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研究課題: Harmonization of Competition Laws for Cross-Border
Digital Trade in Asia: From the View of Economic Analysis of Law

専門分野: Legal Studies

受入先部局: Graduate School of Law

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Dr. Shin-Ru Cheng previously served as a postdoctoral fellow at Kyoto University Graduate School of Law. Before entering academia, he practiced law in Taiwan and is qualified to practice in the State of California, the United States. His research centers on competition law with a focus on digital economy-related issues, about which he has published numerous articles and coauthored the book titled *Antitrust Law: Cases and Materials*.

His research at the Hakubi Center examines the costs and benefits of three primary models of competition law harmonization: the European model (high), the American model (intermediate), and the Southeast Asian model (low). The results will provide Asian governments with a practical proposal for negotiating a regional competition framework, leading to the creation of a broader regional market to expand cross-border digital trade in Asia.

The Need to Harmonize Competition Laws

Cross-border digital trade (CBDT) refers to online transactions between parties in different countries, a key driver of global economic growth. Harmonization—making the laws the same or similar in different countries—is seen as a vital means of expanding the CBDT market globally. Thus, the most notable Japan-led international treaty, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), requires its member states to harmonize their competition laws. However, it does not specify the level of harmonization, which may pose enforcement difficulties.

Prior literature, which focuses on traditional industries and pays little attention to harmonization costs, is insufficient for reflecting the features of CBDT in Asian markets and the level of harmonization needed. The lack of comprehensive research on digital-trade-focused harmonization may lead to the CPTPP being rendered ineffective.

This project aims to fill this gap by implementing an economic analysis of law to explore the level of competition law harmonization needed to promote CBDT in Asia. By analyzing present models used to harmonize competition laws of coun-

tries with close regional ties, this research seeks to propose answers to that question.

Three Primary Models of Competition Law Harmonization

The competition law model implemented by the European Union is the most harmonized in the world. Under the model, both the European Commission (EC) and national competition agencies (NCAs) have the power to enforce competition law. The European Competition Network ensures coherent application of EU competition law, as it requires NCAs to inform the EC of new investigations and decisions. The European Court of Justice holds the final ruling power over competition law cases.

Under the North American model, established in Chapter 21 of the United States–Mexico–Canada Agreement, each member investigates competition law violations independently. Unlike the European model, the member countries have no unified competition law, and no centralized institution has been established to hear disputes. Hence, North American competition laws are considered to be moderately harmonized.

The Southeast Asian model is considered the least harmonized of the three. Developed under the Association of Southeast Asian Nations (ASEAN) Regional Cooperation Framework on Competition, it established objectives and principles to urge its members to cooperate and coordinate in competition law cases. The Framework is unique in that it is voluntary; the lack of formal cooperative procedures and centralized institutions indicate low-level harmonization.

Methodology: Economic Analysis of Law

In contrast to traditional legal research methods—textual interpretation and historical analysis—this research employs an economic analysis of law, which applies microeconomic theory to the analysis of rule options, to examine the costs of three representative models. The approach is particularly suited for this project because competition law harmonization involves multiple countries, an objective approach for evaluating rules is required for effective communication. This method also suggests how countries might achieve maximum economic efficiency. This research focuses on four types of costs generated by the models: compliance costs, negotiation costs, enforcement costs, and loss of innovation.

Anticipated Results and Contributions

This research will determine the level of competition law harmonization best suited to the Asian market for CBDT and provides governments a practical proposal to use when negotiating a regional competition framework. Moreover, it offers an objective analytic model for future research to reexamine the extent to which competition law harmonization keeps pace with digital markets' rapid and unpredictable development.

Reference Lists

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