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硕士学位论文

竞争法域外适用法律冲突的解决方法

The Solution of Conflict Caused by Extraterritorial
Application of Competition Law

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内容摘要

竞争法，是调整市场竞争关系和市场竞争管理关系的法律规范的总和，它通过规制限制竞争行为，维护市场秩序，创造一个自由竞争、公平公正的市场经济环境。竞争法初期规制的是国内市场的限制竞争行为，但是随着经济全球化的发展，国际市场上同样出现限制竞争行为，国际限制竞争行为的实施地与效果的产生地之间往往会出现不一致的情形，境外的限制竞争行为也可能会给本国市场竞争秩序带来巨大的危害。为了对国际限制竞争行为进行规制，市场经济国家域外适用本国竞争法。竞争法域外适用产生的一个不容忽视的问题就是法律冲突，因为当一国主张其竞争法效力可以及于位于境外的人、财产、事件时，就由此为基础触及到其他国家竞争法的管辖范围，从而产生不同国家对同一人、财产、事件的管辖重叠。如何解决这个法律冲突很重要，它关系到竞争法的有效适用，关系到国际限制竞争行为的规制。以下，笔者将就竞争法域外适用法律冲突的解决方法进行论述。本文共分三章：

第一章主要剖析了竞争法域外适用法律冲突的缘起和危害，说明竞争法域外适用法律冲突的产生是不可避免的，而且也是危害巨大的，并指出试图用单边调整方法来解决这种冲突的不足，因而国际合作是更好的选择。

第二章介绍并分析了竞争法的双边合作和区域协调。双边合作和区域协调是目前竞争法国际合作的主要方式，而且都有瞩目的成果达成。但是国际限制竞争行为影响的范围是全球性的，双边合作和区域协调的劣势表明，竞争法的国际合作仅仅局限在双边和地区是不够的，国际社会应该探索更有效的全球多边合作。

第三章论述了竞争法全球多边合作的实践情况，分析不同国际组织或成功或失败的原因，并指出竞争法全球多边合作的最终走向。

关键词：竞争法；法律冲突；解决方法

ABSTRACT

Competition law is the sum of legal norms to adjust market competition relationship and management relationship of market competition. It regulates anti-competition behaviors to maintain the market order and create a competitive, fair market environment. At the beginning, the competition law was to regulate the anti-competition behaviors in the domestic market. However, with the development of economic globalization, the anti-competition behaviors were being also “global”. The feature of these international anti-competition behaviors is that the places where they affect are not the same one where they implement. So the anti-competition behaviors outside the territory may also cause great damage to a country’s domestic market order. In order to regulate the international anti-competition behaviors, extraterritorial application of competition law came into being in the market economy countries. An important problem that cannot be ignored which cause by extraterritorial application of competition law is the conflict of competition laws. As when a country claims its competition law can govern the person, the property and the event outside its territory, it may invade the jurisdiction of competition law of other countries, so different jurisdictions of the same person, property, event may overlap. How to solve the conflict caused by extraterritorial application of competition law is fatal, it matters to the effective application of competition law, and it matters to the regulation of international anti-competition behaviors. Following, the author intends to discuss the solutions of conflict which caused by extraterritorial application of competition law.

The main body of this article is divided into three chapters, which are arranged as follows:

Chapter one mainly analyzes the origin and harm of extraterritorial application of competition law. Then the author intends to point out that the unilateral approach cannot solve the conflict of competition laws which is inevitable and harmful.

Chapter two discusses the bilateral cooperation and the regional coordination which are the main way of international cooperation in competition law. However, as the scope that the international anti-competition behaviors can impact is global, the international cooperation should not only bilateral and regional, but also global.

Chapter three introduces the practices of global multilateral cooperation, and discusses the reasons for the success or the failure of different international organizations.

Key words: Extraterritorial Application of Competition Law; Law Conflict; Solution

略缩语表 (Abbreviations)

IAEAA	The International Antitrust Enforcement Assistance Act (美) 国际反垄断实施协助法
EU	European Union 欧洲联盟
NAFTA	North America Free Trade Area 北美自由贸易区
OECD	Organization of Economics Cooperation and Development OECD 经济发展与合作组织
GFC	Global Forum on Competition 全球竞争论坛
UN	United Nations 联合国
UNCTAD	United Nations Conference on Trade And Development 联合国 国贸发会
ITO	International Trade Organization 国际贸易组织
GATT	General Agreement on Tariff and Trade 关贸总协定
WTO	World Trade Organization 世界贸易组织
GATS	General Agreement on Trade in Services 服务贸易总协定
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights 与贸易有关的知识产权协定
TRIMS	Agreement on Trade-Related Investment Measures 与贸易有 关的投资措施协定
WGTCP	Working Group on the International Between Trade and Competition Policy 贸易与竞争政策互动工作组

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