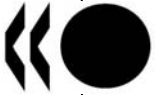


Unclassified

DAF/COMP/GF/WD(2005)19



Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

14-Jan-2005

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP/GF/WD(2005)19  
Unclassified

## **Global Forum on Competition**

### **ABUSE OF DOMINANCE IN REGULATED SECTORS**

**Case submitted by Chinese Taipei**

-- Session III --

*This case is submitted by Chinese Taipei in view of its discussion in Sub-Session 2 on Friday 18 February 2005 (from 9.30 am).*

**JT00176938**

Document complet disponible sur OLIS dans son format d'origine  
Complete document available on OLIS in its original format

English - Or. English

## **ABUSE OF MONOPOLISTIC POWER IN THE TELECOMMUNICATIONS SECTOR CHINESE TAIPEI**

### **1. The practice concerned**

1. Chinese Taipei's state-owned telecommunications company Chunghwa Telecom Co. (hereafter "Chunghwa") introduced the "099 Follow-me code" service ("099" service) on 7 September 1999. This service uses telecommunications and computer technologies on the telephone network to provide so-called intelligent services. Users are able to use these services to make collect calls, manage information, and check voice mail, as well as to benefit from answering and transferring programs. Information sent via the telephone to a user may be transferred to any designated terminal equipment (e.g. telephone, mobile telephone, or fax machine) in accordance with the transferring program set by that user.

2. Originally, Chunghwa set the rate of local calls at NT\$1.7 for five minutes and the rate of local calls to mobile phones at NT\$6 per minute. All of the other existing mobile phone operators set their mobile communications services at similar rates. Through its "099 Follow-me code" service, Chunghwa established a uniform rate of NT\$0.06 per second (*i.e.* NT\$3.6 per minute) for both local-099-local calls and local-099-mobile phone calls. In providing such a uniform rate, Chunghwa increased the rate of local calls an overwhelming 900%, whereas it decreased the rate of local calls to mobile phones 40%.

3. The price structure of the "099" service was extremely low (NT\$3.6 per minute), compared with other mobile phone rates at that time (around NT\$6.0 per minute), and therefore, it was extremely attractive to users. By the end of the first week after the introduction of the "099" service, more than 21,000 people had already subscribed to that service.

### **2. The factual context and the competition problem**

4. Prior to significant amendments that were made to the Telecommunications Act on 5 February 1996, Chinese Taipei's telecommunications services were monopolized by the Directorate General of Telecommunications (the DGT) under the Ministry of Transportation and Communications (the MOTC). The amendments established a legal basis for opening up the relevant markets and split the DGT into two entities, with the new DGT acting as the sector regulator, and the state-owned Chunghwa serving as the incumbent operator to run the telecommunications businesses, ranging from data communications and mobile communications to the fixed networks.

5. The monopolized telecommunications services were liberalized in sequence: from paging, mobile phones, satellite phones and mobile data communications in 1997, and four years later, to the fixed communications networks in 2001. At the time the "099" service was introduced in 1999, Chunghwa was still the only telecommunications company operating in the fixed line telecommunications market. The liberalisation of the mobile phone market brought in five private companies to compete with Chunghwa in related businesses. All the private mobile phone companies, however, still needed to have access to Chunghwa's network facilities to provide their services.

6. According to the Telecommunications Act, the MOTC shall set administrative rules to govern and examine the tariffs of Type I telecommunications enterprises (*i.e.* facility-based carriers). The MOTC shall also prevent the setting of tariffs on the part of Type I telecommunications enterprises engaging in cross-subsidisation, thereby preventing them from hindering fair competition. This rule shall be applicable

to Type I telecommunications enterprises that also operate Type II telecommunications enterprises (i.e. non-facility-based carriers) or other non-telecommunications businesses.

7. To comply with the Telecommunications Act, Chunghwa submitted a rate proposal to the MOTC for approval before it was granted the right to provide the “099” service. Initially, the MOTC granted permission for that rate. However, later on, the MOTC realized there were some points that needed to be clarified, and thus, changed its permission to an interim one, with a two-month testing period. The issues considered by the MOTC included who should have the right to set rates, whether there should be two phases in the collection of fees, whether there should be cross-subsidisation, and whether Chunghwa should negotiate with competitors when its rate-setting affects competitors, and so on.

8. On 10 September 1999, soon after the “099” service was introduced, private mobile phone operators jointly filed a complaint with the competition authority, the Fair Trade Commission (the FTC). The complaint alleged that Chunghwa had structured the pricing of its “099” service in such a way that it may have been giving rise to undue pricing, cross-subsidisation, unfair competition, violation of private mobile phone operators’ rate-setting rights and legitimate revenue.

9. In the complaint filed with the FTC, the private mobile phone operators claimed that Chunghwa’s “099” service may have been obstructing fair competition in the following aspects:

- “Average pricing” constituted cross-subsidisation. For Chunghwa’s “099” service, NT\$0.06 was charged per second (NT\$3.6 per minute) to transfer local calls to local telephones or mobile phones. The local calling rate at that time was NT\$1.7 per five minutes, while the local calling rate to a mobile phone was NT\$6 per minute. As the fixed line business had not yet been liberalized, Chunghwa was allegedly enjoying a monopoly in the local call market. As a result, with its “099” service, Chunghwa may well have been collecting a premium on local calls and using this premium to subsidize its shortfalls from calls to mobile phones, thus causing unfair competition in the mobile communications market.
- Chunghwa was in violation of competitors’ rate-setting rights and the principles of the allocation of telecommunications fees. *The Regulations Governing Mobile Telecommunications Network Interconnection*, issued by the DGT, provides that the “Allocation of telecommunications fees for telecommunications between mobile networks and fixed line networks, but not international telecommunications, shall be processed in accordance with the following principles: ... the carrier on the calling end shall collect the telecommunications fee from the caller; the telecommunications fee revenue belongs to the mobile network carrier.” However, in regard to the “099” service, Chunghwa decreased the local calling rate to a mobile phone from NT\$6 per minute to NT\$3.6 per minute and informed the private mobile phone operators that Chunghwa would take 76% of the telecommunications fee revenue. Chunghwa’s practices were obviously violating the private mobile phone operators’ rate-setting rights and the principles of the allocation of telecommunications fees.
- Clearly there was an issue of unequal access to the “099” service. Chunghwa’s “099” service could only be connected to Chunghwa’s local and mobile phone networks. Contrast this with non-Chunghwa mobile subscribers who could not transfer incoming local calls to their mobile phone through “099”. This may have, indeed, caused subscribers to switch from private carriers to Chunghwa in order to use the “099” service.

10. The FTC, after completing its investigations, determined that Chunghwa had been using the revenues generated from its monopolistic position in the fixed networks to subsidize its mobile phone business that had only recently been opened up to competition. The alleged practice may have been having the effect of excluding competitors from the market, and hence, harming consumers' benefits in the long term.

### **3. Actions taken to solve the problem**

11. The FTC is the sole competent authority of the Fair Trade Act which is the general competition law and which can be applied to all sectors in Chinese Taipei. However, considering that the price structure of the "099" service had been granted by the MOTC on an interim basis, to avoid legal uncertainty caused by any duplication of jurisdictions, the FTC decided not to take formal action against Chunghwa. Instead, it made a formal recommendation to the MOTC on 10 October 1999, as presented in the following:

- Chunghwa's "099" service may have had the effect of obstructing fair competition by collecting telecommunications fees for local calls and local calls to mobile telephones on an average-pricing basis. Thus, the FTC recommended "de-averaging": Chunghwa should only collect fees on the basis of its actual costs;
- When Chunghwa connects "099" calls to the mobile telecommunications networks, mobile phone carriers should have the rights to set and collect the telecommunications fees in accordance with the relevant laws and regulations so as to maintain competition in the mobile phone business; and
- Chunghwa should provide equal access to its "099" service to subscribers to other private mobile telephone carriers and avoid obstructing fair competition by means of unequal treatment without legitimate cause.

### **4. Final outcome of the case**

12. On 24 November 1999, the MOTC formally replied to the FTC, stating its decisions to respect the FTC's recommendation and to reformulate the rate proposal of Chunghwa's "099" service as follows:

- To make the price structure transparent, telephone fees shall be separated into two parts: the first part to be paid by the calling party, and the second part, from 099 to local, long distance or mobile phones, to be charged to "099" users;
- To ease the concerns over cross-subsidisation, the rate of the first part shall be decreased to NT\$0.02 per second, the rate of the second part, in the case of local-099-mobile, shall be decided by the individual mobile phone companies, in accordance with the actual costs and the principles of the allocation of the telecommunications fees;
- The current users of the "099" service could still enjoy the old rate until 6 March 2000; and
- The MOTC will consider fair competition as an important factor when examining telecommunications rate proposals in the future.

13. Chunghwa then reset its price structure of the "099" service so that it was in full compliance with the MOTC's instructions, and this solved the FTC's competition concerns. Nonetheless, unexpectedly, the FTC received numerous complaints from the "099" service users for raising the rate of that service. The FTC then had to make public statements, explaining that it was fully aware that innovations may produce

and enhance consumers' welfare and that it had always been positive to the telecommunications enterprises' introduction of new technologies and new services. However, anticompetitive practices, such as cross-subsidisation, deployed by the incumbent with a monopolistic position that could harm or even eliminate competitors in other competitive markets shall be prohibited or corrected.