Implementation Biases of the Antitrust System in Korea: Causes and Consequences

CHOI, JONG WON
Research Fellow, Korea Development Institute

Abstract

In this paper, we identify three systematic performance biases in the Korean antitrust system: the absence of structural enforcement, the minimal role of antitrust agencies in anticompetitive major industrial policy-making, and the biased conception of the problems of economic concentration. After examining five competing hypothesis based on current implementation literature, we attribute the performance biases mainly to the limited bureaucratic expertise and skills required for complex structural enforcement and to the biased perceptions and expectations, inherent in the policy environment, about the roles of the antitrust system. Further, we connect the two factors above, found in the post-decision period, with some conspicuous features of the preceding enactment process of the Monopoly Regulation and Fair Trade Act.

I. Introduction

1. Scope of Research

The Monopoly Regulation and Fair Trade Act (MRFTA) was enacted in 1980 during the period of severe political turbulence in Korea. Despite the significant symbolic and actual impact of MRFTA on the Korean economy, the act has not always been satisfactorily implemented by the Fair Trade Commission (FTC) and the Office of the Fair Trade (OFT), which were established within the Economic Planning Board (EPB) in 1981 to administer the Act. The policy-making process that led to the enactment of MRFTA as well as the less-than-perfect implementation of the Act raises many interesting questions about the process by which a policy is both enacted and admin-

The Korean Journal of Policy Studies Vol. 8 (1993), 59~89

istered. Despite the importance of these questions, scholars have neglected both the policy enactment process and the implementation process.

In this paper, we attempt to identify the performance biases of the Korean antitrust system, and to investigate the sources of the implementation problems. Section II investigates three conspicuous implementation biases in antitrust enforcement since 1981: the absence of structural enforcement, the minimal role played by FTC in anticompetitive major industrial policy-making in the 1980s, and the biases in the conception of the problems of economic concentration.

Section III reviews the current implementation literature to provide a theoretical framework for analyzing the causes of the performance biases. While the dominant research method in current implementation studies has only focused on factors found in the post-decision stages, this paper argues that in order to acquire a meaningful understanding of policy implementation process, the policy-making process as well as post-decision factors should both be examined. Based on the current implementation literature, Section IV examines five competing hypotheses as possible causes of the implementation biases—statutory problems, lack of resources, biased staff attitudes, bureaucratic incompetence, and an unfavorable policy environment of the antitrust system.

Section V investigates the policy-making process for the enactment of MRFTA briefly, and identifies several conspicuous features of the enactment process. Then, as proposed above, this paper analyzes the connections between the characteristic features identifiable in the enactment of MRFTA and the subsequent implementation biases. Given our understanding of the policy process in Korea, as concluding remarks, we evaluate current reform proposals for effective antitrust enforcement in Section VI.

Before going further, it is necessary to explain briefly the organizational arrangements and the evolution of the Korean antitrust system. The Office of Fair Trade (OFT) and the Fair Trade Commission (FTC) were established within EPB in 1981. Under the provinsions of MRFTA of 1980, however, the Commission was merely a jurisdictional, consultative body for the minister of EPB, who had the authority to enforce the provisions of MRFTA. As a line agency of EPB, OFT was delegated the authority to implement antitrust policy. Therefore, until January 1990, OFT was not a subsidiary agency of FTC; rather, it directly supported the decisions of the minister of EPB.

However, according to the second amendment of MRFTA in 1990, the Commission has become an independent administrative agency with executive functions. OFT was integrated into the secretariat of FTC, and the organization of FTC was expanded considerably. Even though FTC was transformed into an independent commission, its independence has limitations. FTC is located within EPB and is still under the influence of the minister of EPB. The staff of FTC have been recruited from the man-

power pool of EPB, and are under the jurisdiction of the EPB's personnel transfer system.

FTC is comprised of seven commissioners including a chairman. The secretariat of FTC, headed by the secretary general, is composed of four bureaus (the Fair Trade Policy Bureau, the Monopoly Regulation Bureau, the Trade Practices Bureau, and the Investigation Bureau), and four regional offices (Pusan, Kwangju, Taejeon, and Taegu). Currently, FTC has 265 employees, including the commissioners, and its budget for fiscal year 1993 is 6,334 million won, including personnel expenses.

Because this paper investigates the causes and the consequences of the implementation biases of the Korean antitrust system since 1981, the organization which possessed the direct authority to implement the provisions of MRFTA has varied. However, because the OFT has been integrated into the secretariat of the FTC since 1990, the strict distinction between FTC and OFT may be insignificant. Therefore, in this paper, we will assume that FTC has had the authority of antitrust policy implementation since 1981 unless we need more specific articulation.

2. Methods and Data

This paper employs several methods, including participatory observations; extended interviews with current and ex-government officials of OFT and FTC and with other related actors including university professors, lawyers, and businessmen; analyses of available documents such as newspapers, presidential addresses, congressional oversights and reports, staff papers of FTC, and case studies by other researchers. However, the two major research methods are participatory observations and interviews.

During the period of June and August, 1988, I worked for the Overall Fair Trade Policy Division in OFT as an assistant director. While I worked for OFT, I observed and took notes on events and conversations to which my position allowed access. My colleagues at OFT understood my dual role as participant and observer. They were informed of my general intention that I planned to research on the Korean antitrust system. However, I presented as little as possible about the details of my research in order to minimize the possibility of the influence of my presence.

The participatory observations were supplemented by interviews mainly with the staff and the ex-staff of OFT and FTC. I conducted two waves of interviews. The first wave of my interviews was held while I worked for OFT. Extended follow-up interviews were held during March and April of 1993, while working for the Korea Development Institute (KDI). In KDI, because one of my research areas has been competition policy, I could have had close relationship with the bureaucrats at FTC. During the second wave of interviews I tried to supplement the data acquired from the first interviews, and to identify any significant changes in policy envirinments,

staff attitudes, and institutional arrangements.

Questionnaire

A. Background data
   1. What is your educational background?
   2. How long have you worked in EPB and in FTC?
   3. What is your main responsibility concerning antitrust enforcement?

B. How are your antitrust cases initiated?
   1. proactive vs. reactive
   2. proportion of further investigation among received complaints

C. Information sources for investigations
   1. What are the main information sources for your investigation? What kinds of information are you looking for?
   2. Have you experienced an information scarcity during your investigations? If so, can you tell me the type of cases with which you experienced special information scarcity?
   3. What may be your further responses for this information scarcity?

D. Investigation and prosecution procedures
   1. General work procedures
   2. The degree of usage of the FTC's investigation manuals
   3. Type and degree of utilization of economic theories during investigations and prosecutions

E. According to the statistics of the performance of FTC, there were few structural cases compared with conduct cases. Given this performance of FTC, do you agree that this enforcement should be considered the problematic performance of the Korean antitrust system?
   1. If you do not agree, why do you think that the statistics showed in this way?
      (a) Business compliances without strong enforcement
         (1) Successful rule-making (or industry guidance)
         (2) Cultural tradition of administrative dominance over business.
      (b) Problems in counting the cases
   2. If you agree, what factors do you think have most contributed to this problematic phenomena?
      (a) Statutory problems: insufficiency, inadequacy, or ambiguity
      (b) Limited resources (budget and personnel)
      (c) Biased attitudes, motivations, and professional norms of the staff
      (d) Bureaucratic incompetence/incapability

(e) Organizational conflicts
  (1) Organizational conflicts among different divisions within FTC
  (2) Incentive incompatibility between lower staffs and higher officials in FTC
(f) Jurisdictional conflicts with other bureaus within EPB (especially, the Bureau of Price Policy and the Bureau of Policy Coordination) or with other economic ministries outside EPB
(g) Weak status of FTC within EPB or within the government
(h) Outside actors' influence (especially politicians including the President and regulated industries)

I prepared a questionnaire (listed above) which was to be used in interviews. However, during the interviews conducted, the questionnaire was not presented directly to my interviewees. Instead, I had selected several questions before I met an interviewee according to his organizational position and antitrust responsibility. For example, I asked more procedure-oriented questions to the lower level staff members, while more policy-oriented questions were directed to the higher ones.

During the interviews, I tried not to push the pre-selected questions to my interviewees, but to delay the questions until they began to raise similar issues. The interviews could be described more as informal conversations and less as formal interviews. The questionnare I prepared was used as a check list. Because the staff and the executives of FTC were usually interested in the antitrust experiences and institutional arrangements of foreign antitrust systems, our conversations started with their questions about the antitrust system of foreign countries, then moved into performance biases and institutional peculiarities of the Korean antitrust system, and finally into the reform proposals for the policy problems.

I did not tape the conversations and tried not to take notes in the interviewees' presence. I memorized the contents of the conversations and immediately afterwards wrote them down as accurately as possible. Even though one interview on the average lasted half an hour or an hour, the relevant part did not exceed two or three pages. My research would have been impossible without the cooperation of the interviewees. Therefore, I will not disclose their identities, if such protection is needed for their career security.

Similar interviews were conducted with a few outsiders including university professors, researchers, lawyers, and businessmen. I used questions similar to those which I directed to government officials with a different framing in order to accommodate their interests in antitrust and fair trade policies in Korea.

II. Performance Biases of Antitrust System in Korea

1. The Absence of Structural Enforcement

In explaining how the Federal Trade Commission of the United States chooses its caseload, Katzman(1980) classified the possible antitrust cases into two types—structural cases and conduct cases.[1] Structural cases intend to attack fundamental market imperfections and excessive market power, while conduct cases deal with particular business practices such as discriminatory transactions on the seller's side.[2]

The structural cases aim at substantial economic benefits to consumers and presuppose a proactive approach as a model for the operation of antitrust agencies. The conduct cases, however, have more social and political ends—the preservation of small business—and favor a reactive approach to antitrust enforcement. The reactive approach relies upon letters of complaints as the source of investigations, while the proactive approach proposes that antitrust agencies assume the initiatives and use its scarce resources selectively to attack abuses in those sectors of the economy that are most influential.[3]

Korean bureaucrats of the Fair Trade Commission (FTC) seem to have a similar classification for their works. According to their numerous staff publications, they have conceptualized their antitrust responsibilities as composed of structural regulation and conduct regulation.[4] Structural regulation includes prohibition of abuse of market-dominating positions, restrictions on business combinations, deterrence of the concentration of economic power, and consultation on the enactment of anticompetitive laws, decrees, and administrative orders. Conduct regulation is composed of restrictions on collusive activities and anticompetitive activities of trade associations, prohibitions of unfair trade practices, and restrictions on unfair international contracts.

The performance inclination of the antitrust agencies in Korea could be quantitatively expressed in Table 1. Among 6,532 cases dealt by FTC during the period of 1981-1992, there were only 474 structural cases (7.3 %) and 6,058 conduct cases (92. 7 %). Among the 474 structural cases, prohibition of the abuse of market-dominating positions comprised 17 cases, restrictions on the concentration of economic power comprised 111 cases, and the remaining 346 cases resulted from FTC's interventions in business combinations. However, this quantitative summary needs further qualitative considerations.

As we noted in Table 1, during the period of 1981-1992, FTC issued 17 corrective measures against the abuse of market-dominating entrepreneurs. Among the cases, 13 cases were about the "unreasonable interference with the business activities of other entrepreneurs."[5] Despite the detailed provisions of MRFTA and the

<Table 1> Antitrust Enforcement of FTC: 1981-1992

Unit: Case

		'81-'88	'89	'90	'91	'92	Total
Structural	S1	9	0	2	0	6	17
Cases	S2	261	32	12	22	19	346
	S3	28	11	21	3	48	111
Conduct	C1	42	11	12	20	9	94
Cases	C2	132	24	23	31	45	255
	C3	1,854	464	274	535	441	3,568
	C4	1,522	39	288	235	57	2,141
Total		3,848	581	632	846	625	6,532

Source: FTC(1993)

S1: Prohibitions of Abuse of Market-Dominating Positions

S2: Restrictions on Combinations of Enterprises (Mergers)

S3: Restrictions on Economic Power Concentration

C1: Restrictions on Collusive Activities

C2: Prohibitions of Anticompetitive Activities of TradeAssociations

C3: Prohibitions of Unfair Trade Practices (Unfair Contractor-Subcontractor Relationships included)

C4: Restrictions on Unfair International Contracts

Enforcement Decree,[6] FTC prosecuted no case of price abuse by market-dominating entrepreneurs, which could be considered the core of the enforcement. One assistant director in the Commission responded:

> The main reason for not prosecuting the price abuses of market-dominating entrepreneurs is the task arrangement of bureaus and offices within EPB. Ever since the enforcement of MRFTA, FTC has transferred responsibility for monitoring the prices of market-dominating entrepreneurs to the Bureau of Price Policy in order to avoid organizational conflicts and overlaps of responsibility within the same ministry. Therefore, FTC has been blocked in enforcing the articles concerning the price abuses of market-dominating entrepreneurs.

This task arrangement of EPB, however, should be considered quite problematic because the policy goal of the Bureau of Price Policy (BPP) may be different from that of FTC in regulating the prices of market-dominating entrepreneurs. BPP is more likely to be concerned about price stabilization itself, while the goal of FTC would be an increase in market competition through the monitoring of the prices of the market-dominating entrepreneurs.

As Table 2 shows, among 2,306 business combination cases reported to FTC during

<Table 2> Total Merger Cases and FTC's Restrictions: 1981-1992

Unit: Case

	'81-'88	'89	'90	'91	'92	Total
Total Mergers	1653	193	157	154	149	2306
Corrected Cases*	261	32	12	22	19	346
Overdue Filing	(259)	(32)	(12)	(22)	(19)	(344)
Actual Correction	(2)	(0)	(0)	(0)	(0)	(2)

Source: FTC(1993)

* the same number as S2 in Table 1.

the period of 1981-1992, 346 merger cases were corrected by FTC. Among the 346 corrected cases, 344 cases were resulted from overdue merger reports of related entrepreneurs to FTC. Since their overdue filing is derived from the entrepreneurs' ignorance about MRFTA, they cannot be considered actual antitrust enforcement by the Commission. Therefore, we could summarize that only two cases [7] received substantive corrective orders by FTC during the period.

2. The Minimal Role of Antitrust Agencies in Major Industrial Policy-Making

Article 63 (1) of the MRFTA provides:

> If the chief of an administrative agency intends to enact or amend a law or a decree which includes provisions concerning restrictions on competition ... or to issue an order to an entrepreneur or a trade association, concerning matters with regard to restrictions on competition..., he shall consult with the FTC.

The aim of the Article 63 is to minimize anticompetitive impacts of governmental intervention on market competition even though that intervention is based on relevant laws and decrees. We can not find such a clause in any other countries' antitrust laws. MRFTA, therefore, should be considered quite singular in this regard.

Because Korea experienced considerable amount of anticompetitive governmental actions under the name of diverse protective industrial policies during the period of high economic growth, the potential applicability and the significance of this provision is very wide and profound. However, as we will investigate in this section, FTC have played only a minimal role in enforcing this clause.

Since the beginning of the enforcement of MRFTA in April, 1981, there have been three major industrial policy-making actions within the Korean government in the 1980s: the enactment of the Industrial Development Act (IDA), the "Industrial Rationalization Measures" according to IDA, and the "Industrial Readjustment

Measures on the Consolidation of Large Insolvent Enterprises" according to the revised Tax Exemption and Reduction Control Act (TERCA).

From the beginning of the Chun government, many bureaucrats in economic ministries—Economic Planning Board (EPB), the Ministry of Finance (MOF), and the Ministry of Commerce and Industry (MCI)—argued for major reforms in the industrial support system. Due to their efforts, in 1985 MCI enacted the Industrial Development Act (IDA), and MOF amended the Tax Exemption and Reduction Control Act (TERCA).

Replacing seven industrial promotion acts,[8] IDA included authorizing direct government intervention for industrial development. Chapter II of IDA provides for the "Industrial Rationalization Plans." For both declining industries and for promising infant industries, the minister of MCI is allowed to formulate Industrial Rationalization Plans for a limited period. Further, the minister of MCI may issue such orders to related entrepreneurs as the specialization of production item, the maintenance of optimal production capacity or quality, the development of necessary production technology, the utilization of entry barriers and collaborative activities, the restrictions on establishment and expansion of new facilities, and the facilitation of business mergers and takeovers.

In 1986 and 1987, MCI designated eight industries as the subjects of IDA's Industrial Rationalization Plans. The industries included automobiles, heavy equipment for construction, diesel engines, heavy electronic machines, alloyed steel, fertilizer, and the textile dying industry. Almost all rationalization plans included entry barriers and restrictions on facility establishment and expansion. Actually, the rationalization plan for the diesel engine industry mandated monopolization of submarkets in the name of production specialization.

The Tax Exemption and Reduction Control Act (TERCA) was amended on December 31, 1985 in order to support the government's industrial readjustment measures. Notably, Articles 46, 46.2, 46.3, 46.4, and 47 of TERCA were revised to facilitate consolidations of large insolvent enterprises. During the period of high economic growth in the 1970s, the government mobilized enormous amounts of bank credits or loans to specific corporations in order to finance huge fixed and operating costs for heavy and chemical industrialization. As the business environment for these corporations deteriorated after 1979, many of these firms became insolvent. The government, however, could not let them go into bankruptcy, because the enormous amount of non-performing debts borne by the banks would put the financial structure of those banks in danger, and this would, in turn, jeopardize the whole national economy. Furthermore, the bankruptcy of these companies would throw a large number of workers out of their jobs. Therefore, the government determined to let other entrepreneurs take over these firms by giving the acquiring entrepreneurs comprehensive tax incentives.

According to the amended Tax Exemption and Reduction Control Act (TERCA),

during the period of May, 1986 and February, 1988, the government consolidated 49 insolvent corporations to other entrepreneurs.[9] Two facts should be noted. First, most of these insolvent corporations were taken over by competing entrepreneurs within the same market. From the perspective of the banks, it would be very difficult to find a suitable take-over out of the industry within a limited time period. Because outsiders usually lack the necessary know-how and skilled employees, they would not take the risk of taking over a huge insolvent corporation. Also, the ex-competitors had clear interests in increasing their market share in these industries. Therefore, the consolidations usually resulted in huge horizontal mergers.

Second, the consolidations were guided mainly by political considerations and proceeded secretly without any open debates or public auctions. To the exclusion of many interested parties, only a few political figures, President Chun, the Chief Economic Secretary of the Presidential Office, and the ministers of the EPB and the MOF participated in the designation of insolvent corporations and in the selection of future takeover entrepreneurs.

Given this brief investigation of the procedures and characteristics of the three major industrial policies during the 1980s, one question follows: What was the role of FTC? That is, were the outcomes of the industrial policy-making influenced significantly by the efforts of FTC? I will investigate the three cases separately.

First, during the enactment process of IDA, FTC strongly opposed MCI for the inclusion of "promising infant industries" in the scope of industries subject to comprehensive Industrial Rationalization Plans. FTC argued that promising infant industries should be considered differently from declining industries: even though comprehensive government interventions could be justified in the latter, the former should not be included in these measures. Comprehensive, direct government interventions in infant industries would unreasonably favor few corporations to the exclusion of many corporations and would discourage related entrepreneurs' business creativity and profit incentives.

Despite FTC's strong objections, IDA was enacted as MCI intended. FTC could not but satisfy with an inclusion of an article[10] which stipulated that the minister of MCI should consult with the minister of EPB prior to his decisions, if he intends to issue orders of business mergers or collaborative activities among entrepreneurs.

Second, in 1986 and 1987 FTC opposed MCI's "Industrial Rationalization Plans":

> Predictions by the government for the future are very difficult to make and are apt to be wrong. Given the possibility of a government failure, it is too dangerous to support a few corporations to the exclusion of many. Therefore, as rationalization measures, the government should be very cautious in granting anticompetitive entry barriers and monopolizations.[11]

Nevertheless, the "Rationalization Plans" were approved by President Chun with-

out any major changes. FTC succeeded in shortening the rationalization period of a few industries from three years to two years, which was a minor change.

Third, during the consolidation of the 49 insolvent enterprises according to the amended TERCA, the role of FTC was virtually nonexistent. Because the consolidation decisions were made in a so closed way, FTC usually did not have enough information for review. Most of the insolvent enterprises were assigned to their ex-competitors without consultation with the antitrust authority as to possible anticompetitive effects.

3. Biased Conception of the Concentration of Economic Power

There are two different conceptions of the concentration of economic power—industrial concentration (market concentration) and business concentration (wealth concentration). Industrial concentration addresses the share of a given number of enterprises in a particular market. The problem of industrial concentration, therefore, arises when one or two large firms monopolize or oligopolize the market. Meanwhile, business concentration emphasizes the share of a given number of huge affiliated enterprises in all markets. The problem of business concentration, therefore, arises when a few extra large conglomerate business groups (called, "chaebols" in Korea) capture considerable shares of the national economy. The problem of business concentration in Korea is compounded with that of ownership concentration. That is, the extra large business groups are practically owned and controlled by particular individuals or their close family members.

Industrial concentration (market concentration) and business concentration (wealth concentration) are interrelated in two respects. First, usually the former leads to the latter. After accumulating enough capital in a market, a huge monopolistic or oligopolistic company would seek to take over other corporations or to establish new companies in order to diversify business risks and to minimize future uncertainty and transaction costs in producing its commodities or services. Second, from the perspective of policy-makers, the regulation of business concentration could be regarded as an indirect measure against the problems of industrial concentration. By setting some tangible limitations on the growth of an affiliated business group, the policy-makers could prohibit the intrusion of big economic powers into a relatively competitive market.

The two concepts of economic concentration, however, are different in many respects. Each concept captures different aspects of the abuse of economic power and, therefore, presupposes a different set of policy measures to counteract the abuse. In the case of industrial concentration, the phenomena under question are concentrated market structure and consequent monopoly power—price setting of a commodity or a service above its marginal cost. That is, the concept of industrial or

market concentration worries about inefficiency of resource allocation and a loss of consumer welfare as consequences of concentrated market structure. It attributes these undesirable consequences to the lack of competition in a market. Therefore, this concept presupposes the introduction of competition as the policy goal of corrective measures. Those corrective measures include divestitures of a monopolized corporation and prohibitions of the abuse of market-dominating positions and of anticompetitive business mergers.

However, according to the concept of business concentration, economic concentration implies a sizable accumulation of overall economic power within the hands of a few conglomerate business groups and their potential political power over governmental decision-making. The negative consequences of business concentration are not confined to considerations of economic efficiency nor even to the more intangible sphere of economic morals. Still more widely felt is a fear founded in political realities—the fear that huge affiliated enterprises, being the only center of wealth and power, would be able to lord over all other interests and thus to put an end to democratic institutions.[12] Therefore, the concept of business concentration presupposes fair distribution of property rights as the policy goal of its corrective measures, which would be composed of diverse economic, political, and legal restrictions on the growth of those concentrated business groups.[13]

In 1986, 1990, and 1992 MRFTA underwent major revisions. Among them, the incorporation of several articles concerning deterrence of the concentration of economic power was the central revision. The revision included prohibition of establishing holding companies,[14] prohibition of direct cross-ownership within designated large business groups,[15] restriction on the total amount of capital investment in other firms by the designated large business groups,[16] restriction on the voting rights of finance or insurance companies, and the introduction of the mutual guarantee ceiling system.[17] Through the incorporated articles, one could infer that the policy-makers who participated in the amendment process conceptualized the problems of economic concentration more as business concentration problems and less as industrial concentration problems. According to their perspectives, MRFTA should be able to attack the so called, "chaebol problems" in Korea.

It is by no means my assertion that the chaebol problems in Korea are insignificant. However, I would like to argue that the biased conception of policy-makers about the problems of economic concentration gives rise to two questions: Should an antitrust act, such as MRFTA, attack the problems of business concentration directly? Have the deconcentration measures included in the amended MRFTA successfully mitigated the problems of business concentration?

One major problem with antitrust policy is that it has quite ambiguous policy goals, and it sometimes attempts to achieve several conflicting goals simultaneously.[18] However, if one understands the main goal of antitrust policy to be the prohibition

of the spread of business monopoly and the restoration of effective competition, direct restrictions on wealth or property concentration should be considered a remote policy concern. Limitations on the growth of business concentration should be respected as far as these measures increase market competition in related industries. Therefore, antitrust policy should focus mainly on industrial concentration, while the problems of business concentration should be addressed by other political measures such as the Elimination of Excessive Economic Power Law and the Enterprise Reconstruction and Reorganization Law imposed on Japan during the occupation period by the United States.

In most countries—West Germany, France, Italy, England, and the United States—those measures against business concentration, that are added into MRFTA by the amendment in 1986, 1990, and 1992, have been specified in their commercial acts or corporation laws, not in their antitrust acts. One could find similar clauses in the Japanese antimonopoly act. However, the act includes only the prohibition of the establishment of holding companies and limitation on total capital investment. Therefore, Korea's MRFTA should be considered quite exceptional in this regard.

However, considering that a set of policy goals of antitrust policy may differ depending on the political and economic background of each nation, and that the problems of business concentration (the chaebol problems) have been one of the most serious concerns in the Korean economic and political system, it may not be an imprudent decision on the part of Korean policy-makers to include the prohibition of unreasonable business concentration as an important goal of MRFTA.

Even with the above perspective, the provided deconcentration measures such as prohibition of the establishment of holding companies, prohibition of direct cross-ownership, and limitation on total capital investment leave further doubts as to their instrumental value against the problems of the concentration of economic power.

According to the provisions of MRFTA and the Enforcement Decree, FTC has annually designated "large business groups," and has monitored changes in capital investment of the affiliated firms. However, as Table 3 shows despite the enforcement of FTC, the number of chaebol groups, which have their total assets more than 400 billion won, is increasing continuously, and their member companies have also increased. More specifically, the average number of affiliated firms of the 30 largest chaebols has increased from about 16 firms in 1987 to 20 firms in 1993.

Among the deconcentration measures provided by MRFTA, the strongest one is the restriction on the total amount of capital investment (40% of net assets) in other firms by any member companies of the designated large business groups. In accordance with this provision of MRFTA, the designated business groups have dissolved their excess capital investments. The results of the liquidation are summarized in Table 4. As Table 4 shows, the excess capital investment of the large business groups, designated during the period of 1987-1991, amounted to 1,748 billion won. As of

〈**Table 3**〉 Numbers of Designated Large Business Groups and Their Affiliated Companies: 1987-1992

	1987	1988	1989	1990	1991	1992
Designated Groups	32	40	43	53	61	78
Affiliated Firms	509	608	673	798	921	1056

Source: FTC(1993)

〈**Table 4**〉 Liquidation of Excess Capital Investment by Large Business Groups

(As of March 31, 1992: Billion Won, %)

Business Groups Designated in	Excess Capital Investment at the Time of Designation(A)	Liquidated Amount of Investment(B)	B/A(%)
1987	1,246	1,239	99.4
1988	66	66	100
1989	51	51	100
1990	324	324	100
1991	61	49	80.3
Total	1,748	1,729	98.9

Source: FTC(1992A)

March 31, 1992, 98.9 percent of the target amount was liquidated. As a consequence, the average ratio of capital investment in other firms to the net assets for the 29 business groups designated in 1987 has been reduced from 43.6 percent in 1987 to 28.8 percent in 1992.[19]

The statistical results reviewed above show a successful performance of the Korean antitrust system in mitigating the problems of business concentration. However, if we carefully investigates the results, they can be interpreted in a quite different way. One of the staff member of FTC, during my interview, predicted quite correctly:

> Among those measures, the limitation on capital investment would be the most relevant and strongest one against business concentration. However, I am not sure whether the measure has any direct relationship with the deterrence of business concentration. Even with the measure, chaebol groups could increase their business concentration continuously by increasing their net assets, which would further increase their ceilings of capital investment. If there is any goal for the measure, it will be the encouragement of public subscription of their stocks which used to be closed to owners or their family members.

Actually, in liquidating the excess capital investment, instead of decreasing their capital investment in other companies, the designated chaebol groups increased their net assets in order to increase the ceilings of capital investment. The amount of excess capital investment dissolved (1,729 billion won) was mainly liquidated by the increase in the internal surplus within the groups (493 billion won, 28.5 %), issue of new shares to be purchased (490 billion won, 28.3 %), and other methods which increased the net assets (93 billion won, 5.4%). Only 37.8 % of the excess capital investment was dissolved by the method of stock disposal, which actually decreased the capital investment in other firms.[20] Therefore, even though the Fair Trade Commission (FTC) has successfully implemented the deconcentration measures in MRFTA, the Commission has not really mitigated the problems of business concentration due to the remote connections between the deconcentration measures and the problems.

III. Theoretical Framework: Review of Current Implementation Literature and a Proposal of a Broader Perspective

During the last two decades, the literature on policy implementation has grown considerably in the United States. Triggered by the perceived failure of President Johnson's Great Society programs, numerous case studies have concluded that policy as implemented is often different from policy as adopted, and they sought to explain the causes of the implementation failure. That is, there is a "missing link" (Hargrove, 1975) between policy-making and policy implementation or, in other words, between politics and administration.

Implementation theorists have identified the most common factors precipitating implementation failure as being: ambiguity or inconsistency of statute or policy goals (McLanahan, 1980), lack of resources or legitimacy needed for effective implementation (Chase, 1979), staff incompetence or organizational incapability (Kelman, 1984), problematic attitude or motivations of staff (Edwards, 1980), context of implementation (Berman and McLaughlin, 1976), outside interference (Mueller, 1984), ineffective communication network (Nakamura and Smallwood, 1980), interorganizational relationship (O'Toole and Montjoy, 1984), and organizational conflicts (Mechling, 1978).

Other theorists have tried to construct theoretical frameworks for policy implementation. Among them, two perspectives cover broader and markedly contrasting arguments: the top-down approach (the forward mapping; Sabatier and Mazmanian, 1979, 1980) and the bottom-up approach (the backward mapping; Lipsky, 1971; Elmore, 1979). Sabatier (1986: 22) summarized the top-down approach in the following way:

> [I]t starts with a policy decision by governmental (often central government) officials

> and then asks: (1) To what extent were the actions of implementing officials and target groups consistent with that policy decision? (2) To what extent were the objectives attained over time?... (3) What were the principal factors affecting policy outputs and impacts?

The bottom-up approach is based on the following notion: in many important cases, policy is made not by policy-makers, but by people who implement it. The bottom-up approach starts with the bottom line of the implementation process, that is, the street level bureaucracy. It identifies the goals, strategies, activities, and contracts of the bureaucracy. It then uses the contracts as a vehicle for developing a network for identifying the local, regional, and national actors involved in the policy implementation.

Despite wide differences between the two approaches, we can identify one similarity: both approaches only deal with the post-decision stages of the implementation process; They do not consider the preceding policy-making process as an important process that has a significant effect on the subsequent implementation process. This kind of theoretical bias is common with the above-mentioned case studies.

However, this bias in conceptualizing policy implementation is not without serious costs. Baier, March, and Saetren (1988: 152) argued this point quite clearly: "an understanding of implementation cannot be divorced from an understanding of the process that generates the policies, and some conspicuous features of policy-making contribute directly to the phenomena we have come to label as problems of implementation."

More specifically, they investigated the relationship between ambiguity in the policy-making process and the implementation problems. Policy ambiguity allows different groups and individuals to support the same policy for different reasons and with different expectations about the consequences of the policy. The degree of policy ambiguity is not a choice variable determined by policy-makers, but an indispensable requisite for achieving any policy outcomes. Nevertheless, this policy ambiguity inevitably gives rise to contradictions, to the loss of control by policy-makers, and to wide discretionary powers of implementing organizations. All of this makes for what we usually call an implementation problem.

Given the existing literature on policy implementation, I would like to argue that in order to achieve a meaningful understanding of policy implementation, we should expand the time horizon of implementation research to include not only the post-decision period but the policy-making period as well. That is, in addition to post-decision factors currently emphasized by the implementation scholars, conspicuous features of the policy-making process could influence policy implementation. Moreover, those factors identifiable in post-decision stages can be more intensively investigated by examining preceding policy formation stages. Therefore, my approach to implementation research should be regarded as an extension of the cur-

rent approach, not as a substitute.

More specifically, I will propose two steps in examining performance biases of Korean antitrust agencies. In the first step, according to the current implementation literature reviewed above, I will propose five hypotheses which would explain the implementation biases of the antitrust system in Korea: statutory problems; lack of resources; biased staff attitudes, motivations, and norms; bureaucratic inexperience and/or incapability; and the policy environment of the antitrust system. Then, using my interview data and the analysis of other collected documents, I will evaluate each of these hypotheses. In the second step, in order to connect the policy-making process and the subsequent implementation process, I will investigate whether those factors confirmed in the first step could be attributed to some conspicuous features in the enactment process of MRFTA.

IV. Sources of Performance Biases: Searching for Missing Links

1. Statutory Problems

The first hypothesis for explaining the performance biases of FTC is that because MRFTA has insufficient or ambiguous mandatory provisions, FTC could not faithfully implement structural enforcement.

This hypothesis receives a mixed evaluation. During the period of 1981 through 1992, among 2,306 total merger cases reported to FTC, the major type of business acquisition in Korea was conglomerate business combination (1,240 cases, 55.8 percent), compared with horizontal (614 cases, 26.6 percent) and vertical (452 cases, 19. 6 percent) ones. However, the conglomerate mergers have been out of the scope of the MRFTA regulations. In this regard, the first hypothesis might be effective in explaining biased antitrust enforcement; however, it seems quite doubtful whether one could attribute the problematic enforcement of antitrust policy mostly to this factor.

Several points support our doubt. First, compared with the antitrust acts of the United States,[21] MRFTA addresses relatively clear antitrust goals with specific procedural arrangements. The Presidential Enforcement Decree and FTC's Investigation Manuals[22] provide concrete administrative guidelines for the investigation of and deliberations concerning structural cases. Second, during the same period FTC corrected only two horizontal merger cases among 614 horizontal merger cases reported to FTC. It has never recorded any substantive restrictions on anticompetitive vertical mergers, even though MRFTA provides for such enforcement.

In summary, the performance biases of FTC may be explained partly by the statutory deficiency of conglomerate merger regulations; however, considering the performance of FTC during the last decade, the statutory deficiency could not be a

〈**Table 5**〉 Budget of FTC and EPB: 1985-1993

Unit: Million Won, %

	FTC (A)*	EPB (B)**	A/B(%)
1985	182.4	27,042.0	0.7
1987	246.5	26,860.5	0.9
1989	401.7	44,277.6	0.9
1990	3,404.2***	78,132.1	4.4
1991	1,932.5	77,023.7	2.5
1992	2,788.2	87,928.2	3.2
1993	3,681.2	92,324.4	4.0

Source: ROK Government, *Budget,* each year.

* Personnel expenses (salaries and bonuses) excluded.

** Contingency Budget excluded. The budgets of FY 1992, 1993 include those of the National Statistical Office for the sake of the consistency of time series data.

*** Duc to the establishment of three local offices the FTC's budget jumped temporarily.

major factor for the absence of structural enforcement.

2. Lack of Resources

This hypothesis explains the performance biases of the Korean antitrust system as follows: Because FTC has had limited budget and personnel for effective antitrust enforcement, they could not afford to pursue big, resource-consuming structural cases. Table 5 summarizes the trend of the overall budget size of FTC and EPB in which FTC is located.

As Table 5 shows, the FTC budget comprises a very small portion of the EPB budget. Also, compared with that of the United States,[23] the FTC budget is quite limited. Then, have these limited resources resulted in structural biases in its enforcement? Through my interviews with the bureaucrats in FTC, I found that it is difficult to attribute its performance biases to limited resources. First, unlike the antitrust enforcement in the United States, the enforcement of MRFTA does not have to depend on lengthy, time-consuming judicial procedures. The role of substantive interpretation of MRFTA is placed mainly in FTC, not in courts. Therefore, only a very limited number of cases underwent judicial reviews.

Second, the budget of FTC has continually expanded since its establishment in 1981. The budget of 1993 is almost 20 times as much as that of 1985. FTC also expanded its organization according to its workload. In 1987 FTC added the Trade Practices Division II and the Subcontract Division to its six divisions in response to a considerable increase in cases of unfair trade practices and unfair contractor-subcon-

tractor relationships. In 1990, due to the second amendment of MRFTA, FTC experienced a major reorganization process, enlarging its organizational structure considerably. Three local offices were established in Pusan, Kwangju, and Taejeon. The number of divisions of FTC was increased from 8 to 15, and the number of the employees was also increased from 105 to 221 persons. Further, in 1992, in accordance with the third amendment of MRFTA, the investigation bureau, composed of three divisions, was added, and another local office was established in Taegu. Consequently, the number of employees of FTC increased from 221 to 265 persons.

Third, in Korea, every budget proposal is reviewed by the Office of Budget within EPB. FTC, therefore, is in a more or less advantageous position in negotiating with the Office of Budget about its budget increases since the two agencies are located within the same ministry—EPB. Staff members of both agencies have been interchanged through EPB's personnel transfer arrangement. Moreover, they share the same hierarchical control by the minister of EPB (economic Deputy Prime Minister, DPM). Considering these facts, the Office of Budget might not easily ignore FTC's budget increase, if FTC's proposal has enough justifications or if it has already earned DPM's commitment.

3. Biased Staff Attitudes, Motivations, and Norms

This hypothesis takes two different forms: First, because the staff of FTC have strong, prosecution-oriented norms (that is, they value prosecution experience, or they think the "success" of FTC or their own careers depends on the number of cases they prosecute), FTC has emphasized small, easily prosecuted conduct cases. Second, because the staff of FTC have interests in future employment in related industries after their service in FTC, they have problems in investigating and prosecuting big structural cases that would work against the interests of their future employers.

Katzman (1980) attributed the case-selection bias of the Federal Trade Commission of the United States to the organizational maintenance objective of the director of Bureau of Competition and to the career goals of staff attorneys:

> Structural matters and industry wide cases threaten the morale of staff attorneys ... For staff attorneys who perceive that they will not achieve their career goals (usually a job in a prestigious law firm) unless they gain courtroom experience, such cases are the sources of much unhappiness. In an attempt to accommodate the staff attorneys, bureau executives make a conscious effort to assign them not only to industry wide cases but also to smaller matters which might very well reach the trial stage within a relatively brief period of time.... The bureau director, regardless of his preference for the mammoth structural case... will approve the opening of a number of easily prosecuted matters, which may have little value to the customer in an effort to satisfy the

staff's perceived needs.[24]

In Korea, however, because most of FTC's staff are career bureaucrats, they do not seem to cherish trial experience as the staff attorneys in the Federal Trade Commission in the United States do. The prime career interest of the staff in FTC is "promotion" within FTC or EPB. Because most bureaucrats within EPB compete for a limited number of higher positions, the promotion competition is extremely severe.

Then, has the promotion interest of the staff in FTC led to problematic enforcement of structural cases? The answer should depend on what determines a staff member's promotion. Generally, the promotion decision is determined by numerous factors, and favorable recognition by his supervisors may be an important ingredient of the factors. However, favorable recognition by supervisors is not solely dependent on the number of cases investigated and prosecuted by a staff member. Therefore, it would be difficult to assert that staff members' promotion interest has led to the problematic performance of FTC in structural cases.

It seems likely that higher officials, for example, the chairman and commissioners of FTC and the secretary general might prefer a large number of cases dealt with by FTC to a small number, because they may worry about the DPM's and the President's evaluations of the overall performance of FTC. Therefore, they might encourage the staff of FTC to pursue small, conduct cases. However, it seems problematic to attribute the biased case selection decisions entirely to the interests of higher officials, because case initiations have been mainly determined by assistant directors or directors, and the interference of higher officials with these decisions has been quite rare. Moreover, because they are worrying about negative evaluations by the DPM and the President, not about the number of cases itself, higher officials have no reason to reject big structural cases if these cases could bring favorable public recognition of their work.

Given the career goals of the FTC staff, the second hypothesis ("the revolving door hypothesis"—the case-selection of FTC has been influenced by staff members' biased motivations for future employment in regulated industries) is also implausible. In addition to the promotion interests of the staff, because MRFTA is expected to be applied across all the industries, an industry would have a very limited interest in establishing a special relationship with any specific staff member of FTC.

As of March, 1991, there were 45 ex-officials of the Fair Trade Commission (FTC) and the Office of Fair Trade (OFT) who had assumed the position of directorship or above as their previous positions, including four chairmen, four commissioners, three secretary generals (assistant minister for antitrust policy before 1989), 11 director-generals (bureau chiefs), and 23 directors.[25] Among those 45 ex-officials, 19 still remained within EPB, 14 were transferred to other ministries, 6 were transferred to public enterprises (mainly financial institutions such as banks), one was dispatched

to the ruling party, one became a professor at an university, and only 4 ex-officials were employed in private corporations. Among the 4 officials, only 2 found their private jobs soon after their resignation from FTC, while the other 2 got their private positions long after their public service within the government.

4. Bureaucratic Incompetence

This hypothesis asserts that because the staff of FTC have had only limited knowledge and expertise, FTC could not pursue complicated structural cases, nor play an active role in major industrial policy-making.

The hypothesis of bureaucratic incompetence gathers enough support in explaining performance biases of the Korean antitrust system. One economics professor described this point as follows during a interview:

> In enforcing MRFTA, a thorough understanding of the meanings of "restrictions on competition" and "any particular field of trade" is indispensable. That is, you should define "effective competition" and "market" before you apply provisions of MRFTA to a specific case. Nevertheless, I do not think that the Commission has any meaningful definitions for these terms. If you examine FTC's Investigation Manual for Business Combination, you will realize that FTC determines the degree of anticompetitiveness of a certain business merger mainly through the percentage of market shares of an acquiring and an acquired firm. However, if a 50 percent market share is dangerous to effective market competition, should we regard 49 percent as safe?

Presumably, the skills and levels of expertise demanded of a staff bureaucrat depend on the nature of a case. In the simplest conduct cases, a staff member needs to possess only a basic understanding of the provisions of MRFTA. However, in more complex cases such as big structural cases and industry-wide investigations, he should devote most of his time on gathering data on concentration ratio, profitability, barriers to entry, industry structure, and business practices. Moreover, he should be able to connect these data through relevant theoretical frameworks in order to determine whether a case should be prosecuted as an anticompetitive one.

Antitrust and fair trade is still unfamiliar concepts to most of staff members. Only recently have universities in Korea regularly offered courses on industrial organization. Most of the bureaucrats within EPB were not exposed to these concepts in their school years. Moreover, due to the mandatory personnel transfer system of EPB, most of the staff bureaucrats of the Commission have worked for FTC quite a short period (on average about two years). This brevity has worked against their professional qualities as specialists in antitrust enforcement.

The limited skills and expertise required for complicated structural enforcement led FTC to pursue small, conduct-oriented cases. Chung (1985), who served as a non-standing commissioner of FTC, attributed this performance bias of FTC to the

difficulties in recognition and investigation of structural cases:

> In the cases of unfair trade practices, because many interested parties (for examples, competing companies and consumer groups) have reported unfair activities to FTC, it has been relatively easier for FTC to recognize such violations. But in structural cases recognition of possible violations of MRFTA is quite difficult. FTC should initiate its investigatory authority to detect them. Moreover, in order to prosecute the cases successfully FTC should be able to provide the necessary theoretical and legal evidence for the violations. The antitrust agencies in Korea have lacked this kind of capability.[26]

The bureaucratic incompetence also made FTC conceive of economic concentration more as business concentration and less as industrial concentration. Industrial concentration, mainly induced by large-scale horizontal business mergers, presupposes corrective measures based on comprehensive knowledge of industrial organization (for examples, divestiture order against a monopoly corporation. prohibition of anticompetitive business mergers), with which the staff of FTC are not comfortable. With insufficient economic knowledge for substantive antitrust enforcement against the problems of industrial concentration, FTC has focused on the problems of business concentration instead.

Moreover, in regulating business concentration, they tend to set up mechanical, quantitative criteria (for examples, market shares, total assets, net assets, etc.) for their antitrust decisions. They seem to be more comfortable with enforcing uniform, quantitative limitations on the growth of chaebol gorups[27] and be less confident in providing substantive judgements for each specific business merger.

Further, the minimal role of FTC in the formation of major industrial policies was due to FTC's limited competence in mobilizing any compelling economic logic for enhancing competition and dereguration. One director of FTC responded as follows during a interview:

> It was not a matter of power but of logic. The FTC could not propose a plausible counter-argument against the logic of the Ministry of Commerce and Industry and Ministry of Finance which argued for direct government interventions for industrial rationalization.

5. The Policy Environment of the Antitrust System

This hypothesis asserts that an unfavorable policy environment of the Korean antitrust system has resulted in the absence of structural enforcement, the minimal role of FTC in major industrial policy-making, and the biased conception of economic concentration. The concept of a policy environment, however, is a very complicated one. Numerous environmental factors could determine the behavior of a govern-

ment agency. In this paper, we will confine the environmental factors to outsiers' expectations and perceptions toward the roles and status of FTC, policy legacy of governmental decision-making, the economic Deputy Prime Minister, and the President. We will investigate how these environmental factors have influenced the performance of FTC.

An agency acts as it is expected to act by its environment. Even though the agency might behave differently, the environment mainly interpret the behavior through its established expectations toward the agency. An agency's roles will be defined and interpreted according to the image of the agency perceived by outsiders. In these regards, FTC has been in a disadvantaged position in enforcing big, structural matters. One ex-director of FTC put the point this way:

> During my stay in FTC I frequently thought that there was something wrong with the abbreviated title of MRFTA which we use on daily basis. We usually call it the "Fair Trade Act," not the full title, the "Monopoly Regulation and Fair Trade Act." We could find the full title of the law only in formal documents. Even though it looks like a trivial thing, it really is not. By continually calling the law the "Fair Trade Act" the monopoly regulation part of the law has been separated from the enforcement of FTC. People outside FTC usually think our agency as one which is only responsible for prohibitions of unfair trade practices. They might be surprised if they realize that we have other responsibilities such as monopoly regulation and the prohibition of anticompetitive mergers. We should have used, as the abbreviated title, the "Monopoly Regulation Act" or the "Competition Promotion Act" instead of the "Fair Trade Act."

The minimal role of FTC in major industrial policy-making in 1980's was the result of a policy legacy of the 1960s and 1970s when the government strongly favored direct intervention in the private sector. Most bureaucrats within or outside EPB still think and behave according to the frame of references established in that period when they started their government careers. Even though they might agree on the idea of monopoly regulation and fair trade, they are not ready to make important decisions according to its principles. One bureau chief of the Commission argued:

> Most people would agree with the idea of monopoly regulation and fair trade when things go smoothly. However, if there happen to be imminent policy matters, nobody seems to put his first priority on the idea.

The minister of EPB, who is the economic Deputy Prime Minister (DPM) of the Korean government, is the chairman of many important councils.[28] He is the President's top economic advisor, the principal government spokesman on economic policies, and the economic policy team leader. Bureaus and offices of EPB have heavily relied on the DPM's formal authority in influencing other ministries' decision-making processes.

However, because the DPM's main responsibility has been the overall coordination

of economic policies of the Korean government, antitrust enforcement itself cannot be a major policy issue for him. Instead, he has been more concerned about macro economic issues—monetary and fiscal policies, major industrial measures, trade imbalance, inflation, unemployment, and "chaebol problems." Antitrust enforcement could be his major concern only if he realizes that it has a clear relevance to his major policy concerns.

The low policy priority of DPM on the antitrust and fair trade policy has caused the performance biases of FTC. Because FTC has been under the direct or indirect control of DPM, he has influenced the decisions of FTC. Given the strong promotion motivation of the staff of FTC noted earlier in this section, the DPM's policy concerns may be in some cases more decisive criteria for staff decisions than the provisions of MRFTA. If a DPM is strongly motivated toward major industrial rationalization measures that are anticompetitive in nature, FTC may be obliged to adjust its decisions to the DPM's policy priority. Also, DPM's concern about the "chaebol problems" has structured the roles of FTC to attack business concentration (wealth concentration) problems, not industrial concentration (market concentration) problems.

One might think that FTC has been powerless, compared with other government agencies, given the fact that it could not successively intervene with other agencies' policy-making processes. Yet, the conjecture cannot be supported, considering President Chun's unusual attention to the performance of FTC. During my interviews, many interviewees recalled that President Chun had strongly supported FTC during his term of presidency. As the President who supported the enactment of MRFTA in 1980, Chun showed deep concern for the implementation of the antitrust act.

One might then propose the following questions: Given the strong support by the President, why did FTC fail to intervene with major industrial policy formulations? And given his firm commitment to antitrust and fair trade, why did Chun approve diverse anticompetitive industrial policies? We could find an answer for these questions from the issues of antitrust and fair trade in which the President had interests. One former assistant director of FTC responded:

> The President's interests in antitrust enforcement were mainly centered on FTC's active prohibitions of large corporations' unfair trade practices. His favorite antitrust topic was prohibition of unfair contractor-subcontractor relationships.

Chun seemed to conceive MRFTA as a vehicle for "just society," his political catchphrase for the Fifth Republic. Even though he was interested in conduct enforcement of MRFTA, that is, prohibitions of unfair practices of large corporations for the welfare of small and medium-sized companies, he did not seem to understand the other side of antitrust enforcement. Therefore, even though there was strong presidential support, it was mainly confined to the prosecutions of small, conduct-oriented cases, and extended neither to structural enforcement, nor to arena of the major

industrial policy-making.

V. Policy-Making Process as a Source of Implementation Biases: Searching for Another Missing Link

The previous section has attributed the performance biases of the Korean antitrust system mainly to the limited bureaucratic expertise and skills required for complex structural enforcement and to the biased perceptions and expectations, inherent in policy environment, about the roles of FTC. This section will investigate whether these factors for biased performance can be connected with some conspicuous features of the preceding enactment process of MRFTA.

A detailed investigation about the enactment process would require a lengthy discussion.[29] Due to the space limit, this paper will only summarize the characteristic features of the enactment process.

In 1980, MRFTA was enacted by the combination of the emergence of new military leadership, headed by General Chun, and a few reform-minded bureaucrats within EPB. The enactment of MRFTA was not a direct response to the problems of market concentration and unfair trade practices, because it is very difficult to find enough evidence that the problems deteriorated worse than before in 1980. The enactment could be more properly explained by the simultaneity of the idea of antitrust policy sponsored by a few reform-minded bureaucrats within EPB and the political needs of the new military leadership, which was looking for certain reforms to signal his administration's legitimacy, capacity for effective governance, and good will toward the general public.

Wagner (1987: 471) began his paper on the Korean antitrust experience with the observation that "in 1980 Korea became a somewhat surprising addition to the antitrust family of nations." As he implied, the enactment process of MRFTA revealed little consensus among interested parties, including career bureaucrats within the economic ministries, industry groups, consumer groups, and scholarly groups. Even though some of them participated in the process, their decisions were confined to detailed contents of the law, not to the existence of the law. The enactment decision was monopolized by a very small segment of the Korean society, that is, by the new military leadership and by a few reform-minded EPB bureaucrats.

The draft of MRFTA was prepared by a few bureaucrats within EPB. During the drafting process, they relied heavily on antitrust acts of West Germany and Japan. Many provisions were adapted to fit the Korean context.[30] A comparison of the contents of MRFTA with those of the West German and Japanese antitrust laws indicates that the drafters of MRFTA owed the main structure of MRFTA to the West German and Japanese legislations. Without enough knowledge about industrial organization, it is doubtful that the drafters of MRFTA appreciated the economic consequences of

antitrust enforcement. Even though they drafted the law, they did not seem to be equipped with the economic knowledge required for effective structural enforcement.

Therefore, three conspicuous features of the enactment of MRFTA can be summarized as follows: (1) The enactment could be largely attributed to a temporal coupling of the emergence of the new military leadership with a small number of bureaucrats during the severe political turbulence in Korea; (2) therefore, the enactment was not based on a distinct consensus among interested parties; (3) the drafters of MRFTA relied heavily on foreign antitrust acts without enough relevant knowledge required for effective enforcement.

The factors supported in the previous section—bureaucratic incompetence and the biased perceptions and expectations of outsiders about the roles of FTC—could be explained by these three conspicuous features appearing in the preceding enactment process.

First, the biased perceptions and expectations toward the roles of FTC could be attributed to the first and the second features of the policy-making process. Because MRFTA was enacted without enough consensus, the enactment could not guarantee faithful compliances of interested parties. Also, because Korean bureaucrats have long been used to governmental policies that are growth-oriented and government-led, the implementation of MRFTA met resistance and misunderstanding. Prohibition of relevant groups from active participation in the enactment process caused the implementation problems. Without enough participation, the relevant parties did not change their frame of references in governmental decision-making. Even though MRFTA was enacted, the relevant parties have persistently adhered to their old ways of thinking.

Second, the bureaucratic incompetence of FTC could be attributed to the third feature of policy-making process. Because the bureaucrats within EPB drafted MRFTA without the sufficient economic knowledge required for effective structural enforcement, they adoped many uniform, quantitative criteria (gross domestic supply, total assets, market shares, net assests, etc.) for antitrust enforcement. For examples, MRFTA annually designates "market-dominating firms" and "large business groups," which are subject to diverse structural regulations of MRFTA, according to the amount of the gross domestic supply of a firm (50 billion won) and the total assets of a group respectively. FTC has determined the anticompetitiveness of a business merger mainly through the percentage (50%) of market shares of an acquiring and an acquired farms. Further, MRFTA, as a measure against business concentration, prohibits a firm within a designated large business group to invest in other firms exceeding 40% of the net assets of the firm.

The existence of uniform, quantitative criteria had some merits in the early stage of antitrust enforcement: they guaranteed the minimum enforcement. That is, any

antiturst cases which violate the quantitative criteria could be easilty detected, and prohibited. Such uniform, quantitative criteria, however, have precluded necessary substantive considerations about individual antitrust cases. The extensive reliance on the quantitative criteria in antitrust enforcement, coupled with relatively short tenure of the staff at FTC due to the mandatory personnel transfer system of EPB, prohibited the accumulation of bureaucratic expertise and skills required for the prosecution of complicated and delicate structural cases. The deficiency of knowledge of industrial organization led FTC to pursue small, conduct cases where only a casual understanding of antitrust enforcement might suffice. However, this implementation bias of FTC further deteriorated the problem of bureaucratic incompetence.

In summary, in this section, we have shown that the biased perceptions and expectations toward the roles and functions of FTC can be attributed to the absence of consensus among relevant parties during the enactment process of MRFTA. Moreover, we have demonstrated that staff incapability also resulted from uniform and quantitative statutory criteria for the scope and decisions of antitrust enforcement, because these criteria have prevented the staff of FTC from developing and accumulating the capability of substantive considerations of antitrust cases.

VI. Conclusions: Evaluations of Current Reform Proposals

Recently, dissatisfied with the performance of the antitrust system and with the ever-increasing economic concentration by a few chaebol groups, MRFTA and the Korean antitrust agency have received several reform proposals. We can categorize the proposals into two realms:

(1) The inclusion in MRFTA of stronger structural measures against anticompetitive business combinations: the reform proposals suggest the inclusion of regulation of conglomerate mergers and of business divestiture orders against anticompetitive business mergers.

(2) The institutionalization of the independence of FTC from the control of the minister of EPB. The reform proposals also suggest that FTC should be separated from EPB.

Then, would these reform proposals solve the problems of Korean antitrust enforcement, so that FTC would actively prosecute more structural cases and thereby reduce economic concentration in the Korean economy? The answer is negative, because these reform proposals are not based on a thorough understanding of the factors which have contributed to the problematic enforcement of antitrust provisions. Politically, it might have some symbolic meanings to institute stronger antitrust measures and to secure the independence of a regulatory agency. However, it is quite a different matter as to whether these politically meaningful reform pro-

posals could actually solve the performance biases.

The inclusion of the regulation of conglomerate mergers and of business divestiture orders may be a desirable revision, aiming at more sufficient provisions of MRFTA. However, given deficient staff expertise and skills, it would be too optimistic to expect that the inclusion of these provisions alone could improve the performance.

Furthermore, a mere change of the statutory status of FTC would not result in more effective antitrust enforcement. It is not the statutory status of FTC that has caused the problematic implementation. The performance biases of the Korean antitrust system can be attributed mainly to staff incapability and to the skewed perceptions and expectations of environment about the goals and functions of the antitrust system.

Presumably, in the long-run FTC should be separated from EPB, because the EPB's main responsibilities—that is, planning, budgeting, and coordinating—could not be easily reconciled with the implementation-oriented nature of antitrust enforcement. The separation of FTC from EPB, however, will have dual effects. It could prevent unreasonable influence of DPM on FTC's antitrust decision-making. Also, it would increase the tenure of the staff at FTC, which would work for the accumulation of antitrust expertise. However, the separation means that FTC can no longer recruit its staff members from the manpower pool of EPB, generally known to be the top talent in the Korean bureaucracy. Further, due to the separation, FTC can not depend on DPM's authority in influencing other ministries' policy-making process. Therefore, in deciding the new location of FTC, one should emphasize that the mere statutory independence itself might not be so important as whether the location could enable FTC to secure a stable development and accumulation of economic knowledge and antitrust expertise for its staff members and enough understanding and conformity from other relevant economic ministries and from the general public about its antitrust goals and functions.

Notes

1) The structure-conduct-performance approach was originally developed by Bain (1968).
2) Katzman (1980), p. 5.
3) Ibid. p. 27.
4) There are numerous OFT's publications which include the classification. For examples, OFT (1987, 1988A).
5) Article 3 (3) of MRFTA. Those cases include FTC vs. Seoul Miwon Co. & Cheil Sugar Manufacturing Co. (May 18, 1983); FTC vs. Dongsuh Food Co. (October 31, 1984); FTC vs. Daedong Industries Co. (January 23, 1985); FTC vs. Gold Star Co. (May 28, 1986); and FTC vs. Gold Star Electric Wire Co., Daehan Electric Wire Co., Kukje Electric Wire Co., and Korea Electric Wire Association (July 27, 1987).

6) Articles 3, 5, and 6 of MRFTA and Articles 5, 6, 9, and 10 of the Presidential Enforcement Decree.
7) FTC vs. Dongyang Industries Co. (January 13, 1982) and FTC vs. Songwon Industries Co. (December 15, 1982). For a detailed description of the cases, see Wagner (1987), pp. 513-514.
8) The Machine Industry Promotion Act (March 30, 1967), the Shipbuilding Industry Promotion Act (March 30, 1967), the Electronic Industry Promotion Act (November 28, 1969), the Textile Industry Modernization Act (December 28, 1969), the Iron and Steel Industry Promotion Act (January 1, 1970), the Petrochemical Industry Promotion Act (January 1, 1970), and the Nonferrous Metals Refining Industry Act (January 22, 1971).
9) For detailed contents of the consolidation measures, see EPB (1988).
10) Article 26 of the Industrial Development Act.
11) Office of Fair Trade (1986), p. 5.
12) Dougherty (1979), pp. 29-54.
13) For example, a concurrent divestiture proposal by the Federal Trade Commission in 1979. See, ibid.
14) A holding company is a business entity whose main concern is to control the business of other firms through the ownership of shares of the firms.
15) A firm within a designated large business group cannot acquire or own any shares of an affiliated corporation which has already acquired or owns its shares. The criterion of designation of a large business group—the gross sum of its member companies' total assets amounts to 400 billion won—has been changed recently by the third amendment of MRFTA in 1992. In accordance with MRFTA of 1992, the designated large business groups are the 30 largest business groups (chaebol groups) in terms of the total assets of their member companies.
16) A firm within a designated large business group cannot invest in other firms exceeding 40% of net assets of the firm.
17) Under the provisions of MRFTA of 1992, FTC will annually designate the 30 largest business groups in terms of the total assets of member companies. Further, the member companies of these groups will be prohibited from offering excessive guarantees on loans from financial institutions on behalf of other member companies. More specifically, the firms cannot offer guarantees exceeding 200% of the shareholders' equity. As an interim measure for member companies that offer guarantees exceeding the ceiling, the amount of guarantees made by a company as of April 1, 1993 will be regarded as the ceiling until April 1, 1996.
18) Meier (1985), p. 235.
19) Fair Trade Commission (1992B), p. 9, 16.
20) Ibid., p. 13.
21) Those included are the Sherman Act, the Clayton Act, and the Federal Trade Commission Act.
22) For examples, the Investigation Manual for Abuse of Market-Dominating Position, June 5, 1987; the Investigation Manual for Business Combination, September 2, 1981; and the Investigation Manual for the Scope of Holding Companies, April 25, 1987.

23) In FY 1985, the U.S. Antitrust Division had a budget of $44.5 million and 740 employees, and the U.S. Federal Trade Commission had $67 million budget and 1300 employees. See Meier (1985), p. 233.
24) Katzman(1980), p.83.
25) Fair Trade Commission (1991), pp. 524-541.
26) Chung (1985), pp. 258-259.
27) See supra notes 15, 16, and 17.
28) For examples, the Industrial Policy Deliberation Council, the International Economic Policy Council, Economic Ministers' Consultation Meeting and the Economic Ministers' Conference.
29) For the detailed discussions, see Jong-Won Choi (1993).
30) Wagner (1987), p. 473.

References

Baier, Vicki E., James G. March, and Harald Saetren "Implementation and Ambiguity" in *Decisions and Organizations* ed. by James G. March (New York: Basil Blackwell, 1988), 150-165.

Bain, Joe S. *Industrial Organization* (New York: John Wiley & Son, 1968).

Berman, Paul and Milbrey McLaughlin "Implementation of Educational Innovation" *Educational Forum* Vol. 40, 1976, 347-370.

Chase, Gordon "Implementing Human Services Program: How Hard Will It Be?" *Public Policy* Vol. 27, 1979, 385-435.

Choi, Jong-Won "Policy-Making Process in Korea: the Enactment Process of the Monopoly Regulation and Fair Trade Act," in *Korean Public Administration and Policy in Trasition,* eds. by Kwang-Woong Kim and Yong-Duck Jung (Seoul: Jangwon Co.,1993), 121-147.

Chung, Byung-Hyu "A Study on the violation of the Provisions of the Fair Trade Act," *Economic Journal,* Vol. 24, 1985, 243-259 (in Korean).

Dougherty, Jr., Alfred F. "Concentration, Conglomeration, and Economic Democracy: A 'Concurrent Divestiture' Proposal" *Antitrust Law and Economics,* Vol. 1, 1979, 29-54.

Economic Planning Board (EPB) "Industrial Rationalization and the Consolidations of Insolvent Firms," May, 1988 (in Korean).

Edwards, George C., III *Implementing Public Policy* (Washington D.C.: CQ Press, 1980).

Elmore, Richard F. "Backward Mapping: Implementation Research and Policy Decisions" *Political Science Quarterly* Vol. 94, 1979, 601-616.

Fair Trade Commission (FTC) *Fair Trade: 10 Years,* 1991 (in Korean).

FTC "Report on the Cross Capital Investments of the Designated Large Business Groups and the Results of the Liquidation of Excessive Capital Investments," April 1992A (in Korean).

FTC "Analysis of the Capital Investments in Other Firms by the Designated Large Business Groups in 1992," July 1992B (in Korean).

FTC *Annual Report on Fair Trade*, 1993 (in Korean).

Hargrove, Erwin C. *The Missing Link: The Study of Implementation of Social Policy* (Washington D.C.: Urban Institute, 1975).

Katzman, Robert A. *Regulatory Bureaucracy: The Federal Trade Commission and Antitrust*

Policy (Cambridge: MIT Press, 1980).

Kelman, Steven "Using Implementation Literature in Solving Implementation Problems: The Case of Energy Emergency Assistant" *Jurnal of Policy Analysis and Management* Vol. 4, 1984, 75-91.

Lipsky, Michael "Street Level Bureaucracy and the Analysis of Urban Reform" *Urban Affairs Quarterly* Vol. 6, 1971, 391-409.

McLanahan, Sara "Organizational Issues in U.S. Health Policy Implementation: Participation, Discretion, and Accountability" *Journal of Applied Behavioral Science* Vol. 16, 1980, 354-369.

Mechling, Jerry "Analysis and Implementation: Sanction Policies in New York City" *Public Policy* Vol. 26, 1978, 263-284.

Meier, Kenneth J. *Regulation: Politics, Bureaucracy, and Economics,* (New York: St. Martin's Press, 1985).

Mueller, Keith J "Local Implementation of National Policy" *Policy Studies Review* Vol. 4, 1984, 86-98.

Nakamura, Robert T and Frank Smallwood *The Politics of Policy Implementation* (New York: St. Martin's Press, 1980).

Office of Fair Trade (OFT) "Assessment on the Industrial Rationalization Plan," July, 1986 (in Korean).

OFT "Major Contents of the Amendment of MRFTA," May, 1987 (in Korean).

OFT "Implementation of MRFTA and the Future Direction," April, 1988A (in Korean).

OFT "Deconcentration Measures of MRFTA," April, 1988B (in Korean).

O'Tool, Lawrence J., Jr. and Robert S. Montjoy "Interorganizational Policy Implementation: A Theoretical Perspective" *Public Administration Review* Vol. 44, 1984, 491-503.

Sabatier, Paul A. "Top-Down and Bottom-Up Approaches to Implementation Research: a Critical Analysis and Suggested Synthesis" *Journal of Public Policy* Vol. 6, 1986, 21-48.

Sabatier, Paul A. and Daniel Mazmanian "The Conditions of Effective Implementation: A Guide to Accomplishing Policy Objectives" *Policy Analysis* Vol. 5, 1979, 481-504.

Sabatier, Paul A. and Daniel Mazmanian "A Framework of Analysis" *Policy Studies Journal* Vol. 8, 1980, 538-560.

Wagner, Stanley "Antitrust, the Korean Experience 1981-1985" *The Antitrust Bulletin* Vol. 32, 1987, 471-522.