

Competition Policy to Promote “Shared” Growth in Korea

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1. Introduction

- Significance of “Shared” (or Mutual) Growth of Large Companies and SMEs in Korea Competition Policies
 - Korea Monopoly Regulation and Fair Trade Act explicitly mandates the balanced development of the national economy as well as the enhancement of consumer welfare as its two main purposes:
 - *Article 1 (Purpose) This Act seeks to promote fair and free competition so as to foster creative enterprising activities, protect consumers, and strive for the balanced development of the national economy by preventing the abuse of market dominance by enterprises and excessive concentration of economic power and by regulating improper cartels and unfair business practices.*
 - Korea Fair Trade Commission enforces a special act, called as Fair Subcontract Transactions Act, to protect SMEs which have vertical transactions with large companies from being abused:

1. Introduction

- *Article 1 (Purpose) The purpose of this Act is to promote the sound development of the national economy by establishing a fair order for subcontracting so that Contractors and Subcontractors may enjoy a balanced development on an equal footing in a mutually complementary manner.*
- Recent Emphasis of Shared Growth in Korea
 - Background
 - Deepening of the gap between Large companies and SMEs in terms of profitability, employment, and R&D
 - The Government declares to drive shared growth policies on Sept. 2010.
 - Korea Fair Trade Commission, in briefing Mr. President Lee Myung-Bak on its 2011 work plans on Dec. 2010, lists improving relationships between large companies and SMEs for shared growth as its top enforcement priority.
 - Shared Growth Commission launches on Dec. 2010 as a private institution, which is formally independent from, but actually supported by, the government.

2. Fair Subcontract Transactions Act

■ Definition of Subcontract Transactions

□ Involved parties are:

- contractors which are mostly large companies, and
- subcontractors which are confined to SMEs.

□ Subcontract transactions are such that

- a contractor orders a subcontractor to manufacture, repair, construct, or provide services on the former's behalf.

■ Main Requirements and Prohibitions on Contractors

□ Requirements

- Delivering and maintaining written documents containing contractual agreements and their changes
- Making subcontract payments within 60 days from the date of receipt of the ordered objects, proper interests in case of deferred payments, and proper discounts in case of payment by a note

2. Fair Subcontract Transactions Act

□ Prohibitions

- Determining subcontracting prices unreasonably
- Requiring purchases from contractors unduly
- Refusing acceptance, delivery of receipt, and return of objects unduly
- Reducing price unreasonably
- Substituting goods for payments against the will of subcontractors
- Interfering with managements unduly
- Taking retaliatory measures in cases where subcontractors have reported contractors' violations of this Act to the Commission

■ Recent Reinforcement Revisions [declared on 2011.3.29, and implemented beginning 2011.6.30]

□ Applicable subcontract transactions

- Extending to the lower levels of contractor-subcontractor relationships among SMEs

2. Fair Subcontract Transactions Act

- Price changes
 - The relevant cooperative association of SMEs on behalf of member subcontractors may ask contractors to adjust prices reflecting the increase in material costs
 - Assigning the burden of proof to contractors in case of reasonable price reductions
- Technology theft
 - Prohibiting contractors from demanding subcontractors for technology information without justifiable reasons
 - Requiring contractors to submit proper demand documents even in cases with justifiable reasons
 - Adopting punitive treble damages recovery in case of technology theft
- Mutual agreements for fair trade and shared growth
 - KFTC may suggest and encourage contractors and subcontractors to make mutual agreements of subsistence and cooperation

3. Recent Drive for Shared Growth

- Index of Shared Growth

- Shared Growth Commission, a private institution in appearance but a government-supported one in reality, selected 56 large companies in various industries (including Samsung Electronics and Hyundai Motors), whose sales account for 56% of GDP in 2009, as objects to be evaluated for an index of shared growth.
- The index of shared growth will combine two kinds of evaluations:
 - Quantitative evaluation of large companies' efforts for shared growth in terms of the contents and implementations of mutual agreements with subcontractors for shared growth, which will be implemented by KFTC as continuation and extension of its previous project
 - Qualitative evaluation of SMEs' satisfaction about large companies' efforts for shared growth in terms of fair trade and cooperative subsistence, which will be conducted by Shared Growth Commission as a newly launched project.

3. Recent Drive for Shared Growth

- ❑ Evaluation Schedule and Incentives
 - The results of index evaluation in terms of grade or ranking will be announced in early 2012.
 - Government will provide highly evaluated large companies with incentives such as prizes, tax benefits, R&D projects, procurements, exemptions etc. [details to be announced]
- Key Ingredients of Mutual Agreements for Fair Trade and Shared Growth
 - ❑ Compliance of 3 guidelines on contractual agreements, selection of and dealing with subcontractors, and internal review processes
 - ❑ Mutually beneficial assistance
 - Financial assistance, especially for R&D cooperation
 - Improvement of clearance terms such as means, period and frequency of payment
 - Technological assistance and protection
 - Training and man-power assistance
 - Other assistance

3. Recent Drive for Shared Growth

- ❑ Transmission of mutually beneficial assistance into the lower level relationship between subcontractors and sub-subcontractors
- ❑ Other considerations
 - Violations of Fair Subcontract Transactions Act
 - Other breaches against shared growth such as receiving bribes from subcontractors etc.

■ Examples

- ❑ Samsung
 - Nine Samsung group affiliates made cooperative agreements for shared growth with 5,200 subcontractors on April 13, 2011.
 - Financial assistance amounts to \$ 5.7 billion in 2011, among which R&D supports are \$ 1.7 billion.
 - Inducing subcontractors to make cooperative agreements with lower-level sub-subcontractors, and providing them with incentives
 - Allowing free licenses of Samsung's patents and protecting subcontractors' technologies

3. Recent Drive for Shared Growth

- Hyundai
 - Six Hyundai group affiliates made cooperative agreements for shared growth with 1,585 subcontractors on March 29, 2011.
 - Financial assistance amounts to \$ 3.9 billion in 2011, among which R&D and capacity investments are \$ 2.3 billion.
 - R&D support man-power group with 300 members
 - Including other assistances similar to Samsung's

4. Concluding Remarks

■ Positive

- No objections to the importance of “shared” growth for sustainable growth as well as stability.
- At the moment, most large companies take the drive of mutual agreements for fair trade and shared growth as inevitable, and cooperate with KFTC.

■ Negative

- There are concerns that the emphasis on shared growth might distract KFTC from its main tasks of promoting competition such as regulating cartels, mergers and abuses of dominance.
- The drive for shared growth may be transient, depending on policy priorities of the next government.

■ Caveat

- Other drives of Shared Growth Commission, such as the designation of SMEs-pertinent industries and profit sharing, are very controversial, and not well received by many economists as well as large companies.