

Research Summary

Japan is a typical country where “competition culture is prior to competition policy”. This means that Japan's competition culture is not a spontaneous self, but there is a process of creating and nurturing. For a long time, industrial policy rather than competition policy has been the mainstream of Japan's economic policy. But now, "Japan's rapid economic growth owes to the double function of competition policy and industrial policy" has become mainstream view in Japan. In this process, the Japanese Fair Trade Commission (JFTC) has played a remarkable role.

First, in the process of competition law enforcement, JFTC has taken 1) realistic attitude; 2) step-by-step work style; and 3) flexible operating practices. For example, although most of administrative guidance implemented by the MITI acquiesced by JFTC under pressure, it does not seem to be so lucky for other government departments. As another example, although the JFTC rarely applied the Antimonopoly Act at the beginning, however, it still established such principles that in the cases of fixed-price the per se rule rather than the rule of reason should be applied. Such attitudes and practices, ultimately accumulated the power of Japan's Antimonopoly Act, which finally be revived in the seventies of the twentieth century.

Secondly, JFTC is committed to spread the concept and knowledge of competition policy, and has done a lot of competition advocacy. They have prepared lots of antitrust booklets for different operators in different industry on how to comply with antitrust laws, have written a lot of user-friendly learning materials to ensure that operators and consumers understanding the Antimonopoly law on their daily lives, thus consciously abide by the law.

Thirdly and more importantly, JFTC has taken a number of measures to promote competition in regulatory sectors. On the one hand, JFTC is committed to gradually reduce the statutory antitrust exemptions and promote pro-competitive regulatory reforms; on the other hand, it actively promotes the establishment of ex-ante evaluation of regulations. Up to now, most newly-established/amended regulations have been subjected to the competition assessment.

We think the success of Japan in developing competition culture lies firstly in Japan's own cultural characteristics. The informal and preventive measures implemented by JFTC largely depend on the special coordinated relationship between Japanese companies, individuals and law enforcement agencies. It can be said that the group consciousness has been the cultural soil for the effective antitrust law enforcement in Japan.

Second, this is also related with institutional settings. JFTC has the same independence in comparison with western authorities, but with a more powerful authority: JFTC is with the nature of executive, legislature and judiciary, and the "fact finding" released by is normally accepted by the courts. Japan's extensive use of persuasion, reminding, warning and other informal procedures also is so very different from Western countries.

Finally, this is also relevant to the determination of the JFTC and its clear competition policy objective. The JFTC has declared that it will positively implement competition policy with emphasis on the following measures: 1) strict and appropriate enforcement; 2) improvement of competitive environment; 3) reinforcement of competition policy infrastructure. Clear goals and strict enforcement make both competition policy and other economic policies form an effective force, and gradually make the competition culture go deep into the hearts of Japanese people.

It is a successful legal transplantation for Japan to nationalize the western systems and formed its own culture. For China, in order to effectively enforce the Anti-monopoly Law and to create a competition culture, we need to 1) focus more on culture factors rather than institutional factors; 2) attach more importance to competition advocacy, especially aims to the government departments; 3) pay attention to the role of competition law enforcement agencies on shaping competition culture; and 4) establish a clear competition policy objective.

Publication of the Results of Research Project:

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

In September 2010, in the "Sixth International Competition Law Forum" (Seoul, Korea), Professor Xu Shiying delivered a speech entitled *"Competition Policy and Competition Culture of Asia in the Context of Globalization"*.

In October 2010, in the "2010 Annual Meeting of Economic Law Section of China Law Society"(Changsha, China), Professor Xu Shiying delivered a speech entitled *"Competition Policy and the Choice of China"*, Ying Pinguang made a speech entitled *"Comparative Study on the Changes of Competition Policy under the Financial Crisis"*.

In November 2010, in the "Sixth United Nations Conference to Review the UN SET on Competition Policy"(Geneva, Switzerland), Professor Xu Shiying made a presentation entitled *"Competition Policy and Competition Culture in China"*.

In November 2010, Professor Xu Shiying was invited to Liaoning University (Liaoning, China) to make a presentation entitled *"Competition Policy and the Economic Development of China"* for law professors and students.

In December 2010, in the "Sixth Asian Competition Law Forum"(Hong Kong, China), Professor Xu Shiying made a presentation entitled *"Competition culture and Competition Advocacy"*.

In December 2010, in the "International Conference on China's Enforcement of Anti-monopoly Law"(Beijing, China), Professor Xu Shiying made a presentation entitled *"The New Economy and Competition policy & Competition Culture"*.

In December 2010, in the Academic Luncheon of Wuhan University Law School (Wuhan, China), Professor Xu Shiying made a speech entitled *"Comparative Study on Competition Culture"*.

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

Xu Shiying, Ying Pinguang, *"Study on the Japanese Experiences of Developing Competition Culture: the Role of JFTC"*, Journal of Jiangsu University, No.3, May, 2011.

Ying Pinguang, *"Competition Law Enforcement during Depression Times: Transition and Reflection"*, Tian Fu New Idea, No. 5, Sep, 2010.

Ying Pinguang, *"The Welfare Standards of Anti-monopoly Control on Concentration of Business Operators: A Comparison Study and the Choice of China"*, Journal of Lanzhou Commercial College, Vol.26, No. 4, Aug, 2010.

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

Xu Shiying, *"Japan's Competition Policy"*, Beijing University Press, May, 2011.