

英美公平交易法簡介

英國

英國最早是依普通法之規定，認為卡特爾（Cartel）與獨占是無效的，且在第二次大戰前，英國擁護卡特爾，其目的在使經濟力集中，故當時交易限制的情形非常普遍。但卡特爾初起之時並未受到英國一般消費者和中小企業的強烈反對，因英國當時經濟集中度是偏低的，故獨占企業所造成的侵害並不大。然英國卻因卡特爾的盛行而使其經濟無法合理化並無法刺激新規模產業發展，以致英國經濟顯得更老化且僵固化。為了改善這種經濟環境，英國於1948年制定了 Monopolies and Restrictive Practice Act（獨占及限制行為法）。

相關法律包括：

- 1973年 Fair Trading Act
- 1974年 Prices Act
- 1975年 Prices Act
- 1976年 Resale Prices Act
- 1976年 Restrictive Trade Practice Act
- 1977年 Restrictive Trade Practice Act
- 1977年 Price Commission Act
- 1980年 Competition Act

1980年競爭法（Competition Act）條文要旨

Section

1 Abolition of Price Commission

Control of anti-competitive practices

- 2 Anti-competitive practices
- 3 Preliminary investigation by Director of possible anti-competitive practice
- 4 Undertakings in consequence of Director's reports
- 5 Competition references
- 6 Scope of competition references
- 7 Supplementary provisions as to competition references
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- 9 Undertakings following report on competition reference

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- 11 References of public bodies and certain other persons to the Commission
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- 13 Investigations of prices directed by Secretary of State

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- 15 Agricultural schemes : special provisions

General provisions about references and investigations

- 16 General provisions as to reports
- 17 Laying before Parliament and publication of reports
- 18 Information and advice about operation of Act
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- 20 Power to make grants to certain bodies

Amendments of Fair Trading Act 1973

- 21 Monopoly references by Secretary of State alone
- 24 Modification of provisions about performance of Commission's functions

Amendments of Restrictive Trade Practices Act 1976

- 25 Suspension of declarations under section 1 (3) of Restrictive Trade Practices Act 1976 pending appeals
- 26 Suspension of declarations under section 1 (3) of Restrictive Trade Practices Act 1976 pending revision of agreements
- 27 Recommendations by services supply associations
- 29 Exemption of certain undertakings from Restrictive Trade Practices Acts
- 30 Exemption of copyright agreements from Restrictive Trade Practices Acts

Supplementary

- 31 Orders and regulations
- 32 Financial provisions
- 33 Short title, interpretation, repeals, commencement and extent

SCHEDULES

Schedule 1—Supplementary provisions in connection with dissolution of Price Commission

Schedule 2—Enactments repealed

美國

美國最初是沿襲英國之普通法的規定，在州的範圍內提起損害賠償之訴，以尋求對獨占之規範，然於南北戰爭後因產業結構之改變，遂產生種種經濟集中的型態，特別在一八八〇年代，托拉斯（trust）的活動突然旺盛，更加速了托拉斯的形成。此種托拉斯常濫用其經濟力，而受害最深的是勞動者及農民，於是在1889年至1891年間，多數州政府均制定規範托拉斯的法律，然州法未能規範到州際的交易行為，故聯邦政府在1890年首先制定“Sherman Act”，並於1914年制定“Clayton Act”及“Federal Trade Commission Act”，此三法構成美國主要的反托拉斯法案。此外在1914年以後美國也制定了其它法律來補充或修改原有法律之規定。

其相關法案包括：

1890年 Sherman Act
1914年 Clayton Act
1914年 Federal Trade Commission Act
1936年 Robinson Patman Act
1937年 Miller-Tydings Act
1938年 Wheeler Lea Act
1950年 Celler-Kefauver Act
1975年 Magnuson-Moss FTC Improvement Act
1976年 Hart-Scott-Rodino Antitrust Improvements Act
1976年 Sherman Anti-trust Act
1990年 Sherman Act

1990年 Sherman Act 休曼法

An Act

Entitled the “Antitrust Amendments Act of 1990”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Antitrust Amendments Act of 1990”.

SEC. 2. Section 8 of the Clayton Act (15 U.S.C. 19) is amended to read as follows :

“ SEC. 8. (a) (1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

“ (A) engaged in whole or in part in commerce ; and

“ (B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws ;
if each of the corporations has capital, surplus, and undivided profits aggregating more than \$ 10,000,000 as adjusted pursuant to paragraph (5) of this subsection .

“ (2) Notwithstanding the provisions of paragraph (1) , simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

“ (A) the competitive sales of either corporation are less than \$ 1,000,000, as adjusted pursuant to paragraph (5) of this subsection ;

“ (B) the competitive sales of either corporation are less than 2 per centum of that corporation’s total sales ; or

“ (C) the competitive sales of each corporation are less than 4 per centum of that corporation’s total sales .

For purposes of this paragraph, ‘ competitive sales ’ means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation’s last completed fiscal year. For the purposes of this paragraph, ‘ total sales ’ means the gross revenues for all products and services sold by one corporation over that corporation’s last completed fiscal year .

“ (3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation’s last completed fiscal year .

“ (4) For purposes of this section, the term ‘ officer ’ means an officer elected or chosen by the Board of Directors .

“ (5) For each fiscal year commencing after September 30, 1990, the \$ 10,000,000 and \$ 1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than October 30 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph .

“ (b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such

capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred. ”

SEC. 3. Section 10 of the Clayton Act (15 U.S.C. 20) is hereby repealed.

AMENDMENTS

SEC. 4. (a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

(1) by striking “one million dollars” and inserting “ \$ 10,000,000”, and

(2) by striking “one hundred thousand dollars” and inserting “ \$ 350,000”.

(b) MONOPOLY.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

(1) by striking “one million dollars” and inserting “ \$ 10,000,000”, and

(2) by striking “one hundred thousand dollars” and inserting “ \$ 350,000”.

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—

(1) by striking “one million dollars” and inserting “ \$ 10,000,000”, and

(2) by striking “one hundred thousand dollars” and inserting “ \$ 350,000”.

TREBLE DAMAGES FOR THE UNITED STATES

SEC. 5. Section 4A of the Clayton Act (15 U.S.C. 15a) is amended by striking out “actual” and inserting in lieu thereof “threefold the”.

Approved November 16, 1990.

參考書目：

1. 公平交易法制之建立及其經濟分析 587.19/4003
2. 各國公平交易法相關法規彙編 R582.908/2178
3. 公平交易法新論 587.19/5733
4. 美國公平交易法相關法規彙編 587.19/2178
5. Antitrust law and economics in a nutshell 343.73072/G318
6. Antitrust economics : mergers, contracting and strategic behavior 347.30372/W731

7.Economic analysis and antitrust law 343/C167

8.European/American antitrust and trade law 343.072/E89