

A Study on the Regulations of the Auto (Including Parts and Accessories) Industry in Competition Law

1. Background of Study

The auto industry is a capital- and technology-intensive industry. Huge amounts of capital have to be invested at the onset to purchase production and testing equipment and raw materials. Massive labor is also needed for production and marketing which also require large amounts of funds and the risk is high. Meanwhile, different technologies must be integrated throughout the manufacturing process whereas research and innovation have to be carried out continuously to develop new models to meet consumer needs. More over, the auto industry is also closely associated with other industries and is able to help upgrade related vertical industries and lateral industries. The former include market survey, mold-making, parts and accessory manufacturing, marketing, distributing and advertising businesses that are involved in different stages of production and marketing, such as market research, establishment of specifications, clay model and drawing design, mold manufacturing, production of pilot parts and accessories, assembly, testing, mass production, marketing, after-sale service and information feedback. As for the latter, an automobile is composed of around 30,000 parts and accessories that are made of dozens of metal and non-metal materials from the steel, rubber, plastics, electronics, electrical engineering, glass and paint industries. If the auto industry continues to grow, boosting production and quality, it will definitely benefit the upgrades and development of the abovementioned industries whose finance and technologies will also improve. The auto industry has to produce at least 100,000 units of each type of automobiles and at least 400,000 units of all types of automobiles each year in order to achieve economies of scale. However, the domestic auto industry produces only around 400,000 units annually. Under such circumstances, auto businesses are likely to change their pricing strategies and marketing modes at random when facing trading counterparts. Therefore, the Fair Trade Commission (hereinafter referred to as the FTC) ought to review the scale and structure of the auto market comprehensively to assess whether there are violations against the Fair Trade Law.

In 1997, the FTC investigated a case involving domestic car dealerships refusing to sell parts and accessories for automobiles they were agents. The FTC decided during a commissioners' meeting held in August 1998 that there were no violations. In March 2012, the FTC imposed an administrative fine of NT\$3 million on Hotai Motors for setting restrictions on the trading counterparts of its distributors. In January 2013, after conducting surveillance to understand the developments in the auto market and auto parts and accessory market, the FTC issued warning letters to urge related businesses and trade associations to abide by law and also sent staff members to visit auto manufacturers to check on the

supply-demand condition and investigate the operations of sheet metal, auto-wiring and other parts and accessory businesses but no violations were discovered. However, since parts and accessory warranties had serious effects on road safety, the FTC initiated ex officio investigations respectively in May 2013 and August 2014 to find out whether domestic auto dealerships, parts and accessory suppliers and distributors had prohibited sales of parts and accessories to outsiders in violation of the Fair Trade Law. In the end, likely patterns of violation were compiled and the “Fair Trade Commission Disposal Directions (Guidelines) on Handling Auto Parts and Accessory Transaction Cases” were established and promulgated on Dec. 17, 2015. By reviewing related data and cases involving the auto industry and the auto parts and accessory industry that the FTC has processed over the years, the study is intended to establish a deeper understanding of the current situations of the auto industry and auto parts and accessory industry and competition in the relevant markets in order to come up with appropriate suggestions for the FTC’s law enforcement in the future.

2. Scope and Methods of Study

(1) Scope of Study

The auto industry in the country is defined by the Directorate-General of Budget, Accounting and Statistics as including all businesses manufacturing vehicles such as passenger cars, vans, trucks, tractors, all terrain vehicles, golf cars, street sweepers, etc.

According to the classification made by the Department of Statistics of the Ministry of Economic Affairs, automobiles are divided into passenger cars (those for less than 9 passengers and less than 2,000cc are small passenger cars, the ones for less than 9 passengers and more than, including, 2,000cc are large passenger cars, the ones with 20~29 seats are medium buses, and those with 30 or more seats are large buses), trucks (small trucks less than 3.5 metric tons and big trucks more than 3.5 metric tons), rolling chassis, and other automobiles (including ambulances, fire trucks, semi-trailers, cement mixers, etc.) Meanwhile, according to the Monthly Statistics of the Ministry of Transportation and Communications, as of the end of 2015, there were 7.718 million registered automobiles, including around 6.588 million passenger cars, accounting for 85.4% of the total number of automobiles in the country. For this reason, this study is aimed at passenger cars. In Part I, the structure and current status of the auto industry and auto parts and accessory industry are analyzed. In Part II, the regulations on the auto industry and related cases in major countries that implement competition law are examined. Part III reviews all auto industry-related cases that the FTC has processed over the years, including investigations into concerted action, merger and competition restriction cases and the administrative measures taken. The critical point of each case is also analyzed. Then, based on the results of the

abovementioned analyses, the actual competition conditions in the domestic auto industry are studied. It is hoped that the effort invested can lead to establishment of a set of criteria for assessment of violations by domestic auto businesses and a surveillance mechanism for the FTC to keep a close watch on violations against the Fair Trade Law by domestic auto businesses, including auto parts accessory enterprises, to serve as references for the FTC in future law enforcement.

(2) Methods of Study

- A. In-depth interview: Personnel from the auto industry and auto parts and accessory industry are interviewed to acquire their opinions and feelings about related problems and incidents to help the researcher understand the current situations in auto and auto parts and accessory markets, including the structure, transaction approaches and the upstream-downstream relations.
- B. Case study: Related cases processed by competition authorities in Western countries and the FTC are scrutinized to understand the correlations between transaction behavior changes while corresponding data are sorted out, compared and analyzed.
- C. Literature review: Related documents are collected, compiled and placed in contrast to identify market developments and long-term tendencies.

3. Conclusion

Sales of domestically produced automobiles account for close to 70% of total units sold in the auto market in the country. There are not that many domestic makers; plus, the market share of Toyota, represented by Hotai Motors, is rather large (not yet achieving monopoly). The market shares of the remaining domestic auto makers are close and fluctuate as a result of the competitive efforts put in. As for imported automobiles, the marketing channels are rather diverse. In recent years, probably because of the increase in consumers' buying power or importers' successful marketing strategies, the total sales have continued to rise and already surpassed 30% in 2015. Overall, competition in the auto market is still fierce.

The domestic auto market is mature. Auto makers, agents and dealers have cooperated for years and there exists certain level of tacit understanding. The same marketing approaches have also been adopted for many years. Maybe because of the rigidness of such old marketing systems or misunderstandings in

individual transaction cases, the FTC has often received complaints from private citizens expressing doubts about joint price adjustments between auto makers or from dealers accusing general agents of imposing vertical competition restrictions (such as trading counterpart restrictions) that limit the sales activities or reduce the price negotiation capacity of downstream distributors. In other words, the complaints the FTC receive are mostly related to concerted actions (price wise) described in Article 15 of the Fair Trade Law, resale price restrictions in Article 19 or competition restrictions in Article 20.

The scale of the domestic auto market is not big and the auto parts and accessory market is therefore small. As a result, auto parts and accessory businesses find it difficult to reduce manufacturing costs unless they set their targets on international markets. Since their after-market parts and accessories are largely exported, they not only have to be aware of the regulations in the Fair Trade Law but also need to understand the competition regulations of countries where their products are exported. In after-sale service markets, independent repair services usually offer after-market parts and accessories that have price advantages compared to OEM products. However, as the demand for energy-saving eco-friendliness and intelligent safety devices in automobiles continues to increase, the ratio of electronic parts and accessories in a car is gradually increasing. Special tools and testing equipment are needed to repair and maintain such vehicles. Sometimes, they even have to be connected to computers for system updates. The FTC already established and promulgated the “Fair Trade Commission Disposal Directions (Guidelines) on Handling Auto Parts (Accessory) Transaction Cases” on Nov. 17, 2015 to ensure that independent repair services, authorized repair shops and auto parts businesses could acquire parts and accessories and equipment needed to repair and maintain auto mobiles of specific brands so that competition in the relevant market could be sustained. Nevertheless, most independent repair services in the country are small enterprises. It is doubtful whether their automobile-repairing capacity is up to standard or they are able come up with the capital required to purchase the aforementioned special tools and testing equipment and compete in the auto repair market. For this reason, when enforcing law, the FTC should particularly take vertical price restrictions into consideration and assess whether there are violations according to the “principle of rationality.”