



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN CHINESE TAIPEI**

2003

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

Regulatory Notes on the Electronic Marketplace under the Fair Trade Act

1. The e-marketplace is the main digitalised trading place where enterprises can conduct e-commerce. The major participants in the e-marketplace include software technology providers, marketplace operators, buyers, and sellers, among others. In September 2003, the Fair Trade Commission published its *Regulatory Notes on the Regulation of the Electronic Marketplace under the Fair Trade Act*. In the *Notes*, the FTC expressed its views on various types of conduct that may possibly distort or restrict competition in the e-marketplace, such as information sharing agreements, power due to a monopsony held by a large purchasing group, exclusive dealing agreements between participants and operators of the e-marketplace, and so on.

2. The FTC advises that e-marketplace operators shall acknowledge the following:

- Operators shall act neutrally and keep the e-marketplace an appropriately open environment;
- The operational rules of the e-marketplace shall be properly designed to ease the FTC's concerns;
- An efficient management system shall be adopted to prevent participants with operator status from spreading sensitive trading information;
- Proper trading order shall be maintained to prevent concerted actions or unfair competition;
- The membership of e-marketplace participants shall not be unduly restricted or excluded; and
- The establishment or adoption of regulations or standards with regard to specific technology shall not induce undue exclusion or unfair competition.

II. Enforcement of competition laws and policies

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

a) Summary of activities

3. The Fair Trade 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 do require the FTC's prior approval and that is based on the public interests. The Act also bans resale price maintenance but requires the FTC to apply the rule of reason principle to other types of vertical restraints.

4. In 2003, the FTC processed 1,433 cases, comprising 1,101 cases received in 2003 and 332 cases carried over from the preceding year. By the end of 2002, 1,156 cases were closed, and 277 cases were pending. A total of 321 complaint cases applicable to the Fair Trade Act were concluded in 2003, and of these, 52 concerned anti-competitive practices. The FTC also open investigations into 7 anti-competitive cases on its own initiatives.

5. Decision rulings of complaints and the FTC self-initiated investigations were made in 187 cases in 2003, and only 23 of these cases fell into the category of anti-competitive practices.

Decision Rulings by the FTC in 2003

Below some are plural but not all Unit: Case

	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2003	23	-	1	10	2	10

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

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

Cartels

House-Use Liquefied Petroleum Gas Market

6. In August 2000, a retailer filed a complaint with the FTC alleging possible cartel monopolization of a retail market which prevented it from entering the relevant market. This retailer was established in August 1999 but failed to find any of the liquefied petroleum gas (LPG) bottling companies which were willing to trade with it. Thus, instead, this retailer sought to obtain supply from other retailers. Soon, however, other retailers were under pressure from the other LPG bottling companies to stop them from offering LPG to this new entrant.

7. After conducting comprehensive investigations in March 2003, the FTC concluded that 30 LPG bottling and transport companies in five neighbouring cities and counties in the northern area, some of which were vertically integrated with upstream dealers, had formed two regional cartels and were monopolizing the bottling and retail markets, thus violating the Fair Trade Act.

8. In April 1999, the FTC discovered that 16 LPG bottling companies in Keelung city, Taipei city and Taipei county and 14 in Taoyuan and Hsinchu counties had formed two separate cartels, known as the Taipei Management Committee and the Taoyuan Management Committee, respectively. Both of them were using very similar tactics to monopolize their individual regional market.

9. The members of the cartels gathered on an irregular basis to decide on issues relating to the control of their respective market. The agreements they reached during the duration of the cartels included the following:

- prohibiting bottling companies from conducting price competition within their own business regions or from conducting cross-region competition;
- requesting that retailers trade with specific bottling companies and prohibiting them from freely switching trading counterparts;

- fixing or raising the price of bottled LPG sold to retailers and demanding that retailers maintain or raise their resale prices;
- contributing to the so-called “market stabilisation funds” and establishing joint bank accounts to manage these funds; and
- using the “market stabilisation funds” to establish a team to strictly monitor the practices of the bottling companies and retailers concerned.

10. The FTC also found out that the measures taken by the cartels to implement their decisions and to punish retailers not following their demands included:

- using the “market stabilisation funds” to subsidize bottling companies which had difficulty running their businesses so as to prevent them from conducting price competition;
- dispatching personnel to resolve disputes among retailers regarding competition for customers;
- deploying predatory pricing against any retailer that switched to another bottling company or that reduced retail prices to compete for customers. The cartels used their own employees and transport vehicles to sell LPG in this retailer’s business area at an even lower price to force it to follow the cartel members’ decisions; and
- threatening the suspension of supply if retailers refused to raise their retail prices.

11. The two cartels covered more than 90% of the LPG bottling and retail markets in the north. The market mechanism in the north for LPG was severely impaired, while the rights and interests of millions of consumers were being infringed upon. The FTC believed the national economy, consumer welfare and the LPG market had been adversely affected in the following ways:

- national economy: if the cartels raised NT\$1.0 per kilo of bottling and transport fees or retail prices, they could make NT\$1.05 million for every 700 tons of LPG. Considering that the total monthly trading volume of LPG in the said areas was over 20,000 tons and that the duration of the existence of the cartels was longer than 33 months, the undue profits received by those cartel members were estimated to be in excess of NT\$1 billion;
- consumer welfare: the cartels raised and maintained retail prices at an unreasonably high level and eliminated consumers’ choice of more desirable bottled LPG supplier, thus directly harming their interests;
- new investments in the distribution market: the cartels prevented any new entrants into the distribution sector, thereby discouraging new investment in this sector and impairing the benefits produced by the liberalisation of the LPG market; and
- unfair competition in the distribution market: some vertically integrated distribution enterprises could have used undue profits they received to engage in cross- subsidization to conduct or deepen unfair competition in the dealer market and bring additional harm to market function in the whole distribution market.

12. In its decision, the FTC issued a cease-and-desist order to all cartel members and imposed administrative fines on each member in accordance with their business scale, the undue profits they

received and their degree of co-operation during the investigations. However, the ceiling on administrative fines, as stipulated in the Fair Trade Act, for each violator per offence is NT\$25 million; therefore, the total amount of the fines was only NT\$343.75 million.

2. *Mergers and acquisitions*

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

13. 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: Case

	Cases under Processing		Results of Processing		
	Carried Over from 2002	Received in 2003	Total	Approved	Mergers not Prohibited
2003	1	50	50	-	31
	Results of Case Processing				Cases Pending at Year-end
	Rejected	Merger Prohibited	Termination of Review	Cases Consolidated	
2003	-	-	19	-	1

Note: Merger cases notified after 6 February 2002 were subject to new merger control regulations.

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

The Professions and the Fair Trade Act

14. In its first amendment in 1999, the new provision of the Fair Trade Act requires that the Act should not be applied to acts performed in accordance with other laws only if such other laws do not conflict with the legislative purpose of the Fair Trade Act. This amendment thereby affirms that the spirit and contents of the Fair Trade Act be the core of economic policy.

15. Currently, Article 11 of the Architects Act provides that architect associations shall set standards for service charges. Since the laws regulating trade associations make it clear that a professional cannot practice without membership in a relevant trade association, the fee standards stipulated in trade associations' charters, in fact, heavily decrease or even eliminate the possibility of price competition in their respective markets. As that provision could not be interpreted in a way that conforms with the legislative purposes of the Fair Trade Act, the FTC made a decision in 1999 that the prescription of a fixed service charge or minimum standard of service charge was in violation of the legislative intent of the Fair Trade Act.

16. To rectify the distortion of competition among architects and, at the same time, avoid unnecessary conflicts between different laws, several steps were taken by the FTC before a formal investigation was begun. In early 2000, the FTC formally requested that the Ministry of the Interior (the MOI), which is responsible for architects, introduce competition into the Architects Act. Prior to the realisation of an amendment to the Architects Act, the MOI shall request that the three major architect

associations no longer engage in price-fixing which violated the Fair Trade Act. A one-year grace period was given to those architect associations to repeal the provisions for fixed or minimum service charge standards in their charters.

17. Upon the expiration of that period, the FTC conducted reviews of the architect associations and learned that instead of resolving a service charge schedule for architects at its members' meetings, in their articles of associations, the three architect associations provided that members might be expelled from their respective association if they reduced service charges in an effort to improve their competitiveness for business or if they contravened the regulations on business or the associations' covenants or resolutions. The provision bound the members to determine their service fees within the limits of the service charge schedule. The associations also agreed to perform a consigned collection of service payments on behalf of its members and further prescribed the "Guidelines for Service Payment Collection and Transfer on Behalf of its Members" so as to ensure that its members charged accordingly; this also was likely to serve to further compel its members to comply with the service charge table.

18. The aforementioned behaviours were substantiated with information provided by construction companies that responded when interviewed by the FTC. Nearly 80% of the architects were using the service charge table as a basis or as a reference to reach an agreement with construction companies upon the allocation of service fees, and nearly 40% of the payments for architectural services fell within the scope of the charge schedules. Furthermore, as expressly stipulated in consignment contracts or based on the claims of architects, roughly 55% of the architects had to consign a collection of service charges with their respective association before they could obtain stamped approval of their applications for construction permits from that association. The FTC even discovered cases where architect associations required architects or construction companies to make up for any insufficient amount if they charged below the standards specified in the service charge schedule and to consign the association to collect service fees on their behalf.

19. It was also discovered that the architect associations further adopted a "Fee Collection Schedule for Various Architectural Services (Draft)." Although the associations claimed that the schedule was for reference only, the fees listed in the service charge table, mostly based upon a fixed or minimum fee standard and actually used by some architects to determine charges, resulted in price-fixing and were thus able to affect market mechanisms.

20. Considering the associations had failed to correct their resolutions regarding service charge standards for architects and fee standards for services and to comply with the Fair Trade Act, in early 2003, the FTC issued the said associations orders that they must notify their members in writing to cease the use of uniform service charge standards aimed at restricting price competition among its members and to cease engaging in price-fixing that was adversely affecting the relevant market. The associations were also ordered to cancel or revoke the resolutions in question at the next members' meeting and to notify its members of the cancellation in writing and to inform the FTC of the results.

IV. Resources of competition authorities

1. Resources overall

a) Annual budget: NT\$ 353.722 million (equivalent to USD 10.5 million in September 2004)

b) Number of employees (person-years):

Economists	35
Lawyers	56
Other professionals & support staff	130

All staff combined

221

2. Human resources (person-years) applied to:*a) Enforcement against anti-competitive practices and merger review*

21. All kinds of anti-competitive cases, including the misuse of dominant positions, merger reviews, hard core cartels and various vertical restraints, are handled by the FTC's First and Second Departments which are responsible for cases related to the services and agricultural sectors and the industrial sectors, respectively. There are 28 staff members in the First Department and 29 in the Second.

b) Advocacy efforts toward advocacy

22. A section of 5 staff members in the Planning Department of the FTC is responsible for designating public outreach programs. Nevertheless, almost every department and staff member actively plays a role in outreach activities.

3. Period covered by the above information: January through December 2003**V. Summaries of or references to new reports and studies on competition policy issues**

23. The following are the tentative translations of the titles of the studies carried out in 2003. None of them are available in English.

Commissioned studies:

1. Fair Trade Act and Financial Holding Companies
2. Joint-Importation of Wheat and the Regulations thereof
3. Introducing Competition into the Civil-Use Fuel Gas Market and its Relationship to the Fair Trade Act
4. Undisclosed Trading Conditions in the Advertisement and the Fair Trade Act
5. Regulation and Protection of Company Names under the Fair Trade Act
6. Commentary on the Fair Trade Act, Vol. 1
7. Relations between the Automobile Industry and the Fair Trade Act after Chinese Taipei's Accession to the WTO
8. Criteria for Reviewing and Exempting Joint-Research Programs among Competitors
9. Feasibility of Applying the Computable General Equilibrium Model to Competition Policy
10. Questions about the Definition of Multi-Level Sales in the Fair Trade Act
11. Study on Determination and Exemption of Cartels
12. Vertical Restraints in the Distribution Sector and the Fair Trade Act

Staff reports

1. Research on Merger Reviews
2. Tie-in Selling of Copyright Goods and the Fair Trade Act
3. Measuring the Benefits of the Liberalization of the Liquefied Petroleum Gas Market and its Relationship to the Fair Trade Act
4. Comparative Study on Substantive Criteria and Procedure Regulations of Merger Reviews