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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHINESE TAIPEI

-- 2004 --

This report is submitted by the Chinese Taipei Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.

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I. Changes to competition laws and policies, proposed or adopted

1. Summary of new legal provisions of competition law and related legislation

1. The Fair Trade Act and its related legislation, the Enforcement Rules to the Fair Trade Act, have not been revised since February 2002.

2. Other relevant measures, including new guidelines

2. Based on past experiences of handling cases and learning from foreign competition authorities, the Fair Trade Commission has revised 2 guidelines regarding the administrative process as follows:

- Guidelines for Handling Cases Involving Foreign Factors by the Fair Trade Commission,
- Guidelines for Administrative Guidance by the Fair Trade Commission.

3. In addition to the above 2 guidelines, the Fair Trade Commission has issued and revised 6 Regulatory Notes for specific industries and sectors to build an enforcement environment characterized by fairness in response to the requests from the public and in order to develop the economy. The Commission:

- Issued the “Principles for Handling Cases Regarding the Trading Conduct between Department Stores and Boutique Operators.”
- Revised the “Regulatory Notes on the Sales Practices of Textbook Distributors to Compulsory Education Schools.”
- Revised the “Regulatory Notes on the Cable Television-related Industry Cases.”
- Revised the “Regulatory Notes on the Business Practices of Banks and Other Financial Institutions.”
- Revised the “Regulatory Notes on the Sales Practices Regarding Foreign Resort Membership Cards.”
- Revised the “Regulatory Notes on the Telecommunications Industry Cases.”

3. Government proposals for new legislation

4. The Commission made plans to develop new legislation under the Act as follows, but no draft amendments were put before the legislature:

Revising Relevant Restrictions on Joint R&D:

5. Developing R&D projects jointly with competitors could enhance the incentive to create and would also reduce the costs of innovation. The Fair Trade Commission in referring to the experiences of developed countries is now planning to revise the relevant provisions of the Fair Trade Act to ease the current restrictions on joint R&D projects among enterprises.

Introduction of a Leniency Program:

6. Due to the difficulties in uncovering the evidence of cartels, the Fair Trade Commission is planning to introduce a leniency program that will provide amnesty to cartel members who first report to the Fair Trade Commission regarding the illegal organization of the cartel.

Drafting a Multi-level Sales Regulation Act:

7. The existing Supervisory Regulations Governing Multi-level Sales under the Fair Trade Act are not sufficient to regulate multi-level sales practices. To avoid serious disturbances caused by the fraudulent practices of some multi-level sales enterprises, the Fair Trade Commission invited government agencies, relevant enterprises and academia to hold a public hearing and published the draft of the Multi-level Sales Regulation Act in December 2004.

II. Enforcement of competition laws and policies

1. Action against anti-competitive practices, including agreements and abuses of dominant positions

a) Summary of activities

8. The Act permits the existence of monopolies as long as they do not abuse their market power. Concerted actions are strictly forbidden by the Act, but although some exceptions are allowed for, these require the Commission’s prior approval that is based on the public interest. The Act also bans resale price maintenance but requires the Commission to apply the rule of reason principle to other types of vertical restraints.

9. In 2004, the Commission processed 1,331 cases, comprising 1,058 cases received in 2004 and 273 cases carried over from the preceding year. By the end of 2004, 1,012 cases were closed, and 319 cases were pending. A total of 285 complaint cases applicable to the Fair Trade Act were concluded in 2004, and of these, 40 were concerned with anti-competitive practices. The Commission also initiated investigations into 3 anti-competitive cases.

10. Decision rulings in relation to complaints and the FTC’s self-initiated investigations were made in 135 cases in 2003, and only 13 of these cases fell into the category of anti-competitive practices.

Decision Rulings by the FTC in 2004

Unit: Number of cases

	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2004	23	-	4	5	-	4

Note: The number of illegal actions may exceed the number of cases involving decision rulings because a case may involve more than one illegal action.

b) *Description of significant cases, including those with international implications*

Cartels

Case 1: Price Leadership

11. According to Article 26 of the Fair Trade Act, the Commission initiated an investigation in 2002 on two petroleum refinery plants that are also the only two petroleum gasoline suppliers in the domestic market, namely, the Chinese Petroleum Corp. (“CPC”) and Formosa Petrochemical Corp. (“FPCC”). These two companies continued to simultaneously adjust the wholesale prices of 92 and 95 unleaded gas and premium diesel oil. The Commission thus had reason to suspect that the two oil suppliers might have been involved in jointly determining the wholesale prices of petroleum-related products in violation of the regulation of concerted action of the Fair Trade Act.

12. The domestic petroleum gas and diesel oil market has long been monopolized by CPC since FPCC was established and started supplying in September 2000. Although a foreign company, Esso, joined the domestic market competition in 2002, after less than two years of difficult operations, it retreated from the market. CPC and FPCC at present enjoy shares of 70% and 30% of the petroleum gas and diesel oil market on a sales volume basis, respectively.

13. Based on the Commission’s ongoing investigation during the past two years, it was found that the above two oil suppliers had simultaneously adjusted the wholesale price within the same range at least 20 times. The movements in the price adjustments of the two companies were characterized by the following pattern:

- The party that initiates the announcement of a price adjustment decision through the media will await the response of its rival.
- If the respondent decides to follow, then the wholesale prices of the two competitors will be adjusted within the same range at the same time.
- If the respondent decides not to follow, then the leader will immediately withdraw or make an amendment to its earlier price decision.

14. The Commission found that, based on such an operation, the respondent might increase the wholesale price together with the initiator and the two would prevent each other from lowering the wholesale price. Moreover, when the oil suppliers announce the adjustment of wholesale prices in advance, most gas station operators will therefore adjust the resale prices right after the announcement to earn the extra margin as a result of using gas obtained at lower cost.

15. The aforesaid advance announcement not only causes both parties to publicly negotiate the price adjustments on the media platform, but also affects most gas station operations by simultaneously adjusting prices. Such conduct limits the space for gas station operators to compete in terms of price and eventually affects consumer welfare. It also clearly affects the wholesale and retail markets for petroleum-related products.

16. The Commission decided to send a letter to warn the two oil suppliers not to jointly adjust the wholesale prices based on advance announcements and to make the price decisions in accordance with their own operating conditions. Nevertheless, the two oil suppliers continued to adjust prices simultaneously over the same range afterwards. Such adjustments were deemed to affect the prices and supply/demand functions in the domestic petroleum market, in violation of Article 14 (1) of the Fair Trade

Law prohibiting concerted actions. An administrative fine of NT\$6,500,000 (approximately equivalent to US\$196,969) was imposed separately on the two suppliers.

Case 2: Cartels

17. The Commission received letters from the Penghu County Government and the Penghu office of the Investigation Bureau under the Ministry of Justice stating that a local company “Jie Jing” that provided ready mixed concrete complained that Hua Yong Pre-Mixed Concrete Co., Ltd. (“Hua Yong”), Sieh Ying Enterprises, Ltd. (“Sieh Ying”), Hong Cing Enterprises Ltd. (“Hong Cing”) and Bing Sen Enterprises Ltd. (“Bing Sen”) had formed an association for ready mixed concrete providers so as to establish a joint distribution center in violation of the Act.

18. The Commission investigated the case and found the following:

Market structure:

19. On Penghu, an island in the middle of the Taiwan Strait, the local demand for ready mixed concrete is generated mostly by local public construction projects. There are five suppliers in the Penghu ready mixed concrete market, Hua Yong, Hong Cing, Sieh Ying, Bing Sen and the original complainant Jie Jing, all of which are located on the main island of the Penghu group and rely heavily upon sufficient deliveries of upstream raw materials by sand and gravel freighters.

Horizontal agreement:

20. The four companies, Hua Yong, Sieh Ying, Hong Cing and Bing Sen, formed an association in January 2002. After one year of negotiations, the four companies reached a consensus at the association’s chairman’s house on Lunar New Year’s Eve in 2003. The details of the horizontal agreement included: 1. Total sales volume by the association’s members, 2. The sharing of clients’ information, 3. Restraints on the sales volume of each member, 4. Limitations on the market share of each member, 5. Sharing the profits with each member, and 6. Hiking the price of ready mixed concrete in the Penghu area.

Boycotting the competitors:

21. In addition to the above-mentioned agreement, the four companies sought to eliminate the competition from the 5th provider of Penghu ready mixed concrete Jie Jing by buying up all available supplies of sand and gravel and refusing to provide them to Jie Jing. The Commission found that Hong Cing and Sieh Ying imported cargos of sand from Mainland China and offloaded it in Penghu, before distributing it to association members only. Furthermore, the four above-mentioned companies put pressure on the gravel supplier who imported gravel through an eastern harbor in Taiwan not to provide the complainant with gravel.

22. In conclusion, the Commission decided that the four companies did conspire to monopolize the market for ready mixed concrete in the Penghu area, in violation of the prohibition on concerted action prescribed in Article 14(1) of the Fair Trade Law, and imposed administrative fines of NT\$100,000 each on Hua Yong, Hong Cing and Sieh Ying, and NT\$50,000 on Bing Sen as a cooperating enterprise.

Anti-competitive practices:

Case Selection:

23. The Commission received an anonymous complaint alleging that the Shin Kong Mitsukoshi Department Store, Taichung branch (Taichung Shin Kong), which is located in the western part of Central

Taiwan, had stated to the boutique operators contracting with it that any operator that established a boutique in the newly-opened Idee Department Store, Taichung branch (Taichung Idee) would be penalized by the revocation of its boutique space from Taichung Shin Kong.

24. After an investigation by the Commission, the Commission found that Taichung Shin Kong had a sales volume of NT\$8.6 billion, or a 33.34% market share of the department store industry in the Central Western part of Taiwan, which includes Taichung's metropolitan and rural areas geographically. Taichung has become an important place for retailers and boutique operators. The Taichung Idee opened in early May 2003 at a distance of about 600 meters from the Taichung Shin Kong, thus becoming a competitor in the same commercial district.

25. The Commission issued investigation letters to the boutique operators who had just ended their contracts with Taichung Shin Kong because of the termination of their contracts. It was found that the management board of Taichung Shin Kong orally discouraged its contracting boutique operators from setting up a boutique in the Taichung Idee in which case Taichung Shin Kong would revoke the contracting boutique space of the operator.

26. The use of suggestion, incitement, or coercion by the Taichung Shin Kong to induce boutique operators to cut off their transactions with the Taichung Idee for fear of having their boutique contracts with the Taichung Shin Kong revoked was sufficient grounds to deem that the Taichung Shin Kong impeded the Taichung Idee from soliciting boutique operators with the result that the latter was forced out of the department store market in the western part of Central Taiwan.

27. Thus the competitive tactics of Taichung Shin Kong constituted the violation of "causing another enterprise to discontinue supply, purchase, or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise, where likely to restrain competition or obstruct fair competition" under Article 19(i) of the Fair Trade Law. The Fair Trade Commission decided to impose an administrative fine of NT\$800,000 on the Taichung Shin Kong.

2. *Mergers and acquisitions*

a) *Statistics on the number, size and type of mergers notified and/or controlled under competition laws*

28. Mergers involving parties reaching a certain sales volume or a particular level of market share must give notification to and obtain no objection from the FTC. The FTC makes its decision based on whether the benefits to the economy as a whole will exceed the anti-competitive effects of the proposal.

Applications and Notifications for Mergers

Unit: Number of cases

Year	Number of Notifications	Total	Not Prohibited	Types of Mergers (As Described in Subparagraphs 1 to 5 of Sec.1, Article 6 of the Act)				Prohibited	Reviewed Termination
				Subpara.	Subpara.	Subpara.	Subpara.		
				1	2	3	5		
2004	33	31	17	3	12	2	4	0	14

Notes:

The number of notifications in 2004 included 2 cases carried over from the preceding year, 2003.

The total number of notifications comprised the sum of the numbers of cases not prohibited, cases prohibited and cases terminated by reviewing.

A merger case could meet more than one of the types described in Article 6(1) of the Act at the same time. For instance, the acquiring party of a merger case might control the acquired enterprises by holding stocks, rearranging the board of management, and running the business so as to comply with subparagraph 2 and subparagraph 5 of the Act.

b) *Summary of significant cases*

29. The merger notification filed with the Commission related to the merger between the acquiring party Cheng Loong Corporation (“Cheng Loong”) and the acquired party Tien Long Paper Manufacturing Co., Ltd. (“Tien Long”).

30. The notification complied with the merger type “where an enterprise and another enterprise are merged into one” as specified in Article 6(1)(i) of the Fair Trade Act, and satisfied the threshold for merger notification as identified in Article 11(1)(iii) of the Act. Moreover, the relevant documentation filed already satisfied Article 8 of the Enforcement Rules to the Fair Trade Act; the Commission therefore accepted and began to process the notification.

31. The Commission decided that the proposed merger would reduce operational costs and improve profitability, enhance rational management and expand the operational scale of the merging parties, and in the meantime also benefit the international competitiveness of Taiwan’s paper manufacturing industry, therefore leading to positive benefits for the overall economy of Taiwan. It also considered that the relevant market shares of Cheng Loong would only be marginally increased after the merger, and there were several competitors on a comparable scale also operating in the relevant markets. The subsequent disadvantages from restraints on competition were thus considered to be limited. Therefore, the Commission did not object to the merger.

III. The role of competition authorities in the formulation and implementation of other policies, e.g., regulatory reform, trade and industrial policies

32. After processing a comprehensive review of all laws and regulations since 2001 to ensure that the business environment can compete fairly, the Commission will continue to be aware of developments in the market, perform reviews of other laws to determine whether they accord with the Act, consult with related industry authorities, and amend internal administration rules to prevent related laws and regulations from impeding competition.

33. In 2004, the Commission organized and participated in seminars together with other government authorities related to competition issues as follows:

- Participating in related meetings organized by the Government Information Office on competition issues in the cable broadcasting and television market.
- Establishing an alarm system to ease the disorder in the demand for and supply of vegetables with the Council of Agriculture, the Market Management Offices of local governments, the major wholesalers, and the police departments.
- Organizing a meeting entitled the “Resolution of Seasonal Demand and Supply Disorder in the Fresh Milk Market”.

- Inviting the Industrial Development Bureau and the International Trade Bureau both of the Ministry of Economic Affairs, the China Steel Corporation, and 67 midstream iron and steel providers to attend a meeting entitled “Stabilizing the Steel-related Market Trading Order and Producer’s Self-discipline”.

IV. Resources of competition authorities

1. Resources overall

a) *Annual budget: NT\$355.126 million in 2004 (approximately equivalent to US\$10.76 million at the exchange rate of 33NT\$/US\$ in September 2005)*

b) *Number of employees (person-years):*

34. There were 219 employees in 2004, including all staff and the Board of Commissioners that consisted of the Chairman, Vice Chairman and 7 Commissioners. Over 85% of the employees had bachelor degrees after majoring in different subjects at college.

35. In terms of the educational background percentages, 27.49%, 16.11%, 9%, 6.64% and 40.76% of the employees majored in law, economics, business administration, accounting, and other related subjects (including information management, statistics, and public administration), respectively.

36. As a result, the structure of the human resources of the Commission are as follows:

Economists	35
Lawyers	60
Other professionals & support staff	124
All staff combined	219

2. Human resources (person-years) applied to:

a) *Enforcement against anti-competitive practices and merger review*

37. Apart from the Third Department, which is responsible for misleading advertisements, counterfeit and passing-off cases, the First and the Second Departments of the Commission handle all kinds of anti-competitive cases, including the misuse of dominant market power, merger reviews, cartels and various vertical restraints.

38. The First Department is responsible for cases related to the services and agricultural sectors, and the Second Department is responsible for cases related to the manufacturing sector. There are 27 and 26 staff in each Department, respectively.

b) *Advocacy efforts toward advocacy*

39. A section of 5 staff members in the Planning Department of the Commission is responsible for designating public outreach programs.

40. However, since most of the outreach programs for competition advocacy are case-oriented, almost every department staff actively plays a role in outreach activities.

3. *Period covered by the above information: January through December 2004*

V. *Summaries of or references to new reports and studies on competition policy issues*

41. The Commission has studied and published reports on competition policy issues in 2004 with the following titles:

- The analysis of regulating effects on the market performance of merger and acquisitions: taking horizontal merger cases as examples
- A review of the interacting relationship between the regulation set forth in Article 20 of the Act and intellectual property-related laws and regulations.
- National competition policy in the knowledge economy era.

42. The Commission has also looked for outsourced research, and published the following research reports in 2004:

- A study on the management of compulsory education textbooks and reference books and related markets, and the regulation of the sales conduct of the said market.
- A review of the explanatory notes of the Fair Trade Act, Volume II.