

A Report for more Transparent Competition Policy of Korean Insurance Markets

The 1999 legislation streamlining cartel regulation and 2000 liberalization of loadings of insurance products opened up the antitrust intervention in Korean insurance markets. The application of antitrust regulation to insurance markets has resulted in the conflicts between two authorities, namely the Financial Supervisory Commission(FSC) and the Korea Fair Trade Commission(KFTC) due to the persistence of administrative guidance on insurance premium and the lack of clear exemption clause on neither insurance nor antitrust law. There were KFTC cases about making joint decision of insurance premium following the administrative guidance issued by the Financial Supervisory Service(FSS). And the conflicts have driven up the legal risk of insurance companies and could eventually increase insurance premium while harming the industry in the long run.

There is a tension between financial and competition regulations in many countries. Although EU has a trend of reducing insurance exemption from competition law, the US and Japan as well as EU have specific exemption law or clause that excludes the application of antitrust law to insurance industry. The exemption is based on the characteristics of insurance business that pools and transfers risks employing the law of large numbers, which requires joint action among insurers to collect and accumulate insurance data to make accurate and reasonable insurance rates. In addition, certain risks such as catastrophe are to be shared by multiple insurers to be properly distributed. The competition policy of insurance markets should

consider this specific characteristics of insurance markets and the presence of no less important prudential regulation to protect policy holders.

Based on these observations on current situation both domestic and foreign, this study suggests four ways to make the competition policy on the Korean insurance markets more transparent and thereby reduce legal risk faced by Korean insurance companies. First, the insurance exemptions based on the distinctive characteristics of insurance business should be stipulated on insurance law. Second, administrative guidance especially on insurance premium should be issued with ample consideration on the antitrust issues and the issuing procedure should be improved to make a consultation between FSC/FSS and KFTC before the issuance of administrative guidance. Third, the primary jurisdiction of regulated industries should be considered before KFTC intervention in order to avoid regulatory conflicts and ensuing legal risk. Finally, most of all, the free competition in insurance markets should be encouraged in order to ensure market innovation that will increase the benefits of consumers as well as insurance industry.