

- **Legislative and Judicial "Reasonableness":** Third, the AML was re-written to emphasize a reasonable concern with dominance, rather than an unreasonable abolition of group-ness *per se*. As prohibitions against groups weakened, cartels were also permitted in depressed or inefficient (rationalisation) industries and exemptions for resale price maintenance were established.⁷⁶

Soon the courts began emasculating the remaining main prohibitions one by one.

- In 1953, in *Asahi Shimbunsh*,⁷⁷ the courts limited the prohibition of horizontal agreements to cases involving dominance.⁷⁸
- In *Toho and Shintoho*,⁷⁹ the courts removed even this diluted prohibition from vertical agreements, deeming the prohibition of monopolies as only applying to those involving dominant players.⁸⁰

⁷⁶Resale price maintenance (RPM) refers to a vertical price agreement in which a manufacturer-supplier attempts to remove all or part of the re-seller's independent pricing discretion. Retailers charging a lower price than the manufacturer-posted price floor may have to reckon with the loss of distribution privileges. RPM may also take the form of a maximum or a fixed price.

⁷⁷*Asahi Shimbunsha et al v. FTC*, Tokyo High Court, March 9, 1953.

⁷⁸Ariga, *op.cit.*, pp. 452-3:

The *per se* prohibition within article 3 was limited to cases of dominance...no entrepreneur "shall undertake any unreasonable restraint of trade"... The words, in themselves reminiscent of the rule of reason, are defined by the Act in a manner which could, if taken literally, encompass the entire span of Sherman Act section 1...but...the decisions of the Tokyo High Court have restricted the provision to a much narrower scope...[making] it abundantly clear that the unreasonable restraint prohibition of article 3 is limited to cases in which there are...substantial restraints.

⁷⁹*Toho K.K. and Shintoho K.K. v. FTC*, Tokyo High Court, December, 7, 1953.

⁸⁰Mitsuo Matsushita, *International Trade and Competition Law in Japan*, Oxford: Oxford University Press, 1993, p. 87: The control of a monopolistic situation is not premised on a wrongful *conduct* of an enterprise. As long as there is the monopolistic *structure*...a deconcentration order may be issued. Therefore, this control is a control of structure rather than a control of conduct.