A Legislative Study on Antitrust Exemption of Insurers Agreement

According to Art. 125 of Insurance Business Act, insurers may agree on their business activities provided that they are approved prior by financial authority after a due consultation with Fair Trade Commission. The nature of this provision is basically a sector specific regulation over concerted activities of insurers, but it has been regarded a form of statutory antitrust exemption over insurer’s collusion that pertain restraints of competition in relevant market.

Substantive text of this article is archaic and not changed since its enactment in 1962. On the object of agreement, it simply provides 'their business activities' without any detailed statutory requirements. Herein, there have been increasing opinions that claim restrictive interpretation of vague wording of Art. 125. Unlike major jurisdictions of the world that permit per se exemption by virtue of statutory provision, the requirements for statutory exemption provided in Art. 58 of Anti-monopoly and Fair Trade Act are unique. In a series of decisions concerned these requirements, Supreme Court has been strongly restrictive in allowing Art. 58 exemption.

Local insurance industries, both general and life, still adopts substantial numbers of agreements with possible anti-competitive effects. In retrospect of 2006 Supreme Court decision on general insurers agreement, it may not be quite certain whether these agreements are exempted from antitrust enforcement or not.

Along with survey of antitrust exemption for insurers in United States(McCarran-Ferguson Act), European Union(2010, 2003, 1991 IBER Regulations), Japan and Germany, this study recommends an overall revision of Art. 125 of Insurance Business Act. Points of revision are as follow. Firstly, object of agreement must be exact and definite including the cause of 'business activities
around pooling, spreading and transferring of risks’. Secondly, requirements of the agreement are to be established in the statute’s wording; that the agreement in question must be neither discriminatory nor exclusive, that the agreement must allow free entry and exit, and that the agreement must not be encroaching on consumer welfare. Lastly, regulatory schemes such as approval of financial authority and prior consultation with FTC are not seen in statutory exemptions of major jurisdictions, and of course are not in harmony with deregulatory causes,