「嚇阻」(deterrence)概念下之
反托拉斯法私人訴訟
——「最適損害賠償」理論之政策啓示

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　　傳統反托拉斯法（公平法）之研究多集中於實體要件之探討，文獻中討論違反競爭秩序行爲之救濟方式與程度該如何選擇或是否妥當等問題者，則相對較少。而國內學者從「效率」此一在公平法實體面分析中占有重要考量地位的角度，思考公平法私人訴訟制度相關法律問題者，更屬少見。本文擬以「嚇阻」爲公平法所欲實現之主要立法目的爲出發點，就此一議題爲深入之研究。以美國法之執法經驗與學者 William Landes 所提出之反托拉斯「最適損害賠償」理論爲基礎，本文將就其對我國公平法中關於 3 倍損害賠償規定、反托拉斯私人訴訟立法例、當事人適格、與引進集體訴訟制度可行性等實體與程了面問題所具有之政策啓示爲一詳細之評估。文末以提出可資進一步研究之議題作結。

關鍵詞：嚇阻、反托拉斯、公平交易法、最適執法量、3 倍損害賠償、
　　　　私人訴訟、反托拉斯損害、當事人適格、集體訴訟、排除競
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Private Antitrust Litigation under the Concept of Deterrence—Policy Implications from the "Optimal Damages" Theory

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ABSTRACT

In general, threshold issues have been the primary concerns for most antitrust literature. Relatiyely fewer studies have been devoted to the evaluation of the welfare effects inherent in the applicable remedies in private antitrust litigation. Still rarer has been discussion of this issue in Taiwan from the perspective of economic analysis, especially from the "efficiency" consideration. In this article, I attempt to narrow this gap by introducing the "deterrence" approach for the measurement of antitrust damages into the analysis of the Fair Trade Law (FTL) of Taiwan. Based on the "optimal antitrust damages" formula proposed by Professor William Landes, I have derived therefrom some of the implications that might be informative for the implementation of the FTL's treble-damage rule, the interpretation of liability doctrine underlying its private litigation system, the determination of antitrust standing to sue, and the likely incorporation of class action system into the FTL. I close this article with a suggested list of issues relating to the operation of "optimal damages" theory for futher exploration.

Key Words: deterrence, antitrust, Fair Trade Law, optimal law
enforcement, treble damages, private litigation,
antitrust injury standing, class action, exclusion of
competition