
Indicative Administrative Court Rulings Over 20 Years Since Enactment of the Fair Trade Act

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Abstract

Working from selected administrative court rulings on the Fair Trade Act made in the 20 years since the enactment of the Fair Trade Act, this paper takes decisions with indicative bearing on the Fair Trade Act in theory and practice as the subject of discourse. The indicative decisions evaluated cover key types of restrictive trading and unfair competitive conduct prohibited by the Fair Trade Act.

The courts' interpretations and opinions on the Fair Trade Act in actual cases – especially their approaches to exposition on concerted actions, and judgments on the capacity for impacting market supply and demand functions, have steadily become more practiced and more substantive and concrete towards the abstract significance of regulations. Moreover, they have repeatedly stressed that vertical restriction of competition among enterprises outside pricing must reach a certain market status before being subject to regulation, having a far-reaching positive effect on proper statutory applicability. Further, it notes that the formation of relative market advantage based on dependent relationships and using unequal information to achieve an advantageous trading position has significant bearing on “obviously unfair” conduct as termed by Article 24 of the Fair Trade Act.

As for clarification of the distinctions between false advertising and deceptive conduct, counterfeit representation and riding on another's reputation or extracting the achievements of others, it presents clear and incisive opinions. However, on the other hand,

although considerable progress has been made over the past 20 years of practice in the definition of related markets and evaluation and exposition of enterprises' market power, proof is not sufficiently specific and rigorous in certain cases and should be improved. Moreover, in reviewing opinions in practice, it was found that applicable laws proceeded to understand the spirit and objectives of certain regulations based on the implications of single statutes only, rather than the overall legal framework and system, and the intention of the articles and clauses, resulting in erroneous interpretation and application of terms, or causing contradictions or unreasonable phenomena between applicable articles.

Additionally, in practical cases, due to the inadequacy of existing legal regulations, where competent authorities should assess conduct similarly but cannot apply similar regulatory objectives and statutes governing similar conduct, necessitating application of relatively dissimilar statutes, so that the application of different laws gives different legal outcomes, resulting in different assessments. Such unreasonable phenomena and outcomes reflect flaws and inadequacies in the currently practiced legal system and regulations, constituting a leading factor resulting in the not completely correct application of legal sanctions. Consequently, it is noted that it is imperative to actively enact amendments to the law and propose specific recommendations for the general orientation of the amendments so as to bring about a more complete and more reasonable regulatory system, and more effectively regulate restrictive competition and unfair competition, in order to safeguard free and fair competition in the market economy.

Keywords: Monopoly, Merger, Concerted Action, Vertical Price Restriction, Boycott, Unequal Treatment, Improper Coercion of Trading Counterparts, Improperly Causing Another Enterprise to Participate in Restrictive Competition, Improperly Restricting The Business Activities of Another Trading Counterpart, Counterfeiting, False Advertising, Deceptive or Obviously Unfair Conduct.