HOW THE KFTC PROSECUTED THE GRAPHITE ELECTRODE INTERNATIONAL CARTEL

Contribution by The Republic of Korea

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How the KFTC prosecuted the graphite electrode international cartel

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1. Int’l cartel & Developing countries

- Developing countries are more vulnerable to int’l cartels than the advanced countries because:
  - Less developed countries are not likely to have production capacity for the products of int’l cartels;
  - Most of the companies in such cartels are from developed countries;
  - Governments of developing countries countries are not strict in antitrust enforcement;
  - With strengthening enforcements in developed countries, int’l cartels are increasingly restricting their operations to developing countries.

- Levenstein & Suslow (2001)
  - In 1997, developing countries imported $81.1 billion of cartel goods, representing 6.7% of imports and 1.2% of GDP of developing countries.
KFTC’s Enforcement Activities

- **Graphite Electrodes Case (March 2002)**
  - 6 Companies from the US, Germany, Japan
  - The 1\textsuperscript{st} case of extraterritorial enforcement of antitrust law in Asia against int’l cartels

- **Vitamins Case (April 2003)**
  - 6 companies from Switzerland, Germany, France, Japan, Netherlands
What are graphite electrodes?

- “Large columns used in electric furnaces in steel-making”
- They generate the intense heat necessary to melt iron scrap and further refine steel.
2. Case details

- From May 1992 to February 1998, the cartel companies held meetings in London and Tokyo.

- They agreed on a set of principles:
  - Respect for “Home Market”
  - Set price in countries with no home producers(“non Home Market”)
  - “No rebate and No discount”
  - Export restriction and market allocation
  - Impose premium on super-sized products
  - Ban the disclosure of specific technologies to non-members in order to prevent new entrants
### 3. Fines Imposed by National Competition Authorities

<table>
<thead>
<tr>
<th>Nation (unit)</th>
<th>UCAR (US)</th>
<th>SGL (Ger)</th>
<th>SDK (Jap)</th>
<th>Tokai (Jap)</th>
<th>NCK (Jap)</th>
<th>SEC (Jap)</th>
<th>VAW (Ger)</th>
<th>C/G (US)</th>
<th>Total (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>US (US$)</td>
<td>110</td>
<td>135.0</td>
<td>32.5</td>
<td>6.0</td>
<td>2.5</td>
<td>4.8</td>
<td>-</td>
<td>-</td>
<td>290.8</td>
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<td>Canada (CD$)</td>
<td>11</td>
<td>12.5</td>
<td>-</td>
<td>0.25</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>23.75</td>
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<tr>
<td>EU (Euro)</td>
<td>50.4</td>
<td>80.2</td>
<td>17.4</td>
<td>24.5</td>
<td>12.2</td>
<td>12.2</td>
<td>11.6</td>
<td>10.3</td>
<td>218.8</td>
</tr>
<tr>
<td>Japan</td>
<td>-</td>
<td>-</td>
<td>warning</td>
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</tbody>
</table>

* US DOJ also imposed fines and prison sentences on individuals.

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4. Impact on Korean Market and Sanction

- Korea depends 100% on imports for graphite electrodes and makes up about 4% of world consumption.
- Affected commerce amounted to US$ 553 million during the cartel period.
- Import price increased from US$ 2,255 per ton in 1992 to US$ 3,356 in 1997 (about 48.9% increase).
- Damage to Korean steel makers approximated to US$ 139 million.

- Imposition of administrative fines:
  - Total fine: US$ 8.5 million
  - This equals half of the KFTC’s annual budget
5. Limitations of KFTC Actions

- The imposed fines (US$ 8.5 million) were far less than the damage caused (US$ 139 million).

- No Korean steel makers raised any damage claims. (They are not even aware that the cartel caused any damages.)

- KFTC could not obtain enough evidence to prove suspected market allocation and ban on technology transfer.
6. Coping with Difficulties in Enforcement

6-1 Difficulties in Investigation Initiation

- Lack of experience in investigation of international cartels
  ⇒ Accumulated research from 1997

- Lack of internal consensus on the need to prosecute international cartels
  ⇒ Educating staff on the harmful effects of international cartels
6-2 Difficulties in Investigation Process

- Difficulties in collecting material evidence
  - Companies had no branches or affiliates
  - Coercive investigation was impossible

⇒ KFTC collected evidence in an indirect way and relied on cooperation from the US and EU competition authorities to some extent.

✓ US DOJ resolved the case by “plea bargaining” and so disclosed no material evidence.

✓ Mitsubishi was indicted for aiding and abetting the cartel, and the KFTC could get the relevant materials disclosed by the US court.

✓ KFTC obtained the non-confidential version of the EU Commission decision, but it did not include material evidence.
6-3 International Cooperation

- Notification were made to the US, EU, German, and Japanese competition authorities according to the 1995 OECD Council Recommendation.

- Receiving Assistance
  - Foreign competition authorities, upon request from KFTC,
  - Provided with con-confidential information disclosed to the public.
  - The court records of the US v. Mitsubishi Corp. case provided by the US was particularly helpful.
6-4 Difficulties in decision making

- Tactics of cartel companies to deter the KFTC from punishing them (e.g.: hinting that they could stop exporting to Korea; protesting that the cartel has no influence on Korean market)

  ⇒ Firm determination of the KFTC

- Lack of rules on jurisdiction and service of documents

  ⇒ Accumulated research on judicial precedents and practices of advanced competition authorities

- Uncertainty of the companies’ compliance with KFTC proceedings and decision

  ⇒ Self-confidence of the KFTC chief
7. Implications: Multilateral cooperation arrangement needed

- Factors for the successful investigation by the KFTC despite all those difficulties
  - Self-confidence and internal consensus which were formed through accumulated research
  - Strong will and sense of duty of the KFTC chief and staff members to protect consumers from international cartels
  - Diversified means to collect evidence (asking cooperation from the US and EU/leniency program)

- We believe that the KFTC action contributed much to up-rooting international cartels.

  ✓ Effects of preventing potential cartels
• It is impossible for competition agencies from developing countries to address international cartel cases on their own. (excessively costly and time-consuming)
  – Reliance on generosity of US and EU competition authorities

• Existing bilateral cooperation agreements do not allow the exchanges of confidential information
  – Multilateral agreement with the strong and wide-ranging cooperation clause is in order.
• An appropriately organized multilateral framework will provide developing countries with strong political support and technological assistance needed to overcome challenges in every phase of competition policy development.