

## 行動通信業者共用基礎設施 暨頻率之競爭法問題

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### 摘 要

本文在電信管理法開放第五代行動通訊（5G）相關電信業者共用頻率之背景下，探究相關合作行為在競爭法上的定性以及競爭分析所涉因素。共用頻率係基礎設施共享的一種類型，在對於行動通信基礎設施共享的類型及其技術、管制與競爭等層面進行簡介與初步分析之後，本文以歐盟的監管政策及競爭法上的分析與案例為比較對象，分析頻率共用行為在電信管理法兼治競爭目的之產業政策下，是否及如何適用公平交易法有關聯合行為的規定。本文依照電信業者享有使用權及進行共用之頻率資源，將其共用行為分為「促進市場參進」及「共同開發網路」2 種類型，其中僅後者可能合致公平交易法上的聯合行為，並分析依該法第 15 條審查時應考慮的因素。

關鍵詞：第五代行動通訊、5G、頻率共用、基礎設施共享、聯合行為、電信管理法

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# **Competition Law Issues on Infrastructure and Spectrum Sharing of Mobile Telecommunications Operators**

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## Abstract

This contribution explores the properties under competition law and related analytical factors of spectrum sharing, which is allowed under Telecommunications Management Act among 5G mobile telecommunications operators. Based on preliminary remarks and analysis of infrastructure sharing of mobile telecommunications, including its technical, regulatory, and competitive aspects, comparative legal studies focusing on whether and how Article 14 of the FTC Act, which pertains to concerted actions, applies to the cooperative behaviors concerning spectrum sharing are conducted. The said behaviors are categorized into two types, “entry enhancing” and “network developing,” according to the spectrums licensed to and shared by the operators, where only the latter type has the potential to be deemed as a concerted action. An analysis on the review concerning the approval of the latter type of cooperation under Article 15 of the Act is then provided.

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