

## 6

# Korea's Chaebol Regulations and the Relationship between Competition and Company Law

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### 6.1 INTRODUCTION

Regulations on chaebol<sup>1</sup> in Korea are cited by comparative corporate lawyers as a rare example of attempts to regulate corporate groups. Most OECD countries do not have similar regulations;<sup>2</sup> in this regard, chaebol regulations are recognised as one of the unique regulations in Korea. A chaebol consists of a number of companies, and of course, corporate law will apply to corporate governance. In Korea, however, chaebol regulations under the competition law have replaced those that existed under corporate law to some extent. Therefore, the set of rules which I am going to analyse in this chapter is a very meaningful example of the interactions between corporate law and competition law. It is clear that the reason for such rules being found almost only in Korea is due to the presence of chaebol, of which there are few equivalent economic entities in other countries. Therefore, before looking into chaebol regulations, it is necessary to understand how chaebol came to exist in Korea and the position they hold in the national economy. This understanding, of course, has not always been consistent, but the minimal agreement reached in the process of reconciling these disagreements between ideas<sup>3</sup> has provided the basis for chaebol regulation and supported the legitimacy of regulation.

In Korea, chaebol regulations began in earnest in 1987. There have been several revisions to the law since then, but the basic framework of the regulation that was first introduced has continued without major changes. This means that the

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<sup>1</sup> In Korea, chaebol means family property in a dictionary sense. However, it is commonly used to refer to a large group of family-controlled companies. The important characteristics of chaebol will be discussed in detail in the next section.

<sup>2</sup> A similar example can only be found in Japan. After World War II, Japan dismantled zaibatsu, which were similar to chaebol. Perhaps in the West, the German Konzernrecht is an interesting similar example.

<sup>3</sup> In general, two positions can be distinguished. One position calls for strengthening of such regulations with a focus on the negative aspects of chaebol. The other position focuses on the positive functions, especially those that contribute to national economic growth and therefore call for regulations to be eased

basic understanding of chaebol is maintained, but several revisions to the regulations suggest that changes have occurred in the perception of chaebol problems and regulatory goals. Thus, the history of the current regulations must be considered in understanding them. This process will reveal issues that have been resolved or remain unresolved so far. These might be the drivers of future regulatory changes.

This article will proceed in the following order. First, the specific significance of chaebol, their impact on the Korean economy, and the practical background of the regulations will be reviewed. Then, a deductive review of regulations on chaebol and the significance and details of the current legal system will be conducted, and the significance of the various disputes that have arisen regarding the existence or content of these regulations will be examined. In addition, an assessment of a series of legal tools related to the improvement of governance will be carried out with regard to the strengthened corporate law. Based on these discussions, this article will conclude by making predictions on the significance of chaebol on the Korean economy in the future and reviewing the direction of the ongoing discussions on improving the relevant regulations.

## 6.2 SIGNIFICANCE AND EVALUATION OF CHAEBOL

### 6.2.1 *Economic Development and the Rise of the Chaebol*

The emergence of chaebol in Korea is in line with the rapid development of the economy. The formation of initial capital is important for economic development in underdeveloped countries, and this requires the establishment of an investment security and investment inducement system.<sup>4</sup> In Korea, this process was carried out in earnest by the government after the Korean War, where the Korean government fostered investment directly by direct government investments. In the process, the economic resources generated by foreign free or paid financial support were concentrated on a small number of companies actively engaged in the economic development program. This government support provided these companies with an opportunity to grow into chaebol.

The government's leading role in economic development was embodied in a five-year economic development plan that began in 1962. In particular, the five-year plan that was carried out from the first to fourth plan prioritised economic growth.<sup>5</sup> In accordance with this plan, the government carried out specific allocations of resources. For example, the first five-year plan contained a preferential allocation of funding for the light industry, the second plan for heavy industry, and

<sup>4</sup> M Levy Jr, 'Some Social Obstacles to Capital Formation in Underdeveloped Areas' in *Capital Formation and Economic Growth* (Princeton University Press 1955) 469–479.

<sup>5</sup> See T Park, *원형과 변용: 한국 경제개발계획의 기원* (*Original Form and Transformation: Origin of the Korea Economic Development Program*) (SNU Press 2007).

the third plan for the chemical industry. In accordance with these plans, funding was given to specific operators in the field. In this process, Hirschman's unbalanced growth theory<sup>6</sup> became the theoretical basis for economic policy. The performance of leading industries, which had been subject to intensive support under this policy, expanded to related front and rear industries, just as the development of the chemical industry has led to the development of the textile industry ahead and the refinery industry behind. It eventually led to the growth of the entire national economy. In terms of economic development, these strategic choices and practices certainly had a positive effect. Yet, the focused allocation of resources to a small number of industry players also had negative effects such as introducing inequality in the economic system. The emergence of chaebol is a symbolic representation of negative effects. Chaebol has been a key driver of the government's development policy, and at the same time, the biggest beneficiary of growth. In this regard, the analysis that 'the Korean government has hardly put a brake on the accumulation of family property as long as it is reinvested in production activities deemed by planners to be high in priority',<sup>7</sup> provides a proper understanding of the relationship between the government and chaebol at this time. The family underlying the chaebol was an advantageous way of accumulating capital as it served as a powerful means to avoid capital leaks in a culture where it is hard to expect a member of the family to pursue his own interests at the expense of the interests of the whole family. Also, the government did not impose any real restrictions on the expansion of chaebol as long as they followed the government's development program, which resulted in the size of chaebols growing in lockstep with the rapid growth of the national economy.

There has been a fundamental change in the government's economic policies since the 1980s. By that time, the size of the economy had grown too much to be run by the government's programs. Similarly, the pursuit of other values such as resolving inequality problems in addition to economic development has emerged as an unavoidable social agenda, shifting the government-led economic management style to one based on private initiatives. Symbolising this change was the Monopoly Regulation Act that was enacted in 1980, which was the first legislation to institutionalise competition policies in Korea. In this new environment, where private sector autonomy is expanded and market functions strengthened, chaebol achieved explosive growth. This trend continued until the 1997 foreign exchange crisis. This crisis in late 1997 resulted in a fundamental change in the previous industrial structure. Above all, it was an opportunity to put the brakes on business behaviour and the chaebols' unconditional expansions; since then, there have been structural changes focused on high-value-added industries. But this change did not lead to a

<sup>6</sup> The unbalanced growth theory that the Korean government followed was close to Hirschman's model. See A Hirschman, *The Strategy of Economic Development* (Yale University Press 1965) 62.

<sup>7</sup> M Kim and others, *한국 경제 사회의 근대화 (Modernization of Korean Economy and Society)* (Korea Development Institute 1981) 44.

change in the industrial structure, where chaebol plays a central role in the entire industry. As such, the trend of chaebol leading the industry as a whole has been maintained. But the gap between chaebols is widening and the influence of the top chaebol is increasing. This development may continue depending on the changes in the industry and the extent to which the chaebols respond.<sup>8</sup>

## 6.2.2 Characteristics and Definitions of Chaebol

### 6.2.2.1 Characteristics in Finance

As mentioned earlier, in Korea, chaebol has grown as the biggest beneficiaries of state-led economic development. The government allocated limited resources to a small number of entities that responded to its economic development strategy, thereby pursuing efficient and sustained economic development. This specific allocation of resources carried out by the government was mainly done by means of financial support. The government also paid attention to the establishment of an institutional basis to ensure that the process was carried out efficiently. Under the Act on Temporary Measures for Financial Institutions enacted in June 1961 and the Act on the Handling of Illegal Property Accumulation enacted in October of the same year, the voting rights of bank shares held by major shareholders were restricted or recovered.<sup>9</sup> The government thereby strengthened its control over general banks, and the revision of the Korea Bank Act in 1962 strengthened the government's authority to intervene in the Bank of Korea.<sup>10</sup> On this institutional basis, the government took the initiative in implementing growth-oriented financial policies such as follows: 1) allocation of foreign loans, the main source of financing since the early 1960s; 2) financial support in the process of clearing up insolvent companies, which was implemented several times from the late 1960s to the mid to-late 1980s; 3) financial support to foster general trading companies for the purpose of expanding exports in the 1970s, and 4) financial support during the consolidation of the heavy and chemical industry in the late 1970s and early 1980s.<sup>11</sup> Through such financial support, the business sectors of chaebol expanded to include new industries and

<sup>8</sup> As of 2020, the Samsung Group (425 trillion Won), the largest among large business groups designated by the Fair Trade Commission, had 83 times the total assets of the smallest Samyang Group (5 trillion Won).

<sup>9</sup> Control over banks was represented by Samsung Group, which actively took over the sale of government-owned bank shares in 1957, after which the Samsung Group owned about 50 percent of the shares of four commercial banks. This resulted in the internalization of financial institutions. See H Lee, *한국 재벌형성사 (History of the Formation of Korean Chaebol)* (Bibongchulpansa 1999) 84–85.

<sup>10</sup> D Oh, '통화금융제도의 발전 (Development of Monetary System)', in Byeongjik Ahn (ed), *한국경제성장사 (History of Korean Economic Growth)* (SNU Press 2001) 277.

<sup>11</sup> B So, '한국기업의 소유집중과 경제 효율성' (Concentration of Ownership and Economic Efficiency of Korean Companies), in *한국의 대기업: 누가 소유하며 어떻게 지배되는가 (Korea's Big Enterprise: Who Owns and How it Is Controlled)* (POSCO MRI 1995) 59.

markets. The support focused on light industries in the 1960s and heavy industries<sup>12</sup> in the 1970s served as a catalyst for chaebol entry into these fields. In other words, the government's economic development policy was implemented mainly by providing financial support to leading sectors, and the economic entities that received resources entered various industries and expanded the scope of their business, which resulted in the formation of an industrial structure based on chaebol.<sup>13</sup>

The government's financial support for the chaebol, which continued during the economic development process, also had an important impact on the chaebol's capital management style and ownership structure. The financial support for chaebol meant that chaebol financing was biased towards external borrowing rather than equality. There are numerous reasons for this bias. Some of these reasons include tax differences where interest payments on borrowing funds were treated as expenses, while dividends on shares are not,<sup>14</sup> low-interest financial support below-market interest rates, internal funds insufficient to allow for expansion into new industries, and an insufficiently developed capital market.<sup>15</sup> Due to these factors, a financial structure emerged in chaebol management that relied heavily on borrowing funds, resulting in the high debt-to-equity ratio of the companies, one of the main criticisms during the 1997 financial crisis.<sup>16</sup> Furthermore, the practice of relying on borrowing funds is deeply related to the establishment of a generalised ownership structure for chaebol. The fact that borrowing funds have become the main source of funds for the expansion of chaebol means that the expansion process did not affect the existing ownership structure; rather, it increasingly strengthened the ownership structure, a structure dominated by the owners and their families during the chaebol formation period.<sup>17</sup>

<sup>12</sup> Heavy industry is an industry that produces large and heavy products or uses large and heavy equipment and facilities, which usually requires a lot of capital. Light industry means an industry that does not have these characteristics.

<sup>13</sup> See J Jeong, '한국전쟁과 전근대적 계급관계의 해체' (Korean War and Dismantling Pre-Modern Class Relations), in *한국의 대기업: 누가 소유하며 어떻게 지배되는가* (Korea's Big Enterprise: Who Owns and How it Is Controlled) (POSCO MRI 1995) 59.

<sup>14</sup> In particular, regarding the discussion focusing on the fact that interest payments on debts to others are treated as expenses while dividends on equity capital are not, see M Choi, *한국조세의 제문제* (Korea's Taxation Problems) (Josetongramsas 1988) 377.

<sup>15</sup> See So (n 12) 67.

<sup>16</sup> The debt-to-equity ratios of major chaebol that went bankrupt in 1997 are as follows.

	Hanbo	Sammi	Jinro	Kia	Haetae	New Core
asset ranking	14	25	19	8	24	28
debt-to-equity	648%	3,333%	4,836%	522%	669%	1,253%

S, Cho, '경제위기 이후 재벌정책에 대한 평가' (Evaluation of Chaebol Policy After the Economic Crisis), in *21st Century Korean Enterprises' Competitiveness* (SNU's Corporate Competitiveness Research Center 2002) 10.

<sup>17</sup> See O Kwon, *경제법* (Economic Law) (Beopmunsas 2019) 239–240.

## 6.2.2.2 Characteristics in Ownership Governance

In general, chaebols are exclusively controlled by owners and their families. The fact that a chaebol's decision-making authority is wholly vested in the owner and that such control is inherited within the family is the basis for this understanding. It is worth noting, however, that this governance relationship was not built by direct ownership by the owner or his family. For example, the owner and his family owned only 3.3% of the 10 largest chaebols in 2002, and this figure has only changed to 2.5% in 2019.<sup>18</sup> In other words, 100% control is carried out with a small stake. This divergence creates an inconsistency between ownership and control.<sup>19</sup>

Given such small stakes, cross-shareholdings are extremely important as a means of enabling the exclusive control of affiliates by the chaebol owners. Although mutual investment is restricted under the Commercial Act and the Monopoly Regulation Act prohibits cross-shareholding<sup>20</sup> and circular ownership<sup>21</sup> by large enterprise groups, the practice of cross-shareholding between affiliates continues, and this structure provides for exclusive control by chaebol owners with small stakes.<sup>22</sup> The pyramid scheme, which culminates in holding companies or substantial holding companies, is also a factor that enables this dominance.<sup>23</sup>

Furthermore, this ownership structure continues through family succession. The succession itself should not be viewed negatively. It is important to note that the succession of control is not done by normal procedures for the transfer of rights, but in a way that utilises cross-affiliated investments to form a new governance relationship centred on the successor. The succession of Samsung Group, for example, took place in the 1990s in a manner whereby the immediate family of the owner of the group obtained new control over Samsung Everland (an unlisted company), which plays an important role in the group's equity structure.<sup>24</sup>

<sup>18</sup> KFTC, 'Status of Stock Ownership of Enterprise Groups Subject to Disclosure in 2019' (Press Release 5 September 2019) 4.

<sup>19</sup> See O Kwon (n 18) 240.

<sup>20</sup> In this chapter, cross-shareholding means that Company A and Company B own mutual shares.

<sup>21</sup> In this chapter, circular ownership refers to a circular structure in which Company A acquires Company B shares, Company B acquires Company C shares, and Company C acquires Company A shares.

<sup>22</sup> The ratio of shareholdings between affiliates in 59 large enterprise groups in 2019 was 46.7 percent. KFTC, 'Status of Stock Ownership of Enterprise Groups Subject to Disclosure in 2019' (n 19) 3.

<sup>23</sup> Under a pyramid structure built by a chain of shareholdings, in other words a practical holding company method, exclusive control of more than the equity ratio may be possible. See R Morck, D Strangeland, and B Yeung, *Inherited Wealth, Corporate Control and Economic Growth: The Canadian Disease?* (1998) National Bureau of Economic Research, Inc Working Paper 6814, 10–11 [www.nber.org/papers/w6814](http://www.nber.org/papers/w6814) accessed on [24/06/2021].

<sup>24</sup> Lee Jaeyong, the only son of Chairman Lee Kunhee, became the largest shareholder by holding a 31.9 percent stake in Samsung Everland under the voluntary allocation of convertible bonds in 1996, while Samsung Everland held 20.56 percent of the company's shares, giving it substantial control together with Chairman Lee Kunhee, who holds 26 percent of the actual shares in Samsung Life Insurance. For a detailed explanation of this process, see D Lee, '재벌의 반봉건성과 자본주의적 옹호의 허구성' (The Half-Feudalism of Chaebol and The Laxity of Capitalist Advocacy) (2000) 18 *Democratic Laws*

### 6.2.2.3 Characteristics in Organisation and Operation

Given a structure in which the control of the chaebol is exclusively attributed to one head, the organisation and operation of chaebol are carried out in a corresponding manner. Chaebol involves a number of affiliates gathering together to form a group. Each affiliate has an independent decision-making structure as required by Commercial Act, but in practice, the final decision-making authority is vested in the head (owner), and the whole affiliate is operated as an integral part of the single decision-making structure led by the head. This aspect is evident when a chaebol is made up of a holding company system. But even when it is not, they are operated similarly as they operate around a company that is a *de facto* holding company. Of course, the chaebol themselves are making efforts to enhance management efficiency, and one of these efforts is to respect the autonomous management judgment of their affiliates.<sup>25</sup> However, as long as control is wholly attributable to one head (owner), the management independence of each affiliate will be limited.

It also needs to be considered that many chaebols are entering a number of industries and show aspects that can be characterised by the so-called non-relevant diversification. In particular, industries on which the government had focused during the relevant economic development period, such as export replacement industries in the 1960s, heavy and chemical industries in the 1970s, and information and communication industries since the 1990s, have become important milestones in the process of chaebol expansion. As a result of this process, most of the chaebols now make inroads into various industrial sectors, and this ‘non-relevant diversification’ phenomenon is understood as one of the important characteristics of chaebols.<sup>26</sup> Of course, It is also necessary to keep in mind that industrial diversification itself can be a corporate strategy.<sup>27</sup> However, it was hard to avoid problems such as a lack of expertise in a number of industries, excessive and overlapping investments, and

196–199. For a discussion on the unfairness of the purpose of issuance, the unfairness of the process of issuance, and the unfairness of the value of issuance as legal issues with this succession process, see N Kwak, ‘삼성계열사의 통모불공정 주식발행에 대한 소송적 대응: 현황과 과제’ (Litigatory Response to Samsung affiliates’ Unfair Stock Issue: Current Status and Tasks) (2000) 18 *Democratic Laws* 275ff.

<sup>25</sup> Through the Frankfurt Declaration in 1993, the Samsung Group officially declared that it aims to establish an organizational culture of ‘autonomy and creativity.’ See Samsung, *삼성 60년사(Samsung 60 Years)* (Samsung 1998) 220ff.

<sup>26</sup> See B Chung and Y Yang, *한국 재벌부문의 경제분석 (Economic Analysis of Korea’s Chaebol Sector)* (Korea Development Institute 1992) 26. However, the degree of diversification varies from chaebol to chaebol. About this, see Lee (n 10) 156 and W Song and S Lee, *재벌의 사업구조와 경제력 집중 (The Concentration of Chaebol’s Business Structure and Economic Power)* (Nanam 2005) 274 and below. In the end, the expansion of chaebol needs to be understood by combining horizontal and vertical perspectives, and typically, after entering a new industry, vertical expansion centered on the industry in question is organically integrated to complete the Chaebols overall structure.

<sup>27</sup> See S Lee and S Han, ‘한국기업집단의 다변화와 이윤율’ (Diversification and Profit Rate of Korean Enterprise Groups) (1998) 6 *Industrial Organization Research* 55.

worsening financial health of the chaebol due to the transfer of risks between affiliates.<sup>28</sup> Such concerns over excessive diversification have been embodied in policies to strengthen the expertise in industries since the late 1980s and inducing chaebol to engage in the large-scale specialised enterprises that accompanied restructuring after the 1997 financial crisis. Yet such policies are still far from realising their objectives, and the situation continues where affiliates of chaebol are distributed across various industries and also have a dominant position in many markets.<sup>29</sup>

With the affiliates that make up the chaebol distributed throughout various industries and the final decision-making power over them being concentrated in one person, an organisational response to carry out such decisions effectively may be inevitable. If a chaebol establishes a holding company system, the holding company functions as a headquarters and affects subsidiaries or their subsidiaries. On the other hand, if it is not a holding company system, an organisation that can assist the control of chaebol owners may be needed, and it is common for a large-scale secretariat to be set up or a special organisation, such as a restructuring headquarters, to act as a control organisation for all affiliates. Such a unified way of operating the group has created the problem of limiting room for affiliates to manage efficiently and flexibly. It created management inefficiencies that make it difficult for them to respond effectively in the face of intensifying competition. There are also concerns that such organisations generally exist as illegal organisations, with the result of reduced functions for the Board of Directors as the voting bodies of each affiliate based on corporate law.<sup>30</sup>

#### 6.2.2.4 Significance of Chaebol

In light of the characteristics of the chaebol mentioned above, chaebol means a business group consisting of multiple affiliates owned by the owners and their families, and whose control is effectively vested in the owner. Being owned by the owner and his family means that the right to claim the distribution of the remaining property legally belongs to them, but as mentioned earlier, they do not have absolute equity rights in the affiliates, and investments between the affiliates play a decisive

<sup>28</sup> S Cho, '외환위기 이후 재벌구조 변화에 대한 실증분석: 리스크 이전 및 주가수익률 동조화를 중심으로' (Empirical Analysis of Changes in the Structure of Chaebol After the Asian Financial Crisis: Focused on the Transfer of Risks and the Synchronization of Share Price Returns) (Korea Development Institute 2002) 33–34, shows that risk-transfer among chaebol affiliates has not decreased since the 1997 economic crisis. I Hwang, '재벌구조의 특징과 장점, 경영성과에 대한 실증연구' (Empirical Research on the Characteristics and Issues, Management Performance), in *재벌구조의 특징과 쟁점* (*The Characteristics and Issues of the Chaebol Structure*) (Korea Economic Research Institute 2002) 51. In addition, the empirical analysis conducted in the late 90s concluded that related diversification in industry has a higher profit rate than non-relevant diversification, and that excessive diversification reduces gross margin. See Lee and Han (n 28) 67–68.

<sup>29</sup> Cho (n 29) 34.

<sup>30</sup> For chaebol, decision-making is actually decided at the owner's family meeting, not the board of directors of enterprises, and to understand it as the characteristics of Korean chaebol, which operate the modern corporate system in a feudal way, see D Lee (n 25) 192–193.



role in the attribution of total control. Also, the fact that a chaebol is a group of multiple companies, not a single company, that they enter various industries, and that they are dominant in most industries are commonalities shared by most chaebols. It is also important to note that the operation of business groups is carried out in a unified and single manner based on control wholly attributable to the head and that organisational arrangements arise for this purpose.

### 6.2.3 *The Assessment of Chaebol in the Korean Economy*

Chaebols are becoming economic entities that embody the concentration of economic power at each level of market concentration, general concentration, and ownership concentration. The degree of general concentration is understood as the share of a particular enterprise or enterprise group in the entire industry or entire national economy.<sup>31</sup> As an indicator of this share, the total amount of capital, total assets, employment, etc., from a stock perspective and sales, net income, output, and value added from a flow perspective are utilised. The ownership concentration, beyond the perspective of wealth inequality or equity, relates to the ownership structure of enterprises, the most important production organisation in a capitalist economy that recognises private ownership of means of production. In other words, the concentration of ownership as a concentration of economic power means that the enterprise's issued shares or remaining claims are concentrated in a small number of individuals or their families,<sup>32</sup> and this makes it a key issue for the allocation and utilisation of economic resources through the entity to individuals. Therefore, this problem is not separated from the problem in which the control of a company or a business group is wholly attributed to an individual.<sup>33</sup>

In Korea, chaebol exists as entities that embody the concentration of economic power that is understood from various perspectives. First of all, with regard to market concentration, according to a survey in 2015, the industry concentration was 49.2% when the affiliates of the conglomerate were included in the top three companies in accordance with the CR<sub>3</sub> criteria.<sup>34</sup> If the affiliates were not in the industry, the industry concentration was 45.2%. And the figure was 28.9% when the affiliates are entering the industry but are not included in the top three.<sup>35</sup> The figures suggest that chaebol affiliates' entry into an industry and increased market share are correlated with industrial concentration. It is also worth noting that, when looking at the cases of abuse of a market-dominant status, most of the abuses are found to be caused by

<sup>31</sup> See I Hwang, *경제력집중, 한국적 인식의 문제점 (Concentration of Economic Power, Problems of Korean Recognition)* (Korea Economic Research Institute 1997) 25.

<sup>32</sup> *Ibid.* at 26.

<sup>33</sup> *Ibid.* at 27.

<sup>34</sup> This means the sum of the market shares of companies within the top three.

<sup>35</sup> See KFTC, 'Announcement of the Results of Market Structure Survey as of 2015' (Press release 27 April 2018) 11.

TABLE 6.1 *Change of total assets and GDP (2010–2019)*

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total assets	703 (581)	816 (706)	940 (798)	1,018 (886)	1,074 (970)	1,122 (936)	1,166 (945)	1,213 (1,011)	1,298 (1,107)	1,352 (1,167)
GDP	1,323 (1,094)	1,389 (1,202)	1,440 (1,223)	1,501 (1,306)	1,563 (1,411)	1,658 (1,383)	1,741 (1,411)	1,836 (1,531)	1,898 (1,619)	1,919 (1,657)

Units: trillion Won(billion US\$)

affiliates belonging to chaebol.<sup>36</sup> It is also noteworthy that the current Monopoly Regulation Act targets business groups with assets of more than 10 trillion won in affiliates for special regulations. In 2020, 27 business groups controlled by the owner that can be classified as chaebol have an average of 48.2 affiliates. This situation suggests that concentration in individual markets in Korea is closely related to chaebol. The general concentration by chaebol is also increasing in Korea. Table 6.1 shows how general concentration by the top 10 chaebols has been developing in Korea since 2010 through changes in total assets and GDP.

The total asset growth rate of the 10 largest chaebols during the period was 92.3%, well above the GDP growth rate of 45.0%. Also, compared with GDP, the total assets of the top 10 chaebols rose from 53.1% in 2010 to 70.5% in 2019. These figures indicate that chaebols account for a large portion of the national economy and that this trend is also deepening, increasing the general concentration of chaebol. It is hard to find a case in which chaebols have not shown complete control by their owners in terms of ownership concentration. However, as noted earlier, this control is not achieved by an absolute interest. As of 2019, only 0.9% of the top 10 chaebols hold stakes in affiliates held by their heads, while only 2.4% of them have such stakes held by family members. However, 54.3% of the shares are held between affiliates by cross or circular shareholdings. Such an equity relationship allows the owner to exercise 100% control over the entire group. Therefore, the issue of ownership concentration could be replaced by the issue of having full control of a chaebol with a small stake and whether there is a mechanism in place to check them internally and externally to ensure managerial efficiency.

To sum up the above analysis, chaebols are becoming economic entities that embody the concentration of economic power at each level of market concentration, general concentration, and ownership concentration. It is also important to note that these three types of economic concentration define the complex nature of chaebol. In other words, market concentration can be intensified by large business groups,<sup>37</sup>

<sup>36</sup> Of the cases (69 cases) of abuse of market dominant position regulated by Korea Fair Trade Commission since 2000, more than 70% were cases (50 cases) of abuse by affiliates of chaebol.

<sup>37</sup> The expansion of chaebol's general concentration may affect their affiliates' market concentration in individual markets by brand effects (image utilization effects), internal financial effects, and

general concentration can be increased by strengthening the dominant position maintained in a large number of markets, and problems can be aggravated by the fact that ownership concentration is used to control large business groups.<sup>38</sup> As a result of this complex nature, attempts of regulating to address one type of economic concentration will inevitably only have limited effect.

It is hard to deny that chaebol has made positive contributions to economic development in Korea.<sup>39</sup> However, chaebol has also had negative consequences, and in particular, the concentration of economic power within the chaebol. Chaebol's concentration of economic power accounts for a high portion of the national economy, and this concentration continues to grow, negatively affecting individual markets. In addition, the phenomenon of almost absolute control being concentrated on the owner creates centralisation. The overall characteristics of this pattern of economic concentration are also concerning. Chaebols are also seen negatively from non-economic perspectives. Economic power concentrated on chaebol is cited as one of the main factors of social instability, as it is a source of deepening wealth inequality and polarisation problems; furthermore, the concentration of economic resources on a small number of individuals could undermine the foundation of democracy.<sup>40</sup> While the importance of such problems and the discussion of these issues should not be denied, for the order and operation of the economy, the core of the problem of chaebol is the concentration of economic power leading to a disruption to the market economy, which should be maintained as mandated by the constitution.<sup>41</sup> The general concentration of chaebol can have a negative impact on competition in individual markets. In addition, the concentration of decision-making authority during the course of the chaebol's operations can lead to inefficient resource allocation, which is recognised as a concrete example of this problem.

### 6.3 REGULATION OF CHAEBOL

#### 6.3.1 *Significance and Contents of the First Chaebol Regulation*

The first legislation aimed directly at regulating chaebols was made by the First Amendment of the Monopoly Regulation Act in 1986, and it is necessary to examine the meaning of the legislation itself. First of all, it is highly significant that the

aggregation of resources. See D Cho, *한국재벌 (Korean Chaebol)* (Maeil Business Newspaper Publisher 1997) 18–28.

<sup>38</sup> In this regard, the three types of economic concentration do not always evolve in the same direction, and the diversification of large enterprise groups increases general concentration but reduces market concentration, see Hwang (n 29) 26.

<sup>39</sup> Initial capital accumulation, active performance of R&D, utilization of economic resources including human resources, and leading investment in high value-added industries promoted by competition between chaebols are mentioned.

<sup>40</sup> Regarding the correlation between the expansion of political democracy and the strengthening of competition policies, see D Gerber, *Law and Competition in Twentieth Century Europe* (Oxford University Press 2001) 16.

<sup>41</sup> N Seong, *헌법학 (Constitutional Law)* (Beopmunsa 2013) 271–272.

legislation was made through a revision of the Monopoly Regulation Act, Korea's competition law. This demonstrated the legislative determination to deal with the chaebol issue from the perspective of competition policy. It is also important to note that while institutionalising chaebol regulations, the government proposed suppression of the concentration of economic power as the title of the regulation clause. This legislation reflects the perception that the essence of the chaebol problem is economic concentration. Finally, it should be noted that the Japanese Anti-Monopoly Act had a significant impact on legislation at that time. Japan's Anti-Monopoly Act was enacted as part of its economic democratisation policy after World War II and the intent to avoid an economic operation method centred on zaibatsu (chaebol),<sup>42</sup> which was the basis of the previous wartime economic operation.<sup>43</sup> The Allied Military Government dismantled the existing zaibatsu and later imposed a ban on holding companies in Anti-Monopoly Act enacted in 1947 to prevent the formation of new zaibatsu.<sup>44</sup> In addition, as companies belonging to disbanded zaibatsus gradually formed keiretsus (affiliates), reflecting concerns that such a keiretsu could lead to market rigidity, the Anti-Monopoly Act was amended in 1977 to introduce regulations limiting the total amount of shares that can be held in companies belonging to the same keiretsu.<sup>45</sup> In the Korean economy, chaebol held an important position similar to that of zaibatsu in Japan before World War II, and for this reason, the Japanese Anti-Monopoly Act became a strong legislative model for the revision of the Monopoly Regulation Act.

According to the original regulations, a regulation banning holding companies was introduced, and a system was enacted to regulate the equity investments of large enterprise groups, which organised chaebols under a legal conception. Specifically, Article 7-2 of the revised 1986 Act prohibited the establishment of holding companies, and Article 7-3 stipulated the prohibition of mutual investment, Article 7-4 limited the total amount of investment, and Article 7-5 restricted the voting rights of insurance and financial companies belonging to large enterprise groups.

The holding company was the method used to form a zaibatsu before World War II, and therefore the Japanese Anti-Monopoly Act limited the powerful means of forming a zaibatsu through regulations prohibiting such. Although chaebols were not utilising a holding company structure at that time, concerns that a holding company system could be an easy way to control a large number of companies

<sup>42</sup> While Japan's zaibatsu, which existed before World War II, had similar characteristics to Korea's chaebol in that they were composed of multiple affiliates run by the owner family, they were distinguished from Korea's chaebol in that they were composed of holding companies, had banks inside the group, and played a key role in the wartime economy.

<sup>43</sup> See E Hadley, *Antitrust in Japan* (Princeton University Press 1970) 496.

<sup>44</sup> See S Kisugi, '日本の競争政策の歴史的概観(1): 戦前から1977年改正まで' (A Historical Overview of Competition Policy in Japan: From Pre-War to Revision 1977) in Akira Gotou (ed), *Competition Policy in Japan* (Tokyo University Press 1998) 20–23.

<sup>45</sup> See A Gotou, '一般集中關聯およびその制定, 制定後の経緯' (The Progress of General Concentration and Its Enactment and Post-Enactment), in A Gotou (ed), *Competition Policy in Japan* (Tokyo University Press 1998) 235.

with small capital, given Japan's regulatory cases, led to the introduction of a regulation banning holding companies in the Monopoly Regulation Act as a precautionary measure.

It is also noteworthy that legislation regarding existing chaebols regulated their equity investments instead of directly demanding structural changes such as dismantling enterprise groups. At that time, chaebols were generally forming enterprise groups through circular shareholding structures, so the regulation on investment limited the formation or maintenance of enterprise groups. In order to clarify the chaebol subject to regulation, a large group of enterprises was designated among chaebols when certain legal scale and structural requirements were met,<sup>46</sup> and a regulatory framework was established. First, cross(mutual)-shareholdings between affiliates were prohibited in principle. However, since these regulations had limits to regulating circular (not mutual)-shareholdings, to compensate for this regulation were introduced as a second prohibition that uniformly limited the total amount of investments made by affiliates<sup>47</sup> belonging to large enterprise groups. The regulation on the ceiling for total amount of investment was expected to be a regulation that could have a real impact on the structure of the enterprise group that involved such things as circular investment.<sup>48</sup> As a third prohibition, regulations were introduced to limit voting rights of shares of affiliates held by financial and insurance companies belonging to large enterprise groups, which were also aimed at preventing huge amounts of funds being raised from customers and used like private coffers to expand or strengthen their affiliates.

### 6.3.2 *Changes in Holding Company Regulations*

The change from a ban of a holding company to a system that allows them in principle stems from the revision of the Monopoly Regulation Act in February 1999. Originally, the ban was justified based on concerns that holding companies could be a means of forming a large enterprise group by controlling a large number of companies with very small capital. However, this perception changed and led to a fundamental shift in regulation.

In particular, the revision of the Japanese Anti-Monopoly Act in 1997, which became a legislative model, had a significant impact on changes to regulations on holding companies under the Monopoly Regulation Act. In Japan, it was considered that holding companies are no longer likely to function as a means of forming

<sup>46</sup> According to Art 21 (1) and (2) of the Enforcement Decree of the current Monopoly Regulation Act, large enterprise groups have been dualized into groups of companies subject to mutual investment restrictions or disclosures, and the former has total assets of at least 10 trillion Won, while the latter is based on at least 5 trillion Won.

<sup>47</sup> It means a company controlled by the owner.

<sup>48</sup> See KFTC, *시장경제 창달의 발자취 - 공정거래위원회 20년사 (The Footprint of Market Economy - 20 Years' History of Korea Fair Trade Commission)* (KFTC 2001) 86.

zaibatsu, and that companies need to be given a choice to take advantage of the positive functions of holding companies. The law as was thus changed prohibiting holding companies only when business control was excessively concentrated.<sup>49</sup> This change in Japan led to a reconsideration of holding companies with respect to the Monopoly Regulation Act in Korea. The functional advantages of holding companies due to the separation of ownership and management between companies, and the fact that the holding company system is relatively transparent compared to the existing chaebol structure based on circular investments, were highlighted in the debates around the changes in Korea. Yet, certain restrictions were imposed on holding companies and subsidiaries, reflecting the view that there was still concern that holding companies would become means of concentration of economic power. Article 8–2(1) of the 1999 Amendment prohibited holding liabilities exceeding the amount of net assets (No. 1), holding shares of subsidiaries less than 50/100 (No. 2 30/100 in the case of listed subsidiaries), holding shares for controlling purposes in domestic companies other than subsidiaries (No. 3) and general holding companies having financial and insurance subsidiaries and financial holding companies having general subsidiaries according to the principle of separation of financial and industrial capital (Nos. 4 and 5). In addition, it was in principle prohibited for a subsidiary of a holding company to have a grandchild company under Article 8–2(2). The above-mentioned regulations on holding companies, in particular those under paragraph 1 No. 2 and those on subsidiaries under paragraph 2, are deeply related to attempts to block the possibility of enterprise groups expanding horizontally or vertically.<sup>50</sup> This restriction reflects the legislative intention to address concentration of economic power.

After the changes to the law on holding companies, it was expected that a number of large enterprise groups would introduce a holding company system, and the Korea Fair Trade Commission (hereafter KFTC)'s policy reflected that change. Above all, the enhanced transparency and efficiency of corporate governance of holding companies as compared to the circular structure, typical of chaebol, have become a corner stone for policy formation.<sup>51</sup> Yet, since not many chaebols switched to holding company systems, measures have been sought to facilitate the transition to a holding company. As a result, the revisions to the law continued to ease the restrictions imposed on holding companies. The actions regulated under Article 8–2(1) of the current Monopoly Regulation Act include holding more than twice the total amount of capital, owning shares of a subsidiary less than 40/100 of the

<sup>49</sup> See A Gotou, '一般集中の規制' (The Regulation of General Concentration) in A Gotou (ed), *Competition Policy in Japan* (Tokyo University Press 1998) 238. Meanwhile, with the revision of the Japan Anti-Monopoly Act in 2002, exceptional regulations on holding companies were replaced in a way that regulates excessive business controlling power regardless of company type.

<sup>50</sup> See D Lee, *지주회사 (Holding Company)* (Sechang 2001) 24 and below.

<sup>51</sup> See M Hong, *재벌의 경제력집중 규제 (Regulation of Economic Concentration of Chaebol)* (Kyunginmunwhasa 2006) 175–176.

total number of shares issued by that subsidiary, owning shares of a domestic company that is not an affiliate in excess of 5/100 of the total number of shares issued by that company, or owning shares of domestic affiliates other than subsidiaries. The actions regulated under Article 8-2 (1) of the current Monopoly Regulation Act include holding more than twice the total amount of capital, owning shares of a subsidiary less than 40/100 of the total number of shares issued by that subsidiary, owning shares of a domestic company that is not an affiliate in excess of 5/100 of the total number of shares issued by that company, or owning shares of domestic affiliates other than subsidiaries. These requirements are considerably less stringent than those when imposed when holding companies were first allowed. The number of holding companies increased gradually in response to these eased requirements. After holding companies was allowed in 1999, only seven companies switched to the holding company system by 2000. But this number increased gradually with the deregulation, rising to 173 in 2019. It also appears that 39% of the large business groups have transformed their structure into a holding company-oriented one.

### 6.3.3 *Changes in Cross or Circular Investment Regulations*

The core of the regulations for large business groups is investment regulation, which is also the most controversial part of the process of changing the regulations. The legal prohibition of cross-shareholding was circumvented through indirect(circular) investment. Thus, a regulation on indirect investment relations was made to supplement the ban on mutual investments.

The investment ceiling regulation introduced in the original legislation was aimed at limiting the total investment in affiliates belonging to large business groups to a certain percentage of their net assets. This regulation was criticised as excessive for limiting unconditionally the investment on a formal basis without distinguishing the purpose or content of the investment. Moreover, such strict investment regulations could be a real impediment to the active investment activities of the entity. In addition, the issue of the effectiveness of the system in actually suppressing cross-shareholding was strongly raised.<sup>52</sup> In 2009, the total investment ceiling regulation was finally abolished.

However, after the abolition of the total investment ceiling regulation, the amount of investments between affiliates belonging to large enterprise groups soared significantly. Table 6.2 highlights changes to the equity ratios of the owner, family, and affiliates in the Top 10 large enterprise groups with owners since 2004.

Due to this situation, concerns over chaebol's concentration of economic power arose again, and it served as an opportunity to seek legislative countermeasures. As a result, a regulation banning new circular investments was introduced by the 2014 revision of the Act. While not prohibiting established curricular investments, Article

<sup>52</sup> See M Hong, *경제법론I(Theory of Economic Law I)* (Kyunginmunwhasa 2008) 177-178.

TABLE 6.2 *Equity ratio of owner, family, and affiliate*<sup>53</sup>

	2004 (%)	2006 (%)	2008 (%)	2010 (%)	2012 (%)	2014 (%)	2016 (%)	2018 (%)	2019 (%)
Owner	1.3	1.4	1.1	1.0	0.9	0.9	0.9	0.8	0.9
Family	3.1	3.7	3.2	3.1	2.7	2.8	2.6	2.5	2.4
Affiliate	43.3	46.0	45.6	44.0	52.8	49.5	54.9	55.2	54.3

9–2(2) of the Amended Act, prohibit a company belonging to a large enterprise group from forming or strengthening a new circular investment.

#### 6.3.4 *Other Attempts of Regulation*

The first large enterprise group regulation was based on a ban on the establishment of holding companies and the regulation of investments between affiliates by existing large enterprise groups, but it was questionable whether such a system was sufficient to curb the concentration of economic power by chaebol. Thus, legislative supplementation continued; first was the regulation on debt guarantees, which was introduced by the revision to the law in 1992. The debt guarantees between affiliates could pose financial risks to the entire group and problems with the inefficient allocation of resources. The first inter-affiliates debt guarantee regulation was limited to 200% of capital but was lowered to 100% under the revision in 1996, and the regulation was strengthened by prohibiting debt guarantees entirely after the revision in 1998.

The thought that chaebol problems could be corrected by the market's ability to adjust autonomously also had an important impact on changes to the regulations on large enterprise groups. The legislation reflected the recognition that inefficient governance or management in the capital market or commodity market can be controlled, and that it is important for enterprise groups to provide key information so that these functions can be exercised effectively. Thus, obligations were imposed with regard to disclosure of prior resolutions and key details of the board of directors (as revised Monopoly Regulation Act in December 1999), disclosure of important matters of unlisted companies belonging to large enterprise groups (as revised in December 2004), and disclosure of the status of large business groups (as revised in March 2009).

As a type of unfair trade practices, regulations on unfair support practices also have important implications in relation to curbing the concentration of economic power by chaebol. In the course of running a group of companies, support for uncompetitive affiliates is not only a means of maintaining and expanding the economic

<sup>53</sup> KFTC, 'Status of Stock Ownership of Enterprise Groups Subject to Disclosure in 2019' (11 19)



concentration. At the same time, it can lead to a negative impact on the national economy through the inefficient allocation of resources as a result of such transactions with marginal enterprises. The regulation of unfair support practices introduced through the revision of the Monopoly Regulation Act 1996 was prescribed in a way that regulates unfair trade practices, but as discussed in the legislative process, the substance of the regulation focuses on the inter-affiliate transactions that take place within large enterprise groups.<sup>54</sup> From a competition policy point of view, the significance of regulating unfair support practices can be understood in two ways. First, it is noteworthy that it provided a basis for the control of chaebol's group operations from the perspective of individual markets. Regulating the specific actions of chaebol as unfair trading practices in individual markets may be in line with the structure of competition laws formed to protect competition in individual markets. Second, this approach is meaningful in that it can contribute to curbing economic concentration in terms of general concentration. In addition, the regulation of unfair support practices was carried out by ex-post evaluation of transactions, unlike other economic concentration regulations based on the imposition of ex-ante obligations, which meant that they were outside of the uniform and formal regulatory framework. The regulation of unfair support acts can be said to be a unique type of regulation of the Korean Monopoly Regulation Act that is difficult to find in other countries, so there are difficulties in forming regulatory legal principles for unfair support practices. But to some extent, such principles have been established through the regulatory practices of KFTC and court rulings. The Supreme Court ruled, in relation to the unfairness of such support practices, that:

It is based on whether fair trade is likely to be infringed upon due to the support practice that hinders competition in the relevant market or causes concentration of economic power.<sup>55</sup>

Thus, the Supreme Court presented the effects on competition in individual market and concentration of economic power as a double criterion for determining the unfairness of support practices.

The introduction of these regulations and the composition of legal principles were assessed to be appropriate, but there were certain limitations to the actual regulations. In particular, the law needed strengthening in the case of transactions conducted for the purpose of obtaining profits for individuals with special relationships with affiliates, where measures did not fall under support practices or not meeting the requirements of unfairness. Thus, in 2013, Article 23–2 was introduced under the Monopoly Regulation Act. This article prohibited certain transactions where

<sup>54</sup> According to a 2002 survey, internal transactions accounted for 38.1 percent of the total sales of the top five large enterprise groups. Wongeun Song and Sangho Lee (n 26) 148–149. The 2019 survey showed that the portion of internal transactions in the top 10 large enterprise groups owned was 13.8 percent. See KFTC, 'Status of internal transactions of enterprise groups subject to disclosure in 2019' (Press release 15 October 2019) 1.

<sup>55</sup> Supreme Court, 2001Du7220 12. 3. 2004 (S Kor).

the owner or his family obtains private profits through a transaction in particular by means of the attribution of interests.<sup>56</sup> The significance of the regulation can be viewed positively, but the difficulty of judging unfairness still remains and the question of whether the regulation will be effective has not been resolved.<sup>57</sup>

## 6.4 DIRECTION OF DISCUSSION ON IMPROVING CHAEBOL REGULATIONS

### 6.4.1 *Adequacy of Subject of Regulation*

Under the Monopoly Regulation Act, chaebol regulations were introduced with the aim of curbing them as the concentration of economic power by chaebols intensified. However, the chaebol themselves were not accepted as legal concepts, and as aforesaid, large enterprise groups of a certain size<sup>58</sup> and structure as a group of multiple affiliates were subject to regulation. At the time of legislation, no differentiation took place between the large enterprise groups and economic entities generally perceived as chaebols. Hence, there was no problem with the subjects of this regulation other than pointing out the inadequacy of intentionally avoiding the term chaebol that had negative implications for the public in Korea. Most of the large enterprise groups that were initially designated shared the characteristic elements of chaebol. Absolute control by the owners and their families. Thus, the concept of large enterprise groups of a particular size and the requirement of having multiple companies was not problematic in embracing chaebol as regulatory targets.

However, problems began to materialise when a group of state-owned enterprises or an enterprise group without governance by natural people was designated as a large enterprise group. There was no control by the owner as a natural person in this enterprise group, thus lacking the problem of ownership concentration that was traditionally perceived as a problem of chaebol. This raised the question of whether the regulations formed to target chaebol were not over-inclusive. Discussions on this

<sup>56</sup> Motives for internal transactions, regardless of efficiency, are represented by tunneling and propping, and this regulation is meaningful as a regulation on internal transactions conducted for tunneling motives. See M Baek, 'An Empirical Study on Tunneling Using Internal Transaction Data among Affiliates of Large Enterprise Groups' (PhD thesis, Seoul National University 2019) 21–27.

<sup>57</sup> In addition, efforts to improve the governance structure under the Commercial Act are also meaningful as regulations on chaebol. The outside directors and compliance support personnel as internal control systems were introduced in the commercial law, and the introduction of intensive voting, written voting, and electronic voting systems to protect minority shareholder interests can also be seen as part of improving governance structure. Such a system can be seen as a certain contribution to improving the governance structure of affiliates belonging to conglomerates. However, since the governance problems of chaebol have the dual nature of individual corporate governance and corporate group governance, attempts to improve governance will inevitably have certain limitations under the Commercial Act.

<sup>58</sup> At the time of legislation, relative criteria were adopted by the gross asset ranking (30th), and the 2001 amendment to the Monopoly Regulation Act changed to absolute criteria.

issue led to the conclusion that even enterprise groups without an owner are subject to the regulation because enterprise groups without owners can also cause problems with regard to general concentration. In particular, since the 2000s, the increase in the number of affiliates belonging to enterprise groups without an owner, and the expansion of the total size, have served as a strong basis for supporting this approach.<sup>59</sup>

However, discussions continue regarding the need for differentiated regulation between enterprise groups that still have owners (traditional chaebol) and those that have flagship companies at the centre without personal control. Furthermore, the emergence of new types of large enterprise groups is drawing attention. As the digital economy develops, digital companies of such as Naver, Kakao, Netmarble, and Nexon Group are included in the regulation list because they meet the requirements of large enterprise groups. These enterprise groups, which follow the growth of the IT industry, are emerging as the new large enterprise groups. Yet, there are significant differences between such companies and traditional chaebols in terms of governance and distribution of industries. Specifically, the emerging enterprise groups are characterised by the fact that control over the enterprise group is largely not based on a circular ownership structure, that the business sectors are concentrated in the IT sector and do not show a tendency to diversify non-related sectors, and that their status as platform operators is being strengthened, suggesting the need for change to the regulatory system that was formed with consideration towards traditional chaebol.

#### 6.4.2 *Approach by Type of Enterprise Groups*

The above discussion could be expanded to transform a single regulatory framework into a regulatory framework commensurate with the characterisation of enterprise groups. As mentioned, about 40% of large business groups are switching to holding company systems. Groups with holding company systems differ from groups that have not transitioned in terms of the way of control and structural transparency, and this difference will need to be reflected in regulations.

These discussions also relate to the government's policy of encouraging holding companies. The KFTC focused on transparency in the governance structures of holding company systems and continuously implemented policies to expand holding companies. In the process, a number of rules were eased that initially imposed limits on holding companies being used as means to concentrate economic power, resulting in an increase in the number of enterprise groups that switched to holding companies.<sup>60</sup> Whether such a policy is still valid needs to be discussed, and if it is

<sup>59</sup> Among the large enterprise groups designated for 2019, POSCO, Nonghyup and KT groups were included as ownerless enterprise groups.

<sup>60</sup> The number of holding companies increased from 25 in 2005 to 173 in 2019. In 2019, there were 173 holding companies, 915 subsidiaries, 973 grandchildren and 95 great-grandchildren. And 23 groups of the 59 large enterprise groups switched to holding company structure as of 2019. See KFTC, 'Analysis of Holding Company Status Under Monopoly Regulation Act in 2019' (2019) 2–8.

indeed recognised as valid, additional challenges will be placed on how to adjust the content and level of regulations for holding companies and circular investments.

#### 6.4.3 *Strengthening the Market vis-a-vis Chaebol*

As we saw earlier, regulations on chaebols are aimed at holding companies or large business groups, mainly by demanding a ban on certain activities regarding equity investments. The legitimacy of these regulations arises from the intent to effectively cope with the economic concentration problems caused by chaebol. It is important to keep in mind that it is the task of the Monopoly Regulation Act to address competition problems caused by chaebol in individual markets.

Although one should not deny the importance of regulation on unfair support practices and profit-taking practices of related parties as stipulated in the Monopoly Regulation Act, the effectiveness of these regulations has been questioned. It can be pointed out that it is still not easy to find a reasonable regulatory basis theoretically and practically. The Supreme Court showed that 'unfairness' has two aspects, competition restrictions and economic concentration. But it is not clear what aspects or factors of economic concentration can be considered in the context of unfairness, especially in the case of profit-taking practices of related parties. It will need to be supplemented in the future. Such improvements to legal principles will not only have a positive effect on strengthening the enforcement of regulators but will also result in regulatory clarity for market participants. Furthermore, this will make a meaningful contribution to increasing the market's autonomous control functions.

It is also necessary to look at the issue from the perspective of the protection or promotion of small- and medium-sized enterprises or independent companies that are not affiliated with chaebol. In other words, the concentration of economic power may be addressed through the growth of small- and medium-sized/independent companies. The regulation of chaebol and the protection of small- and medium-sized/independent enterprises can contribute to the suppression of economic concentration and the realisation of free and fair competition. The promotion of small- and medium-sized/independent companies can also be meaningful as a supplement to one-sided regulatory policies. To this end, it is important to provide an opportunity for the growth of small- and medium-sized/independent enterprises in various aspects.

In this regard, there can be no question as to the importance of traditional competition laws in ensuring that opportunities for the growth of small- and medium-sized/independent enterprises. In general, small- and medium-sized/independent enterprises and affiliates belonging to chaebol are related vertically or horizontally. In the case of vertical relationships, it is important to ensure that the trade relationship between small- and medium-sized/independent enterprises and chaebol affiliates is carried out fairly throughout the production and distribution process. In the case of horizontal relationships, it will be important to prevent anti-competitive behaviour.

Furthermore, various economic resource support programmes, including financing, will be needed so that competition between small- and medium-sized/independent enterprises and the affiliates under the umbrella of a chaebol can be substantive.

## 6.5 CONCLUSION

With the revision of the Monopoly Regulation Act in 1986, regulations on chaebol began to take place. Lawmakers at the time thought that the concentration of chaebol's economic power had a negative impact on the market economy order. This idea has so far been basically maintained. Various measures have been devised and institutionalised to curb the concentration of economic power. Nonetheless, when comparing the situation at the time of the first legislation and the present one, the concentration of economic power by chaebol has actually increased. In this respect, the effectiveness of the regulation may be questioned, but if we assume that there is no such regulation, it may be understood that the present condition is based on the minimum deterrent function of the regulations. The question is whether chaebol-oriented economic management methods will be effective even in the face of future platform-based changes to industries and the fierce competition for innovation, and such recognition should be reflected in the maintenance or revision of the chaebol regulatory framework under the current Monopoly Regulation Act. Of course, chaebol themselves are seeking improvement on these issues. However, there is still a need for support to ensure that these chaebol's own efforts will be effective. From this perspective, efforts to improve corporate governance, such as strengthening shareholders' rights and interests and enhancing the power of the Board of Directors under the Commercial Act, could make meaningful contributions. At this point, however, it is difficult to completely dispel concerns about the concentration of economic power in terms of general concentration or ownership concentration only by improving governance structure, and the need to regulate the entire enterprise group that is composed of affiliates will inevitably be considered positively. On the other hand, in pursuing chaebol policies, caution is required when it comes to the issue of social costs incurred in the formation and operation of business groups. Of course, there will be expenses incurred in forming and operating an enterprise group, but chaebol will only take into account their own private costs. Therefore, it is difficult to expect chaebol to include social costs, such as hindering the growth of competitive independent companies or distorting the efficient allocation of resources, among the costs to be considered when they evaluate their profits and expenses in the process of setting their goals. Such inconsistencies between private and social costs provide justification for regulatory agencies' policy interventions, while also serving as a limitation to remain within the scope as much as possible.