

Innovation competition and antitrust policy; focusing on merger regulation (Summary)

In this research project we have undertaken the following three basis investigations, so as to provide some bases for the future antitrust policy formulation in Japan with respect to innovation competition in the sense of research and development (R&D) competition. Chapter 1 and 2 present the main findings on the merger examination practices abroad, with a focus on the US. They analyze the recent merger cases for which DOJ/FTC indentified the potential adverse effects on R&D and also summarize the major findings on the merger examination practices in the US and Europe, based on the interviews with the competition policy officials. Chapter 3 surveys law journal papers and cases in the legal analysis on innovation competition and merger in the US. Chapter 4 undertakes a case study of the effects of the merger on innovations using micro-patent data, focusing on the emergence of joint research.

The major thrusts of the findings are the following. (i) U.S. antitrust authorities have identified the adverse effects on research and development in about a quarter of the cases which they have challenged in recent years. In most of such cases, however, the antitrust authorities identified the adverse effects not only on the research and development but also on the manufacturing and sales. (ii) Much less frequently the European antitrust authority (DGCOMP) has analyzed the impact of the mergers on research and development. (iii) The current survey of the US law literatures suggests that there still exist significant pros and cons on whether the antitrust authorities should intervene in the merger cases due to the negative effect on innovation competition. (iv) According to a case analysis conducted in this study, the micro analysis of the patent data allows us to undertake specific investigations of the synergy effects of mergers, such as the emergence of post-merger joint research and its relationship with the relocation of the researchers and the time elapsed after the merger.

Some preliminary policy implications of this research are the following. The necessity of the competition policy authority to address the innovation competition would increase in Japan as the importance of R&D, intellectual property right protection and network externality has increased. The relationship between R&D competition and the performance of R&D would, however, depend significantly on the appropriability of R&D and the other factors, so that a structural analysis well adapted to the case on hand is called for in the analysis of the merger effects on innovation. Thus, it would be important to accumulate the empirical research on the process of innovation competition, including the analysis using patent information. While this study focuses on horizontal mergers, the protection of innovation competition is also important for vertical mergers, joint research and monopolization cases, so that the extension of the current research for these areas would also be important.