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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

Cancels & replaces the same document of 30 January 2002

OECD Global Forum on Competition

CONTRIBUTION FROM CHINESE TAIPEI

This note is submitted by Chinese Taipei as a background material for the second meeting of the Global Forum on Competition, to be held on 14-15 February 2002.

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I - COMPETITION LAW AND ECONOMIC DEVELOPMENT: CHINESE TAIPEI EXPERIENCE

The Fair Trade Law, the competition law in Chinese Taipei, has been in place for 10 years since February 1992. Its competent authority, the Fair Trade Commission, has adopted the three following concurrent measures to enforce the Fair Trade Law and competition policy:

1. Enforcement actions against violations;
2. Deregulation of certain regulated sectors;
3. Promotion of competition culture.

Over the past 10 years, Chinese Taipei has identified that the following issues are vital to the building of competition regime:

1. Independency of the Competition Authority

Maintaining the independency of the competition authority is not only the foundation for effective enforcement of the competition law, but also ensuring the credibility of the Fair Trade Commission decisions.

In Chinese Taipei, legislation allows the Fair Trade Commission to exercise its authority independently. The nine commissioners are appointed three-year guaranteed terms, and their work transcends political party affiliations. This protective umbrella enables the commissioners to become resilient against external pressures. Although the Chairman of the Fair Trade Commission is a member of the Cabinet, the Chairman receives no pressure from the Premier or other cabinet members. In addition, the Commissioners' Meeting is convened at least once every week. The different views of commissioners on the applicability of the Fair Trade Law are likewise published in the Fair Trade Gazette to enable the general public to understand the decision making process of the Fair Trade Commission and substantiate the credibility of the Commission.

2. Exceptions and Disputes to the Competition Law

Effective enforcement of the competition law hinges on the exceptions to the law. Prior to the first amendment of the Fair Trade Law in February 1999, Article 46 of the Law stated that "the acts of a governmental enterprise, public utility or communications and transportation enterprise shall not be subject to the application of the Law until the elapse of five years after the promulgation of the Law." The five-year grace period is detrimental to the enforcement of the competition law, and its legitimacy was questioned by private enterprises.

For this reason, the Law was first amended in February 1999. Article 46 was amended to read that "where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of the Law." This amendment gave the Fair Trade Commission greater authority to enforce the competition policy.

The Fair Trade Law likewise stipulates that with regards to issues involving the duties and responsibilities of other government agencies, the Fair Trade Commission shall handle such cases in consultation with the respective government agencies. The right to consult with other government agencies enables the Fair Trade Commission to introduce forthwith the concept of “market competition” into the policy implementation of the other government agencies to prevent conflicts with the competition policy. The liberalisation of the telecommunications industry is a very good example.

3. Education and Use of Outside Resources

The Fair Trade Commission has designed training and seminars for enterprises and the general public to enable a better understanding of the competition law. This is an important step in creating a domestic environment for competition. In addition, the Fair Trade Commission also grants scholarship to encourage academic research in competition law, so that students can become advocates of the concept of competition when they leave school.

To promote the efficient use of manpower, the Fair Trade Commission will invite experts and scholars to assist in the research of special issues such as new forms of market transactions, or hold symposiums on these issues. The Commission hopes to learn from outside sources so as to help facilitate the work of its staff members.

4. Co-operation with Foreign Competition Authorities

To avoid duplicating similar mistakes, experiences and information of law enforcement from overseas are very important to the Fair Trade Commission. In addition to engaging bilateral co-operation agreements with foreign competition authorities, the Commission also holds bilateral meetings with the foreign authorities regularly. In addition, the Commission likewise sends staff members overseas to carry out researches and learn from the law enforcement experiences of advanced countries. These arrangements help elevate the efficacy of competition law enforcement in Chinese Taipei, making it at par with international standards.

In the year 2000, former commissioners Dr. San Gee and Dr. Lo Chang-fa developed an empirical model, using data between 1969 and 1998, to study the overall effects of the Fair Trade Law on Chinese Taipei’s overall economic development, particularly in the fields of export competitiveness, commodity prices, employment, direct foreign investment, and R&D expenses.

Model:

$$EX = a_0 + a_1K + a_2FDI + a_3RD + a_4T + a_5D_2 + a_6S_1 + \varepsilon_1$$

$$CPI = b_0 + b_1GE + b_2EX + b_3T + b_4D_1 + b_5D_2 + b_7S_1 + \varepsilon_2$$

$$E = c_0 + c_1GE + c_2EX + c_3T + c_4D_2 + c_5S_1 + \varepsilon_3$$

$$FDI = d_0 + d_1GE + d_2EX + d_3R + d_4T + d_5D_2 + d_6S_1 + \varepsilon_4 \quad RD = e_0 + e_1K + e_2EX + e_3T + e_4D_2 + e_5S_1 + \varepsilon_5$$

The dependent variables are :

- EX: annual export value in USD million
- CPI: consumer price index in percentage
- E: employment levels in thousand persons

- FDI: approved private foreign direct investment in USD million
- RD: annual R&D expenditure in NTD 100 million

The explanatory variables are:

- K: gross domestic capital formation in NTD billion
- T: time trend variable, the data period for the above econometric model ranges from 1969 to 1998
- S₁: annual total number of decisions with sanction made by the FTC
- GE: government expenditure in NTD billion
- EX: annual export value in USD million
- D₁: dummy variable for the first and the second oil shock that took place in 1974 and from 1979 to 1981
- D₂: dummy variable for the period of 1992 to 1998 to capture the implementation effort
- R: three-month time deposit interest rate from 1968-1998

The study found the following results:

1. Export Competitiveness
 - (1) Capital formation improved Chinese Taipei's export performance, but direct foreign investments and R&D expenses did not affect export performance.
 - (2) The cases handled by the Fair Trade Commission produced significant positive effects in improving Chinese Taipei's export competitiveness.

2. Commodity Price Index
 - (1) Except for the first and second global oil crises that had adverse impact on commodity prices, government expenditures and export value did not have adverse effects on the commodity price index.
 - (2) The Commission's handling of cases, and its promotion of deregulation and competition, did not have any adverse impact on the Chinese Taipei's inflation.

3. Employment Index
 - (1) The Commission's handling of cases did not have significant impact on Chinese Taipei's employment index.

- (2) However, the Commission's efforts toward deregulation and promotion of competition had significant positive impacts on the generation of more employment opportunities.

4. Foreign Direct Investments

- (1) Government expenditures did not affect foreign direct investments, but export competitiveness has significant positive impact on foreign direct investments.
- (2) The Commission's handling of cases had significant positive impact on foreign direct investments.

5. R&D Expenses

- (1) Capital formation had significant positive impacts on R&D expenses.
- (2) The Commission's handling of cases stimulated R&D expenses. However, it was not possible to prove whether the promotion of deregulation and competition concepts had adverse impacts on R&D expenses.

It is generally believed that competition law is better suited for countries with larger economic scales, and the law is not very helpful to countries with smaller economic scale. Although Chinese Taipei falls into a small economic scale category, the implementation of competition law over the past 10 years still creates positive results on the overall economy and sectors specific. Ten years may not be a long time, Chinese Taipei will continue to devote its efforts in creating a more competitive environment and is willing to cooperate with other competition agencies.

II. - REPLY TO THE QUESTIONNAIRE TO INVITEES ON INTERNATIONAL CO-OPERATION IN CARTEL AND MERGER INVESTIGATIONS

1. Provide a copy of each formal co-operation agreement between your country or your competition agency and a foreign country or competition agency relating to competition investigations or cases.

Chinese Taipei has signed co-operation arrangements with Australia and Zealand respectively regarding enforcement of competition and fair trading laws. Copies of the arrangements are as Attachment 1 & 2.

2. Describe your country's laws or regulations that relate to or affect your agency's ability to exchange information or co-operate with a foreign competition agency.

Chinese Taipei's laws that relate or affect the exchange of confidential information with foreign competition agency is provided as Attachment 3.

Cartels

3. If your agency issued one or more formal requests to a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests (you need not identify specific cases):

Chinese Taipei has not issued such request from 1 January 2000 to the present.

4. If your agency received one or more formal requests from a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests (you need not identify specific cases):

Chinese Taipei has not received such request from 1 January 2000 to the present.

5. Please describe any other instances of co-operation with a foreign competition agency in a hard core cartel investigation or case not described above, such as meetings, telephone or email communications, including, if possible, the co-operating country or countries, the nature of the co-operation and the importance or significance of the co-operation to your agency.

Chinese Taipei has no such kind of co-operation with any foreign competition agency from 1 January 2000 to the present.

6. State the number of instances in which a hard core cartel investigation or case could have benefited from information or co-operation from a foreign competition agency but your agency did not request such assistance because you knew that it could not or would not be granted. Describe the type of assistance that would have been useful and the impact of its unavailability on your enforcement effort.

Chinese Taipei does not have such cases from 1 January 2000 to the present.

Mergers

7. Identify each merger that your agency reviewed that, to your knowledge, was also reviewed by the competition agency of another country.

Chinese Taipei has reviewed 9 cases that we believe also reviewed by foreign competition authorities from 1 January 2000 to the present. The cases are:

Citycorp./Traveler Group Inc.;

Union Zurich Insurance Co./B.A.T. Industrial P.L.C.;

Citigroup Inc./Associates First Capital Co.;

ING Group N.V./Aetna Inc.;

Ericsson/Sony;

Bently/General Electric Co.;

Koninklijke Philips Electronics N.V./Marconi Co. Plc.;

General Electric Co./Kretztechnik AG;

General Electric Co./Dover Co.

8. For each investigation or proceeding involving a merger in which there was communication between your competition agency and the competition agency of another country during the course of the investigation or proceeding, please state or describe:

Chinese Taipei does not have such cases from 1 January 2000 to the present.

9. Describe any instances in a merger case or investigation

- a. in which your agency sought the assistance of a foreign competition agency but it was denied;
- b. in which your agency sought a waiver of confidentiality restraint from one or more of the merging parties but it was denied.

Chinese Taipei does not have such cases from 1 January 2000 to the present.

10. Describe any investigation or proceeding involving a merger that would have benefited from co-operation with a foreign competition agency but your agency did not pursue such co-operation because you knew that it would not be possible. Describe the type of co-operation that would have been useful and the impact of its unavailability on your enforcement effort.

Chinese Taipei does not have such cases from 1 January 2000 to the present.

**III. - THIS ATTACHMENT INCLUDES LAWS OF THE REPUBLIC OF CHINESE TAIPEI
RELATING OR AFFECTING THE ABILITY OF THE FAIR TRADE COMMISSION TO
EXCHANGE CONFIDENTIAL INFORMATION WITH FOREIGN COMPETITION AGENCY**

Criminal Code

Article 132

A government employee who discloses or gives to others any document, picture, information, or other things of a secret nature relating to matters other than national defence shall be punished by imprisonment for not more than three years.

A government employee who negligently commits an offence specified in the preceding paragraph shall be punished by imprisonment for not more than one year, detention, or a fine of not more than 300 New Taiwan Dollars.

Any person other than government employees who, having knowledge over or being in possession of such document, picture, information, or other things specified in paragraph 1 because of his post or occupational activities, discloses or gives to others the above said shall be punished with imprisonment for up to one year, detention, or a fine up to 300 New Taiwan Dollars.

Article 316

A medical doctor, pharmacist, druggist, midwife, clergyman, lawyer, advocate, notary public, accountant, an assistant to any of the above, or one who has previously engaged in such occupation who, having knowledge over or is in possession of another's secrets because of his occupational activities, discloses without justifiable reason shall be punished with imprisonment for up to one year, detention, or a fine up to 500 New Taiwan Dollars.

Article 317

Any person who, having knowledge over or being in possession of another's business secrets because of his occupational activities and being ~~is~~ required by law, regulation, or contract to preserve such secrets, discloses such secrets without justifiable reason shall be punished with imprisonment for up to one year, detention, or a fine up to 1,000 New Taiwan Dollars.

Article 318

A government employee or a former government employee who, having knowledge over or being in possession of another's business secrets because of his post, discloses such secrets without justifiable reason shall be punished with imprisonment for up to two years, detention, or a fine up 2,000 New Taiwan Dollars.

Business Secrets Law

Article 9

A government employee who has knowledge over or is in possession of another's business secrets because of his duty shall not use or disclose such secrets without justifiable reason.

A party, counsel, advocate, expert witness, witness or other relevant person who has knowledge over or is in possession of another's business secrets because of judicial investigation or trial shall not use or disclose such secrets without justifiable reason.

The preceding paragraph shall apply *mutatis mutandis* to arbitrators and other persons handling arbitration cases.

Article 10

Any of the following behaviours constitutes an infringement of business secrets:

1. acquiring business secrets with unjustifiable method;
2. acquiring, using, or disclosing such business secrets specified in the preceding subparagraph with the knowledge of the nature of the secrets or without such knowledge because of gross negligence;
3. using or disclosing such business secrets specified in the preceding subparagraph with the knowledge of the nature of the secrets, after having acquired the secrets, or without such knowledge because of gross negligence;
4. using or disclosing with unjustifiable method business secrets acquired through legal behaviours;
5. using or disclosing business secrets without justifiable reason in violation of the obligation of preserving such secrets under laws and regulations.

The term "unjustifiable methods" as used in the preceding paragraph means theft, fraud, threat, bribery, reproduction without authorisation, violation of obligation of keeping secrets, seduction of another to violate the obligation of keeping secrets, or any other similar methods.

Administrative Procedure Law

Article 46

The party or interested person may apply to the government agency for reading, making copies, photocopies, or photographing relevant data or records, with the condition that such requests shall be limited to those necessary to assert or maintain its legal interests.

The government agency may not reject the application referred in the preceding paragraph, unless there is any one of the following situations:

1. It has to do with proposals for administrative decisions or other preparatory documents;
2. There involve secrets of national defence, military, foreign affairs, or general public affairs, being required by laws and regulations to be kept confidential;
3. There involve personal privacy, professional secrets, or business secrets, being required by laws and regulations to be kept confidential;
4. There is a likelihood of infringing third party's rights;
5. There is a likelihood of seriously impeding the normal function of duties related to social order, public safety, or other public interests.

Fair Trade Law

Article 27-1

The party or interested person, in the process of the investigation procedure referred in the preceding Article, may apply for reading, making copies, photocopies, or photographing relevant data or records, with the condition that such requests shall be limited to those necessary to assert or maintain its legal interests; unless there is any one of the following situations:

1. It has to do with proposals for administrative decisions or other preparatory documents;
2. There involve secrets of national defence, military, foreign affairs, or general public affairs, being required by laws and regulations to be kept confidential;
3. There involve personal privacy, professional secrets, or business secrets, being required by laws and regulations to be kept confidential;
4. There is a likelihood of infringing third party's rights;
5. There is a likelihood of seriously impeding the normal function of duties related to social order, public safety, or other public interests.

The relevant procedure and requirement such as the qualification of the applicant, the time period for application, the restrictions of content of data or records for reading, the procedure for reading data or records shall be prescribed by the central competent authority.