

Extraterritorial Application on Private Antitrust Enforcement in the United States (summary)

Miseon KIM

Assistant Professor, Graduate School of Engineering Osaka University

This article considers the way to make a decision about whether the court have a jurisdiction in case that an action for compensation brought before the court of Japan by foreign plaintiffs against foreign companies who are members of international cartels. In Japan, the Public enforcement is common on exterritorial application of Antitrust Law, some cases which accept to exterritorial application by effect test recently appear. Also, injured victims can brought before the court for damages under Antitrust Law Article 25. As Japanese Antitrust Law have been considered Public Law, the jurisdiction problem treated scope of application of laws. According to this perspective, an important issue is whether Private enforcement also treated as scope of application of laws like Public enforcement.

Chapter 1 outlines the concept of exterritorial application of U.S. Antitrust Law. In the United States, the Effect theory which appeared in *Alcoa* spread into the mainstream of the arguments on exterritorial application of Public antitrust enforcement. On the other hand, Private enforcement which is the regulation for anti-competitive activities through remedy for victims, common in the United States coupled with treble damages and class action actually. Later, Congress enacted the Foreign Trade Antitrust Improvements Act (FTAIA) in 1982 to clarify the reach of the Sherman Act in matters involving foreign commerce. The statute, however, was unartfully drafted and led to more confusion than clarity among courts and litigants.

In the Chapter 2, this paper clarify the difference of interpretation of FTAIA through make a comparison between judgment of Public enforcement and Private enforcement. And, this paper present *Empagran* which is the first judgment of the Supreme Court interpret FTAIA on Private enforcement. *Empagran* concerned a class action brought by foreign plaintiffs against foreign firms that participated in the worldwide vitamins cartel. The Supreme Court ruled that U.S. Antitrust Law cannot be applied to remedy injuries stemming from wholly foreign transactions, provided that the adverse foreign effects were independent of any anticompetitive effects felt on the U.S. market.

Chapter 3 aims to explain feature of exterritorial application on Private Antitrust enforcement based on comparisons with exterritorial application of other laws.

In the Chapter 4, this article discusses input from U.S. arguments to Japan. Despite the Private enforcement is beneficial to the interests of the individual, it should be treated scope of application of Antitrust Laws. Because the final goal is orderly marketing whether Public enforcement or Private enforcement and it is only available after the Japan Fair Trade Commission (JFTC) has rendered a final and binding decision. For Public interests like swiftness, moreover, these actions must be brought before the Tokyo High Court and benefit from a special statute of limitations period that only starts to run after the JFTC's decision becomes final.

In conclusion, a jurisdiction of Private Antitrust enforcement should be recognized when antitrust conducts have "direct and reasonably foreseeable" effect to Japan domestic market. And, it need a causal connection which means that the victim's injuries are caused by antitrust violation.