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

-- 2009 --

*This report is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2010.*

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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 “Act”) 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 amended guidelines***

2. With the experience gained from handling past cases and the knowledge learned from foreign competition authorities, the Fair Trade Commission (hereinafter the “FTC”) has revised 7 policy statements and guidelines for particular industries or sectors to build a fair competition environment in response to requests from the public. These policy statements involve, for example, the telecommunications industry and textbook industry, among others. The FTC:

- Revised “Guidelines on the Disclosure of Information by Franchisers”;
- Revised “Policy Statements on the Telecommunications Industry”;
- Revised “Guidelines on Technology Licensing Arrangements”;
- Revised “Policy Statements on the Distribution of Elementary School Textbooks”;
- Revised “Policy Statements on the Disclosure of Information by Academic Short-Term Tutorial Schools.”
- Revised “Guidelines on Handling Cases Governed by Article 20 of the Fair Trade Act”;
- Revised “Guidelines on Investigations in Multi-level Sales Cases.”

### ***1.3 Government proposal for new legislation***

3. By taking into consideration the suggestions put forward in the peer review report of the Global Forum on Competition of the OECD in February 2006 and the emergence of various competition concerns due to the trends in globalisation and internationalisation, the FTC has since drafted a new proposal to revise the Act in 2006. A task force was organised by the Department of Legal Affairs of the FTC to gather together the Commissioners to discuss the new legislation. The proposal containing the new amendments consists of three major aspects that are concerned with the suggestions made by the OECD Competition Committee and encompass some important reforms.

#### ***1.3.1 To revise relevant exemptions on concerted actions and to introduce a leniency programme***

4. Article 14 of the Fair Trade Act prohibits enterprises from partaking in concerted actions, save for specific types of conduct that are beneficial to the economy as a whole and are in the interests of the public at large. Only for certain purposes shall the parties apply to the FTC for approval. The two policy concerns in the phrase “beneficial to the economy as a whole and in the public interest” are the element of efficiency and industry development.

5. The FTC acknowledges that the types of concerted actions being beneficial to the economy as a whole and in the interests of the public are numerous. For example, the developing of R&D projects jointly

with competitors, intellectual property rights and technologies obtained jointly with competitors could enhance the incentives to create and, more than that, would reduce the costs of innovation. Thus, the FTC is planning to revise the relevant provisions of the Act to relax the exemption restrictions on concerted actions based on the two aforesaid policy concerns, but will do so by referring to the experiences of developed countries. It can be expected that the FTC will continue to adhere to its strict position when carrying out its law enforcement against concerted actions.

6. Due to the difficulties in obtaining substantive evidence of cartels, the FTC has extensively surveyed the designs and the methods of enforcement of such programmes in other countries. These findings have served as important references for the FTC to introduce a leniency programme that will provide reduction or immunity from fines to cartel members who report to the FTC regarding the illegal organisation of the cartel. When that is adopted, the FTC will put forward the details of the programme.

#### *1.3.2 To employ search power*

7. Given the difficulties in obtaining substantive evidence of large-scale international, or technological, or secret anti-competitive practices, it has become increasingly prevalent among competition law authorities to employ search power. With this, most competition authorities can more efficiently investigate and combat anti-trust and cartel cases. The employment of such search power can save on investigative costs, prevent the spread of injury and detect cartels. The FTC also needs to prepare itself to deal with the growing prevalence of “smart” crime.

#### *1.3.3 To differentiate administrative penalties for various violations*

8. The punishment system of the Act is different from others. By not only applying administrative fines as the tool of punishment, the Act combines anti-competition with unfair competition and does not differentiate among the penalties for different types of violations. According to Article 41 of the current Act, an administrative fine ranging from NT\$50,000 to NT\$25,000,000 (approximately equivalent to US\$1,555 to US\$777,436 at the exchange rate of \$32.157NTD/USD in September 2009) could be imposed upon any violators. However, fines against hard-core conduct are low by international comparison.

9. In order to deter violations, the administrative penalties will be imposed depending on the behaviours associated with the violation. In the proposed new legislation, the violation-related behaviours will be categorised 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 FTC*

10. In order to cope with the reform of government organisations, the FTC’s name will be changed from the “Fair Trade Commission, Executive Yuan” to the “Fair Trade Commission.”

11. Appeals of the FTC’s decisions will be taken directly to the Administrative Court rather than to the Appeal and Petition 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 should to the fullest extent possible be free of political considerations to gain a wider support for competition policy from the general public.

#### *1.3.5 To apply the rule-of-reason standard to RPM*

12. Article 18 of the Fair Trade Act deems resale price maintenance to be a conclusively illegal conduct. This prohibition covers only goods. Virtually all articles of the Fair Trade Act encompass both goods and services, but the “resale of goods” in Article 18 refers solely to tangible goods. Extending the

interpretation of the current Article to include services has seemed somewhat inappropriate up to now. Nevertheless, to fully achieve the objectives of competition law, the FTC is currently working toward an amendment to include services in Article 18.

13. Currently, the most experienced countries apply the “rule of reason” to resale price maintenance cases and thus the effect on market competition must be examined. By taking into consideration the practices of various competition authorities and the effect of resale price maintenance, the FTC has researched and discussed changing the treatment of resale price maintenance to the rule-of-reason standard. The amended Article 18 of the Fair Trade Act will explicitly state that no enterprise shall engage in maintaining resale prices, except for actions for which the actors have proper justification. The FTC considers using the “rule of reason” as a basis to evaluate whether the actor engaging in resale price maintenance has imposed only a minimal effect on competition and that its conduct could have a positive effect.

## 2. Enforcement of competition laws and policies

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

#### 2.1.1 *Summary of activities*

14. 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. However, while some exceptions are allowed for, these do require the FTC’s prior approval and its decision is based on the public interest. The Act also bans resale price maintenance but requires the FTC to apply the rule-of-reason standard to other types of vertical restraints.

15. In 2009, the FTC processed 1,754 cases, including 1,501 cases received in 2009 and 253 cases carried over from the preceding year. By the end of 2009, 1,553 cases had been closed, and 201 cases were pending. A total of 495 complaint cases applicable to the Act were concluded in 2009 and, of these, 71 concerned anti-competitive practices.

16. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 183 cases in 2009, and only 18 of these fell into the category of anti-competitive practices. The FTC also initiated investigations into 8 anti-competitive cases.

### Decision Rulings by the FTC in 2008

Unit: Number of cases

	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2009	18	1	4	8	3	2

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.

2.1.2 *Description of significant cases, including those with international implications: Anti-competitive Cases*

- **Case 1: Cartels**

In April 2006, a pharmacy in the Kaohsiung-Pingtung area filed a complaint with the FTC alleging the possibility of the monopolisation of the advertised-drug market in the Kaohsiung-Pingtung area by Yong Chien Advertised-Drug Association (hereinafter YCAA) which restricted the retail prices of drugs advertised by local radio stations. The FTC hence initiated an investigation.

After preliminary investigation, the FTC found that the upstream advertised-drug suppliers (i.e., pharmaceutical firms and drug dealers which were responsible for pharmaceutical manufacturing, importing and wholesaling) in the Kaohsiung-Pingtung area also participated in the regular meeting of the YCAA and paid an annual fee to the YCAA. Those suppliers set up an “Advertised-drug Manufacturers Association” (hereinafter AMA) that involved jointly restraining the resale prices of pharmaceutical products.

Based on the FTC’s investigation involving 53 pharmacies and pharmacists, it was found that all members of the YCAA were drug retail enterprises which had acquired pharmacy licenses or pharmacists’ licenses in accordance with laws and engaged in retail sales of drugs in Kaohsiung County, Kaohsiung City and Pingtung County. 17 members within the YCAA made up a committee which held a meeting once a month to discuss and determine the association’s activities and regulations concerning members’ rights and obligations. YCAA held a regular meeting every 2 months to discuss and approve the committee’s decisions. YCAA collected NT\$30,000 as a security deposit from each of its members to ensure that its members complied with the rules and resolutions of the YCAA. Furthermore, the YCAA would punish or force its members to leave the YCAA if they failed to comply with the resolutions.

The FTC also found that the regular meeting of the YCAA passed the amendments to a recommended sales price table in March 2006. After that, YCAA assigned people to buy pharmaceutical products experimentally from its members in order to examine whether its members followed the rules regarding the recommended sales price table. Those who engaged in price-cutting competition, product resale (i.e., accepted the same business for transferred products or products sold by other branches), or product referral (i.e., when the consumers wanted to purchase Product A, the pharmacy referred him/her to Product B which was the same type of product as Product A, but another brand) would be punished or forced to leave the association. The FTC concluded that the YCAA jointly restricted its members from implementing discount promotions and maintained retail prices and such actions affected the supply and demand functions of the advertised-drug market in the Kaohsiung and Pingtung area. The members of the YCAA had undoubtedly been engaging in concerted actions in violation of Article 14 of the Fair Trade Act.

The Advertised-drug Manufacturers Association (hereinafter AMA) is an organisation established by the upstream advertised-drug suppliers in the Kaohsiung-Pingtung area who usually exchanged trading information regarding the advertised-drug market and resolved disputes through meetings over meals. In addition, AMA actively participated in the regular meetings and committee activities of the above-mentioned YCAA and assisted and co-operated with the YCAA to deal with the disputes among the members of the YCAA. The AMA also conveyed or executed its resolutions through YCAA and requested that the members of YCAA refrain from price competition, product resale and product referral. At the same time, AMA executed experimental buying in order to inspect whether the members of YCAA engaged in price competition and other activities. If the members of YCAA engaged in any of the

circumstances, they would be punished by AMA through the cutting off joint supplies or else punished by YCAA through the imposition of fines.

The FTC concluded that the members of AMA engaged in concerted actions that included jointly prohibiting the members of YCAA from engaging in price competition and prohibiting them from recommending that consumers buy other branded products. In addition, such actions affected the supply and demand functions of the advertised-drug market in the Kaohsiung and Pingtung area in violation of Article 14 of the Fair Trade Act. The FTC resolved that administrative fines amounting to a total of NT\$ 101.95 million were to be imposed on 53 pharmacies and pharmacists under YCAA and 16 advertised drug suppliers under AMA.

- **Case 2: Restrictive Business Practices**

In March 2009, the Taichung County Government sent a case to the FTC that the Chairman of the Taichung County Lunchbox Association (Mr. Yang, a representative of the Jiexiang Lunchbox Food Plant) forced each member to issue a check for NT\$ 400,000 or sign an affidavit as a guarantee when issuing membership certificates; otherwise, membership certificates would be withheld. The FTC hence initiated an investigation.

Most lunchboxes in elementary or junior high schools in Taichung County are supplied by the members of the Taichung County Lunchbox Association. More than half of the schools requested that the bidders in the bidding provide membership certificates of the Lunchbox Association in its county or city as a qualification. All members of the Taichung County Lunchbox Association applied for membership certificates twice a year to qualify for the bidding.

After investigation, the FTC found that the members of the Taichung County Lunchbox Association were prevented from price competition as follows. First, members of the Taichung County Lunchbox Association could not participate in bidding for school meals if the bid price was lower than NT\$43 for 3 bids in accordance with the Association's decision. Secondly, members needed to issue checks for NT\$400,000 or sign affidavits as a guarantee, otherwise, they would not receive the membership certificates. From the evidences collected, however, the Taichung County Lunchbox Association never made the above-mentioned decision. Jiexiang obviously exceeded the authority of the Chairman of the Taichung County Lunchbox Association and should have accounted for the action as an individual.

In other words, if the members of the Taichung County Lunchbox Association did not comply with Jiexiang's instruction or request, Jiexiang would withhold the membership certificates for the first and second halves of the year 2009 as a punishment. He would then cash the checks or circulate the affidavit to other members. Members worried that their rights to bid might be affected if they did not receive membership certificates, that checks would be cashed, or that other members might criticise them. Therefore, they were forced to comply with Jiexiang's instruction. By restraining members in bidding, Jiexiang intended to make the school meal bidding fail, which would force the school to increase the bid price and, furthermore, affect the supply price of the school meal.

The FTC concluded that Jiexiang used undue measures to eliminate the price competition, including requesting compliance as a condition for issuing membership certificates, forcing members to issue checks for NT\$400, 000, and signing affidavits as a guarantee. As a result, members were forced to reach a consensus for a reservation price (i.e., members would not participate in bidding where the bid price was lower than NT\$43) and members were forced to not bid for school meals. The conduct of Jiexiang was likely to lessen the competition in the lunchbox market in violation of Article 19(iv) of the Fair Trade Act. In its decision, the FTC issued a cease-and-desist order to Jiexiang, and imposed administrative fines of NT\$600,000 in

accordance with the motivation, purpose and expected improper benefit of the unlawful acts of Jiaxiang; the degree and duration of the act's harm to market order; the benefits derived on account of the unlawful act; past violations and the attitude towards co-operation in the investigation.

## 2.2 *Mergers and acquisitions*

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

17. 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.

#### Notifications for Mergers

Unit: Number of cases

Year	Cases under Processing		Results of Processing				Cases Pending at Year-end
	Carried Over from 2008	Received in 2009	Total	Mergers not Prohibited	Mergers Prohibited	Termination of Review	
2009	3	58	57	27	2	28	4

#### Statistics on Enterprise Mergers

Unit: Number of cases

Item Year	Cases not Prohibited	Type of Merger (Article 6, Paragraph 1 of the Fair Trade Act)				
		Subparagraph 1	Subparagraph 2	Subparagraph 3	Subparagraph 4	Subparagraph 5
2009	27	7	20	3	-	13

Note: More than one type of merger may be applicable to some cases. Therefore, the total number of cases under different types of mergers exceeds the total number of approved cases.

### 2.2.2 *Summary of significant cases*

- **Case 1: Pre-merger Filing Obligation– Uni-President Enterprises Corp. & Weilih Food Corp.**

In October 2008, Uni-President Enterprises Corp. (hereinafter UPEC), through the re-election for the boards of directors and supervisors of Weilih Food Corp. (hereinafter Weilih), acquired half of the seats of the boards of directors and supervisors of Weilih. In addition, the general manager of UPEC served as the Chairman of Weilih, thereby making it likely that the merger criteria as defined in Subparagraph 5, Paragraph 1, Article 6 of the Fair Trade Act would be met. The FTC hence initiated an ex-officio investigation into this case.

In the other precedent case, the acquiring company UPEC used its subsidiaries to indirectly hold more than one-third of the total shares of Weilih and applied for merger approval. UPEC and Weilih have the largest and second largest market shares (47.4 % and 27.2%) in the domestic instant noodles market, respectively. After discussions, the FTC decided to prohibit the merger.

In the present case, the FTC found that UPEC, through its control of the boards of directors and supervisors, had substantial control over Weilih's operational decisions. As a result, competition in the instant noodles market would be weakened.

The merger in this case met the criteria defined in Subparagraph 5, Paragraph 1, Article 6 of the Fair Trade Act, which states that "an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise." The controlling enterprise UPEC failed to notify the FTC and therefore violated Article 11 of the Fair Trade Act. According to Articles 13 and 40 of the Fair Trade Act, the FTC ordered UPEC to remove certain persons from their positions in Weilih until there was no substantial control in Weilih, and imposed an administrative fine of NT\$500,000 on UPEC.

- **Case 2: Yieh United Steel Corp. & Tang Eng Iron Works Co., Ltd.**

The merger which Yieh United Steel Corp. (hereinafter Yieh United) intended to acquire 34% of the shares of Tang Eng Iron Works Co., Ltd. (hereinafter Tang Eng) fell under the type of merger set forth in Articles 6 (1)(ii) and 11(1)(iii) of the Fair Trade Act. As the overall economic benefits of such a merger would not outweigh the disadvantages resulting from the competition restraint caused by the merger, the FTC decided to prohibit the merger in accordance with Article 12(1) of the Fair Trade Act.

After investigation, the FTC found that the stainless steel industry is a globalised market, that stainless steel products circulate around the world, and that the raw material price fluctuates according to the international price movements. In addition, the raw material imports of stainless steel products are still affected by some factors, including geographic areas, long delivery time, international raw material prices, foreign exchange risk, the floating supply of imported materials and uncontrollable quality.

After merging, their market share would reach more than one half of the relevant market and the competition in the relevant market would diminish. As a result, they would have more discretion to adjust prices unilaterally, to be more influential in raising the product price and, furthermore, create co-ordinated effects of co-ordinated price or concerted actions in raising the price. Although the merger could reduce production costs, expand economic scale and improve international competitiveness, if material imports by the downstream enterprises were impeded, the market concentration and market share of the two merged parties would increase, which would affect the midstream and downstream enterprises in the stainless steel products market and diminish the competition in the domestic market.

In addition, the production technology in the stainless steel industry is rather mature. Due to factory costs and investments in hot mills/ cold mills cannot be easily converted for use in other industries, the possibility of potential competitors entering the relevant market is thus unlikely. Besides, Yieh United and Tang Eng have the largest and the second largest market shares in the stainless steel market prior to the merger, respectively. After merging, the countervailing power between the two merged companies would weaken, the extent of competition between the two merged companies would diminish and the merged company would have more discretion to adjust prices unilaterally. Thus, the FTC concluded that the overall economic benefits of the merger did not outweigh the disadvantages resulting from competition restraints in the Yieh United and Tang Eng merger case and prohibited the application for a merger filing.

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

18. In its first amendment in 1999, the new provision of the 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 Act. This amendment thereby affirms that the spirit and contents of the Act be the core of economic policy.

19. The FTC has completed a comprehensive review of all relevant laws and regulations since 2001 to minimise potential conflicts among laws, to advocate free and fair competition, and to ensure the presence of a healthy operating environment in which all businesses are able to compete fairly. As a result, the FTC will continue to be aware of developments in various markets, perform reviews of other laws to determine whether they are in compliance with the Act and consult with relevant industry competent authorities to prevent related laws and regulations from impeding competition.

20. In 2009, the FTC organised and participated in seminars and consultation meetings with other government authorities related to competition issues, as summarised in the following:

- Organised a meeting entitled “From the View of Digital Convergence to Explore the Necessity of Modification of the Boundaries for Cable Television Service Areas” at which the FTC consulted with related regulatory authorities, metropolitan governments, county (or city) governments and relevant cable television enterprises to discuss competition issues related to the possibility of modification of the boundaries for cable television service areas and relevant approaches.
- Organised a meeting entitled “The Fresh Milk Market and the Fair Trade Act” to exchange views with the Council of Agriculture, Consumer Protection Commission, Dairy Association and the major suppliers in the fresh milk market and to advise the milk processing enterprises against engaging in illegal conduct, such as concerted actions or resale price maintenance practices;
- Organised a meeting entitled “Competition Issues Related to Elementary and Junior High School Textbook Sales” at which the FTC consulted with Ministry of Education, National Teachers’ Association, National Alliance of Parents Organisation and related textbook publishing enterprises to understand the textbook market situation and required that textbook publishing enterprises comply with the Fair Trade Act.
- Organised a meeting entitled “Applicable Regulations on False Advertisements by Academic Short-Term Tutorial Schools” and reached a consensus to effectively regulate false advertisements by academic short-term tutorial schools through consultation with the Ministry of Education and county (or city) governments.
- Organised a meeting with the Department of Health to discuss issues related to applicable regulations on false advertisements cases.
- Organised a meeting with the Financial Supervisory Commission to strengthen the co-operative relationships in investigating and handling false advertisements and other matters between the Fair Trade Commission and the Financial Supervisory Commission.

## **4. Resources of competition authorities**

### **4.1 Resources overall**

#### *4.1.1 Annual budget*

- NT\$ 360.571 million in 2009 (approximately equivalent to U.S.\$ 11.21 million in September 2010)

#### *4.1.2 Number of employees (person-years)*

21. There were 222 employees at the end of the year 2009, including all staff in the operations and administrative departments and nine full-time Commissioners. The operations departments include the First Department, Second Department, Third Department, Department of Planning and the Department of Legal Affairs. Over 89% of employees have bachelor degrees with majors in different subjects at the university level.

22. In terms of the educational background percentages, 25%, 19%, 3%, 4% and 49% of the employees majored in law, economics, business administration, accounting, and other related fields (including information management, statistics, and public administration), respectively.

23. As a result, the structure of the human resources of the FTC is as follows:

- Economists: 43
- Lawyers: 55
- Other professionals & support staff : 124
- All staff combined: 222

### **4.2 Human resources (person-years) applied to:**

#### *4.2.1 Enforcement against anti-competitive practices and merger review*

24. Apart from the Third Department, which is responsible for unfair competition practices, such as false and misleading advertisements, counterfeiting and multi-level sales cases, the First and the Second Departments of the FTC handle all kinds of anti-competitive cases, including the misuse of dominant market positions, merger reviews, cartels and various vertical restraints.

25. 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 sectors. There are 28 staff members in the First Department and 30 in the Second Department.

#### *4.2.2 Advocacy efforts*

26. In 2009, 10 of the 28 staff members in the Department of Planning of the FTC were primarily charged with public outreach programmes. However, since most of the outreach programmes for competition advocacy were case-oriented, almost every department staff member played an active role in outreach activities.

**4.3** *Period covered by the above information*

- January through December 2009

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

27. The FTC has studied and published reports on competition policy issues in 2009 with the following titles. None of them are available in English.

1. A Study on the Petroleum Market--Focusing on the Fair Trade Act Cases.
2. A Study on Competition Policy and Law Enforcement in the Real Estate Industry.
3. A Study on the Jurisdictions for Administrative Appeals Cases Related to the Fair Trade Act.
4. A Study on Competition Policy and Small Economy.
5. A Study on the Fair Trade Act Governing False Advertisements in the Distribution Industry and Related Cases.

28. The FTC has also conducted outsourced research, and published the following research reports in 2009. None of them are available in English.

1. A Study on Practicable Policy and Regulations on the Undue Behaviours of Monopolistic and Oligopolistic Enterprises--Focusing on the Pricing Behaviour of the Dominant Players in the Telecommunications Market.
2. A Study on the Performance Assessment and Prospects of the Service Industry under the Fair Trade Act--Focusing on Financial Business.
3. A Study on the Application of the Fair Trade Act in Hoarding and Price-Gouging Practices.
4. Research on the Domestic Petroleum Industry.
5. A Comparative Study on the Regulations and Legal Enforcement of Patent Licensing.
6. A Study on the Development of International Competition Advocacy.
7. A Study on the Assessment of the Concurrent Application Among the Fair Trade Act and Other Regulations.