

Antitrust Developments in Korea

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The views stated herein are my own view and do not reflect the views of the KFTC.

Outline

1. Overview

2. Abuse of Dominance
 - } Posco case
 - } Intel case
 - } Comparison with Unfair Trade Practices

3. Cartel: Leniency Programs

4. Merger: Notification Thresholds

Korean Society and Antitrust

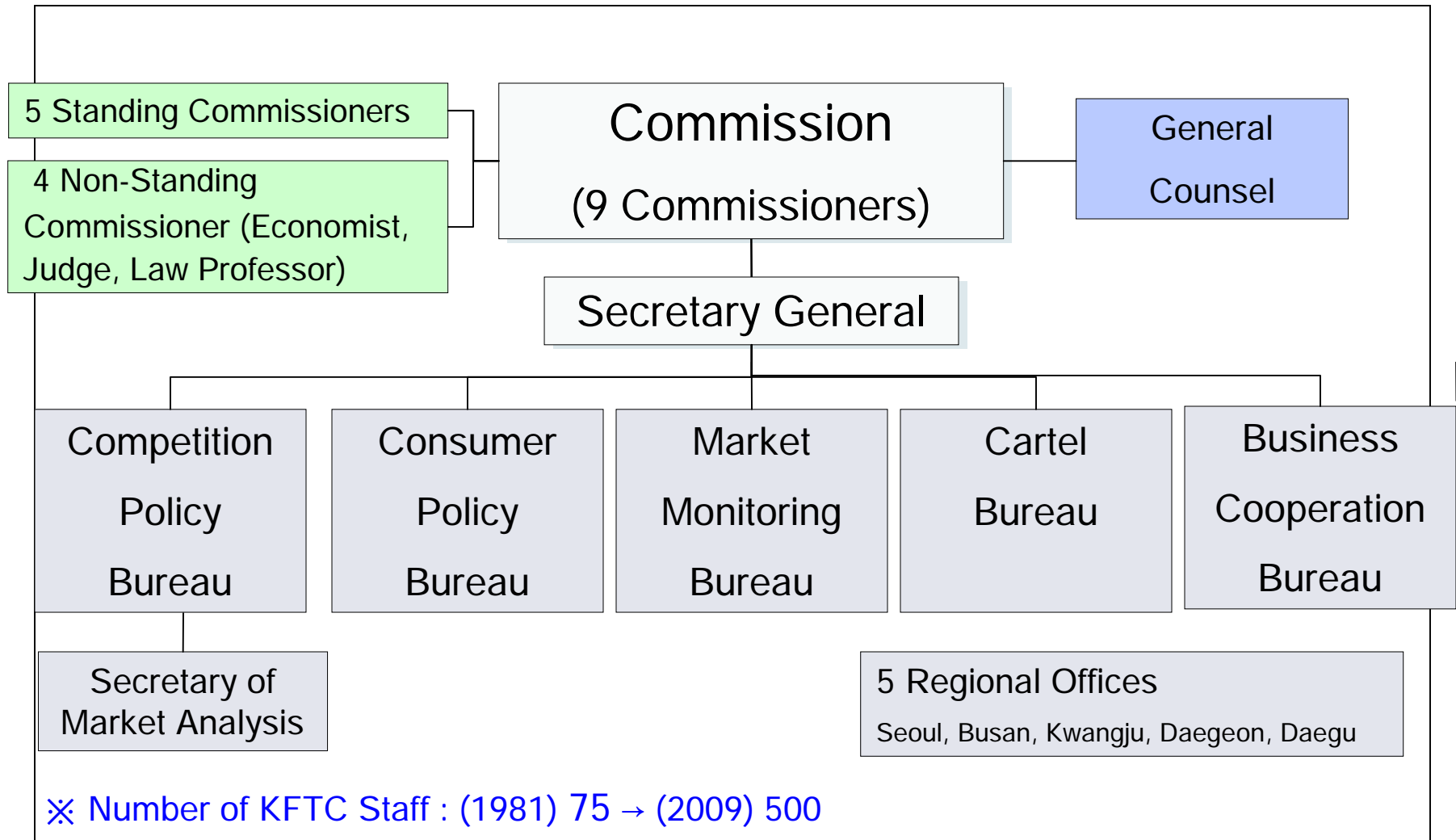
} Microsoft's announcement (Oct. 2005)

“If the KFTC enters an order requiring Microsoft to remove code or redesign Windows uniquely for the Korean market, it might be necessary to withdraw Windows from the Korean market or delay offering new versions in Korea unless the remedial order is stayed or overturned on appeal.”

* Source: www.sec.gov/Archives/edgar/data/789019/000119312505209978/d10q.htm

} “MS Threatened KFTC Investigation” (HanKyoReh, Oct. 28, 05)

Organizational Structure of KFTC



Private Enforcement: Under-enforced

} “Opt-in” Class Action System

- } Only those participating in the suits would be subject to the outcome of the case (individual evidence required).
- } Limited discovery system: Most of the private parties must rely on KFTC’s investigation to prevail in private suits.

} Recent Developments

- } Trend: Increase cartel enforcement → Increasing private suits
- } Amendment of Consumer Basic Law (2008): Limited class action system adopted

Recent Major Developments

- } Establishment of Economic Analysis Unit (2005)
- } Establishment of Cartel Bureau (2005)
- } International Cartel Division (2008)
- } Supreme Court has recruited Antitrust Experts since 2006

Abuse of Market Dominance

- } Posco case: Refusal to Deal case
- } Intel case: Exclusive Rebate case
- } Unfair Trade Practice vs. Abuse of Market Dominance

Abuse of Dominance - Overview

} Inclusion of Exploitative Abuse

- “1. An act determining, maintaining, or changing unreasonably the price of commodities or services
2. An act unreasonably controlling the sale of commodities or provision of services;”

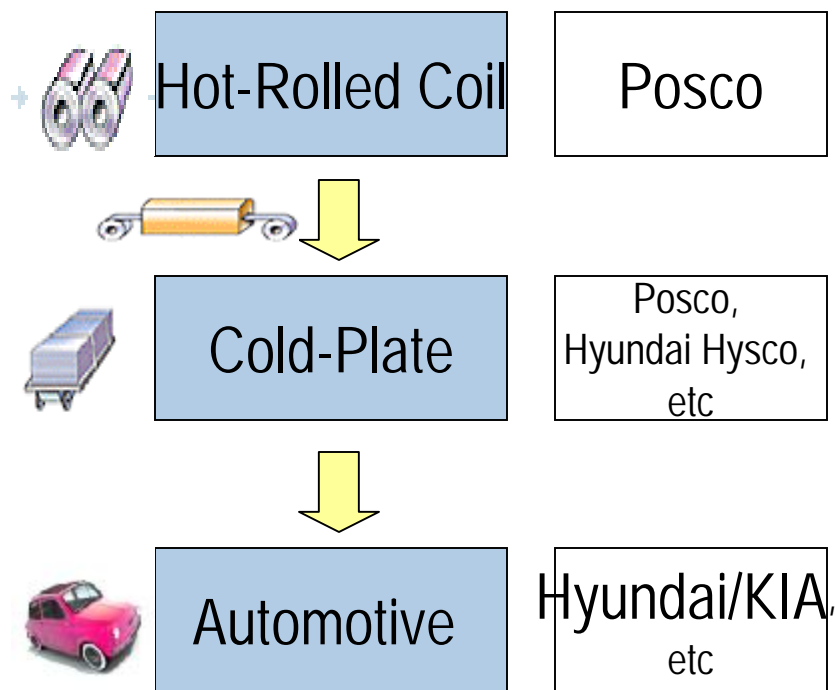
} Essential Facility Doctrine (Enforcement Decree § 5 (3) 3, § 5 (4) 3)

} Presumption of Dominance Position:

- (1) MS \geq 50% (2) Collective MS of 3 or fewer entities \geq 75%

} Interpretation of “Unreasonableness”: Little case law – Importance of *Posco*

Posco Case: Refusal to Deal (2007)



*Hyundai Hysco: Hyundai/Kia Automotive Group's subsidiary

- } Hot-Rolled Coil MKT: Posco was sole producer (80%)
- } Cold Plate MKT: Posco (58%), Hyundai Hysco (11%), Dongbu(14%), YH (8%)
- } Forward Vertical Integration by Posco
- } Backward Vertical Integration by Hyundai Automotive Group
- } Posco's Refusal to provide Hot-Rolled Coil to Hyundai Hysco

KFTC & Seoul Appellate Court's rulings

} KFTC (April, 01)

“Hyundai Hysco had to suffer by additional cost burden, instability of transaction, weakened buying power...”

“Posco intended to maintain its dominant position in the cold plate market by refusing to provide its hot rolled coil”

* additional costs; custom tax (2%) , logistics costs, etc

} Seoul Appeals Court (August, 02)

“harm competition by disadvantaging Hyundai Hysco to the extent that it could not sufficiently function as a competitor”

Supreme Court Decision (November, 07)

} Focusing on Actual Effects

(1) “Hyundai maintained normal business even after the refusal to deal”

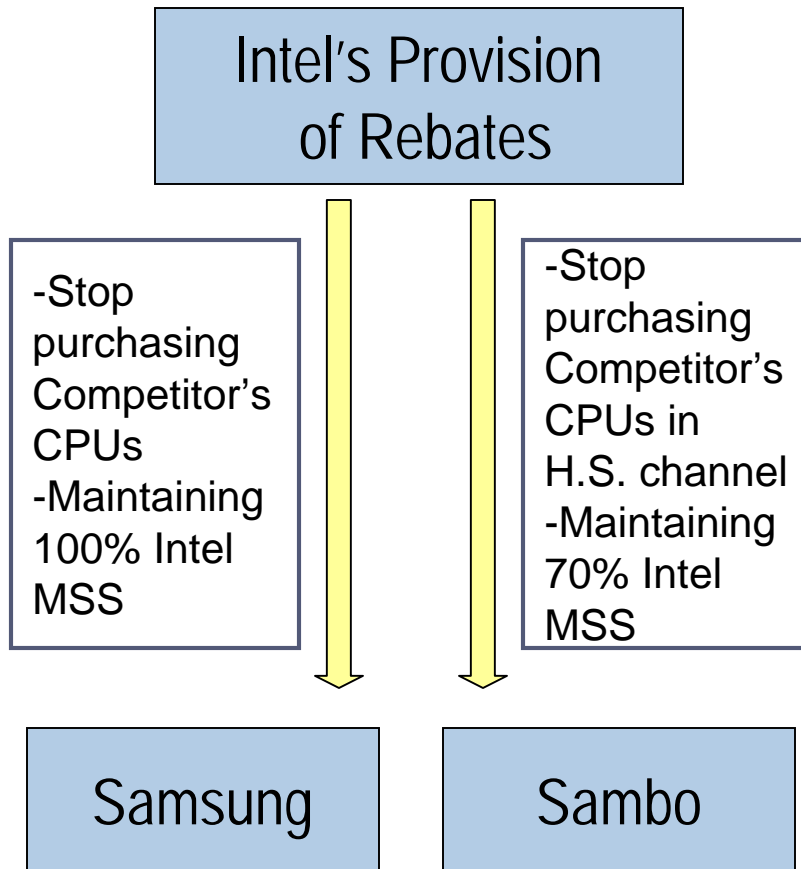
(2) “and no output reductions or price increases were observed, hence it is hard to conclude that competition was harmed.”

} Concern for chilling efficient conduct

“concern for protecting competitor, not competition”

“danger for harm the intrinsic market efficiencies”

Intel Case: Exclusive Rebate (November, 08)



} Samsung "accepted our total package proposal and will drop all competition by end of Q3."

* Intel's internal document

} "000 consistently testified that the defendants suggested rebates in exchange for abandoning the AMD CPUs-installed PCs, or in exchange for retaining the 100% Intel CPU MSS."

*Brief Translation could be found in antitrustinstitute.org

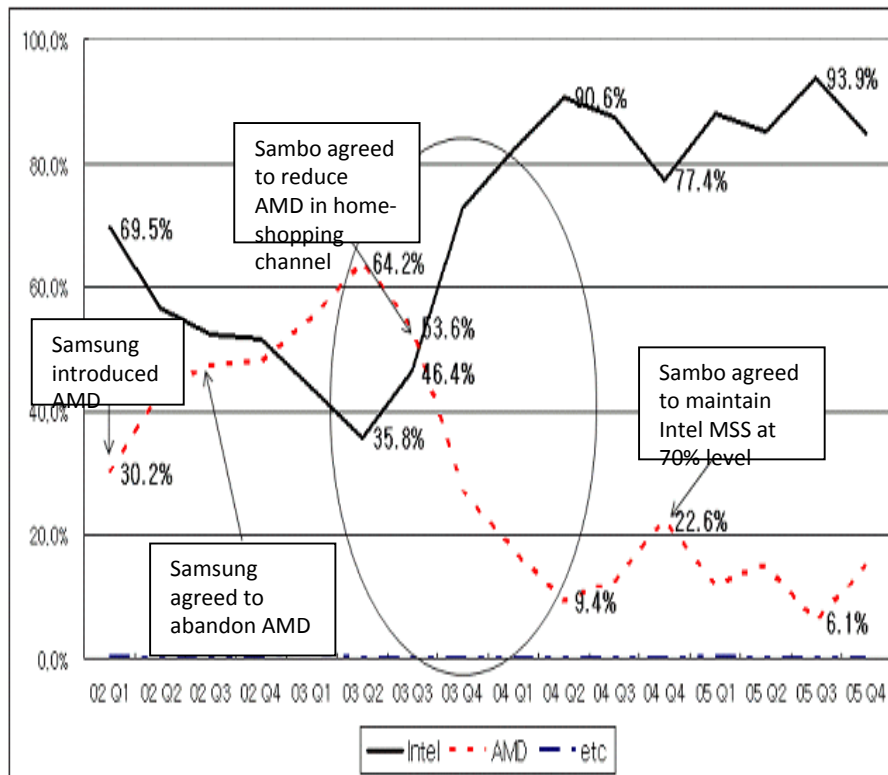
Reviewing Intel's argument

- } Characterization of the alleged rebates
 - } Intel: 'kind of volume discount,'
 - } KFTC: 'different from normal discount program' – 'rebate on the condition of abandoning competitor' – a type of exclusive dealing

- } Application of Effective Price Test
 - } Intel: No exclusionary effects because Effective Price > Average Variable Cost, thus same efficient competitor can compete
 - } KFTC
 - } In certain assumption, Effective Price < AVC or ATC

KFTC's Decision

- } Market Share Trend: Home-shopping channel



- } 'Competitor was substantially excluded from MKT'
- } Samsung, Sambo: No1, 2 PC Makers in Korea
- } 'Maintain market price higher than the competitive market price, which could have been achieved through a common and simple volume discount policy.'

Comparison with Unfair Trade Practices

- } Overlapping with Abuse of Market Dominance
- } Three categories of “Unfairness” according to guidance

Criteria for Judgment	Concerned Behaviors
Anti-competitiveness	Refusal to deal, Exclusive dealing, Price discrimination, etc
Unfairness of competitive methods	Drawing customers with a deceptive plan, Preventing the change of client
Abuse of Superior Bargaining Power	Forced purchasing, Management interference

Cartel Enforcement & Leniency

- } Total 40-45 cases/year (Leniency: 8 cases/year)
- } 05 Amendment: Reducing Discretion and Enhancing Predictability
 - (before) discretionary 75% → (after) certain 100%
- } Applied to First Two cartel members
 - } First informer: 100% mandatory exemption in surcharge
 - } Second informer: 50% mandatory reduction in surcharge
- } Informant Reward Program : Targeted for Retired employees

International Enforcement Issues

} Cooperation with other Jurisdictions

- } Simultaneous dawn-raids: air cargo cases (ongoing)

} Recent cases

- } Vitamin case, Electronic graphite case
- } Southeast Paper Cartel (Dec. 08): First case KFTC initiated in international cartel investigation

* China, Indonesia, Singapore, Thailand companies involved

Merger

- } Total review 800/year (3-5 cases/year)
- } Notification Threshold (June. 08 amended)
 - } General: M&A between A & B
 - } A: Total assets or Turnover KW 200 billion (approx. \$170 million)
 - } B: Total assets or Turnover KW 20 billion (approx. \$17 million)
 - } Foreign-to-Foreign: General Threshold (above) + Each companies' Turnover in Korea KW 20 billion (approx. \$17 million)
- * In 2006, 113 overseas M&As were notified, and 10 cases were fined for not complying with the notification rules.
- } Saint-Gobain Vertrotex ("SG") / Owens Corning case (07)

Concluding

- } Concern for divergence in international antitrust enforcement
- } Asian competition community & Harmonization of International antitrust enforcement

Thanks