

The Assessment of the Concurrent Application to Fair Trade Law and Other Regulations

Abstract

Key Words: Regulation impacts, Competition assessment, Regulatory reform, Regulatory policy

Though it's been through the movement of deregulation, regulations are everywhere. Regulations are the tools for government to achieve some certain social goals, but regulations do harm market competition. Many studies have shown that higher competition significantly leads to higher economic growth. This implies that, the competition policies, which intend to create a healthy environment for competition and to foster competition, can achieve only a constrained optimality. The constrained optimality is subject to a given regulation. By way of relaxing, removing, or reforming the given regulations, a higher level of constrained efficiency can be created and achieved.

However, the social goal of regulations certainly cannot be given up. Thus, it becomes more important to find a best alternative of regulation, which can achieve the targeted social goal as well as the minimum harm to competition. We termed this best alternative regulation as the "efficient regulation." The purpose of this project is to build up a framework which can help regulation makers check the regulation impacts on competition and trace out the best alternative for a regulation.

A better constrained optimality, which increases market competition and economic growth, by way of an alternative method to some certain given regulations. In the past twenty years, Fair Trade Commission has been doing well in practicing competition policies. Following in OECD's footsteps, it is time for Taiwan to pay attention to the regulation reform.

According to Article 9-2, Fair Trade Law, for any matter provided for in this Law that concerns the authorities of any other ministries or commissions, the Fair Trade Commission may consult with such other ministries or commissions to deal therewith. Thus, there is no authority for general regulation review. FTC can only consult with those other ministries for dealing with those matters concern. Therefore, it is a need to have a simple and distinct toolkit to teach those staff not in competition authorities the competition concepts for ex ante regulation review. In order to help them ex ante trace out the efficient regulation, this project intends to provide a guidance approach with practical methods, examples, and concepts for regulation makers to easily identify important competitive restrictions. The guidance is written in

a form of toolkit, which includes basic competition concepts, basic classifications of regulation impacts on competition, and review framework of competition assessment.

Four parts are included in the toolkit. Part I describes the impotence of regulation impact on competition, which is written as chapter 2 in this project. The aggressive OECD promotion of regulation reform, the adoption of competition assessment for new markets in the new economy age, and the role of Fair Trade Commission for competition assessment are discussed in this chapter.

Part II in the project introduces important concepts of competition as the groundwork for a good practice and understanding of the competition assessment. It includes Chapter 3 and Chapter 4. In Chapter 3, basic concepts of market are introduced, such like market power, market structure, concentration measure, barriers to entry, contestable...etc. In Chapter 4, four dimensions in market, which are most easily influenced by regulations, are made a clear introduction. It includes the number of firms, entry of new firms, product standard, and market price.

Part III is the core of the project. It classifies three different categories of impact on competition caused by regulations, which are subsequently studied in Chapter 5, Chapter 6, and Chapter 7. Chapter 5 discusses the impacts that cause market supply to decrease. It could be due to the increasing average market costs, the increasing barriers to entry, the authorizing monopolized right, and the limit of product liquidity. Chapter 6 describes the impacts that reduce firms' competitive ability due to regulations. It could that some advertising strategies are forbidden, the quality standard is set ex ante, the grandfather clause is given, and the market price is limited. Finally, Chapter 7 studies the impact type of the increasing non-competition incentive among firms. It could be due to the association of self-regulating, the communication platform of information sharing, the exemption of competition policies, and the liquidity trap of buyers. In this part, a large number of more than one hundred examples are displayed and explained.

Part IV is to set up a framework for analyzing the competition impacts, which is written in Chapter 8. On the basis of previous chapters, readers laid the groundwork for a good understanding in practicing competition assessment framework. According to those chapters, we classify nine dimensions of possible regulation impact on competition in the assessment framework, which is then compressed into a checklist. In the checklist, each dimension includes several issue questions. In total, thirty-eight issue questions are listed in the checklist. A practitioner is asked to answer with point 2, 1, or 0 to to each issue question. In each question, if a practitioner can tell with an affirmatively significant yes, then 2 points; if one can only tell with an partial to significant yes, then 1 point; if one can only tell with an insignificant yes or informatively significant yes, then 0 point. For a dimesion in measuring competition

impact to go for an advanced second-stage analysis, it requires that: (1) at least one issue question earns 2 points; and (2) total points are no less than half the number of questions in the dimension.

Once the checklist shows that situations are likely to harm the competition (i.e., the two above-mentioned conditions are satisfied), a second-stage advanced competition assessment is required. The advanced competition assessment will contain a quantity analysis, which needs more sophisticated techniques and thus is not the concern in this project. However, through the use of the checklist, possible alternatives that may minimize potential harm to competition while continuing to achieve the desired policy objectives need to be identified.

More important, the competition assessment toolkit of this project has no intent to oppose or remove the idea of regulations. Instead, it helps regulation makers to find an efficient way, which can minimize regulation impact on competition. By this way, the benefits of economic growth, social security, or other policy objectives can be maximizes.