

공정거래법

이론과 실무

임영철, 조성국

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Introduction

This book is the summary of what the authors have discussed on the Fair Trade Act for more than twenty years into a textbook. The authors met with each other for the first time while working at the Fair Trade Commission in 1997. One was the head of General Counsel Office with the background of serving as a justice and the other was deputy director who was assigned to the said office, after passing the higher civil service examination. Back then, General Counsel Office of the Fair Trade Commission was an administrative organization but also had an atmosphere similar to a research center. Meetings in the form of a study group continued even after working hours and brainstorming and discussion were made irrespective of job titles. The authors read more law books than in our college days and, in particular, were very busy with reading and comprehending textbooks of or judicial precedents in the US and Japan. With hindsight, those days were truly “Our Joyful Young Days” like the title of a movie.

With passage of time, one of the co-authors of this book began to practice law in 2002, and the other changed his career as teaching law in university in 2006. But the authors’ relationship of having discussions and debates together continued thereafter. The authors always had debates as to the Fair Trade Act in every meeting occasions as done in the past. Young-Chul Yim, one of the co-authors, already published a textbook on the Fair Trade Act (Beopmunsa) in 2007. The Act has been amended several times therefrom and the authors had new discussions thereon. Last autumn, the authors finally made a big decision and planned to publish a new book based on the dialogues made up to then and the previously published book.

There are many great books available in the market, published by many masters in this field. It came as a big burden for the authors to write a new book, as the ones who confess a long way for the mastery of the field. However, many people surrounding the authors continued to urge us to publish a book. The authors also thought that synergy may be created, with the combination of the authors’ working-level sense gained from working in the Fair Trade Commission with the ex-justice and current-lawyer’s experience gained from practicing law as a lawyer for many cases and the theoretical background gained from lecturing in the university. However, the authors believe that our biggest motivation was that we were never afraid of anything.

The authors have shared common thoughts as to the Fair Trade Act for a long time as follows.

First, the Fair Trade Act is the law which intends to guarantee companies’ free business activities and therefore for the market’s functions to work in a smooth manner. For such purpose, tyranny of monopoly and oligopoly must be blocked and any agreement restricting competition must be regulated. The Fair Trade Act is the stipulation of the rules for enabling that companies would be able to do a fair competition based on price and quality. Market develops through competition and

the source of competition is innovation. It has been long since Korea already went beyond the stage where the government could lead the distribution of resources and control the market. The government must focus on establishing fair rules to be applied to the market and applying such rules in a consistent manner. The purpose of regulation under the Fair Trade Act is not to resolve a reporter's complaint or to impose sanctions on a company in breach of the Act but to bring the market's function back to normal state through such efforts.

Second, family-run business conglomerates, *chaebol*, are criticized for causing many problems in the Korean society, e.g. inheritance of wealth by resorting to an expedient, collusive links between politics and business community and a family's illegal act, etc. However, the Fair Trade Act cannot solve all of those problems. In the event any unfair support is given to an affiliate at conglomerate level, an independent company cannot even be engaged in any sort of fair competition. For example, payment guarantee between affiliates within group may hinder fair competition in terms of financing. The Fair Trade Act must play its role in terms of such aspect. The Tax Act and the Criminal Act also have their own roles in their own areas. The most effective method would be to get a company controlled by the interested person, e.g. a shareholder or a debtor, etc., and making the aforementioned work in a smooth manner is important more than anything else. Instead of trying to make use of administrative means which are easy to use but are merely makeshift measures, we must make efforts to find a more fundamental solution, though it may take more time and be more difficult to solve the problem.

Third, it comes into question what kind of role the Fair Trade Act must play in order to protect the financially challenged. Regulating the tyranny of the financially strong party will protect the financially challenged. Then, a next challenge would be to which extent the Fair Trade Act must get involved in. If a dispute is only a private one between private parties, it is not desirable for the government to come in. There could be a dispute, of course, with public interest, which may require the government's intervention. A case in point would be the act of abusing one's power over subcontracts which has become the norm in the market, or an act of a company which could affect many different transaction parties. However, people have too high an expectation level to the government, in reality of the Korean society, as can be seen from a civil complaint filed to be saved with reliance on the Fair Trade Act, after one loses in a lawsuit. Maybe such high expectation has been made because the title of the law itself is the 'Fair' Trade Act and people tend to think that anything not fair must be handled by the Fair Trade Commission. Seeing the Fair Trade Commission reminds me of a restaurant with guests standing in a long que to go inside. Guests want to be served fast and chefs are doing their best to cook the orders but still are not enough to meet all the expectation of the guests. The Fair Trade Commission, operated with the public tax, will have to set

priority, to process the cases which give a great ripple effect on the society with a large number of victims and come up with measures to handle other private disputes in other methods.

Fourth, another matter to focus is who will implement the Fair Trade Act which provides the rules in the market, and by how. In most advanced countries, a commission operated with the system of agreement is supposed to implement the Fair Trade Act in order to guarantee independent handling of cases, so that political or economic power would not intervene with the implementation of the Fair Trade Act. It is very important to guarantee the independence of the Fair Trade Commission. In addition, most acts violating the Fair Trade Act are not crimes, in principle. Any unfair profit, if earned, may be returned by the means of Fines and any unfair practices, if performed, may be prohibited through corrective orders. If there is any serious violation of the Fair Trade Act at the level of criminal crime, the commission operated with the system of agreement may report the case. Instead, there must be a great improvement in the civil action procedures, so that a company who suffers loss can get compensated for its loss in a smooth manner. Athletes find it difficult to play well in a sports match when a referee blows whistles too often. As such, the Fair Trade Commission's excessive implementation of the Fair Trade Act may make companies hesitate to be engaged in innovative and creative business activities. Companies are bound to be daunted even by an investigation of the Fair Trade Commission. If business activities are daunted in the market, the damage would be felt by the entire society. The implementation of the Fair Trade Act should not be minimal or excessive, but must be done properly.

Lastly, we would like to give our sincere appreciation to Se Ron Han who is taking a doctor's course in Chung-Ang University for reviewing the script and provided so many advices as to the direction of production until this book could be published. And our thanks also go to many other people who have reviewed the detailed matters. We would like to give our deep appreciation to President Jong Man Ahn of Parkyoungsa, who made the publishment of this book possible, Director Seong Ho Jo, who gave so many advices as to the publishment, and General Manager Seon Min Kim, who worked hard on editing.

2018. 6. Authors

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