

# **A Study on Safe Harbor Clause in Competition Law**

## **ABSTRACT**

**Keywords:** Safe harbor, cartel, monopolization, vertical restraint, de minimis, block exemption

The so-called "safe harbor clause" in competition law is a certain threshold standard set out by the relevant provisions of the law for certain types of offences. Anyone who has not reached this threshold will not be considered to constitute an offence. In the case of enterprises, as long as they do not cross this line and keep their competitive behaviors in the safety zone, their acts will be treated as lawful and not be liable to face punishment. A well-established safe harbor system in competition law will be helpful to clarify the enforcement standards. For the competition authority, it is possible to concentrate its resources on cases of greater impact. Also, the safe harbor system can guide enterprises to remain in the safety zone as long as possible.

In Chinese Taipei, the Fair Trade Commission (CTFTC) has developed some, however, more or less overly simplistic criteria for the application of the safe harbor clause, so there is still room for further amendments. This project is sponsored by the CTFTC to study and analyze how to construct a better safe harbor system for the Fair Trade Law, and as a conclusion, to make concrete suggestions for reference by the Fair Trade Commission and other relevant government departments. The project has focused on the leading countries and regions where competition law is reasonably and theatrically implemented --- the United States, European Union, Germany, and Japan. These countries and regions have established clear and usable safe harbor systems concerning most anticompetitive conduct. Therefore, it is possible to discuss the safe harbor clause for the Fair Trade Law following these rules.

In 2017, the Organisation for Economic Co-operation and Development (OECD) held a discussion called "Safe harbors and legal presumptions in competition law" to explore the safe harbor rules. However, its object was determining whether the competition authorities should introduce such kinds of safe harbor clauses, not how to adopt such clauses. As a result, there is not so much detailed information about the real figures and legal basis (e.g. the articles or judgments which constitute the safe harbor system). In order to provide sufficient information and material to discuss domestic law, the project adopted from there the main aspects of anticompetitive conduct: horizontal restraints, vertical restraints, and monopolization, then divided each topic into separate chapters. Each chapter discusses a country or region in an independent section.

The project is to begin by introducing the definition, characters, functions, legal bases, and legal effects of safe harbor clauses (Chapter One). It will provide a landscape to observe this project. Then, it will discuss the safe harbor clauses for horizontal restraints. The focus has been placed on the “De minimis Notice” and “block exemption regulations” in the EU and Germany; the “safety zone” in Antitrust Guidelines for the Licensing of Intellectual Property and Antitrust Guidelines for Collaborations among Competitors of the United States; and the Guidelines Concerning Joint Research and Development under the Antimonopoly Act of Japan. Basically, promoting joint research but precluding the application of safe harbor clauses to the hardcore cartels is the common ground of the former countries’ and region’s competition authorities (Chapter Two). Thirdly, it analyzes the safe harbor clauses for monopolization and finds the safe harbor clauses for monopolization are not so homogeneous, no matter in the figure of threshold or in the legal bases (Chapter Three). Next, it will observe the safe harbor clauses for vertical restraints. Although the United States transferred to a “rule of reason” basis concerning the vertical restraints, the EU, Germany, and Japan have still held a conservative attitude towards the safe harbor clauses for vertical restraints, especially the so-called “Resale Price Maintenance (RPM)” (Chapter Four). Finally, the project examines the safe harbor clauses in the Fair Trade Law. Due to the assistance provided by CTFTC staff, the project could get access to some interesting cases which weren’t challenged by CTFTC. Based on enormous comparative law analysis and cases studies, the project proposed several pieces of advice to revise the current safe harbor clauses of Fair Trade Law (Chapter Five) and the conclusion of this project (Chapter Six).