The "Safe Harbor" in Competition Law

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Abstract

The so-called "safe harbor" in competition law is a certain threshold standard, set by the relevant provisions of the law for specific types of offences. Any behavior that has not reached this threshold will not be considered to constitute an offence. In the case of enterprises, as long as they do not cross this line and restrict their competitive behavior to the safety zone, their acts will be treated as lawful and they will not be liable to face punishment. A well-established safe harbor system in competition law will be helpful to clarify the enforcement standards. As for the competition authority, it will be possible to concentrate resources on cases where the impact is greater. The safe harbor system can also guide enterprises to remain in the safety zone for as long as possible.

In Taiwan, the Fair Trade Commission (TFTC) has developed criteria for the application of the safe harbor clause. However, the criteria tend to be too simplistic, leaving room for further amendments. This article seeks to examine how a better safe harbor system for the Fair Trade Act can be constructed, and thereby offer concrete suggestions for reference by the TFTC and other relevant government departments. The article focuses on the leading countries and regions where competition law is reasonably, or at least theoretically, implemented, namely, the United States, the European Union, Germany, and Japan.

This article begins by introducing the issue of enforcement and related problems in the Fair Trade Act. Based on a series of regulations and case studies, this article indicates that there are some shortcomings in the safe harbor regulations regarding horizontal and vertical restraints. Therefore, it focuses much of the discussion on two issues. First, it discusses the safe harbor for horizontal restraints. The focus is placed on the "De minimis Notice" and "block exemption regulations" in the EU and Germany, the "safety zone" in the United States, and the guidelines under the Antimonopoly Act in Japan. Second, it ana-

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lyzes the safe harbor for vertical restraints. Although the United States has shifted to a "rule of reason" basis, the EU, Germany, and Japan still maintain a conservative attitude toward the safe harbor for vertical restraints cases, especially those related to "Resale Price Maintenance (RPM)." Finally, based on a comprehensive comparative law analysis and case studies, the article attempts to systematize the structure of the safe harbor and provides several recommendations for revising the current safe harbor regulations contained in Taiwan's Fair Trade Act.

Keywords: Competition Law, Safe Harbor, Cartel, Vertical Restraint, De Minimis, Block Exemption.