

## Collective Dominance under an Oligopolistic Market - With a Focus on German Competition Law

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### Abstract

In Taiwan, the anti-competitive behavior within an oligopolistic market under the antitrust law takes the form of mergers, monopolies, and cartels. A merger is an ex ante preventative measure. By contrast, cartels are ex post events, so that a merger cannot regulate cartels. Furthermore, if it is difficult to prove the elements of cartel agreements, it is also difficult to identify the theory of concerted actions and the theory of facilitating practices. It is thus difficult to prove the burden of proof of cartels. Therefore, whether it is possible to define collective dominance under the oligopolistic market is the main direction of this study.

However, we do not see any collective dominance cases under Article 7 II of the Fair Trade Act. As a result, the objective of this article is to discuss other countries' legal models. There are two different types of regulation. One is the implicit regulation in the US and EU, and the other is the explicit regulation in Germany. Compared to US and EU Competition Law, German Competition Law (GWB) refers to Monopoly to define dominance. Section 18(5) of the GWB defines collective dominance. The GWB provides that two or more undertakings are dominant to the extent that no substantial competition exists between them. GWB enforcement and academia also refer to oligopoly dominance and oligopoly presumption of dominance to examine how to define collective dominance. This article intends to examine relevant regulations by comparing different laws (while focusing on the GWB).

**Keywords:** Agreement, Merger, Monopoly, Collective Dominance, Dominance.