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主 論 文 の 要 旨

論文題目

The Regulation of Price-fixing Cartels under Vietnam's Competition Law: A Comparative Analysis with the Japanese Anti-Monopoly Act and the EU Competition Law

氏 名

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論 文 内 容 の 要 旨

Abstract

The purpose of this dissertation is to analyze the principles by which the Vietnam Competition Authority (VCA) examines price-fixing cartels through a comparative study with the Japan Fair Trade Commission (JFTC) and the European Commission. This dissertation found that although Vietnamese enterprises were already fiercely competing with each other, due to the ongoing evolution of Vietnam's socialist-oriented market economy concept, and the nation was benefitting from competition at the time of enacting competition law in December 2004, the concept of 'cartels' that had been adopted by law-makers in 2004, no longer meets the requirements of present-day Vietnam. While Japan and the EU are following 'conduct and effect-based' approaches, Vietnam is applying a 'traditional form-based' approach to identifying cartels. This study highlighted that cartels could not work without mutual coordination feature.

This study also explored how Japan and the EU examine the conduct and harms of price-fixing cartels, finding that the JFTC applies the rule of reason and the European Commission follows the per se illegal rule. This dissertation demonstrated that the VCA's principle of 30 percent market share threshold in the relevant market to examine the price-fixing cartels is not sufficient enough to effectively control the monopoly in an oligopolistic market. This is because the Vietnamese approach mainly relies on product definition and calculation of market share under circumstances where the VCA does not have access to sufficient data to properly define products or identify boundaries for relevant markets. The VCA also faces significant challenges due to its limited resources and its non-independent nature vis-a-vis the Ministry of Industry and Trade (MOIT).

Significantly, this dissertation found that the price-fixing cartels, which lead to monopoly and inefficient use of resources, are categorized by competition legislators as 'hard-core' cartels because of their extreme harm to markets and consumers. Many jurisdictions are applying the per se illegal rule for this kind of cartel. Finally, the study proved that after 12 years of enforcement in Vietnam, the perception of cartels has been enhanced. Stricter sanctions against such as higher fines and criminal penalty were introduced. In order to combat the price-fixing cartels effectively and efficiently, this dissertation suggests that it is crucial for Vietnam to define cartels in a more comprehensive way that encompasses all cartel types, to apply the per se illegal rule for price-fixing cartels, to take into consideration of the concept of 'substantial restriction of competition', to examine the harms of cartels in general and introduce the leniency program, and to adopt a comprehensive competition policy that will promote greater economic efficiency in Vietnam.

