

**Reflections and Reformation on Regulations of Abuse of Monopoly Power
in the Fair Trade Act**

Huang, Ming-Jye*

Abstract

This article argues that after 30 years of legal enforcement, there are many deficiencies in the control of abuse of the monopolistic position in the Fair Trade Act of Taiwan, and it is necessary to correct them. After reviewing the current provisions of the Fair Trade Act on the abuse of the monopolistic position and the deficiencies of the Fair Trade Commission's practical operation so far, this paper proposes that the future of the control of abuse of the monopolistic position should be revised in relation to the following direction and content: (1) The term "monopoly" in Paragraph 1 of Article 7 should be renamed as "market dominance," and in accordance with the European Court of Justice's perception of general market dominance or the typographical approach stipulated in Article 18(1) of the German Act on the Prevention of Competition Restriction. (2) Paragraph 1 of Article 8 of the Fair Trade Act should be amended to read as follows: "An enterprise that occupies 40% or more of the relevant market shares shall be presumed to have a monopoly (market dominance) position." (3) Paragraphs 2 and 3 of Article 8 should be deleted. (4) Paragraph 2 of Article 7 and Subparagraphs 2-3 of Paragraph 1 of Article 8 should be deleted. (5) The anticompetitive effects requirement of Article 14 should be added to Paragraph 1 of Article 9. (6) Paragraph 1 of Article 9 should be amended as follows: "A monopoly enterprise must not abuse its monopoly position so as to affect the market function of production, commodity transaction or service supply and demand. (Paragraph 1) The abuse of a monopoly position referred to in the preceding paragraph includes the following acts: 1. Exclusive dealing. 2. Tying or bundling. 3. Predatory behavior. 4. Refusal to deal. 5. Discriminatory treatment. (Paragraph 2)" (7) Articles 19 and 20 of the current Fair Trade Act should be deleted. At the end, the author has written down the wording for reference in the future legislative revision.

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* Professor of Law, Graduate Institute of Interdisciplinary Legal Studies, College of Law, National Taiwan University.

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