

The Relations between the Management Practices in the Search Engine Industry and the Fair Trade Law

1. Background of Study

Search engines and Email are the most commonly used Internet applications. 92% of adult Internet users use search engines to look for information on the Internet and 59% of Internet users use search engines almost every day. The search engine industry plays the role of Internet gatekeeper and whether it has market power as defined in conventional economics or even has the market power to monopolize opinion expression channels has thus become a heated topic of discussion among antitrust, media and technology law scholars. One after another competition authority in Western countries launched investigations into Google's antitrust conduct and whether the "search bias" of search engine businesses constitutes anti-competitive conduct has also been a critical issue in courtrooms. As the dispute triggered by practices adopted by search engine businesses is a new issue while the FTC has also handled cases of anti-competitive conduct in the search engine market, it is therefore deemed necessary to further examine the economic characteristics of search engines, the competition issues involved as well as related theories and practical aspects to establish references for competition law enforcement in the future.

2. Methods and Process of Study

Antitrust theories related to search engines and cases processed by competition authorities in other countries are collected and compared with the situation in the search engine market, competition conditions, cases and opinions in our country to come up with suggestions that are suitable for the domestic market and legal system.

3. Main Suggestions

So far, there is no definite answer to whether the "search bias" of search engine businesses is a problem to be dealt with according to competition law. However, regarding whether competition authority should intervene in the operations of the search industry, how the market power of search engine businesses should be assessed and what criteria to apply in assessment of violations by search engine businesses, this study proposes the following suggestions:

(1) The abuse of monopoly power by leading suppliers in the information economy environment on the Internet also calls for the attention of the competition authority.

(2) Structural indicators such as market share and concentration cannot fully reflect the market power of search engine businesses. In addition, search engines often adopt the business practice of offering "free" or "freemium" services and this makes it impossible to apply the "hypothetical monopolist test" to define a market. Under such circumstances, the competition authority perhaps should consider using direct evidence to assess the effects of suppliers' conduct on competition.

(3) The mode of competition in the search engine industry is a process of "disruptive innovation." The competition authority only has the duty to maintain competition, not to choose winners. Therefore, it must abide by the principle of "protecting competition not competitors" and adopt consumers' interests as the criteria to evaluate whether a practice is legal or not.