

Analyses and Comments on Important Courts' Judgements of Fair Trade Law – Focusing on the Cases regarding Abuse of Dominant Position and Other Vertical Trade Restraints

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Generally speaking, the current normative framework of Fair Trade Law (FTL) is roughly the same as that of other countries' competition laws. Except for the combination control of structural norms and the cartel regulation of horizontal competitors, FTL's regulatory focus is on the unilateral restriction of competition for businesses with considerable market power. The current FTL governs such unilateral vertical restrictions on competition, mainly stipulating the abuse of exclusive position in Article 9, the restriction on resale prices in Article 19, and the restrictions on vertical trading in Article 20. The main research focus of this research is to collect important domestic court judgments regarding Articles 9, 19 and 20 of the current fairness law, and analyze, sort and evaluate them, and try to derive from them the development and trends of those court judgments. This research aims to provide reference for the future law enforcement for the courts and Fair Trade Commission (FTC).

The research puts forward the following 3 short-term recommendations and 4 medium and long-term recommendations.

I. Short-term recommendations

1. The regulation of vertical trading restrictions should specify that the business must have a certain degree of market power, and the competition in the relevant market to which it belongs or the upstream or downstream relevant market related to its transaction must be or may be subject to considerable restrictions or influence due to its behavior.
2. Article 20, paragraph 2 of differential treatment is used to hinder fair competition among downstream businesses and have the effect of hindering and restricting competition. Such characteristics should be clearly stated in the provisions to draw attention to the nature of the impact of competition in the relevant market and degree.
3. The amendments to Article 3 of the Implementing Regulations shall add more specific and provable matters concerning the determination of monopoly, including the possession of key patents or technologies, the control of the related enterprise group, and the control or assurance of its products under

contract Supply and sales of upstream and downstream industries, as well as capital and funds that can express their strong financial strength.

II. Long-term recommendations

1. Amend Article 8 Paragraph 2 to set "one tenth of the market share" as the minimum threshold for identifying a monopoly business, and raise it to "one quarter of the market share."
2. The text of "Unfair Methods" in Article 9, Paragraph 1 is amended to "Improper Methods", so that the terms restricting the illegality of competitive conduct tend to be consistent.
3. The types of tying, exclusive transactions, geographic, customer restrictions, and use restrictions in Article 20, paragraph 5, "Improperly restricting the business activities of the counterparty of the transaction" shall be upgraded from the implementation rules to the provisions of the parent law, and shall give a clear definition.
4. The five types of behaviors stipulated in each paragraph of Article 20 shall be individually regulated, and the relevant provisions of the enforcement rules shall be upgraded to the provisions of the parent law.