

The Relationships between Sensitive Information Sharing and Cartel in Enterprises: Focus on Competitive Law

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This Research aim to explore the relationships between sensitive information sharing and cartel. The article 15 of the Taiwan Fair Trade Law regulates no enterprise shall have any cartel (a matter of principle of inhibition that is similar object infringement or effect infringement of European Union competitive law); unless the cartel that is beneficial to the economy as the whole and in the public interest, and the application with the central competent authority for such cartel has been approved (an exception permit). The study has argued that there are substantial benefits from sharing information, any rule that simply banned information sharing would forego these benefits. However, information sharing between competitors either directly or indirectly through third parties, generates significant risks to competition from facilitating collusion. A rule that simply permitted all information sharing would allow significant harm to consumers. For solving the conundrum, the authorities are devising rules or guideline to differentiate between procompetitive and anticompetitive information sharing. Therefore, understanding the other main competitive law country regarding information sharing legal constituting elements, an economic analysis, and a case analysis, can serve as reference for the Taiwan Fair Trade Commission when dealing with related cases.

The research references to the Bennett and Collins (2010) paper, and divided an information sharing into three different categories. First, the bad: there is information sharing that forms a part of hard core cartel. Legally, these are considered as a collusion. Secondly, the good: there is information sharing that forms a part of wider agreement. Legally, there

are considered as a procompetitive. Finally, the ugly: there are stand-alone examples of information sharing that are neither part of a cartel nor a wider agreement. The discussion of the object infringement and effect infringement pertains to the last category of information sharing, and the ugly is further divided into a most likely to have anticompetitive impact, a least likely to have anticompetitive impact, and a difficult to classify. Using above analysis framework, private sharing of individual future, price or quantity information are often likely to harm consumers without providing offsetting benefits. Classifying these as object infringement is relatively non-contentious. At the extreme, public sharing of aggregated, historic cost information is highly unlikely to harm consumers. Classifying these as effects infringement, or even as not falling under the Treaty on the Functioning of the European Union article 101(1), is again relatively non-contentious.

However, the type of information sharing that difficult to classify are: public disseminating of individual future pricing information; and public disseminating or private communication of individual current pricing information. These types of information sharing pose not insignificant risk to competition, but are also likely to generate significant benefits to consumers. Therefore, different people may reasonably classify them in different ways. Thus, Bennett and Collins (2010) suggests that a classification may be to use a public/private distinction, where public is defined as available to all at no cost. Under such a distinction, all information sharing in private of individual pricing or quantity data would be treated as an object infringement, while all information sharing in public of individual, pricing or quantity data would be treated as an effect infringement, whilst between both is case by case.

In 2011, the European Union Commission revived the Guideline on the applicability of article 101 of the Treat on the Functioning of the European Union to horizontal co-operation agreements (EU horizontal agreement guideline) that increased the information exchange charter, and

listed seven evaluation principles: a strategic information, a market coverage, an aggregated or individualized data, an age of data, a frequency of information exchange, a public or non-public information, and a public or non-public exchange information. Furthermore, the research adopts the game theory, the Cournot model, the Stackelberg model, and the Kinked demand curve to proceed economy analysis that is regarding the relationships between information sharing and cartel, the main analysis results have: First, an enterprise private sharing pricing information criticizes more than a public; Secondly, an enterprise sharing future and current pricing information criticizes more than a historic data; Third, a sharing individual enterprise information criticizes more than a whole industry; Fourth, a sharing specialization, rationalization, and normalization producing technologic information criticizes less than a sensitive information of pricing and output; Fifth, a sharing rescission information criticizes more than a non-rescission; Sixth, a sharing announcement factual price criticizes more than an announcement brand price.

The research draws a conclusion through above analysis, and addressing short term evaluation principles that have: First, an evaluation method of object infringement or effect infringement that includes three items important influent factors, an aggregated or individualized data, an age of data, and an information character; and four items common influent factors there are a strategic information, a market coverage, a frequency of information exchange, and an information sharing intensity. Secondly, the evaluation principle of an exception permit is based on an efficiency gain, an indispensability, a pass on consumers, and a no elimination of competition. Furthermore, the research addresses the long-term suggestions that the Taiwan Fair Trade Commission would be consider conclude cartel related guideline or reference to the EU horizontal agreement guideline revive the other guideline to increase an information exchange charter for dealing with similar cases.