential to create Independent Regulatory Authority with special expertise. Competition process in the transition should be neutral, not distorted by the influences of stakeholders in the industry. So the Sectoral Regulator should be able to

[30] Stefan Storr, Die Vorschläge der EU-Kommission zur Verschärfung der Unbundling – Vorschriften im Energiesektor, EuZW 2007, Heft 8, S. 233.
[31] MCI Comm. Corp. v. AT&T, 708 F.2d 1081 (7th Cir. 1983).
[32] Seung-Jin Kang, Government's Role after Privatization of Energy Industry, Gas Federation, autumn 2001.

decide independently winner and loser of the game with full knowledge of the related energy markets and competition law. The lessons from Telecom industries clarify on this. Since 1997, the KCC is responsible for ensuring fair competition and settling disputes between Telecom companies. The KCC is, however, belongs to the Ministry of Information and Communication and the commissioners -except for only one sent by the MIC- are non-standing members, which brought their independence and expertise in suspect. As another drawback of the KCC is noted that its decisions are often policy-oriented; there has not been a judicial case against its decision. This hampers consistence and transparence of sectoral regulation, which is crucial to set up the level playing fields between competitors.

V. Conclusions

For the time being, the reorganization of electricity and gas markets in Korea seems far from being a reality. Several proposals initiated by the former government in the late 1990s have failed due to the resistance of interests groups. As a result, these industries could not step into the second phase of liberalization. An opportunity for paradigm shift, however, remains open to the future with increasing confidence with market principles. Globalization and market opening change the deep-rooted regulatory mind gradually. It can be carefully expected that the energy reform is likely to resume after the presidential election 2007.

So far, there has been only narrow room for competition law and policy in network-bound energy industries. Any genuine energy regulatory authorities, whether independent or not, are not found. The KFTC could correct only a small fraction of monopolistic market structure by ex post intervention and there was not any

jurisdictional conflict between the Regulator and the KFTC. For a successful implement of energy liberalization, however, an independent regulatory authority is essential. In this regard, the Independent Sectoral Regulator should carry out the mission as special competition authority and a reasonable allocation of competition issues to these special and general competition authorities should be materialized.

The starting points for a reasonable coordination of these two jurisdictions are as following: who can resolve competition issues more efficiently, and to what extent ex ante sectoral regulation is needed.