

How should we regulate parallel exclusive conducts? (Summary)

A basic object of our study is as follows. If two or more firms independently and simultaneously use the exclusive dealing to profitably deter an efficient entrant in a market, should we rule the conduct (regulate this kind of conduct?) based on Japanese competition law? For instance, it is easy to remind us of the case where the entrant is excluded by the parallel exclusive conducts over a long period of time and the competition for the market has stagnated. We mainly analyze an exclusive contract since there are many literatures as a pattern of the exclusive dealing.

In the first chapter, we discuss the object and background of our study from a legal viewpoint, analyzing the current Japanese regulation policy, legal theories, and the comparative law.

The analysis in the Chapter 2 is as follows. As a first, we survey literatures of the exclusive contracts models with monopoly firm as well as some situations. There are two branches of the literature. One branch of the literature pays attention to one anti-competition effect of the exclusive contracts, in which they have considered some models which are more complex than Chicago School model. The models have been clarified that an anti-competitive effect may happen with the exclusive contracts. Another branch of the literature is a pro-competitive effect of the exclusive contracts. As a second, we construct models with the two incumbent firms to engage in exclusive contracts independently. In the model, each incumbent firm has owns marketing channel. If each firm optimally sets a rental fee for the marketing channel, the entrant can enter the market by paying the rental fee. However, there is a possibility that an efficient entrant may be unable to enter the market when the cost function of the entrant is uncertain. If an antitrust authority has the policy such that the negative impact for the payoff of incumbents when both incumbents conduct an exclusive contract, there are some rooms for an efficient entrant can entry in the market.

In the third chapter, we interpret the economic analysis in Chapter 2 with a legal viewpoint and summarize our study.

We found some good reason why we regulate parallel exclusive conducts even if it is very limited as the implication of this study.

On the other hand, in order to implement the regulation, we need to solve several problems. Firstly, more detailed study is needed to clarify parallel exclusive conducts which have anti-competitive effects on the market. Secondly, we have a difficulty on proof, especially when collecting evidence with respect to defendant's business-sensitive information. Lastly, we should solve the following problem; on which firm should we impose any enforcement, or how should we implement the enforcement? The last point is one of the most important problems that our study left.