

Structural Reflection and Reform on the Regulatory Status Quo of Horizontal Agreements in Taiwan: Prior Approval, Positive Differentiation, and Ex Post Regulation

Richard Li-Dar Wang^{*}

Abstract

Taiwan Fair Trade Act requires participants in horizontal agreements secure ex ante authorization from the Fair Trade Commission (FTC) since the law came into force in 1992. The performance of that regulation to date has been quite limited in terms of the sheer amount of cases, competition analysis, and the reasoning of punishment decisions. The current problematics of the enforcement practices are in fact closely related to the ex ante regulation as such. FTC has rarely investigated cases involving procedural violation of the prior approval system, which further undermines the same system. From the outset of this century, however, it has been the international trend to distinguish between hardcore cartels and beneficial competitor collaborations and treat them differently. Furthermore, benign horizontal agreements are not so easy to identify as generally considered, and actually spread out in varied kinds of economic activities. In light of all those findings, it would be advisable for Taiwan to repeal the prior approval system, and change into ex post regulation on horizontal agreements.

Keywords: rule of reason, per se illegal, hardcore cartel, Taiwan Fair Trade Commission (FTC), official holidays, cooperative innovation, buyers' conspiracy.

^{*} Professor and Associate Dean, College of Law, National Chengchi University; S.J.D., Indiana University Maurer School of Law at Bloomington.
E-mail: lidar@nccu.edu.tw