

The Issues of Competition Law in FinTech: Focusing on Digital Financial Platforms and Anti-Competitive Practices

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Abstract

This article scrutinizes the evolution of digital financial platforms, the reform of financial regulations stemming from FinTech, and surveys pertinent literature and cases from the United States and the European Union. Drawing on these findings, the study further dissects and suggests appropriate enforcement of the Taiwan Fair Trade Act (TFTA) concerning anticompetition issues associated with FinTech and digital financial platforms within the Taiwanese legal framework. Primarily, it is evident that numerous digital financial service markets possess the characteristics of two/multi-sided platforms. The assessment of these platforms' market power and related anticompetitive risks is deeply intertwined with anticompetitive issues associated with FinTech. Secondly, when evaluating fintech-related mergers, the Taiwan Fair Trade Commission (TFTC) should effectively apply the theory of two/multi-sided platforms and acquire data related to online financial services. This would enable it to define relevant markets and evaluate ensuing anticompetitive risk. Additionally, the TFTC should consider the competitive advantages created by data and analyze the impact of mergers on financial innovation, drawing references from merging enterprises' internal documents and the perspectives of their customers and competitors. Furthermore, large technology companies or non-financial enterprises in Taiwan, acting as or through electronic payment institutions, third-party payment providers, digital payment service providers, or third-party service providers, have gradually emerged as conduits and gateways for financial consumers to access or utilize a

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variety of financial services. Related vertical restrictions or exclusionary practices will pose significant anticompetitive issues in Taiwan. Nevertheless, under the current financial regulatory framework in Taiwan, the TFRC faces challenges in invoking Article 9 or Article 25 of the TFTA to prohibit any individual bank's unjust denial of third-party service providers' access to customer data. The refinement and revision of the associated financial regulations and legal systems protecting digital personal data will be the focal point, which could also avoid the risk that certain self-regulatory practices of the Taiwan Bankers Association may contravene the prohibition against illegal concerted actions.

Keywords: FinTech, Competition Law, Digital Economy, Two-sided/Multi-sided Platform, Open Banking, Big Data, Antitrust Law