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**THE OBJECTIVES OF COMPETITION LAW AND POLICY
AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

-- CHINESE TAIPEI --

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THE OBJECTIVES OF COMPETITION LAW AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY

1. The Purpose and Legal Basis for the Establishment of the Fair Trade Commission

As far back as the 1980's, Chinese Taipei started to undertake a series of economic reforms to transform its highly regulated economy into one which is much more market-oriented and, thus, better able to both sustain and further economic development. In the belief that competition law is indispensable to this process, Chinese Taipei promulgated the Fair Trade Law on February 4, 1991.

The legislative purposes of the Fair Trade Law, as defined in Article 1 of the Law, are to maintain trading order, protect consumer interests, ensure fair competition, and promote economic stability and prosperity. These purposes identify efficiency and fairness as the goals to pursue, and, at the same time, consumer interests and economic development as the ultimate results of enforcement.

Article 25 of the Fair Trade Law requires that the Government establish the Fair Trade Commission (the FTC) to manage matters pertaining to fair trade as set forth in the Law. To this end, the government appointed the Commodity Price Supervisory Board, the Ministry of Economic Affairs, to conduct the necessary groundwork. On January 27, 1992, the Commodity Price Supervisory Board was abolished, the FTC was founded, and superseded the Board.

The Fair Trade Law also stipulates that a separate law shall govern the organizational structure of the FTC. The Organic Statute of the Fair Trade Commission (the Organic Statute) was, thus, promulgated on January 13, 1992 to determine and define the structure of the FTC, its relationship with local governments, the functions of its internal branches, the appointment and qualifications of the commissioners, and the functions of the Commissioners' Meeting.

2. The Status of the Fair Trade Commission in the Government

Article 9 of the Fair Trade Law authorizes the competent authority, the FTC, to function at the central government level. In practice, this provision recognizes the FTC as one of the ministries, and entitles its Chairperson to a seat in Cabinet meetings.

The rationale behind the establishment of a ministerial-level competition institution can best be interpreted within the context of competition advocacy and deregulation matters. Throughout the 1980's, there were often long, bitter disputes as to whether and why a competition law to promote economic development was required and as to exactly what the status and how competent the authority should be. Such policy debates went on for nearly 10 years.

On the one hand, some argued that it was the responsibility of the Ministry of Economic Affairs (the MOEA) to issue and co-ordinate economic policies of all kinds, including those pertaining to competition. The newly-born FTC, they went on, should therefore be assigned to the MOEA and should be chaired by the Minister so that the Minister could implement the new mechanisms at hand.

Others, on the other hand, contended that the FTC should be designed as an effective mechanism to reduce unnecessary regulatory burdens and to remove undue entry barriers to the market. Since the MOEA and other related ministries were responsible for the development of state-owned enterprises, most of which were statutory monopolies and public utilities, only a clear-cut separation between the authorities

of industrial policy and those of competition policy, they claimed, would allow the FTC to operate in the most effective way.

In the end, the FTC was established to stand on par with other ministries and to take on the functions of both policy-making and law enforcement. Accordingly, the FTC Chairperson attends Cabinet meetings to express the FTC's views on competition policy and deregulation matters. Furthermore, in the case of any matter provided for in the Fair Trade Law that concerns the authorities of any other ministries, the FTC may consult with such other ministries to seek feasible solutions.

The Commissioners' Meeting is comprised of 9 full-time commissioners, including the Chairperson and Vice-Chairperson, who are all nominated by the Premier and appointed by the President for a three-year renewable term. Commissioners must be well experienced in law, economics, finance, tax, accounting or management.

Around 250 personnel assisting the Commission are divided into the following organizational structures: (i) the Department of Services and Agricultural Sectors; (ii) the Department of Manufacturing Sectors; (iii) the Department for Unfair Competition; (iv) the Department of Planning; (v) the Department of Legal Affairs; and (vi) other administrative support offices. Most staff members have majored in law, economics or both.

The FTC currently has no regional office to conduct enforcement work. Nevertheless, to carry out its duties, the FTC may request assistance from local governments or entrust them with such duties. In that the application of the anti-trust provisions requires consistency and expertise, the FTC only seeks the local governments' assistance for the regular inspection of the operations of multi-level sales businesses.

The FTC's annual budget is subject to Parliamentary review and approval. The Chairperson and other high-level officials of the FTC are required to fully explain its administrative programs and provide defense in support of its budget proposals to the legislators in person. No other source of budget, such as fees or fines, is available.

3. The Tasks and Powers of the Fair Trade Commission

According to Article 25 of the Fair Trade Law, the FTC is in charge of the following matters:

- preparation and formulation of fair trade policies, laws and regulations
- review of any fair trade matters related to this Law;
- investigation into the activities of enterprises and economic conditions;
- investigation into and disposition of any case violating this Law; and
- any other issues related to fair trade.

The Fair Trade Law provides a two-track system for the enforcement of the Law: the administrative system and the judicial system. Although the court and the prosecutors also have a certain degree of authority, enforcement is largely in the hands of the FTC. For any breach that harms the interests of the general public, the Fair Trade Law provides for the FTC to investigate and issue remedies, upon complaints or *ex officio*.

To ensure compliance, the Fair Trade Law equips the FTC with investigative powers for the discovery of illegal practices. The FTC is also empowered to issue cease and desist orders, to require correction of illegal practices, and to impose administrative fines directly.

Decisions in individual cases are taken by a majority vote in the Commissioners' Meeting. Commissioners meet once a week, and additional special meetings may be held if necessary. The FTC's

decisions can be appealed to the Government's Appeal Committee. If the Appeal Committee's decisions are deemed unsatisfactory, the parties can then appeal to the administrative court.

The independence of the FTC is embodied in the Fair Trade Law. In Article 28, the Law requires that the Fair Trade Commission carry out its duties independently in accordance with the Law. The FTC may dispose of cases in the name of the Commission so as to prevent any individual commissioner from any undue political pressure. The Organic Statute also stipulates that the commissioners shall act independently in performing their duties under the Law. The decision-making procedure in the Commissioners' Meeting further helps secure the independence of decisions/the decision-makers.

To effectively enforce the Law and maintain market mechanisms, the Fair Trade Law itself has to be regularly modified to stay in line with the constant changes in the socio-economic environment. The FTC continuously reviews its enforcement work, receives comments from the general public, the business community as well as academics and, all the while, holds hearings to formulate its proposals for amendments to the Fair Trade Law.

Based on the FTC's proposals, the Fair Trade Law has been significantly amended twice since its enactment in order to enhance its administrative sanctions, increase its maximum penalties, strengthen its regulations on multi-level sale schemes, reinforce the FTC's competition advocacy role, loosen merger controls, and so on.

Public awareness of the provisions of the Fair Trade Law is crucial for enforcing the Law. For this purpose, the FTC has been making great use of a multitude of avenues, such as news releases, websites, sector-specific seminars-- almost all directed towards businesses and the general public alike. Endeavors to promote transparency include issuing enforcement guidelines on a wide range of conduct or on specific sectors to help both businesses and the general public understand the standards that the FTC has in place when applying the Law.

4. The FTC's Relations with Other Governmental Bodies

In its earliest version, the Fair Trade Law granted exemptions to anti-competitive practices that were permitted by other existing laws, thus holding the FTC back from fully exercising its potential power. However, to be able to aggressively enforce the Law under such circumstances, the FTC could still, work with other ministries by exercising its consultative power in an attempt to reduce their regulatory controls which, in the FTC's view, restricted competition.

The FTC has been making every effort to minimize these exemptions and to create a regulatory environment which complements the spirit of the market economy. Ever since its establishment, the FTC has employed a case-by-case approach to revise and repeal administrative measures which have distorted market functions. Significant cases have included household liquid gas, bill underwriting, securities refinancing, and aviation fueling service markets, among others.

In addition, the FTC has constantly advised relevant government agencies about the formulation and development of new laws and consulted with government agencies so that they might revise or repeal existing laws to ensure that they are compatible with the spirit of the market economy.

In order to conduct this work in a comprehensive manner, in 1994, the FTC established a one-year task force to investigate and examine all of the existing laws which provided a legal basis for exemptions under the Fair Trade Law. The task force then consulted the relevant government agencies in an effort to review and revise other such laws. Recognizing this could not have been a once-and-for-all event, the FTC took such review and consultation work as its responsibility and organized similar task forces in 1997 and 2002 again.

In 1999, the Fair Trade Law was amended for the first time. One new provision stipulates that the Law cannot be applied to acts which comply with other laws as long as those other laws do not conflict

with the legislative purpose of the Fair Trade Law. The amendment thereby affirms/affirmed the spirit and content of the Law as the core of economic policy.

The FTC has always closely monitored regulatory reforms pertaining to public utilities, especially those in the telecommunications and energy sectors. In 1996, the Telecommunications Law was significantly rewritten to build a healthy environment for competition. The government agency that used to monopolize the telecommunications market was split into the incumbent and its regulator. Provisions to regulate rates and prevent the misuse of a dominant position, cross-subsidization and unduly pricing of the incumbent are now in place for the regulator. The FTC fully participated in the legislation of the new Telecommunications Law and provided a great deal of input.

More recently, the FTC has been actively involved in contributing to regulatory reforms in the petroleum and electricity markets. Although there are now regulators and sector-specific laws, the FTC has been closely cooperating with various regulatory bodies to introduce more competition in order to restructure the monopolies into competitive firms and to co-regulate them in newly de-centralized market situations.

5. Conclusions

Given that socio-economic factors and state plans for development likely vary from time to time and between economies in different stages, it may very well be that no “optimal” design actually exists for a competition authority. In addition to discussing “core principles” for competition laws, the design of competition authorities might be worthy of further exploration.