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析論獨占事業濫用市場地位之禁止

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摘 要

公平交易法第十條對獨占事業之規範，採所謂的防弊主義立法體例，即不禁止獨占事業，而禁止獨占行為。本文探討本條及其相關規定之三次草案立法沿革及未來之修正草案，析論獨占事業的相關問題，參酌美國、德國、歐體之法制，界定濫用市場地位之行為的意義，並整理出濫用行為之二大類型(封鎖競爭式的濫用及榨取式的濫用)及其具體之態樣(例如拒絕交易、操縱價格、聯合行為、阻礙性質的投資、濫訴、營造寡占性的市場條件、價格之濫用、交易條件之濫用、搭售、持續遲延給付、其他不公平競爭的行為)。最後討論公平法第十條第一項第四款之合憲性問題。

大 綱

- 壹、前言
- 貳、立法沿革
- 參、獨占事業
- 肆、獨占事業濫用市場地位之行為
- 伍、第十條第一項第四款規定之合憲性
- 陸、結論

On Prohibiting Monopolies from Abusing Their Market Power

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Abstract

Article 10 of the *Fair Trade Law* prohibits monopolistic enterprises from abusing their market power, violation of the provision being criminally punishable by up to three years of imprisonment. In its abstract wording and criminal consequences Article 10 resembles Section 2 of Sherman Act. But it also bears a German GWB-origin. This paper examines and analyzes the following topics in sequence: 1. The legislative history — including the amendment draft proposed by the government — of this article. 2. The issues related to monopolistic enterprises, such as the definition of the term, their identification and distinction from monopolistic conduct, and the relevant authority that classifies them as monopolies. The definition of the market is too big an issue to be treated in this paper. 3. The meaning and types of the abuse of market power. 4. The constitutionality of Item 4, Subparagraph 1 of Article 10.