

Research on Justifications Proposed by Regulated Industries Facing Competition Investigations

Abstract

Keywords : regulated industries 、 competition law 、 Fair Trade Act 、 financial services sector 、 telecommunications 、 professional services 、 public interest 、 information asymmetry 、 economies of scale 、 externality

Regulated industries are commonly observed even in a free economy. They are usually the products of a belief in which the benefits from unfettered competition are viewed as unachievable in certain industries characterized by market failures. And unlike competition law, law or regulations for regulated industries are frequently enacted to “replace” rather than “reviving” the function of the “invisible hand.” The means the regulatory agencies adopt to correct market failures are in essence more market-intrusive than competition law. Ranging from rate and quality control, restrictions on the types of product or service available to the public to barriers for market entry and exit, those laws typically inhere a pre-determined roadmap for the way market imperfections should be addressed with the regulator also having in mind a preset regulatory outcome. In practice, firms of regulated industry recurrently challenge the jurisdictions the Fair Trade Commission could exercise over their activities in the regulated markets. They repeatedly assert that the existence of regulatory legislations in general and non-competition provisions in those regulations in specific offer justifications for their being exempted from antitrust liability. Failing to construct a clear and consistent framework capable of delineating precisely the boundary between these two types of law could highly likely render government’s well-intentioned legislative efforts to become a roadblock for welfare-enhancing economic transactions.

We examine this issue in details in this research project. From the perspective of economic analysis, we review the market structure, the current status of regulation, and the problems from regulations on competition law in three major regulated industries in Taiwan: telecommunication and cable TV, financial and insurance, and professional industries. In addition to theoretical analysis, we will also introduce the experiences from the United States and European Union, and have them compare with our own. The purpose of this project is to

offer the Fair Trade Commission more concrete criteria in dealing with justifications proposed by regulated industries facing competition investigations. Also, we believe that suggestions made in this project could aid the Fair Trade Commission to engage in more constructive dialogue with regulatory agencies concerning competition issues from their regulations. Coincidentally, that will also be beneficial for the Fair Trade Commission to promote their “competition advocacy” campaign to regulated industries.