

**A Comparative Legal Study on the Approaches to Economic Analysis Adopted by
Courts in Competition Law Cases: Single Branding/Exclusive Dealing Agreements in
the U.S. and the EU**

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Abstract

This article compares the economic assessments conducted by judicial practice on single branding/exclusive dealing cases between the EU and the U.S. in order to gain insights on how to improve the effects-based approach to competition law.

Generally speaking, the U.S. judicial practice presented a more integrated approach to examine the practical effects caused by exclusive dealing arrangements than its EU as well as Taiwanese counterpart. The U.S. cases *Tampa* and *Standard Stations* laid down the requirement to weigh the anti-competitive effect with all relevant factors taken into account. More recent cases exemplified the incorporation of the theory of Raising Rivals' Cost into assessment of contested conducts, which enriched the analysis of the practical effects on barriers to entry.

In contrast, the EU case law has still been taking a more formalistic approach. Though it is widely acknowledged that analysis of effects on restriction of competition is required as to single branding agreements under Art. 101 TFEU, *Delimitis* as the leading case failed to clarify the economic logic behind and the economic relationship between the factors required to be examined. The application of Art. 102 TFEU before *Intel* is close to a *per se* standard. However, the turn of *Van den Bergh* and *Intel* to more consideration of the effect on cost of existing or potential competitors deserves more observation as to future developments.

It is argued that the U.S. practice can shed light on EU competition law in two perspectives. Firstly, the test of *Delimitis* needs to be restructured to examine and weigh the effect of the contested agreements. Secondly, the approach for Art. 102 TFEU could be

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developed through adoption of similar tests with those conducted in application of Art. 101 TFEU, where assessment of barriers to entry is crucial. The foregoing is also likely to be future suggestions for competition law in Taiwan, and to enrich its assessments of exclusive dealing arrangements.

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