

Research on Competition Law and Issues of the Dairy Industry in Taiwan

Key Words : dairy Industry, fresh milk, Infant formula, Competition Law and Policy, Exemption clause

Abstract

This research mainly focuses on the scope of the dairy industry on “fresh milk” and “infant formula milk powder” and discusses issues relating to competition law that may arise from its development history, market structure, production and marketing conditions, and other policy events, as well as possible future impact on Taiwan’s competition policy and enforcement. Dairy products are an industry with a special market structure. After the popularization of industrialized society, producers engaged in agriculture and animal husbandry are faced with challenges such as cost, capital, labor, and operating models. This study refers to the development of several leading dairy industry countries in the world, namely the United States, New Zealand, Japan, and the European Union. Although the above four countries or regions compared are all exporters in the global dairy market, which is not the same as the situation in which that Taiwan’s dairy products are mostly used for domestic sales, we still could explore their experiences regarding to competition law enforcement, court opinions, and competition policies etc., as the references for our country ◦

In terms of fresh milk, as dairy farmers are affected by complex factors such as technological progress, natural environment, social changes, consumer habits, and global warming resistance, the number of dairy farmers, cows, and the total output are gradually reducing year by year. Many countries have adopted relevant policy measures to protect the dairy industry, including subsidies of basic purchasing price, provision of technical equipment, or even direct income payments for farmers. So did make the fresh milk a highly protective product. When WTO established in 1995, the dairy industry did not reduce tariffs as much as the manufacturing industry. To fulfill the goal of free trade approach, the past

exclusive and protective measures of dairy products was gradually reduced afterward. It can be observed from the research that New Zealand and the EU have gradually adopted the direction of completely free competition. However, the US and Japan maintain a certain domestic protection mechanism, and Taiwan also implements “tariff quotas” to control the import volume of liquid milk. With many individual dairy farmers scattered, the mid-stream dairy manufacturing industry in most countries is a “oligopoly market”, and the bargaining power of individual dairy farmers is significantly weaker compared to dairy manufacturers. Therefore, during the development of the dairy industry, no matter whether it is voluntary by the individuals or composed by the government, dairy farmers have invariably established “cooperatives” as an organization to regulate raw milk production and prices, and to enhance their influence on the midstream dairy industry and downstream distribution companies with effectively forming the seller’s collective bargaining power. Based on the experience of various countries, dairy farmers in the U S, New Zealand, Japan, and some countries in the EU have chosen to use the “cooperative” as a production and marketing organization. Among them, the most famous one is Fonterra Co. of New Zealand, which is a corporative enterprise. This development model may be used as a reference for Taiwan.

In terms of infant formula milk, due to the relevant regulations in the “International Code of Marketing of Breast-milk Substitutes” advocated by the World Health Organization (WHO), health and welfare authorities around the world have adopted the above principle of prohibiting advertising. The EU’s directives on infant formula are the most complete and can be used as a reference for Taiwan, and these norms also take precedence over competition laws. In the past cases of infant formula milk powder in various countries, most of them focused on “food safety issues” (melamine, or the U.S. Ampere milk powder pollution incident etc.), which caused “out of stock” and seriously affected market supply chain, or there may be joint behavior for price increasing. The total shortage of goods in the US in 2022 will affect the health of most babies in

the country and even become a national security issue. The above case is worth pondering in Taiwan. Due to Taiwan does not have any factory directly produces infant formula milk, so that almost all of them are supplied by foreign manufacturers. It's suggested that Fair Trade Commission should continue to track the source countries of infant formula milk import manufacturers, which is the important way to prevent risks.

Based on the above research findings, it's first suggested that the FTC should continue to conduct price surveys and analysis of the dairy market to understand the competition status of upstream and downstream, especially for price fluctuations caused by special events, price adjustments of the most upstream raw milk sources, etc. Only by tracking price fluctuations, the impact of international trade import and export, long-term trends, and the market influence of channels can we understand the reasons for price fluctuations, or whether there are restrictions on competition and unfair competition. Secondly, it is suggested that FTC referred to the practice of competition authorities in various countries in the comparative law, and express moderate concerns about the situation that affects vertical or horizontal competition in the dairy industry, but do not get involved in investigating the event itself of product price fluctuations. Finally, considering the legislative methods of different countries on the dairy industry, it is not difficult to find that many countries have "limited exemption" clause for certain behaviors based on the policy goals of protecting dairy cooperatives, market competition, and upstream and downstream supply. "Limited exemption clause of competition law" not only gives the dairy industry a relatively free space, but also retains the legal basis for the competition authority to investigate or intervene when restricting competition or unfair competition occurs. The applicable relationship between Taiwan's Fair Trade Law and other industrial regulations, the design of exemption clauses, and the establishment of a horizontal coordination mechanism between the Fair Society and other competent authorities are all directions for future references.