

Procedural Fairness and Transparency : the KFTC's Experience

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Procedural fairness is the basic requirement of rule of law

- ❖ Without procedural fairness, it is impossible to ensure substantive fairness
- ❖ However, in some cases, the focus is rather on substantive law and procedural rights are relatively neglected
- In particular, authorities with short history of competition law tend to put more emphasis on substantive law because of the lack of resources

Procedural fairness benefits both businesses and competition authorities

- ❖ **It protects companies** that are subject to sanctions or remedies by guaranteeing sufficient defensive rights
- ❖ **It also matters to competition authorities** for the following reasons:
 - Enhances the **understanding of the facts** on which the case is based
 - **Enhances the final decision's logicity** by providing opportunities to question competition authorities' judgment
 - **Builds trust toward competition authorities** and facilitate companies' cooperation during the investigation process

Investigation Stage

- ❖ **Investigation** should be conducted **within necessary minimum limit**
 - Investigators shall **conduct their investigation within necessary minimum limit** in order to enforce this Act and they shall be **prohibited from abusing their investigation authority** for any other purpose, etc. (MRFTA Art. 50-2)

Drafting & Filing Examination Report Stage

- ❖ **The Examination Report includes:**
 - Outline of the case, market structure and other factual basis
 - Legal grounds for the allegation including applicable legal provisions, anticompetitive effects of the conduct, etc.
 - Examiner's suggestion on sanctions or remedies to be taken
- ❖ **“Preparation process for deliberation” may commence prior to committee hearing**
 - This process was introduced in 2005 to enable in-depth committee by clarifying the issues involved beforehand

Committee Hearing Stage

- ❖ The hearing process follows **procedures similar to those of public trials**
 - 1) **Opening Statement** by an examiner and respondents
 - 2) **Interrogation** by commissioners→
 - 3) **Suggestion of sanctions or remedies** by an examiner→
 - 4) **Closing Statement** by respondents

Decision-making Stage

- ❖ **Transparency of the decision-making process**
 - Final decision is sent to the respondents and be also publicly available
 - The committee hearing and the final decision shall be disclosed, provided that this shall not apply where there is need to protect business confidential information (MRFTA Art. 43)

Major improvements on case-handling procedures in 2016

❖ Introduced the Rules for Investigation Procedure

- Delivering a written notice with detailed purpose, location, duration of the investigation
- Allowed the investigated to be accompanied by counsel at all stages of the investigation

❖ Revised the Rules for Case Handling Procedure

- **Set the deadlines for case handling** : Investigators should deliver the Examination Report to the Commission within 6 months (9 months for the abuse of dominance case, unfair assisting acts and 13 months for cartel of the start of an investigation.)
- Any commissioner may 1) **be challenged** with regard to; 2) **be requested to withdraw**; 3) **or withdraw** him or herself from deliberation if he or she is likely to be unfair during the deliberation or decision-making process (MRFTA Art. 44)
- Similar rules now also applied to the staff –level officials.



Thank You