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



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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

Enforcement Manual through International Discussion



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

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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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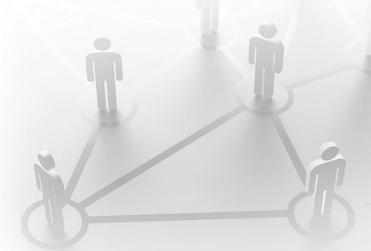
- I. International Cooperation
- **II.** Role of Private Practitioners

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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

Capacity Building

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

THANK YOU