

## Competition Law and Economic Regulation

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### Abstract

Competition law and economic regulation are two legal tools the government can utilize to supervise the market. Competition law seeks to reinforce the operation of the market mechanism by proscribing certain anticompetitive behaviors and preventing firms from abusing their dominant position. Economic regulation, on the other hand, usually involves direct and coercive changes from the government in certain industrial sectors, especially to resolve problems regarding market failure. The main issue addressed in this paper is the conflict between competition policy and regulatory policy. In particular, in the 1980s, many traditionally highly-regulated industries were faced with the trend of deregulation and liberalization. Many East Asian countries, having adopted developmentalism in the past, are notably challenged by the concurrent application of competition law and economic regulation. In fact, Taiwan itself is one of these nations. By comparing the decision of *Trinko v. Verizon* of the United States Supreme Court with the holdings of *Deutsche Telekom* as well as *Telefónica* of the Court of Justice of the European Union, the underlying policy decision and the discourse shift can be seen by analyzing the reasoning of both courts.

Under such circumstances, competition law serves as a cross-industrial and overarching legal framework to maintain the market mechanism. The main focus of this paper is therefore to discuss how competition law interacts with other regulatory tools when entering each industry. The concrete legal representation reflecting such an issue in Taiwan is present in Article 46 of the Fair Trade Act, having gradually transitioned from respecting the regulatory framework of each industrial authority to adopting the principle of prioritizing the Fair Trade Act. In fact, the competition policy plays a more important role than ever. Nevertheless, this paper argues that basing the discussion on the traditional legal system rules such as the “economic basic act” and “*lex specialis derogat legi generali*” should be avoided. Similarly, it is not adequate to reach the core of this issue by solely looking at the legislative purpose of the Fair Trade Act. Instead, this study urges that

the appropriate solution can only be found by returning to the analysis of the actual theory between competitive law and economic regulation.

**Keywords:** Competition Policy, Fair Trade Act, Economic Regulation, Concurrent Application, Antitrust Immunity.