現代法学の先端　第1回（2021-04-06）　事前資料

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第1回は「デジタルプラットフォームと競争法」を話題とします。下記の英文は、そこで用いる一つの素材です。法学に足を踏み入れ、問題の文脈を知れば、この短い文章から多くのことがわかり、知りたい点・疑問点が出てくることを一緒に体験できればと思います。可能な範囲で、下記の英文に目を通しておいてください。

この米国下院小委員会多数派報告書（2020年10月）の原文はここ↓にあります。

https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519

授業では、下記の英文（報告書396頁からの引用）のみを読みます。もう少し挑戦してみたいなら、9-21頁の「Executive Summary」に目を通すとよいでしょう。

報告書2頁に出てくるLina Khanさんは、最近また話題となり、日本の新聞でも取り上げられました。「Lina Khan」または「リナ・カーン」で検索してみてください。

1つだけヒント。日本で独占禁止法（独禁法）と呼ばれている法分野は、現在、世界的にはcompetition law（競争法）と呼ばれており、しかしこの法分野で最も長く重厚な歴史のある米国ではantitrust law（反トラスト法）と呼ばれています。Sherman Act（シャーマン法）は、antitrust lawの主要な内容を規定した法律です。

3. Rehabilitate Monopolization Law

Section 2 of the Sherman Act makes it illegal to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States." Over recent decades, courts have significantly heightened the legal standards that plaintiffs must overcome in order to prove monopolization. Several of the business practices the Subcommittee's investigation uncovered should be illegal under Section 2. This section briefly identifies the relevant business practices and the case law that impedes effective enforcement of section 2 of the Sherman Act.

（次頁に続く）

a. Abuse of Dominance

The Subcommittee's investigation found that the dominant platforms have the incentive and ability to abuse their dominant position against third-party suppliers, workers, and consumers. Some of these business practices are a detriment to fair competition, but they do not easily fit the existing categories identified by the Sherman Act, namely "monopolization" or "restraint of trade." Since courts have shifted their interpretation of the antitrust law to focus primarily on the formation or entrenchment of market power, and not on its exploitation or exercise, many of the business practices that Subcommittee staff identified as undermining competition in digital markets could be difficult to reach under the prevailing judicial approach.

To address this concern, Subcommittee staff recommends that Congress consider extending the Sherman Act to prohibit abuses of dominance. Furthermore, the Subcommittee should examine the creation of a statutory presumption that a market share of 30% or more constitutes a rebuttable presumption of dominance by a seller, and a market share of 25% or more constitute a rebuttable presumption of dominance by a buyer.

（以下、3のbからfまでの見出しのみ。）

b. Monopoly Leveraging
c. Predatory Pricing
d. Essential Facilities and Refusals to Deal
e. Tying
f. Self-Preferencing and Anticompetitive Product Design

United States House of Representatives,
Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary,
Majority Staff Report and Recommendations,
"Investigation of Competition in Digital Markets" (October 2020)
p. 396（フォントとレイアウトを変更し、脚注番号と脚注を省略しています。）