

**An Analysis of the Anticompetitive Effects Requirement
of Cartel Regulation in Taiwan
-Focusing on the Development of Courts' Judgements-**

Huang, Ming-Jye*

Abstract

This article analyzes the reasons for the judgments of Taiwan's courts from January 1999 to May 2019 on the constituent elements of Article 14 (1) of the Fair Trade Law, namely, "market functions that are sufficient to affect production, commodity transactions, or service supply and demand". In the judgments, the courts' judgments affirm the factual determination of fairness regarding the constituent elements. However, this article also finds that the interpretation and application of these constituent elements based on court judgments may not only occasionally conflict with the reasoning and determination of the previous and subsequent judgments, but also often have significant implications for the type of disputed joint behavior and the crux of the market effect. Based on this understanding, this article first explains the normative meaning and function of the elements that can affect the supply and demand in the market, and then explores the relationships between the relevant market definition, market share, and market (dominance) power, while also discussing the courts' decisions on the subject. The methods used to identify the constituent elements and the development trend of judgments involve the application of so-called "quality" and "quantity" standard analysis, while also addressing the major problems that face such analytical methods in the application of judgments in China. After that, the concept of "vertical competition" that appears in the courts' judgments is explored in relation to the joint code of conduct. Based on the above analysis, this article proposes an explanation and application method that should be sufficient to affect the functional requirements of market supply and demand in the future, and serves

Date submitted: November 2, 2019

Date accepted: December 24, 2019

* Distinguished Professor of Law, College of Law, National Taiwan University.

as a useful reference for future Fair Trade conferences and also the courts as they interpret and apply the constituent elements.

Keywords: Fair Trade Law, Market Power, Market Share, Relevant Markets, Per se Illegal, Agreements for the Purpose of Restricting Competition, Vertical Competition, Joint Boycott.