ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHINESE TAIPEI

-- 2006 --

This report is submitted by the Delegation of Chinese Taipei to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 October 2007.

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

1.1 Summary of new legal provisions of competition law and related legislation

1. The Fair Trade Act (hereinafter the “Law”) and its related legislation, the Enforcement Rules to the Fair Trade Act, have not been revised since February 2002.

1.2 Other relevant measures, including new guidelines

2. To enhance the effectiveness of the enforcement work, the Fair Trade Commission (hereinafter the “Commission”) has been issuing 7 guidelines in line with its past experiences of handling cases. The titles of the guidelines are as follows:

   - the “Mergers Guidelines by the Fair Trade Commission,” and for the contents of the guideline, please refer to:
   - the “Guidelines on Slimming and Beauty Cases by the Fair Trade Commission,”
   - the “Guidelines on TV Ratings Cases by the Fair Trade Commission,”
   - the “Guidelines on Gas Safety Equipment Cases by the Fair Trade Commission.”
   - the “Guidelines on Advertising for Electronic Appliances by the Fair Trade Commission,”
   - the “Guidelines on Advertising for Real Estate by the Fair Trade Commission,”
   - the “Guidelines on Advertising for Banking by the Fair Trade Commission,”

3. In addition to the above 7 guidelines, the Fair Trade Commission has revised four administrative procedures and 1 guideline on handling cases of specific industries. There are:

   - the “Procedures for Pre-merger Notification Filing,”
   - the “Procedures for Accessing Files of the Fair Trade Commission,”
   - the “Procedures for the Commissioners’ Meeting of the Fair Trade Commission,”
   - the “Rules for Non-disclosure and Disclosure of the Information of the Fair Trade Commission,”
• the “Guidelines on Additional Fees Charged by Distribution Enterprises by the Fair Trade Commission.”

1.3 Government proposals for new legislation

4. In response to the suggestions by the peer review report of the Global Forum on Competition of the OECD in February 2006, Chinese Taipei held the “Symposium on the OECD Peer Review of Chinese Taipei’s Competition Law and Policy” in Taipei, June 2006. Experts from the OECD Competition Committee along with local scholars and lawyers were invited to serve as panellists in the seminar and to offer their thoughts and views on both the issues related to the valuable policy suggestions from the OECD Competition Committee and on their achievability.

5. The Commission has since drafted a new proposal to revise the Law in 2006 which it is ready to send to the Executive Yuan. A task force has been organized by the Department of Legal Affairs of the Commission to gather together the Commissioners two or more times each month to discuss the new legislation. The proposal containing the new amendments consists of four major aspects that concern the suggestions made by the OECD Competition Committee:

1.3.1 To revise the market share criteria of the pre-merger notification

6. The merger control regime that has adopted a pre-merger notification system has not been adjusted since the 2002 amendments by the Law. For any merger that falls within any of the following circumstances, a notification shall be made to the Commission prior to the realization of the merger:

• as a result of the merger the enterprise(s) will have one-third of the market share;
• one of the enterprises in the merger has one-fourth of the market share; or
• sales for the preceding fiscal year of one of the enterprises in the merger exceed the threshold amount publicly announced by the central competent authority.

7. The purpose of employing market share as one of the merger control criteria is to prevent such mergers from competition restraints. For some specific industries, like the cable TV or the KTV industries, employing only the turnover as the notification criterion might exclude dominant firms with low turnover and with high market share from reporting their mergers to the Commission.

8. However, it is difficult for a firm to measure the market share without sufficient information regarding the market’s definition and the scope of the market. Thus, in order to avoid the confusion between administrative obligations and the rules in practice, the Commission has discussed adjusting the relevant articles of the market share threshold criteria of the Law.

1.3.2 To revise relevant restrictions on joint R&D and to introduce a leniency program

9. The issue as to how to regulate joint venture activities has been the subject of considerable debate. Article 14 of the Law prohibits enterprises from partaking in concerted actions, save for specific stipulated exceptions that are beneficial to the economy as a whole and are in the best interests of the public at large. Only for certain purposes shall parties apply to the Commission to seek approval for concerted actions. These are: the element of efficiency, and the element of industrial development.

10. However, developing R&D projects jointly with competitors could enhance the incentive to create and would also reduce the costs of innovation. The Commission is now planning to revise the
relevant provisions of the Law to ease the current restrictions on joint R&D projects among enterprises. The application for joint R&D or for other general purposes, which has no substantial impact on the market, could be approved by the Commission or exempted from the regulation of the Law.

11. Furthermore, due to the difficulties in uncovering the evidence of cartels, the Commission is planning to introduce a leniency program that will provide amnesty to cartel members who are the first to report to the Commission regarding the illegal organization of the cartel. When that is adopted, the Commission will design the details of the program.

1.3.3 To classify sanctions for different violations

12. The punishment system of the Law is different from others. By not only applying administrative fines as the tool of punishment, the Law combines anti-competition with unfair competition and does not differentiate the penalties for different types of violations. According to Article 41 of the current Law, an administrative fine ranging from NT$50,000 to NT$25,000,000 (approximately equivalent to US$1,515 to US$757,575 at the exchange rate of 33NT$/US$ in September 2007) could be imposed upon any violators. However, fines against hard-core conduct are low by international comparison.

13. In order to deter the violation, the administrative penalties will be imposed depending on the behaviours associated with the violation. In the proposed new legislation, the violation behaviours will be categorized into 1. merger, 2. anti-competition and 3. unfair competition. Thus, the statutory cap for the administrative penalties will be different for different violations.

1.3.4 To reform the structure of the Commission

14. In order to cooperate with the reform of governmental organizations and to clarify the Commission’s independence from political oversight, the Commission’s name will be changed from the “Fair Trade Commission, Executive Yuan” to the “National Fair Trade Commission.”

15. The chairman of the National Fair Trade Commission will no longer participate in the meetings hosted by the Premier of the Cabinet. This will move the Commission away from policy-making discussions and change the approach to advocacy. Appeals based on the Commission’s decisions will be taken directly to the Administrative Court rather than to the Appeals Committee of the Executive Yuan. Commissioner appointments will be subject to the consent of the legislature. These changes will draw attention to the fact that the application of competition law is not a matter for political balancing and this will broaden the base of support for competition policy.

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities

16. The Act permits the existence of monopolies as long as they do not abuse their market power. Concerted actions are strictly forbidden by the Act, and although some exceptions are allowed for, these require the Commission’s prior approval that is based on the public interest. The Act also bans resale price maintenance but requires the Commission to apply the rule of reason principle to other types of vertical restraints.

17. In 2006, the Commission processed 1,714 cases, comprising 1,304 cases received in 2006 and 410 cases carried over from the preceding year. By the end of 2006, 1,304 cases were closed, and 410
cases were pending. A total of 506 complaint cases applicable to the Law were concluded in 2006, and of these, 49 were concerned with anti-competitive practices. The Commission also initiated investigations into 6 anti-competitive cases.

18. Decision rulings in relation to complaints and the Commission’s self-initiated investigations were made in 175 cases in 2006, and only 19 of these cases fell into the category of anti-competitive practices.

### Decision Rulings by the Commission in 2006

<table>
<thead>
<tr>
<th></th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-competitive Practices</td>
<td>19</td>
</tr>
<tr>
<td>Abuse of Monopoly</td>
<td>-</td>
</tr>
<tr>
<td>Mergers</td>
<td>3</td>
</tr>
<tr>
<td>Concerted Actions</td>
<td>9</td>
</tr>
<tr>
<td>Resale Price Maintenance</td>
<td>3</td>
</tr>
<tr>
<td>Vertical Restraints</td>
<td>4</td>
</tr>
</tbody>
</table>

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

#### 2.2 Description of significant cases, including those with international implications

##### 2.2.1 Anti-competitive Cases

**Case 1: Improperly causing another enterprise to participate in a concerted action**

19. The Taichung County Government, which is a local government of Chinese Taipei, sent a case to the Commission related to the Taichung County Lunchbox Association preventing its members from price competition. The Commission initiated the investigation and found the association to be in violation of the Law.

20. The average price of a school lunchbox in Taichung County had fallen from NT$40 to NT$35 since 2001. In order to save the profit margins of members, the members of the Taichung County Lunchbox Association reached a horizontal agreement in their general members’ meeting. The resolution was nothing but the imposition of restraints on price competition. First, the minimum price of the combo lunchbox (including 4 different dishes and a soup) provided by the members was not to be less than NT$40. Secondly, the members were reminded not to engage in cutthroat competition. Thirdly, the Taichung County Lunchbox Association collected a check amounting to NT$200,000 from each member as a tool to enforce punishment. If any member initiated price competition, its check would be cashed.

21. By disregarding the chairman’s warning, 2 members of the Taichung County Lunchbox Association offered lunches at a price lower than NT$35 for a meal without fruit in a lunchbox bidding case for an elementary school. After the bidding took place, the Association cashed the checks of the said members. Even more than that, the Association decided to terminate the membership of one of the bidders.

22. The conduct of the Taichung County Lunchbox Association caused enterprises to refrain from competing in price and such behaviour was likely to lessen the competition in the lunchbox market. Such conduct violated the provision of Article 19, Subparagraph 4 of the Law. By taking into consideration the motivation, purpose and expected improper benefit of the unlawful acts of the said Association; the degree and duration of the act’s harm to market order; the benefits derived on account of the unlawful act; past violations, remorse shown for the act and the attitude towards cooperation in the investigation, the said Association was therefore ordered to cease the unlawful acts and a fine of NT$640,000 was imposed according to the anterior paragraph of Article 41 of the Law.
Case 2: Facilitating pricing

23. After rendering the punishment on Chinese Petroleum Corp. (hereinafter the “CPC”) and Formosa Petrochemical Corp. (hereinafter the “FPCC”) for their concerted action in October 2004, the Commission continued to monitor the price adjustments of the said petroleum suppliers; and an ex officio investigation began in March 2005 in response to the rise in the market price of petroleum oil.

24. The past movements in the price adjustments of the two companies were characterized by the following patterns and were deemed to constitute an unlawful concerted action:

- The party that initiates the announcement of a price adjustment decision through the media will await the response of its rival.
- If the respondent decides to follow, then the wholesale prices of the two competitors will be adjusted within the same range at the same time.
- If the respondent decides not to follow, then the leader will immediately withdraw or make an amendment in regard to its earlier price decision.

25. After monitoring the prices from December 2004 to the end of February 2006, the Commission found that the wholesale prices rose mainly because the price of international crude oil rose continuously. Furthermore, during the investigation, the Commission found that the CPC and FPCC had adjusted the wholesale prices seven times, including 4 price hikes and 3 price cuts. However, the patterns of adjustment were different from those in the past.

- Neither of the parties made any advance announcement of a price adjustment decision through the media. Once the decision regarding the price adjustment was made, it became effective right away.
- The wholesale prices of the two competitors were adjusted within the same range, but not simultaneously.
- When one party decided to raise its price, the competitor would not follow.
- The chain gasoline stations did not adjust the retail prices immediately.

26. Upon investigation, the Commission found that price competition had existed in the retail market and that the consumers had more choices. Thus, the Commission decided that the price adjustment methods adopted by the 2 petroleum suppliers were not related to the conduct of improper pricing, price facilitating, or a meeting of minds.

27. However, the Commission sent warning letters to both suppliers to remind them not to affect trading order in the petroleum wholesale market. In addition, the Commission requested that both oil suppliers, when adjusting wholesale prices in response to cost pressures, reasonably refer to the price of international crude oil and the purchasing cost. The Commission will regard the price adjustments as unlawful if the evidence shows that the changes in price and the frequency of adjustments are symmetric, and will initiate the investigation on a case-by-case basis.

28. Moreover, in order to enhance the effectiveness of the market mechanism, the Commission has drafted a principle for handling cases related to the issue of the price of petroleum gasoline. The Commission will respect and consult with the energy sector regulator to avoid improper interference in the
market. If the market price changes significantly, the Commission will pay close attention to it and will conduct an investigation.

Case 3: Tie-in sales

29. It was reported by the media that Taiwan Tobacco and Liquor Corporation (hereinafter the “TTL”) had introduced a new sales program to encourage customers to buy its new products so as to meet the purchasing quotas of its old, well-known and popular products. The Commission therefore initiated an ex-officio investigation.

30. The Commission found that there was a shopping rush in the cigarette and tobacco market due to the consumers having expected that the price of tobacco related products would be increased in response to the raising of the health surcharge. The TTL used to be the state-owned monopoly in the tobacco and liquor market and it has continued to dominate the market since liberalization due to customer loyalties. In order to satisfy the demand for TTL’s products, the TTL applied a sales control mechanism for 4 months in 2005. In addition, the TTL provided a promotion program so that those who purchased the new cigarettes would be given priority to purchase the series of “Long Life” cigarettes. However, the new cigarettes and the Long Life series have been sold separately.

31. The Long Life series of cigarettes is very famous in the eyes of the public in Chinese Taipei, even among non-smokers. The total sales value of the Long Life series exceeded 11% of the domestic tobacco market in 2004. Thus, the TTL treating the Long Life series as a bundled product would improperly induce its customers to purchase other unexpected products. As a result, such action might have impeded the fair competition in the tobacco market.

32. After considering the TTL's promotion program as lasting only 1 month and having no conspicuous effect, the Commission ordered the TTL to cease any illegal action and imposed an administrative fine of NT$301,000 in accordance with the fore part of Article 41 of the Law.

2.2 Mergers and acquisitions

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

33. 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 Commission. The Commission 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: Number of cases

<table>
<thead>
<tr>
<th>Year of Notifications</th>
<th>Total</th>
<th>Not Prohibited</th>
<th>Types of Mergers (As Described in Subparagraphs i to v of Sec.1, Article 6 of the Act)</th>
<th>Prohibited</th>
<th>Reviewed Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>i</td>
<td>ii</td>
<td>iii</td>
</tr>
<tr>
<td>2006</td>
<td>79</td>
<td>77</td>
<td>34</td>
<td>6</td>
<td>25</td>
</tr>
</tbody>
</table>

Notes:
- The number of notifications in 2006 included 3 cases carried over from the preceding year, 2005.
- The total number of notifications comprised the sum of the numbers of cases not prohibited, cases prohibited, cases combined and cases terminated by reviewing.
- A merger case could meet more than one of the types described in Article 6(1) of the Act at the same time. For instance, the acquiring party of a merger case might control the acquired enterprises by holding stocks, rearranging the board of directors, and running the business so as to comply with subparagraph 2 and subparagraph 5 of the Act.

2.2.2 Summary of significant cases

Case 1: Pre-merger filing obligation

34. Far Eastern Department Stores Co., Ltd. (hereinafter “Far Eastern”) and Pacific SOGO Department Stores Co., Ltd. (hereinafter “Pacific SOGO”) are horizontal competitors in the department store industry. A complaint was sent to the Commission that Far Eastern was acquiring the shares of Pacific SOGO prior to filing a pre-merger notification with the Commission.

35. The Commission found that the acquiring company Far Eastern used its subsidiaries By-Yang Investment Co., Ltd. (hereinafter called “By-Yang Investment”) to increase its shares in Pacific Liu Tung Investment Co., Ltd. (hereinafter called “Pacific Liu Tung Investment”), the parent company of Pacific SOGO, through its trust account with Shanghai Commercial Bank Ltd. (hereinafter the “Shanghai Commercial Bank”).

36. The acquiring company Far Eastern alleged that the shares acquired by Far Eastern and By-Yang Investment through their trust account with Shanghai Commercial Bank were owned by Shanghai Commercial Bank. However, the Commission found that Far Eastern actually had the right to decide how to use its trust funds. Additionally, the evidence showed that the Shanghai Commercial Bank had followed the instructions given by Far Eastern or a third party entrusted by Far Eastern in the operation of the trust funds. Therefore, although Shanghai Commercial Bank owned the said shares, the acquiring party in this case was actually Far Eastern instead.

37. Far Eastern should have filed a report with the FTC before the merger with Pacific SOGO. However, Far Eastern failed to file a report with the FTC before the merger with Pacific SOGO and therefore violated Article 11(1) of the Law. Upon consideration of previous case handling patterns regarding enterprises failing to report mergers and the impact on relevant market competition, the Commission ordered Far Eastern to make a supplemental report of any necessary corrections in accordance with Article 13(1) of the Law and imposed an administrative fine of NT$1.02 million on Far Eastern in accordance with Article 40 of the Law.
3. The role of competition authorities in the formulation and implementation of other policies, e.g., regulatory reform, trade and industrial policies

38. To eliminate the restrictions with regard to the quota on the number of new lawyers so as to decrease the costs of legal consultation for consumers and increase the incentives for them to opt for a class action, the Commission formally asked the competent authorities of the Exam Rules, the Ministry of Examination, based on the suggestions of a peer review report of the OECD Competition Committee.

39. The Ministry of Examination informed the Commission that it had already been considering how the examination affected legal education and the legal profession, as a whole, and to this effect, it had taken steps to set up the “Task Force for Reforming the Examinations of Judges and Attorneys”. The purpose of the Task Force is to reform the current requirements of the examinations for judges and attorneys; moreover, and what is particularly important is that, in their topics of discussion, the Task Force decided to include the OECD Competition Committee’s suggestions regarding the qualification quota, i.e., the success rate in the Law examinations. Also pertinent here, the Task Force will consider other issues related to the required qualifications for examinees to take the examination, the examination subjects and all other relevant factors that might affect entry barriers in the legal profession.

40. Furthermore, in 2006, the Commission organized and participated in seminars together with other government authorities related to competition issues as follows:

- Establishing a task force to prevent the prices of essential raw materials from being manipulated by suppliers. The selected raw materials were petroleum oil, sugar, wheat, soybeans, electricity, liquid petroleum gas and natural petroleum gas, sandstone and gravel, and school lunchboxes.

- Continuously applying the alarm system to ease the disorder in the demand for and supply of vegetables with the Council of Agriculture, the Market Management Offices of local governments, the police departments, and the major wholesalers, and

- Continuously organizing meetings entitled the “Resolution of Seasonal Demand and Supply Disorder in the Fresh Milk Market”.

- Organizing 2 meetings to discuss issues related to the competition in the shipping and delivery industries.

- Organizing a meeting with the Intellectual Property Office to discuss issues related to warning letters for infringement of patents and patents advertisements.

- Participating in a meeting organized by the Executive Yuan to discuss issues related to easing the disorder in the sandstone market.
4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget: NT$354,216 million in 2006 (approximately equivalent to US$10.73 million at the exchange rate of 33NT$/US$ in September 2007)

4.1.2 Number of employees (person-years)

41. There were 212 employees in 2006, including all staff and the Board of Commissioners that consisted of the Chairman, Vice Chairman and 7 Commissioners. Over 50% of the employees had bachelor degrees after majoring in different subjects at college.

42. In terms of the educational background percentages, 28%, 17%, 7%, 5% and 43% of the employees majored in law, economics, business administration, accounting, and other related subjects (including information management, statistics, and public administration), respectively.

43. As a result, the structure of the human resources of the Commission are as follows:

<table>
<thead>
<tr>
<th>Group</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economists</td>
<td>36</td>
</tr>
<tr>
<td>Lawyers</td>
<td>59</td>
</tr>
<tr>
<td>Other professionals &amp; support staff</td>
<td>117</td>
</tr>
<tr>
<td>All staff combined</td>
<td>212</td>
</tr>
</tbody>
</table>

4.2 Human resources (person-years) applied to:

4.2.1 Enforcement against anti-competitive practices and merger review

1. Apart from the Third Department, which is responsible for misleading advertisements, counterfeiting and passing-off cases, the First and the Second Departments of the Commission handle all kinds of anti-competitive cases, including the misuse of dominant market power, merger reviews, cartels and various vertical restraints.

2. The First Department is responsible for cases related to the services and agricultural sectors, and the Second Department is responsible for cases related to the manufacturing sector. There are 26 and 29 staff in each Department, respectively.

4.2.2 Advocacy efforts toward advocacy

44. A section of 5 staff members in the Planning Department of the Commission is responsible for designating public outreach programs.

45. However, since most of the outreach programs for competition advocacy are case-oriented, almost every department staff member actively plays a role in outreach activities.
4.3  Period covered by the above information: January through December 2006

5.  Summaries of or references to new reports and studies on competition policy issues

46. The Commission has studied and published reports on competition policy issues in 2006 with the following titles:

- The development of the competition law system in the era of globalization and liberalization, please refer to: http://www.apeccp.org.tw/doc/Taipei/Publication/ctps2006-1.htm,

47. The Commission has also looked for outsourced research, and published the following research reports in 2006:

- Structure, behaviour, and competition law enforcement in the domestic petroleum industry; please refer to: http://www.apeccp.org.tw/doc/Taipei/Publication/ctpubsg0601.htm.
- A study on setting up “professional assessment systems” and indices for the multi-level sales industry.

Resources
