Practical Suggestions for Better Enforcement on Cross Border Cartels

- A perspective from a private practitioner with long work experience in the competition authority

First Intervention

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I. Legislations for Combating CBC
II. Enforcement Manual
III. Difficulties Investigated Parties Face
Concept of CBC

- Foreign company with no presence or asset in the investigating jurisdiction
- Engages in an international cartel activity outside of the jurisdiction
- But the conduct has **anticompetitive effect within the jurisdiction**

Legislation for Combating CBC

1. **Establishing legal basis for extraterritorial application**
2. **International Cooperation**
   - Mutual recognition and utilization of positive comity
   - Sharing of investigation information
   - System for confidentiality
3. **Harmonizing relevant regulations among jurisdictions**
   - Leniency program
Utilization of the know-how accumulated through International discussions

- Active discussions surrounding the challenges the competition authority faces in its enforcement and ways to respond to such challenges

Bilateral cooperation agreements

- Periodically meet with the partnering jurisdiction
- Share the enforcement experience
- Learn from each other

Establish enforcement manual through implications from international discussion
- Strengthening enforcement capacities
- Leading to successful investigation & sanctions
Difficulties Investigated Parties Face

- Simultaneous investigation in multiple jurisdiction
- Investigated and sanctioned under a foreign legal system

✔️ International Agreement on transparency, predictability, and consistency

- When each competition authority’s manual for cross border cartel sufficiently reflects this overall principle → Burden on the investigated party is reduced
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I. International Cooperation

II. Role of Private Practitioners
International Cooperation

🎯 For effective enforcement against CBC, **international cooperation** is necessary

- Working together with foreign competition authorities in conducting individual investigations
- Participating in various multilateral international discussions and enhancing the cooperative relationship with major trading partners by entering into bilateral agreements

🎯 Learn from other jurisdictions’ experiences of facing challenges and overcoming them
Role of Private Practitioners in Developing Countries

- Need for **procedural guarantees** based on which private practitioners may actively engage in the competition authority’s enforcement process.
  - KFTC example
  - Private practitioner’s participation keeping KFTC’s enforcement in check
  - Procedural fairness and drawing the right conclusion

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**Capacity Building**

- Introducing foreign precedents
- Learning from foreign enforcement systems
- Participating in international conferences
THANK YOU