

## **Inducement with Low Price and Other Improper Means to Prevent Competitors from Participating or Engaging in Competition**

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### **Abstract**

Article 20 Paragraph 3 of the Taiwanese Fair Trade Act stipulates that an enterprise shall not prevent competitors from participating or engaging in competition by inducement with low prices, or other improper means in a way that is likely to restrict competition. In Germany, a resale-below-cost law is included in the general competition law, the Act Against Restraints of Competition (ARC). Article 20(3) of the ARC states the legal presumption that if an undertaking offers goods or commercial services not just occasionally below cost price, such conduct constitutes an unfair hindrance. In Japan, the Japan Fair Trade Commission (JFTC) regulates sales prices below cost which fall under the “Unjust Low-price Sales” of Subsection 6 of “Designation of Unfair Trade Practices” as stipulated in Article 19 of the Antimonopoly Act because such acts may impede fair competition..

This paper first introduces the historical background to and cases involving the law of below-cost sales in both Germany and Japan.

Secondly, this paper discusses the components of Article 20(3) of the TFTA. Article 27(1) of the Enforcement Rules of the TFTA provides that “inducement with low price” means offering a price below cost or obviously inappropriate so as to hide competition or prevent competitors from participating in the market.

The conclusion of this paper is that the TFTA should provide guidelines for its approach to unjust low prices and other improper means. Four requirements have to be stated in the guidelines, i.e., (1) the meaning of undertakings with superior market power; (2) low price (or below-cost price); (3) other improper means; and (4) a reasonable low price.

**Keywords:** Restraints of Competition, Low Price Inducement, Improper Means, Unfair Trade Practice, Cost Price.