

# **The Interaction between Privacy Protection and Competition Law in the Digital Era**

## **1. Background of Study**

Along with the prevalence of information technology products and the rise of social media, data volumes have escalated and big data analytics has become a business model able to create revenues and a hot topic on the Internet and in the technology industry. However, in the big data era, a considerably large percentage of data collected, processed and utilized by enterprises is records left by consumers. Such information is often acquired and used without the knowledge of people. As a result, the practice causes concerns about protection of privacy. Under such circumstances, should protection of privacy be a consideration in competition analysis? Will it bring an impact on enforcement of competition law? How should the competition authority and personal information protection agencies divide their work? Is it necessary and reasonable for the competition authority to intervene? All these questions need further clarification.

## **2. Methods and process of study**

Literature review and case examination are adopted in this study to inspect the characteristics and the controversial privacy issues derived from of big data, as well as the resulted challenges in enforcement of competition law. Meanwhile, the relevant cases and research results of the other competition law authorities are collected in order to work out some suggestions the FTC for reference when reviewing merger cases and handling cases associated with abuse of market power.

## **3. Main suggestions**

- (1) The Fair Trade Law may intervene in cases involving privacy under certain conditions: Social media platforms are information-driven products; therefore, access to the personal information has a critical effect on the market position of an enterprise. Such platforms' handling of users' personal information is not only a concern for personal information protection authority but also be in relation to the competition authority. When an enterprise influences market competition or obtains market power through users' data, which the process or ways of application are improper or unfair that cause anti-competition effect and harm to consumer welfare, should be subject to the regulations of competition law.
- (2) The current provisions of the Fair Trade Law are sufficient to deal with anti-competition issues likely to arise from platform operators, so amendment is uncalled for. Nonetheless, it is necessary to refine related analytic processes through establishment of disposal directions.
- (3) When reviewing merger cases that in relation to privacy, the focus must be set on as follows:
  - A. With mergers that involve data concentration, it should be taken into account
    - ① whether the merger can cause changes to the level of privacy protection or affect the choice of consumers when platform users regard privacy as an important factor of quality competition and
    - ② whether the merger in question is subject to domestic or international personal information protection regulations and thus affect competition in the market that the merger in questions is involved.
  - B. Privacy should be taken into account in assessment of quality competition associated with competition between information-driven digital platforms. However, the importance of privacy as a consideration in evaluation of

quality competition can also be affected by the intensity of consumers' privacy-related perception or by whether the status quo bias from pre-installation of software exists.

- (4) When handling cases regarding abuse of market power that is in relation to privacy, the focus should be set on as follows:
  - A. When a platform with dominant market position takes advantage of the needs of users or collaborating platforms to use its services to obtain and utilize user information in contradiction to the volition of users or adopt measures beyond the cognition or control of users, it can be considered exploitative.
  - B. Collection of large volumes of user information can enhance the market power of an enterprise. However, whether the use of such data is likely to impede competition order, it requires continuous observation of the development in the relevant market.
  - C. With unfair competition acts conducted by a platform with its market dominance can be included as a pattern of relative market dominance or use of information asymmetry as stated in the disposal directions on handling cases in Article 25 of the Fair Trade Law.