

COMPLETION REPORT

Study on the Japanese Experiences of Cartel Regulation: The Valuable Reference to China's Enforcement of Competition Law

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Japan carries out localization reform on the cartel regulation rooted in the west basing on its government-led market economy and competitive culture. Japanese anti-cartel enforcement showed a great uniqueness and advancement. The research puts emphasis on studying theory innovation of in Japanese localization process from the following aspects.

1.Types and illegal judgement conditions of cartel. Collusion includes horizontal agreement and vertical agreement. At the beginning, Japan only regulated horizontal agreement. In 1993, Japan extended to regulate the vertical. Simultaneously, It quantifies the illegal conditions of cartel: (1) operated by firms or trade associations.(2) the common behaviors reflected in agreements or concerted practice to limit competition. (3) substantially restricts competition in the relevant market. (4) violate the public interest of society. The (3) and (4) are the special standards in Japan.

2. The principles of anti-cartel enforcement: reasonable principle and Per Se illegal. Reasonable principle applies to less harmful cartels, by which authorities should consider not only the existence of cartel, but also the restrictive effect on market. Per se illegal is applicable to cartels that severely restrict competition, by which, authorities can directly judge it illegal as long as the existence of cartel is determined. Per se illegal greatly improved the efficiency of enforcement.

3. The exemption from anti-cartel enforcement. The exemption is an important characteristic of cartel regulation in Japan. It is divided into two kinds, i.e., regressive exemption and definite exemption, according to the relationship between competition and exemption. The former was provided for industrial policyin1950s and was abolished along with enhancing competition policy in 1999. The latter aims to protect competition. Nowadays, the Japanese exemptions only apply to definite exemption promoting competition and book resale price maintenance preserving social culture.

4. Centralism of Japanese Fair Trade Commission (JFTC) in anti-cartel enforcement system. JFTC plays a core role in fighting cartel: (1) has exclusive powers to determine facts. (2)has exclusive powers to prosecute and investigate criminal cases.(3) plays important role in civil cases. Firstly, the victims shall not claim compensation until JFTC made a decision of cartel. Secondly, the illegal facts determined by JFTC can be proof in civil action. Thirdly, JFTC should assist victims action, such as providing relevant documents, and helping court determine the amount of compensation.

5. The diversified sanctions system for cartels: surcharge, civil and criminal liabilities. Firstly, because of the tradition of relying on administrative enforcement to safeguard public interests, surcharge is the most important sanction against cartels, in which JFTC has taken realistic attitude and step-by-step work style. Secondly, in recent years, Japan has made use of criminal sanction, compensation and leniency policy to address the difficulties of anti-cartel enforcement.

We think the success of Japan in fighting cartel lies **firstly** in the localization of anti-cartel enforcement rooted in the west. Based on its own government-led market economy and competition culture, Japan constantly perfect its system. **Secondly**, this is because Japan adjusted cartel regulation in time according to the status of competition policy and industrial policy. In the period of promoting economic by competition policy, Japan strictly regulated cartels; while in the period of industrial policy being prior to competition, Japan set up many exemptions from anti-cartel enforcement. **Thirdly**, this is also relevant to the determination and the following measures of JFTC : 1) strict and appropriate enforcement; 2) improvement of competitive environment. **Finally**, this is also relevant to the certainty and predictability of enforcement.

It is a successful transplantation for Japan to nationalize the western anti-cartel enforcement systems and formed its own competition policy. For China, in order to effectively fight cartel, we need to 1) Focus on the factors in China rather than in other Countries; 2) Adjust the degree of regulating cartels depending on what kind of economic policies the state implements. 3) Quantify anti-cartel measures to control the discretion of competition authority and increase the predictability of regulation; and 4) establish a diversified sanctions system to deter cartel.

Publication of the Results of Research Project:

Verbal Presentation (Date, Venue, Name of Conference, Title of Presentation, Presenter, etc.)

In June 2017, in the “12th China Economic Law Forum”(Beijing, China), Professor Wang Yuhui delivered a speech entitled “*The Development of Per Se Illegal of Cartel Regulation in China*”.

In August 2017,in the “6th Annual Global Competition Policy Forum Under the Background of Global Economic Integration”(Shanghai,China), Professor Wang Yuhui delivered a speech entitled “*Comparative Study on Exemption of anti-cartel enforcement between China and Japan*”.

In September 2017, in the "Asia Competition Association 2017 Annual Conference" (Sapporo, Japan), Professor Wang Yuhui made a speech entitled "*Leniency program: the Path to Deter Cartel*".

In September 2017, in the "2017 Annual Meeting of Economic Law Section of China Law Society"(Wuhan, China), Professor Wang Yuhui delivered a speech entitled " *The Regulation on Bid-rigging*", Sun Jin made a speech entitled "*Comparative Study on Vertical Agreement*".

In October 2017, Professor Wang Yuhui was invited to Henan University (henan, China) to make a presentation entitled "*The Leniency Program of Fighting Cartel in China*" for law professors and students.

In December 2017, in the “ Forum of Intellectual Property and Competition Law ”(Wuhan, China), Professor Wang Yuhui made a speech entitled "*The Path to Regulate Information Exchange*".

In December 2017, in the “2017 Hong Kong Lingnan Competition Policy Forum”(Hong Kong, China), Professor Wang Yuhui delivered a speech entitled "*Private Action of Cartel:Current Status,Challenges and prospect*" .

In March 2018, in the “Legal Regulation on Acts in the Market”(Nanjing, China), Professor Wang Yuhui delivered a speech entitled "*The regulation on bid-rigging*".

Thesis (Name of Journal and its Date, Title and Author of Thesis, etc.)

Wang Yuhui, “*The Latest Legislation Development of Competition Law in Japan*”,A Contemporaneous Report on the Development of Competition Law in China and the World. September, 2017.

Wang Yuhui, “*The Regulation on Bid-rigging under the Japanese Anti-monopoly Law*”, Social Science Journal, No.1, January, 2018.

Wang Bo, Wang Yuhui,“*The construction of application and acceptance procedure of anti-monopoly law leniency policy in China*”, Journal of Zhengzhou University, No.2, March, 2018.

Sun Jin, Zhong Yuan, “*An Analysis of the Types of Vertical Non-Price Monopoly Agreement and Recognition Mechanism*”, China Business News, May, 2017.

Sun Jin, Zhong Yuan, “*Construction of Exemption System for Fair Competition Examination in China under the Perspective of Competition Policy*”, Journal of Jishou University, No.3, June, 2017.

Book (Publisher and Date of the Book, Title and Author of the Book, etc.)

Wang Yuhui, “*Study on the Control Mechanism of Bid-rigging*”, Law Press, July, 2017.