

Justifications of Anticompetitive Activities Under U.S. Antitrust Law

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In this thesis, I analyze under what circumstances anticompetitive activities are justified. The focus of the discussion is whether “noneconomic justification” such as public interest is included in the scope of justifications of the Antitrust Law. Even though justifications of anticompetitive activities are limited to “economic justification”, discussion is still required on what facts are deemed to “promote competition”. Furthermore, I investigate the criteria of justifications; how certain anticompetitive activities are evaluated in order to be justified.

In order to explore the above issues, I have thoroughly investigated the judicial precedents of mainly the U.S. Supreme Court, discussions of the U.S. Congress, guidelines of the Federal Trade Commission and the Department of Justice, as well as various theories of commentators.

Lastly, I suggest the fundamental idea that lies within justifications under the Antitrust Law; anticompetitive activities may be justified in cases where they are conducted in order to correct “market failures” that recover the market mechanism and promote competition, which is ultimately in accordance with the objective of the Antitrust Law. With respect to the criteria, firstly decision-makers should balance procompetitive effects and anticompetitive effects to overview their correlation, and then determine which criteria (three standards; (i) strict standard, (ii) intermediate standard, and (iii) moderate standard) should be applied to anticompetitive activities.