

Title

The Role of Competition Law and Policy in Developing Countries

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Abstract

Compared to USA, major European countries, and Japan that have the experience of competition policy for at least half a century, most East Asian countries started competition laws (anti-monopoly laws) more recently and are still working hard to accumulate sufficient experience to operate an effective and efficient competition policy. There are also a number of issues that are prominent in developing countries besides the fact that these developing countries started development efforts more recently and under different circumstances than those of early starters that began economic growth in the 19th century or early 20th century when economic globalization was limited and the internet was beyond imagination. With this difference in mind, this paper aims to discuss competition policies in East Asian countries today.

For this purpose, this paper will invite some introduction, mostly lawyers, with knowledge on competition policy from several East Asian countries and aim to give the colleagues my presentation of this paper. The issues are as follows:

Generally,

1. Favoritism and cronyism by politicians and government officials, and entry prevention by state enterprises and monopolistic incumbent firms: Have they occurred and had harmful effects on competition? What can the competition policy do
2. How should be the technical assistance on competition policy in developing countries?

Specifically,

. Promotion of innovation and capacity expansion: These are particularly important in countries trying to catch up with advanced countries. Should competition policy take particular considerations for this purpose?

. Aggregate concentration: Big and diversified business groups are often dominant in the economy as a whole (including the financial sector) if not in individual markets. Does it (and should it) cause concern from the viewpoint of competition policy?

. Dominance of multinationals: Should competition policy be concerned with whether the dominant firm is domestic or foreign-owned?

. International cartels: Do these cartels exert particularly damaging effects on developing countries in which domestic firms are weak?

Through presentations and discussions, I hope to deepen our understanding of what should be the adequate competition policy in developing countries and how international cooperation can help to pursue such a policy.

More detailed explanation

This paper emphasizes on the role and its importance of technical assistance on competition policy in developing countries.

Technical assistance in competition law is very important for the development of competition law and policy. Along with the increase in the number of developing economies which introduced or preparing to introduce competition laws, needs for technical assistance have also expanded.

On the other hand, both the budgetary and personnel resources dedicated to technical assistance activities are limited. However, we have quite often witnessed that the same kind of technical assistance activities are conducted at the similar times of year for the same recipient economies. Also, it is not unusual to find that the knowledge, experience and expectation of selected trainees do not fit the contents or level of the provided technical assistance program.

This is why, I believe, we should begin to explore ways of establishing more efficient and effective technical assistance mechanism in order to correctly respond to the increasing and diverse needs for technical assistance.

By the way, in nowadays, the public has increasingly come to understand that in the globalized world effective competition policies are the trustee of our economic prosperity. The developing economies and economies in transition are restructuring their economies in an effort to create free and fair competitive conditions and to integrate them fully into the world's economy.

Over-Regulations, Lack of basic business laws, Discrepancies between laws, and Informal interference not in transparent manner, are typical Problems in Developing Economies. And these are severe obstacles against free and fair globalised economies.

In order to claim their share of the benefits of globalization, more developing economies are adopting economic reform packages to liberalize entire sectors, privatize state-owned enterprises and introduce competition laws and policies.

They naturally look to established competition authorities – including Japan Fair Trade Commission – for support and technical assistance. The reason is that Japan has a long history of struggling to establish a competitive environment through the instrument of an effective competition policy. In the trend of economic globalization, competition law and policy should rank as a common rule of the market economy of the world. This is one of the goals of legal assistance of competition law.

The goal of the competition law is the creation of enforcement mechanisms that should seek to strongly deter clearly anticompetitive conduct, while at the same time ensuring that there is no chilling effect on conduct that enhances efficiency or is otherwise beneficial to consumer welfare. Competition laws protect fairness of markets and promote competitiveness of enterprises

Japanese strategy of the official development assistance in the legal sector is fundamentally different from that of the Law and Development movement of the United States in the 1960s.

The goal of the legal assistance project is to provide the economies in the process of transition from regulated economy to market oriented economy with necessary information and resources training to establish legal institutions appropriate enough to participate in the global market. Its methodology is as follows: to organize Japanese expert groups to draft laws or to advise drafting laws, to dispatch those experts to the partner country and to hold discussion meetings with lawyers of the partner country, and to conduct field studies if necessary.

JICA (Japan international Cooperation Agency) sends long term experts to the partner country to coordinate project works. The Japanese experts do not make any final decision

on the draft law but always seek for consensus with partner experts. For the purpose of capacity building, judges and government officials are invited to Japan to participate in a seminar.

The philosophy of Japanese legal assistance in competition law is the partnership or equality between the two parties. Of course, the country of transition does not have the appropriate market legal institutions. The society itself may be currently far behind the developed countries. However the law of the country has to function in the society. Even when a country has an ideal legal system, it is not the law of the country if the system does not work in its society. Japan received European legal system in the 19th century and took long time to adjust to our own culture and society. That is the reason why we request our partners to take initiatives in making final decisions. Needless to say the countries of transition inevitably have to shift to market economy. In this sense we have to show our partners what are the merits and demerits of a legal institution and other alternatives of the market law. However, we must, we must refrain from imposing our preference and experience.

Last few years the United Nations has been interested in the coordination of legal assistance projects of international organizations and governments under the name of Rule of Law. The idea could be to improve the governance and democracy of developing countries under judicial control. As an idea it is not bad. but each country has its own tradition of judiciary and the check and balance between the administration and judiciary varies from one country to another. If the assisting country imposing its own idea of judiciary, the transplanted system will not work in the society of assisted country.

In this paper I re-examine our assistance policy on competition law regime from the broader perspectives and formulate the long term strategy for the legal development assistance.