

Fair Trade Commission, Executive Yuan

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Abstract

The purpose of Fair Trade Act is to establish a fair trading system by providing an open and free market to establish economic order. It protects and encourages renovation of business development and also the consumers' interests by prohibiting businesses occupying a large share of the market from monopolizing and limiting market competition. "Restraint of Trade" is specifically regulated by the Fair Trade Act. According to Fair Trade Commission of the Executive Yuan, from 1992 to April, 2005, there were a total of one hundred and thirteen cases punished by restraint of trade. Since the Fair Trade Act was enacted about fifteen years ago, there have been great developments in laws and regulations, theories, and realization on restraint of trade.

This study aims at analyzing aspects of restraint of trade, as stipulated in the Fair Trade Act. Specifically, it will address such questions as what is restraint of trade and should such acts be banned. What are its constituent conditions? What are its patterns and manifestations? What punishment should be imposed when violation occurs? To answer these questions, this study will explore how restraint of trade is enforced by the Fair Trade Commission of the Executive Yuan, as illustrated by the case of China Petroleum Inc. and Formosa Petrochemical Corporation.

Keywords : restraint of trade, gentlemen's agreement, concerted action.

聯合行為之研究 - 以行政院公平交易委員會之實踐為中心¹

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摘 要

公平交易法制定之目的在於建立公平交易制度，透過公平自由市場經濟秩序之建立，明確保護與鼓勵企業之努力及創新經營，使市場力較大之企業不致濫用其力量控制市場，限制市場競爭，以保障消費者權益；「聯合行為」便是公平交易法上特別加以規範之行為。根據行政院公平交易委員會之統計，自民國 81 年至民國 94 年 4 月，因違法聯合行為遭處罰之案件共計 113 件。立法迄今已將屆 15 年，無論在法規範、學理、實踐上，對於「聯合行為」之規範，均有相當進步發展。

本文旨在針對公平交易法上聯合行為進行研究，亦即針對何謂聯合行為？是否絕對禁止？構成要件為何？行為態樣為何？違反規定之處罰為何？等加以研究，但以行政院公平交易委員會之實踐為中心，並藉中油與台塑石化案印證說明之。

關鍵字：聯合行為、君子協定、寡占利益