

## **Introduction of the Search and Seizure System into the Fair Trade Law**

### **I. Background**

The Fair Trade Law (hereinafter referred to as the “Law”) was enacted to ensure free and fair competition. Hence, the Fair Trade Commission (FTC) has the administrative authority to restrict conduct that damages competition competitive order in the market. The Law restricts conduct that restrains competition, e.g. monopoly, merger, and concerted action, and deceptive or obviously unfair conduct, e.g. boycott, differential treatment, restrictive business practices, pirating, and false advertisement.

The domestic economy has rapidly grown in recent years, and enterprises have gained increasingly stronger economic power, which they can use to easily obtain excess profit and restrain competition from other enterprises. This poses a major challenge to the FTC when investigating illegal conduct of enterprises. In other words, if an enterprise uses its strong market power and economic power (e.g. abuse its monopoly, illegal merger or concerted action) to gain excess profit and restrain competition from other enterprises, it will damage the efficiency of resource utilization in the long-term and result in social loss. This greatly concerns public interest because if it is not stopped in time, it will cause great economic loss in the long-term.

The FTC exercises a form of administrative authority. Since concerted action and monopolies have a significant impact on the economy, and the FTC’s investigation results may incur criminal charges, it is important to the FTC to effectively exercise its administrative authority to deter illegal conduct. The public has growing expectations for the FTC to gain greater public authority through the legal system when conducting investigations. This will enable the FTC to prevent illegal conduct, which will prevent bad enterprises from continuing to harm the society and economy when a case is brought to the prosecutor and there are issues with the evidence validity or trial is dragged on. This is a legal issue that should be looked further into.

The Fair Trade Law does not give the FTC the power of search and seizure, and it has made it difficult to gather material evidence when conducting investigations. The FTC thus has not been able to effectively put a stop to growingly larger, more technical, and more concealed illegal conduct that restrains competition. The competent authorities of competition law in advanced countries, such as Germany, Japan, Canada, and Holland, generally have the power of search and seizure to different extents. There have been quite a few precedents of other countries in using public authority, i.e. search and seizure, to gather evidence of illegal conduct, even when the illegal conduct does not merit criminal charges.

Therefore, it is necessary to consider adopting the administrative search and seizure system for the FTC to more effectively conduct investigations into conduct that obstructs free competition in the market. It will also prevent issues with the evidence validity or a long trial when a case is brought to the prosecutor.

### **II. Recommendations**

The FTC added administrative search and seizure in Article 28 of the draft amendment to the Law

to more effectively exercise its administrative authority, and specified the principles of legal reservation, particularity, warrant, proportionality, and due process of law . This is an unprecedented undertaking in the development of administrative law.

Nonetheless, the power of search and seizure may infringe on the public's rights, and merely providing legal basis in Article 28 of the Law may not be sufficient. Therefore, to ensure the completeness and accuracy of information collected by the FTC and protect subjects being investigated from excessive intervention in their private life, how the FTC exercises its "power" of search and seizure and fulfills its "obligations" to the subject should be further regulated in the Law, so as to protect the rights and interests of the administrative counterparts.

To balance the FTC's need to carry out administrative search and seizure and the need to protect the rights of the administrative counterpart, this paper recommends that the FTC fulfill its "obligations " by: (1) compliance with due process of law; (2) setting up related supporting measures for administrative search and seizure in coordination with the judicial organ.