

A Preliminary Study on the Role of Negotiation in Public Administration - Between Government and Monopolist

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In this paper, the author presents a negotiation case between Microsoft Taiwan Corporation, Taiwan Fair Trade Commission and the U.S.A governments. This is a qualitative research. There are two hypotheses in this paper. The first hypothesis is that negotiation plays a role in public management about conflict resolution. The second hypothesis is that a large number of negotiations help to achieve participators' goals. After the author making case study and literature analysis, the results of hypotheses are all positive. There are three implications in this research: good team workers for public management, a good negotiation strategy and a good investigation method.

JEL: Public management, negotiation, monopolist

1. Introduction

Negotiation could happen on every situation when there are more than two people. For example, if consumers would like to get a special service, they need to negotiate with company to see if the service could be provided. It could also happen on government and private business. By the way, an international company needs to follow the law of the local country. If a company did not obey the rule, it might hurt the consumer right and fair competition. Microsoft Taiwan Corporation had been accused of monopolization in April 2002. However, it was considered to provide unfair price in the market and made the problems of package selling. Moreover, a large number of Taiwanese agreed the price of Microsoft software is too high and the government also recognizes it as monopolization. For example, according to the Legislative Yuan of Taiwan, American only need to pay five U.S. Dollars to purchase a Microsoft product, however, people in Taiwan need to spend fourteen-time money with the same product. Taiwanese government considered it is unreasonable for Microsoft to

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make such a high price. One of duty of Taiwan Fair Trade Commission is to investigate the monopolist behavior actively. Hence, it is a duty for Taiwan Fair Trade Commission to confirm if Microsoft is a monopolist business in Taiwan, and they organized “Software market monopolization investigation squad” to investigate this case. According to the law of Taiwan Fair Trade Commission (2003), the squad held several times of meetings. The process of survey included arbitration hearing, collected data of Microsoft Taiwan Corporation to estimate the behavior of Microsoft Taiwan Corporation.

This was a complex case. It is not negotiation between company and company; it is a negotiation between company and government. The result will influence economic in this country. Moreover, it is an important case for consumer and business because of their right and cost. After the survey, the Taiwan Fair Trade Commission was not sure that the illegal pricing behavior in marketing process. Additionally, Microsoft Taiwan Corporation asked to have Administrative Litigation with the Commission. Therefore, in the number 573 meeting, the Commissions agreed with the administrative litigation in October, 2002. This case study would discuss the importance of negotiation with this example. Thought Taiwan and the U.S.A have different law and process, the results are still similar. It is a good case to compare the role of negotiation with different countries.

There was 18 states in the U.S.A. prosecuted that Microsoft is a monopolist. The US Department of Justice sues Microsoft Corporation in the 90s. According to The US Department of Justice, Microsoft Corporation used “the bundle” sells other software through it product. Some people agree that Microsoft Corporation should be divided into two different companies. After a period of years of negotiation, The US Department of Justice, the state government and Microsoft Corporation had agreed Administrative Litigation.

There are not a large number of case study and literatures about negotiation in Taiwan. However, people practice negotiation in all kinds of situation from interpersonal to much higher level behaviors. In Taiwan Microsoft case, the Fair Trade Commission approved an administrative settlement proposed by Microsoft Taiwan and its affiliates in 2003, the content ranged from fair-trading, protection of consumer interests, promotion of development of the information technology industry and so forth. All of the requests focus on basic principle and both sides

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made up an administrative settlement to solve the problem, but American applied judicial approach. It had showed different negotiation culture among public management within Taiwan and U.S. government.

2. Review of Literature

According to Tracy and Brett (2007), they tried to analyze a case of international negotiation. Their case related with an international company, which needed to consult with Canada. Canada mining asked this company to prepare a new contract. This research developed two theory questions about international problems. Moreover, this research let researchers make clear that how a person get the best result through negotiation.

Tseng (2004) considered that a monopoly behavior in the U.S.A is not only being considered as crime intention, but also a crime behavior against antitrust laws. However, in the lawsuit between the Senate Judiciary Committee and Microsoft in 1995-2001, they also made a compromise finally, and the result similar to the administrative litigation with Taiwan government and Microsoft. Generally speaking, the definitions of monopoly can be divided into three conditions: refusals to deal, tying and predatory price. There is two conditions that it had taken place in Taiwan: tying and predatory price. Based on the authority, Taiwan Fair Trade Commission has duty to understand and investigate the monopoly behavior actively.

Public management

This part stated the different public management though between Eastern and Western. According to Alfonzo (2006), New Public Management (NPM) had risen in 1980s and redefined the goal of public management, one of its emphasis is that an organization must place importance on customer and the public. It influences the decision making model of government and business, especially for private enterprise. There is a formulation about how to calculate the outcomes of service. Moreover, NPM help the organization to achieve good performance. It encourages companies to cooperate with government.

According to Alfonzo (2006), NPM related with the 'Marketization' of public service,

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because scholars point out that government need to service people as consumer, it uses management tool similar to private company, which also strengthen the role of coordination/ negotiation inside and outside organization. Huang (2000) pointed out public management is a new research area. It helps public servers to solve the problem of public management, and protect citizen rights. It makes negotiation necessary and frequent between government and public, government and business, even between business and public.

Negotiation

This part stated the different negotiation style of Eastern and Western. According to Sebenius(2005), negotiation is psychological war, it needs a “prescriptive framework”. Sebenius stated that if a negotiator cannot solve problem directly, the “negotiation analysis” would less exacting assumptions. Moreover, the players should consider satisfied the other side. Third, “games and decisions” is important two parts in negotiation. Game theory is statement basic situation. An exacting decision should make everybody to have basic agreement. Fourth, when players have conflict, that it means they less basic agreement with each other. In order to solve problem, they should analyze their basic scope directly. Fifth, Negotiation is an art and science. They should make a beautiful plan and benefit for each other.

According to Chang-Chien (2007), Negotiation is also an art and science. The goal of negotiation is to have best result, but people might not always get what they want because the conflict exists. There are two ways why negotiation would happen. The first one is to create the new available solution. The second reason is that they would like to solve the conflicts. It is why negotiation been used on different areas extensively. In this paper, the author would focus on the negotiation between government and business, with the case study of Taiwan Fair Trade Commission and Taiwan Microsoft Corporation.

This part is about business negotiation. People concert about business negotiation because the result might bring success or failure of business. International business negotiation is more complex. The players come from different countries with different cultures and point of views, and it brings different negotiation styles and behaviors.

3. Case Study Methodology

There are two research methods in this paper. First is case study. In this chapter, author would like to discuss a case and find the project strategy of negotiation methodology. The second is through literature. The researcher will use the first hand data of official documents, and the second hand data. This paper descripts research hypothesis and methodology. First, the research question of case will be included in this chapter. Second, the data collect methodology will be introduced, too.

In the research framework, the independent variable is public management direction. The dependent variable is negotiation. There are two hypotheses in Microsoft case. The first hypothesis is that public management and negotiation has relationship. The second hypothesis is that a large number of negotiations can help researchers to achieve their goals. After the researcher read the case of Microsoft Taiwan Corporation market monopolization, there were some questions be found during the negotiation process. In order to make out a result, it is actually that Taiwan Fair Trade Commission and Microsoft Taiwan Corporation had over 500 times of meetings

Negotiation is an important role for the both sides in this case. Microsoft and the U.S government also had around four years negotiation to try to maintain their interest or standpoint. It is an interesting issue for consumers. Therefore, there are two questions in this research. This part will discuss about data collect. This is exploring research. The researcher will use second hand data from relate literature. For example, the author can look at the literature from the U.S. and Taiwan government, Microsoft Taiwan Corporation and Internet database. Taiwan government adopted the process of administrative litigation and collected related data as important case; therefore, it is convenient to collect the research material.

This part discuss about research limitation. Objectively, the author cannot have enough time, knowledge about all related areas and database resource. Subjectively, the first research limitation is that this research is an exploration research. It uses only literature and case to do exploration about the role of negotiation in public management. Because of research source, the author uses a case in the research.

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The second research limitation is that this research compares the case between the U.S.A and Taiwan. Hence, the data collection is from the U.S.A and Taiwan. Third, this research uses a case from a company in different countries. Fourth, this research cannot do Interview Survey because the period of time is not enough.

This part will discuss about research process and methodology. There is a number of processes for this research. First, the author needs to decide the topic and its' area. Second, the author needs to collect the relate literature. Third, the author needs to decide the research methodology. The fourth, after collected data, the author needs to use a methodology to analyze the data. Next is methodology. This research will use case study and literature analysis. Case study is to analyze an event through qualitative research methodology. Literature analysis is also qualitative research methodology. The research needs to read and think the text and implication through an article.

4. Analyzing Case Study

In this chapter, the author will use the case to develop the project strategy. The author will bring up two questions from this case to analyze the statement. Both of the two questions came from Microsoft Taiwan and the U.S.A Corporation negotiation case. This part will discuss the first hypothesis. The first answer is public management and negotiation has relationship. For example, According to Microsoft (2002), after they had negotiation, Microsoft, the U.S.A of justice of department and state department agreed administrative litigation. It is a good literature about the relationship between public management and negotiation. Another example is the negotiation between Taiwan Fair Trade Commission and administrative litigation. There is suggestion about good public management quality. In order to have good public management quality, the Taiwan Fair Trade Commission should adopt the way of administrative litigation. First, the author will analyze the strategy of administrative litigation. Second, the author will analyze the function of negotiation in the case.

The first question's implication is that provides an idea to build a stronger "Microsoft Taiwan Corporation market monopolization investigation squad";

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therefore, there are a large number of strategies of negotiation:

The first is that to collect the second hand data is from other researcher or institution. In order to find suggestions from other researchers or institution, this Microsoft Taiwan Corporation market monopolization investigation squad has a large number of works. Additionally, this squad has website to ask opinions from the others.

The second is that to collect the illegal evidence from a company is important process. The squad re-analyzed the data and to brought up presumptions, which provided stronger evidence and disciplinary citation outline in the future for the similar situation.

The third is that to know the limitation is important. In order to know the condition of judgment and survey situation, this squad needed to collect a large number of data and then analyze it. It is a second hand data research. The research area is about Taiwan's experience.

The fourth is that to know about meeting with Microsoft Taiwan Corporation is important. Taiwan Fair Trade Commission and Microsoft Taiwan Corporation met. When they had number 573 meeting, they made decision and they had discussed about the content of judgment.

This part will discuss the second hypothesis. The second question's answer is that a large number of negotiations can help researchers to achieve their goals. The target of negotiation is solving the problems. For example, according to Taiwan Fair Trade Commission, the negotiation in this case decided get administrative litigation. In order to find out the importance of consul ting's role, there is a large number of knowledge people who should know:

First, the agreement of the product's price for consumer's opinions: Microsoft Taiwan Corporation should understand customers' opinions and then they can decide their products' price in Taiwan. Second, Microsoft Taiwan Corporation should obey the Taiwan's law of fair trade to make the price. Third, Microsoft Taiwan Corporation should provide Chinese description for their products. Fourth, when Large Account Distributor and Large Account Reseller trans sell their

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products, they must pay attention to that if they obey Taiwan fair trade law.

There is a large number of limitation of after negotiation, Microsoft Taiwan Corporation and Taiwan Fair Trade Commission made a common consensus to provide good after-sales service. It means that both Microsoft Taiwan Corporation and Taiwan Fair Trade commission agreed that they should follow this rules. First, in order to protect consumer's benefits, the law has resist the company must compete in fair way. Second, Microsoft Taiwan Corporation must treat everyone with the same price and after-sales service to improve the competition of brand. Third, Microsoft Taiwan Corporation and Taiwan Fair Trade Commission agree that the former need to add after-Sales Service in a package.

5. Negotiation strategy in this case

This part will discuss the different negotiation strategy of the U.S.A and Taiwan. The process is the most biggest different. According to Taiwan Fair Trade Commission (2002), When it did negotiation with Microsoft, it just do negotiation. It never needs to go court, and then they get the result of administrative litigation. However, when the U.S.A government negotiated with Microsoft, they need to go court. Moreover, According to Microsoft (2002), they need to face the price-making problem in Taiwan; however, they do not need to face it in the U.S.A.

This part is about the strategy of negotiation of The U.S.A Microsoft and state department. According to Microsoft, the Microsoft ever faced to be divided into two companies. However, they do not need to be divided because of negotiation. Hence, a proper strategy of negotiation is important to help companies to solve the problem and crisis. In order to get the satisfied results from Negotiation, people need to assure the strategy achieve less cost and best result. After analyze the case from Microsoft Taiwan Corporation, the author gives four negotiation strategy points for consultants. First, both of Microsoft Taiwan Corporation and Taiwan Fair Trade Commission have the need to start administrative litigation. Second, When Microsoft marketing with illegal way, Taiwan Fair Trade Commission had confirmed by spending three weeks to do investigation in this case. Microsoft Taiwan Corporation also would like to reduce the disadvantage, for example, the lawsuit cost and damage of image, it is the

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main reason for Microsoft agrees administrative litigation. Third, Taiwan Fair Trade Commission had the duty to find evidence of violating related laws or norms. Fourth, if Microsoft Taiwan Corporation and Taiwan Fair Trade Commission had agreed that the contract is hard to carry out, they could decide to abandon it after meeting.

5.1 Implication and future research

Implication can help people to avoid making mistake again. There are a lot of points for implication and future research. The first implication is superior squad. A useful superior can help people to do efficient public management. The second one is that good negotiation strategy is important. Third, well investigation helps people to have superiority through negotiation. The third paragraph is to discuss about future research.

The first: implication is a good superiors squad for public management.

In the essay “Software Market Monopolization Investigation Squad for Administrative Litigation”, its mission aimed to solve the problem through the approach to hold meetings between Microsoft Taiwan Corporation and Taiwan Fair Trade Commission.

The second: implication is negotiation strategy

Administrative litigation is taken to solve the conflict between government and people. In order to get the balance results from public interests, government authority and private interest, each side need to know their goal and choose a proper negotiation strategy. If government and company make decision that is good to consumer, the public would also be protected although they did not join negotiation.

The third: implication is good investigation

There are a large number of statements when the government needs to investigate private company. First, the price of commodities or services is not provided in the store, or it is not fit in with the true value. Second, the tying agreement is happened. Taiwanese Fair Trade Commission could use it power to investigate if the price is reasonable. Moreover, the U.S.A justice of department could investigate the illegal way.

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There are a large number of suggestions of future research. In order to play the role of supervisor and protect the consumers' right, Taiwan Fair Trade Commission need to enforce the supervisor plan. In the future research, we might analyze how the Taiwan Fair Trade Commission operates to make efficiency. It might reveal that the consumer right is arisen or doesn't change, and if Taiwan Fair Trade Commission meet the citizen's expectation. Moreover, if the researchers break up the research limitation of this paper, the framework of the research can be more complete.

References

Alponzo.A.2006 *"Consumerism, marketization, new public management and the citizen-state relationship."* New York University, school of law.

Chang-Chien.H.2007. A Study of Cross-Cultural Business Negotiation Styles between Malaysia and Taiwan by Dual Concern Model. Hsuan –Chuang University.

Huang.W.2000.A Study on Civicness-laden Public Management in Association with Non-profit Organization. National Sun Yat-sen University.

K, L & J, H .2008. *The basic principles of effective negotiation.* Microsoft Taiwan. Retrieved on Nov 1, from <http://www.microsoft.com/zh/tw/default.aspx>

Noga, T & W, B. 2007. *International Negotiation income: an investigation of the tax implications of a U.S. individual working in Canada.*

Taiwan Fair Trade Commission.2003. Retrieved on Nov 1, 2009,from <http://www.ftc.gov.tw/internet/main/index.aspx> R

Tseng,Y.2004. *The challenge of knowledge economy on competition law and policy a study on the U.S Microsoft case*