

The legal norms and the enforcement cases of restraints of competition of Japan, South Korea, and Singapore

Abstract

Keywords: Restraint of Competition 、 Act on Prohibition of Private Monopolization and Maintenance of Fair Trade of Japan (AMA) 、 Monopoly regulation and fair trade act of Korea (MRFTA) 、 Competition Act 2004 (Singapore).

Taiwan, Japan, South Korean and Singapore are geographically located in East Asia and have considerable historical ties with each other and usually share the same market. It is necessary to learn from each other's anti-competition legal policies and law enforcement. Summarizing the results of this study, the suggestions for the future legal development of Taiwan's Fair Trade Act, The suggestions are as follows:

1. Immediately actionable suggestions

The law enforcement standards according to the time and place belongs to different countries and regions. However, striving for more law enforcement resources and improving law enforcement efficiency are the same goals for every country. Referring to the practices of improve law enforcement effectiveness of Singapore and South Korea, it is suggested that FTC can do as follows:

(1) Strengthening legal transparency

Due to strict law enforcement in Singapore, the transparency of regulations is necessary increased, so that people can know the law and abide by it. This

has become an important step for CCCS to promote compliance with the law to ensure that everyone abides by the law. As a prelude to the implementation of law enforcement standards, the transparency of regulations serves as a pre-steppingstone to prevent illegal activities. FTC can refer to Singapore's multi-faceted publicity laws and related normative practices to strengthen the transparency of the legal system in the future.

(2) Establishing an institutionalized contact window

Since competition law enforcement often involves the powers and responsibilities of different government institutes, it is recommended that FTC should establish an institutionalized contact window with regulatory authorities and exchange enforcement information to promote and coordinate the relationship between competition and regulation.

2. Long-term suggestions

(1) Abuse of market monopoly position norms

Article 9 of the Fair Trade Act lists four types of abuses prohibited by monopolistic enterprises. Each type of breach behavior and the criteria for judging illegality are very different. However, the FTC will apply the law in certain disciplinary cases, which may confuse obstructive abuse and extractive abuse. abuse or other types of abusive behavior. Therefore, with reference to the guidelines for the use of exclusive monopoly practices issued of Japan's litigation, Taiwan's FTC should formulate a normative explanation of the abuse of monopoly enterprises under the Fair Trade Act, so as to clearly reveal the standards for judging violations.

(2) Joint Code of Conduct

The draft amendment to the Fair Trade Act 2023 of Taiwan added Article 14 to stipulate the joint behavior requirements of "competitive enterprises at the

same production and marketing stage and other enterprises", and seems to intend to expand the scope of application of this article to cover "vertical cartel" illegal acts. However, its applicable requirements are limited to the fact that some actors must have competitive relationships, which limits its normative functions and disrupts the regulatory system for restricting competition.

This study recommends that Article 14 of the draft amendment stipulates that the requirement "referring to enterprises at the same production and sales stage with competitive relationships, or the same production and sales stage with competitive relationships" should be deleted. The joint code of conduct applies to competition relationships at the same production and sales stage or supply and demand relationships in upstream and downstream transactions, and where the desired outcome is enough to affect the market supply and demand function.

(3) Investigation and sanction procedures

The current rules of "administrative first, judicial later" sanctions for the punishment of abuse of monopoly status and illegal joint activities, which has the disadvantage of insufficient deterrent effect against illegal acts. In addition, the Fair Trade Act only gives FTC administrative investigation authority, and it is difficult to find evidence of illegal activities in actual operations. This study recommends deleting the "administrative first, then judicial" penalty provisions, then introducing an "exclusive reporting" system, and giving the FTC exclusive reporting authority for malignant and serious abuse of monopoly status and illegal joint acts. In conjunction with the implementation of the exclusive whistle-blowing system, the amendment of Fair Trade Act gives FTC the power to conduct quasi-criminal compulsory investigations such as search and seizure, which will increase the risk of joint

conduct being investigated and punished, and also provide incentives for enterprises participating in joint conduct to apply for leniency clauses.

(4) Introducing the safe zone

In view of the large numbers of cases and limited administrative resources, it is recommended to refer to the Korean Competition Act to set a safety zone threshold for specific types of prohibited unfair trading practices as the threshold for whether the KFTC will intervene the investigation. That can also concentrate resources to achieve the effect of maintaining market competition efficiency.

(5) Digital economy competition policy issues

1. Combined with the declaration threshold

This study recommends that, with reference to the 40 billion yen consideration declaration requirements for the acquisition of new start-up companies under Japan's corporate joint review rules, consider and measure the current market conditions of the Japanese and Taiwan's technology industries, and add "killer merger" reporting threshold requirements to the draft amendment to the Fair Trade Act to ensure that the benefits of the overall economy outweigh the disadvantages of anti-competition.

2. Elements of combined review of data

In response to the development trend of the digital platform economy, the digital platforms use network transmission technology to provide services, it is important to collect a large amount of (Volume) and diverse (Variety) data from platform users during the use process. With reference to the Japanese Enterprise Joint Review Rules, this study suggests that the FTC should amend the principles for handling combined notification cases and add factors to consider when judging whether a combined matter is competitively important or

highly potential competitive data with type of data, amount of data owned, frequency and scope of data collection, and the importance of the data owned, and the degree of correlation that enhances the competitiveness of relevant product market services and the degree of advantage that may be obtained by other competitors that are not part of the enterprise combination.

3. Regulations about digital platform enterprises

From Japan's practical of govern the digital platform case models: (1) The FTC will handle platform enterprises that implement "equal terms and conditions". If the conduct involved in the case is likely to restrict market competition in the online store enterprise, Article 20, paragraph 5, of the Fair Trade Act shall apply the regulations that prohibit harmful behaviors that restrict competition; (2) The FTC will handle platform enterprises that force online stores to accept unprofitable and unreasonable contract terms such as "bearing shipping costs", "bearing the cost of reward points", "customers picking up by themselves", etc. The conduct of the cases involved is not likely to restrict market competition, but still meets the illegal connotation that can affect the order of transactions, the provisions of Article 25 of the same law shall apply.

In conclusion, the above research results and suggestions point out that worthy of reference and vigilance for the future development of Taiwan's Fair Trade Act and are expected to help improve the efficiency of FTC's law enforcement in the future.