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## Global Forum on Competition

### THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

#### Contribution from Chinese Taipei

-- Session IV --

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## THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

-- Chinese Taipei --

### 1. Introduction

1. In preparing the present submission, the Fair Trade Commission (FTC) had consulted with the competent agency, the Consumer Protection Commission (CPC), who is responsible for the enforcement of the Consumer Protection Law. This submission summarises Chinese Taipei's general approaches toward dealing with issues pertaining to competition and consumer policies, especially in regard to the interaction between the two policies and the coordination between the two agencies.

2. In general, Chinese Taipei holds the view that competition law and consumer protection law pursue common objectives which are to ensure competitive markets in well functions so as to promote consumer welfare. In this respect, the competition and consumer policies should complement each other.

3. The Fair Trade Act plays an important role in realising the consumer protection in Chinese Taipei. Although the Fair Trade Act has been principally applied to regulate monopoly, mergers, cartels, other restraints on competition and unfair competition practices since it came into force in 1992, yet the protection of consumers' interests has also been one of its stipulated legislative goals.

4. The promulgation of Consumer Protection Law in 1994 brought the issue of consumer protection in Chinese Taipei into a new era. Based on Article 40 of the Consumer Protection Law, the CPC was established under the Cabinet with a mandate for policy making, supervision, and coordination among different competent authorities regarding consumer protection issues but without the power to enforce the law.

5. Article 6 of the Consumer Protection Law states clearly that the competent authorities defined by the Law at the central government level shall be the competent authorities having primary jurisdictions, at the metropolitan level the metropolitan governments and at the county city levels the county and city governments. Enterprises violating the Law should be punished by the competent laws. In addition, the government of municipalities and counties (cities) shall each establish a consumer dispute mediation committee to handle the consumer disputes. With respect to Article 39 of the Consumer protection Law, the CPC, the municipality and county (city) government shall respectively maintain several consumer ombudsmen. The consumer ombudsman is responsible for dealing with complaints, approving the consumers protection group's filing of class action suits for damage to customers and having an action for omission. The Consumer Protection Law also already provides the consumers with the legal basis to file a group action. The system is supposed to be a mechanism to achieve the goals of the Consumer Protection Law by encouraging the consumers to search for remedies by themselves.

6. Most of consumer protection laws address eight consumer rights: (1) The right to basic needs; (2) Right to safety; (3) Right to information; (4) Right to Choice; (5) Right to be heard; (6) The right to redress; (7) The right to consumer education; (8) The right to a healthy and sustained environment. These rights were included in Chinese Taipei's Consumer Protection Law in 1994. The Consumer Protection Law is enacted for the purposes of protecting the interests of consumers, facilitating the safety of the consumer

life of nationals, and improving the quality of the consumer life of nationals. The Consumer Protection Law has regulated safeguard of health and safety, standard contracts, extraordinary purchase and sale as well as regulations governing consumer information. Regarding the mail order, door-to-door sale, and internet transaction, consumers may return the goods or notify in writing the business operators to rescind the purchase contract within 7 days upon receipts of such goods without stating reasons and paying any expenses or the purchase price.

7. As stated in Article 1, to maintain trading order, protect consumers' interests, ensure fair competition and to promote economic stability and prosperity are the legislative purposes of the Fair Trade Act. More to the point, ensuring fair competition is its core objective. As a tool for stabilising and strengthening economic activity, competition can result in a better allocation of resources, improve business operations efficiency and foster technological progress, all of which leads to the stability and prosperity of the overall economy. The ultimate objective of the Fair Trade Act is to promote economic stability and prosperity. In other words, protecting and nourishing economic stability and prosperity is the policy goal, and the maintenance of market competition order is a kind of policy tool to achieve this goal. However, competition is not the sole policy tool available.

8. Article 26 of the Fair Trade Act states, "The FTC may investigate and handle, upon complaints or *ex officio*, any violation of the provisions of this Law that harms the public interest." Thus, "consumers' interests," as referred to in the Fair Trade Act, should be interpreted from the standpoint of public rather than personal interest. "Consumers' interests" was added to Article 1 during review sessions by the Congress and should also be given due consideration when interpreting relevant provisions and exercising authority. Yet, consumers' interests, albeit important, should not be mistaken as the only interest protected by the Fair Trade Act. By "ensuring fair competition", the Fair Trade Act enables enterprises to compete in open and free markets, which will enhance efficiency and innovation, thereby indirectly nurturing a healthy environment for consumers and thus protecting consumers' interests, as enterprises compete to meet consumers' needs by ensuring better conditions in which to make transactions.

## **2. The Complementary Roles of Consumer Protection and Competition**

### ***2.1 How does consumer policy interact with competition policy in your country, if at all ? Can you give examples where they have conflicted ? Where have they been complementary ?***

9. The Consumer Protection Law came into force in 1994. The Consumer Protection Commission was established and was responsible for policy making, supervision, and coordination among different competent authorities regarding consumer protection issues. The CPC is chaired by the Vice Premier, and the chairman of the FTC is a member of the CPC who is invited to its monthly Commissioners' Meeting to discuss issues pertaining to consumer protection. To enhance consumer protection, the CPC draws up an annual project which serves as the basis for 26 central government authorities to produce annual proposals on consumer protection and to enforce them accordingly after the proposals being evaluated by the CPC. The FTC also participates in the Commission's evaluation which is carried out every two years and which provides direction for future efforts.

10. The FTC proposed a consumer protection plan in association with the CPC's annual project. Taking the FTC's annual consumer protection plan of 2007 as an example, several consumer-related issues are included. Those are the regulations of internet advertisements, participation in discussion of standard contracts, the supervision of multi-level sales, announcement of supply and demand information in seasonal commodity markets, regulations and management of weight loss and body care activities as well as the regulations of sales practices of foreign resort membership cards.

11. The FTC has in practice accepted all cases in which violations of the Fair Trade Act have been subjectively assumed by the complainant, leading the general public to expect that the FTC will intervene in every case in which consumers' interests are to various degrees at stake. There are some cases related to unfair competition practices holding that trading partners' interests and the consumer welfare (public interest) are both protected by Articles 21 and 24 of the Fair Trade Act. Therefore, it becomes necessary to offer remedies to the general public for possible private actions to enforce the Articles 21 and 24. The FTC is sufficiently experienced in requiring the enterprises to provide consumers with transparent transaction information in this regard.

12. False and misleading advertising is considered to be an unfair competition practice and regulated by Article 21 of the Fair Trade Act. In addition to the Fair Trade Act, regulations governing false advertisements can be seen in relevant laws under other sector regulatory authorities. For example, regulations regarding false advertisements on the part of securities firms are in the Securities and Exchange Act. Other types of false advertising are covered in other acts and statutes. Insurance and securities advertisements are regulated by the Financial Supervisory Commission. Advertisements for food, dairy products, pharmaceuticals, cosmetics and health foods are under the authority of the Department of Health. Advertisements regarding supplementary education are under the jurisdiction of the Ministry of Education. Employment advertisements are under the jurisdiction of the Council of Labor Affairs. The FTC consults with each of the authorities to ensure that various false advertisements are dealt with by the authorities in charge. The FTC will intervene only when there is no applicable law under the jurisdiction of the competent authority and there appears to be a possibility that fair competition will be impaired. The Fair Trade Act also grants those injured by false and misleading advertisements the right to seek civil remedies.

13. According to Articles 1 and 9 of the Fair Trade Act, the FTC is expected to play the role more of a competition than consumer protection authority. Therefore, when dealing with unfair competition cases, such as false advertising, the FTC will evaluate and emphasise their competitive effects to the markets in addition to the degree of consumers' harms from alleged violations.

14. Consumer and competition policies have been complementary in Chinese Taipei. For examples, in typical real-estate transactions, consumers need only propose their written offers to the brokers to establish a real-estate brokerage contract. By introducing an additional mediation fee for the brokerage service, however, firms in the real-estate brokerage industry require consumers to advance a specific amount of mediation fee before they would provide their services. The FTC was of the opinion that the brokerage industry owes consumers an obligation to inform them the right of choice between the use of traditional offer-in-writing model, of which a standard format has been provided by the Ministry of Internal Affairs, and the mediation-fee model. Otherwise, it will be a violation of Article 24 of the Fair Trade Act. The FTC also issues the policy statements for the brokerage industry. The FTC takes the position as a consumer guardian and treats consumer welfare as a legitimate interest to be protected by the Fair Trade Act.

15. There is another example. In August 2007, the FTC grants the merger approval of two convenient stores, Family Mart and Niko Mart after taking into account its competitive effects on the relevant market. Following the consummation of the merger, Family Mart announced that consumers who owned the gift certificates of Niko Mart would have to have them converted into the gift certificates of Family Mart by 31 January 2008. The CPC was of the opinion that the conversion period set by Family Mart is unreasonable and would affect consumers' interests. Therefore, the CPC organised a meeting at which the CPC consulted with Ministry of Economic Affairs, FTC, Family Mart and Niko Mart regarding the solution of this issue. Finally, the Family Mart agreed to continue validating the gift certificates of Niko Mart after 31 January 2008.

### 3. The Interaction between the Competition and Consumer Policies

#### 3.1 *What do you feel are the benefits and drawbacks to your own country's choice of "dual-function" or "separate agencies" for handling competition and consumer policy?*

16. Article 1 of the Fair Trade Act unequivocally states that, "maintaining trading order, protecting consumers' interests, ensuring fair competition and promoting economic stability and prosperity." The protection of consumers' interests is obviously one of the legislative purposes of the Fair Trade Act. Both the Fair Trade Act and the Consumer Protection Law seek to protect consumers, but the two are different legal systems, and as such, they differ in their approaches and functions.

17. In contrast with the protection of individual consumers in the Consumer Protection Law, consumers' interests, as referred to in the Fair Trade Act, denote public interests or consumers' interests as a whole within the context of market competition. The Fair Trade Act by "ensuring fair competition" enables enterprises to compete in open and free markets, which increases market efficiency and innovation, thereby nurturing and indirectly enhancing a healthy environment for consumers. Furthermore, as enterprises compete to entice consumers through better transaction conditions, they are in fact protecting consumers' interests.

18. The protection of consumers' interests under the Consumer Protection Law is primarily by way of civil remedies. Although the Consumer Protection Commission, as an administrative agency, was established to execute the Consumer Protection Law, its main function is to propose and review basic policies related to consumer protection. Individual disputes that harm consumers' interests are between private parties, and the parties should seek civil remedies. The Consumer Protection Law intervenes when the trading parties are on unequal footing and provides collective or class litigation procedures. The Consumer Protection Law also empowers the competent authority to intervene with administrative sanctions on specific issues. The Consumer Protection Law, therefore, consists of a multi-level system of legal protection: Disputes concerning private rights are resolved in civil remedies; collective and class litigation, in civil proceedings, complements the position of consumers; and the competent authority improves the terms for consumers through reinforced supervision of enterprises.

19. Paragraph 1, Article 9 of the Fair Trade Act provides the vertical regulatory framework for its enforcement. It refers to the FTC under the Cabinet at the central government level; the metropolitan government at the metropolitan level; and the county (or city) government at the county (or city) level. Semi-annual coordination meetings and the usual contact between the FTC and the local government enhance enforcement efforts. Paragraph 2, Article 9 of the Fair Trade Act provides the horizontal regulatory framework of enforcement on matters concerning the authorities of any other ministries or commissions; the FTC may consult with such other ministries or commissions to deal therewith. Accordingly, in addition to enforcing the Fair Trade Act, the FTC has since its inception actively and fully cooperated with the relevant authorities.

20. In Chinese Taipei, the CPC and the FTC have jurisdictions over the Consumer Protection Law and the Fair Trade Act respectively. The enforcement method and policy goals are dissimilar between the FTC and the CPC. The CPC has its functions with policy making, supervision, and coordination among the competent authorities so as to avoid the same issues related with consumer complaints to be handled in different ways and with conflicting results by relevant authorities. The CPC has experienced much success in this regard. For example, the CPC has actively and coordinated with the relevant authorities regarding the solution of gift certificates issue. The result is that any enterprise should implement the gift certificates redeeming mechanism from the beginning of April in 2007.

21. There has been discussion since the late 1990s about combining the CPC with the FTC. The Cabinet sent the draft amendment of the Executive Yuan (the Cabinet) Organisation Law for Parliamentary review in 2005, but until now, the review has not been completed. The combining of the two agencies is no longer under consideration.

22. Both the Fair Trade Act and the Consumer Protection Law seek to protect consumers, but the two are different legal systems, and as such, they differ in their approaches and functions. So the separate agencies for handling competition and consumer policy can respectively carry out its functions and policy goals better. The coordination mechanism among competent authorities in consumer protection issues becomes more important.

#### **4. Selected Cases: Cable TV and Combo Card**

**4.1 *Has your country required that “no frills” versions of complicated products be offered, to help vulnerable consumers? If so, who provided the product and how was its supply enforced? What was the effect on competition, if any?***

23. There is no laws requiring the enterprises to offer “no frills” versions of complicated products to help vulnerable consumers in principle, unless the provision of products or services specifically involve the issue of public interest or has infringed on consumer rights to choose.

24. With regard to the specific products, there are some regulations requiring the provision of “no frills” versions of complicated products. The enterprise has the responsibility to provide products or ensure its supply. There are some examples. The first one is cable TV channel. Today, most of the existing 51 cable TV service areas in Chinese Taipei have only one, or perhaps two, cable television broadcasting system operators. Therefore, the CPC consulted with the National Communications Commission, the competent authority for the cable television market and many related industries, to require the cable television broadcasting system operators to offer “no frills” versions of the cable TV channel programs. The cable TV subscribers have options in terms of payment for the basic cable TC channel programs or extra payment for additional cable TV channel programs.

25. A few years ago, the government compulsorily required all financial institutions convert the banking cards with magnetic strip to IC cards by the end of December 2006 to avoid the card being misappropriated by swindlers. It was discovered afterwards that some banks took this opportunity to merge the functions of the ATM card, credit card, and digital wallets into a single card (sometimes called a “combo card”), and demanded consumers to accept them. Such a mandatory policy had violated consumers’ freedom to choose and the CPC issued the “Items That Should and Should Not Be Included in Standardised Model Contracts Pertaining to Credit Cards” to require that banks must provide consumers full information and let them choose freely whether they want to apply for a credit card and digital wallets.

#### **5. Issues regarding Internet False Advertisement Practices**

**5.1 *Can you identify areas where a better convergence of both competition and consumer policies globally would be beneficial?***

26. In light of the current trends toward development of global electronic commerce, international cooperation between the competition and consumers protection authorities to combat, for example, cross-border Internet false advertisement practices becomes very important. In Chinese Taipei, our competent authorities including the FTC, the CPC, Ministry of Finance, Ministry of Education and the Investigation Bureau of Ministry of Justice are cooperating to enforce Internet sweep activities regarding false advertisements. Such a cooperation plan can save on investigative costs, prevent the spread of injury and

deter future internet fraud. Chinese Taipei is exploring the possibility of seeking more cooperation from counterparts of other countries to ensure that enforcement activities can be undertaken in an even more effective, far-reaching manner.

## **6. Conclusions**

27. The competition law enables enterprises to compete in open and free markets, which could increase efficiency and innovation, thereby indirectly foster a healthy environment for consumers and enhance consumers' interests, as enterprises compete to meet consumers' needs by ensuring better transaction conditions. Competition not only increases consumers' choices, but also motivates suppliers to provide useful and transparent information about the products or services and drive them to fulfill their promises concerning prices, quality, and terms of sale. Thus, competition is a means for protecting consumers' interests.

28. Effective consumer protection is also an indispensable element of ensuring a market will function well. Competition cannot always prevent the enterprises from engaging in unfair conducts and guarantee that the consumers could always be well informed of all transaction conditions and make good decisions. In Chinese Taipei, it is mainly the responsibility of the CPC to oversee the consumer protection issues. However, coordination and cooperation among the competent authorities to provide clearer rules of the game will improve the environment for consumption and enhance consumer welfare in the long run.