

Analysis of Important Domestic Competition Law Cases Focusing on Deceptive or Obviously Unfair Conducts Issues

Keywords: deceptive, obviously unfair, able to affect trading order, restraints of competition, unfair competition, consumer protection, general clause, principle of supplementariness

This study focuses on actual cases involving Article 25 of the Fair Trade Law. The scope of the study includes administrative court judgments; cases that are of practical and theoretical importance are critiqued and analyzed using theoretical principles or from the perspective of comparative law.

This study discusses various issues regarding the application of Article 25 of the Fair Trade Law from the perspectives of both its general and specific provisions. The application of the general provisions can be divided into the following five sections.

First, regarding the scope of the supplementary application of Article 25 of the Fair Trade Law, this study found that most administrative courts ruled that the scope of Article 25 is not only limited to unfair competition but also encompasses the realms of restraints of competition and consumer protection. However, a prerequisite to the application of Article 25 of the Fair Trade Law is that the element of being “able to affect trading order” must be satisfied first.

Second, apart from receiving wide support in the academic community, the principle of “supplementariness” had been adopted by the Fair Trade Commission for almost 20 years. The majority of the administrative court judgments that expressed an opinion in this regard also supported this theory. There are still a few cases, however that neglected the application of this principle, while those that expounded on it are scarce. It is hoped that there can be further developments in the future.

Third, regarding the threshold of intervention “whether the conduct is able to affect trading order,” this element can distinguish this provision and the other laws (especially civil laws and the Consumer Protection Act), which helps to determine the scope of this provision. This study found that there are a plethora of interpretations on this element by the administrative court. The discourses on the determinant factors of “affecting trading order” are also diverse. However, the administrative court did not clearly express its opinion as to the extent to which conduct of a different nature must affect the trading in order to constitute this element.

Fourth, regarding the applicability of the elements, “deceptive” and “obviously unfair,” this study found that the judgments of the administrative court often cite the standards in the Guidelines of the Fair Trade Commission as the basis for their determination.

However, in actual practice, there are still areas that can be improved, which are also identified in this study.

Fifth, the clarification of the legal structure of Article 25 of the Fair Trade Law cases is a means to curb the legal uncertainty of the general clause. The Fair Trade Commission categorized the following classification of conduct based on the elements of “deceptive” and “obviously unfair” within the provision. Such classifications are also incorporated into the guidelines. This study generally agrees with the classification by the Fair Trade Commission. On this basis, this study further classified administrative court judgments from 1992 to 2020, which can be found in the appendix.

As for specific provisions, this study analyzed actual judgments of different classifications, based on the aforementioned classification of deceptive and obviously unfair cases. In terms of deceptive conduct, this study analyzed the conduct of (1)pretending or free riding on the credibility of another entity; and (2)concealing material trading information. In terms of obviously unfair conduct, this study analyzed conduct including (1)impeding market competition for the purpose of injuring a particular enterprise; (2)exploiting the fruits of others’ work; (3)improperly soliciting customers or unfair competition for trading opportunities; (4)improper use of one’s relative market dominant position; (5)use of asymmetric information; (6)hindering customers’ exercise of their legitimate rights; (7)improper use of standard form contracts; and (8)conduct that is in violation of the law and is obviously unfair.