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

-- 2011 --

*This report is submitted by Chinese Taipei to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 24-25 October 2012.*

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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”) has been amended five times since its promulgation on February 4, 1991 and implementation a year later. Its related legislation, the Enforcement Rules to the Fair Trade Act, have not been revised since February 2002.

2. The fifth amendments to the Act came into effect on November 25, 2011, the main theme being the introduction of a leniency program and increase of maximum administrative fines for abuse of dominance and concerted actions as well as the imposition of civil liabilities on non-celebrities for false endorsement of goods or services. In addition, the new “Organic Act of the Fair Trade Commission” was promulgated on November 14, 2011, and became effective on February 6, 2012.

#### 1.1.1 Introduction of a leniency program

3. After 19 years of implementing the rules on cartels, the Fair Trade Commission (hereinafter the “FTC”) has found more than 161 violations of Article 14 of the Fair Trade Act. Due to the difficulties in obtaining substantive evidence of cartels, the FTC has extensively surveyed the designs and the methods of enforcement of leniency programs in other countries. These findings have served as important references for the FTC to adopt and introduce such a program that will provide reduction or immunity from fines to cartel members who report to the FTC regarding the illegal concerted actions. The contents of such a program require that conspirators should voluntarily reveal and assist before the FTC learns of the agreement or obtains adequate evidence; alternatively, they are required to provide concrete evidence in the investigation process that enables the FTC to successfully complete its investigation and to establish the involved members in violation of Article 14 of the Fair Trade Act.

4. In accordance with Article 35-1 of the Fair Trade Act amendment, the details of the 2011 leniency program were set out in the “Regulations on Immunity and Reduction of Administrative Fines against Concerted Actions” which were promulgated and enacted on 6 January 2012. The major content of the regulations included: applicable targets of leniency policies, application requirements, application methods, requirements for granting immunity and reductions to administrative fines, provision of concrete evidence of illegal conduct, conditional agreement clauses, confidentiality of identity, and other enforcement items.

5. After seven months’ experience with the 2011 Program, the FTC received input from stakeholders on the topic of the form of application. On August 22, 2012, the FTC made changes so that the leniency application could be made either in writing or orally for the record prepared by the FTC, and not presented as originally requested in the form of a written statement. The FTC considered that this approach would increase the incentive for potential applicants to participate in such a Program.

#### 1.1.2 Increase in maximum administrative fines for abuse of dominance and concerted actions

6. According to Paragraph 1, Article 41 of the current Act, an administrative fine ranging from NT\$50,000 to NT\$25,000,000 (approximately equivalent to US\$1,663 to US\$831,393 at the exchange rate of \$30.07NTD/USD in September 2012) could be imposed upon any violators. However, fines against hard-core infringement are low based on international comparisons.

7. In certain serious violations, the profits that enterprises obtained from such unlawful conduct far exceeded the upper limit for administrative fines set forth in Paragraph 1, Article 41 of the Act. To ensure such unlawful conduct would be given severe punishments and to deter future attempts, a large amount of

administrative penalties will be imposed on the violators engaging in abusing dominant positions or concerted actions. In accordance with Paragraph 2, Article 41 of the Fair Trade Act amendment, the FTC may impose an administrative fine of up to 10% of the total sales income of an enterprise in the previous fiscal year without being subject to the limit of the administrative fine set forth in the preceding paragraph if the enterprise is deemed by the FTC as being in serious violation of Articles 10 and 14 (referred to as abuse of dominance and concerted actions).

8. “The Regulations for Calculation of Administrative Fines for Serious Violations of Articles 10 and 14 of the Fair Trade Act” were enacted on April 5, 2012 in accordance with Paragraph 3, Article 14 of the Act to provide the legal basis for the imposition of fines.

#### *1.1.3 Imposition of civil liabilities on non-celebrities for false endorsement of goods or services*

9. It was a fact that more companies made use of bloggers or celebrities to promote their own products or attack the competitors’ products or goodwill, thus achieving the effect of advertising and competitive advantages. If the endorsement content was false or misleading, it was difficult to protect the consumption rights and interests of the general public that bought the advertised product or service as a result of believing the consumer’s endorsement and testimonials. Furthermore, the other competitors in the market that have operated properly face disadvantage in competition.

10. To produce the deterrent effect, such endorsement behaviours are regulated under Article 21 of the Fair Trade Act amendment since June 2010. Considering the principle of proportionality, Article 21 in the 2011 amendment states that, “the endorsers who are not celebrities, specialists or organizations shall be held jointly and severally liable with the advertiser for only up to 10 times the reward they have received from the advertiser.”

#### *1.1.4 The structural reform of the FTC*

11. In order to cope with the reform of government organizations, the new “Organic Act of the Fair Trade Commission” was promulgated on November 14, 2011, and became effective on February 6, 2012. The FTC’s name has changed from the “Fair Trade Commission, Executive Yuan” to the “Fair Trade Commission” since its establishment on January 31, 2002. Due to the growing importance of economic analysis in antitrust cases, the FTC has transformed its Statistics Office into the Information and Economic Analysis Office as the designated unit responsible for economic analysis and industry data collection.

12. The nomination of Commissioners will be subject to the consent of the legislature. The 7 full-time Commissioners (reduced from 9) must have knowledge and experience with regard to law, economics, finance and taxation, accounting, or management. The terms of the Commissioners will be staggered rather than consecutive. At the next appointment (Feb. 2013), 3 of the 7 Commissioners, not including the Chairperson and Vice Chairperson, shall serve for a term of two years.

13. 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.

#### *1.2 Other relevant measures, including amended guidelines*

14. With the experience gained from handling past cases and the knowledge learned from foreign competition authorities, the FTC has revised and issued 7 guidelines and policy statements for particular industries or sectors to build a fair competition environment in response to requests from the public. The FTC has:

- Issued the “Guidelines on the Handling of Internet Advertising Cases”;
- Revised the “Directions for Pre-merger Notification Filing”;
- Revised the “Public Notice on the Period for Handling Filings for Approval of Concerted Action by Enterprises”;
- Revised the “Policy Statements on the Telecommunications Industry”;
- Revised the “Policy Statements on Business Practices of Franchisers”;
- Revised the “Policy Statements on Cable Television and Related Industries”;
- Revised the “Policy Statements on Selling Presale Houses.”

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

15. By taking into consideration the emergence of various competition concerns due to the trends in globalization and internationalization, the FTC has since drafted a new proposal to revise the Act in 2006. The proposal containing the new amendments encompasses some important reforms. The FTC has submitted the proposal to the Cabinet for review in June 2012.

#### *1.3.1 To revise the pre-merger notification threshold and review period*

16. The pre-merger notification requirements in the Fair Trade Act have not been reviewed since the 2002 revision of the Act. The thresholds for triggering the notification obligation include both the merging parties’ market shares and turnover. For some specific industries in Chinese Taipei, like the cable TV or the KTV industries, employing only the turnover threshold might exclude dominant firms with low turnover but high market share from reporting their mergers to the FTC.

17. However, it is difficult for a firm to measure its 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 and to save business compliance costs, the FTC has considered adjusting the relevant provisions related to the market-share threshold of the Act and will opt for a turnover-based criterion.

18. In line with the 2005 OECD Recommendation on Merger Review, it is suggested that after the notification, the substantive review should be concluded, and a final decision should be taken within a reasonable timeframe. The current review period for merger cases is 30 days. Such a period may be further shortened or else extended by another 30 days at the discretion of the FTC on a case-by-case basis.

19. After ten years’ experience since the 2002 revision of the Act, the FTC found that current review procedures do not provide enough time for the review of serious doubt or the raising of suspicions of obvious restraints on competition mergers. Thus, the FTC has considered revising its review periods to at most an additional 60 days for further review.

#### *1.3.2 To revise relevant exemptions on concerted actions*

20. 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. It is only for certain purposes that the parties shall 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.

21. The FTC acknowledges that the types of concerted actions that are 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 it 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.

*1.3.3 To employ search and seizure powers and to increase the expiration length of power to impose administrative penalties*

22. 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 and seizure power. With this, most competition authorities can more efficiently investigate and combat anti-trust and cartel cases. The employment of such search and seizure powers 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.

23. Article 27 of the Administrative Penalty Act states, “the power to impose administrative penalty is expired upon the lapse of a period of three years.” Due to the fact that restrictive competition practices often cause a large amount of damages and require long process of investigation, such expiry period of three years will have a very serious impact on enforcement actions. Thus, the expiration length of power to impose administrative penalties will be increased to five-year period.

*1.3.4 To differentiate administrative penalties for various violations*

24. 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\$1,663 to US\$831,393) could be imposed upon any violators. However, fines against hard-core conduct are low based on international comparisons.

25. In order to deter violations, administrative penalties will be imposed depending on the behaviors associated with the violation. In the proposed new legislation, the violation-related behaviors 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.

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

26. 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.

27. 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*

28. 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 that the FTC apply the rule-of-reason standard to other types of vertical restraints.

29. In 2011, the FTC processed 1,863 cases, including 1,517 cases received in 2011 and 162 cases carried over from the preceding year. By the end of 2011, 1,500 cases had been closed, and 179 cases were pending. A total of 403 complaint cases applicable to the Act were concluded in 2011 and, of these, 60 concerned anti-competitive practices.

30. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 272 cases in 2011, and only 19 of these fell into the category of anti-competitive practices. The FTC also initiated investigations into 15 anti-competitive cases.

**Decision Rulings by the FTC in 2011** (Unit: Number of cases)

Year	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2011	19	-	1	8	1	10

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 Anti-competitive cases (including those with international implications)*

- Case 1: Cartels — Tobacco Market

In May 2010, FTC’s service center received phone calls from citizens alleging that 31 imported tobacco distributors had jointly agreed to raise cigarette prices from June 1, 2010. The FTC hence initiated an ex-officio investigation into this case. The FTC resolved that 31 tobacco distributors had jointly raised cigarette prices in violation of Article 14 of the Fair Trade Act which prohibits concerted actions. Total administrative fines of NT\$ 21.9 million were imposed on the 31 tobacco distributors for price fixing.

After investigation, it was found that Yuan Jie Co., Ltd. and 30 other tobacco distributors had indeed engaged in frequent get-togethers through the “Chinese Taipei Distributor

Association”(hereinafter the “Association”) to discuss their business practices and the condition of the tobacco market over a long period of time. As fierce market competition between January and April 2010 made it impossible for any member to make any profit, the wholesale price of a carton of Mild Seven series, for example, even dropped below NT\$660 during the said period. All the members of the Association then met three times in May 2010 to discuss the price-stabilization policy in the tobacco market and agreed to raise the wholesale prices of Mild Seven series cigarettes starting in June 2010.

In addition, each distributor was required to set aside between NT\$10 to NT\$15 for each box of cigarettes sold and deposit the funds in a separate account in the same bank. For example, NT\$10 for Mild Seven series and the Mine series, and NT\$15 for other series, respectively. To ensure that all members of the Association were in compliance with the agreement, the Association also hired an accountant to monitor their bank accounts and regularly check whether each distributor had made the bank transfer on time. The accountant was to report to the chairperson or the chief financial officer of the Association if any member failed to deposit the funds on time.

During the FTC’s investigation, some of the distributors admitted that the appropriation was a complementary measure for the purpose of stabilizing cigarette prices. The FTC also discovered that the funds in the above accounts could be withdrawn by members only once every three months, even though the total amount of funds had already reached several million NT dollars between June and September 2010 that could not be withdrawn. The funds were regarded as the costs of pushing up cigarette prices and actually had the effect of increasing the cost of each distributor. By doing so, the distributors expected that they would each refrain from lowering prices to avoid price competition.

As cigarette smokers normally have a certain brand loyalty to the tobacco products they purchase, cigarettes therefore have the characteristic of non-interchangeability. By jointly raising the wholesale prices of cigarettes, the 31 distributors not only decreased the competition function of the tobacco distribution market but also directly increased the purchase prices of the downstream retailers. Such conduct indeed weakens “inter-brand” price competition in the tobacco market and then damages the interests of consumers.

Based on the above-mentioned evidence, the FTC concluded that 31 imported tobacco distributors were in violation of the prohibited concerted actions set forth in the Fair Trade Act.

- Case 2: Cartels – Fresh Milk Supply Market

On 5 September 2011 the National Animal Industry Foundation announced the price increase of NT\$1.9 per kilogram in the purchase price of raw milk, effective from October 1. In response, the FTC immediately initiate an investigation, issuing letters on two occasions to dairy companies to inform them and provide related information, and notify sales channel operators and the three largest domestic dairy companies to appear and make statements at the FTC regarding matters that could lead to major controversies.

After investigation, the FTC found that the three largest dairy companies, namely, Wei Chuan Corp., Uni-President Enterprises, and Kuangchuan Corp., had an 80 percent market share in the domestic fresh milk supply market. Although the price increase of NT\$1.9 per kilogram in the purchase price of raw milk exerted pressure on cost, the three largest dairy companies jointly and consistently increased the recommended retail price of fresh milk and the extent of the increase in the retail price reflected the raw milk cost increase to an excessive degree. Taking a 1-liter carton of fresh milk as an example, the price of Wei Chuan’s Lin Feng Ying milk rose from NT\$77 to NT\$83, while Uni-President’s Rui Swei milk increased from NT\$76 to NT\$82 and Kuang Chuan’s Ru Hsiang Shih Chia milk went up from NT\$76 to NT\$82. All three products had their

prices set differently and all three dairy companies offered different reasons for their increases, but all underwent a price hike of the same scale of NT\$6 per liter.

Moreover, the price rises among competing branded products remained consistently within the specified price range. For example, the price of a 1-liter carton of fresh milk rose from NTD\$77 to NTD\$83 and that of a 2-liter package of fresh milk rose from NTD\$149 to NTD\$160. Upon careful comparison of previous documents and files, the FTC found that the current increase in recommended retail prices among the companies concerned showed a high similarity, and that the extent of the recommended retail price increase of fresh milk was several times higher compared to the previous raw milk purchase price increase of 2007, for which there was no rational explanation apart from a mutual understanding to refrain from price competition. (That is, when the purchase price of raw milk was increased in 2007 by NT\$3.5 per kilogram, the recommended retail prices of fresh milk rose by NT\$7 to NT\$8 per liter. However, in 2011, when the purchase price rose by NT\$1.9 per kilogram, the recommended retail prices of fresh milk increased by NT\$6 per liter.)

The FTC was of the opinion that the public disclosure of any information related to the prices of fresh milk products helped sustain the concerted actions. It was impossible for the market information released through various media between August 15 and October 9 in 2011, regardless of whether it came from the enterprises in question or from the media, to not sustain the concerted practice. On September 6, the media first disclosed “the price of fresh milk is to go up next month.” This was followed by “the price of fresh milk is to rise by 12%” on September 23, and “the price of fresh milk is to increase by over NT\$6 per liter from next month” on September 26. A comparison between the prices before and after the announcements showed that the enterprise had no justification for the price rise.

In this case, the FTC made its decision at its Commissioners’ Meeting on October 19, 2011 that the three biggest dairy companies, Wei Chuan, Uni-President, and Kuangchuan, engaged in jointly raising the recommended retail price of fresh milk in violation of Paragraph 1, Article 14 of the Fair Trade Act prohibiting concerted actions. Administrative fines of NT\$ 12 million, NT\$ 10 million, and NT\$ 8 million were imposed on Wei Chuan, Uni-President and Kuangchuan, respectively.

- Case 3: Resale Price Maintenance and Restrictive Business Practices

In March 2009, the Kinmen county government sent a case to the FTC that a resident in Kinmen complained that the manufacturer Hocheng Corporation (hereinafter the “HCG”) in Taipei required that a local distributor of HCG in Taipei not sell bathroom equipment to him when he tried to purchase bathroom equipment from a local distributor of HCG in Taipei. The FTC hence initiated an investigation. During its investigation, the FTC discovered that HCG was involved in other illegal activities.

Based on the FTC’s investigation, it was found that the market share of HCG in the hygiene porcelain market was 20%. There are two ways in which they can sell their products. One is through “general distributors (who buyout from HCG)” and the other is “sales offices (run by HCG and their sales areas that do not overlap with those of general distributors).” HCG implemented the so-called “bathroom equipment price policy.” All bathroom equipment has list prices and different discounts are given when HCG sells it to general distributors or when general distributors (or sales offices) resell it to distributors.

With housing projects that require large quantities of such supplies, general distributors (or sales offices) or their distributors need to fill out the “Housing Project Special Offer Registration Form” for HCG to approve the discounts before the contract can be signed officially. HCG demanded that the general distributors sell bathroom equipment at the prices stipulated by HCG.

In addition, HCG set penalty provisions in the contract to terminate the distribution rights for the purpose of making the general distributors abide by its resale price. It is the FTC's opinion that HCG restricted the freedom of general distributors to decide their resale prices and infringed upon the competition mechanism of the market in violation of Article 18 of the Fair Trade Act.

The FTC also discovered that if a "Housing Project" involves cross-district transactions, HCG demands that distributors report and fill in a "Housing Project Special Offer Registration Form" for getting discounts approved from HCG for each case. In principle, when HCG receives the "Housing Project Special Offer Registration Form", the distributor who has first filed the form is given priority to complete the deal. However, when there are two distributors from different districts contending for the business opportunity at the same time, HCG will determine a uniform discount rate for each project. Thus, the builder could choose one of the said two distributors to close the deal. Under such circumstances, the general distributor (or sales office) with jurisdiction over the location of the project will handle the delivery, while the cross-district distributors handling the deal are required to give 2% of the amount of the deal to the concerned general distributor (or sales office) to cover the transportation cost.

HCG restricted the freedom of distributors to compete and pursue business opportunities in "housing projects" while at the same time requesting that distributors file "housing project" cases involving cross-district transactions and comply with the company's rules of cross-district transaction registration and coordination. HCG had been limiting its trading counterparts' business activities improperly by means of the requirements of business engagement in violation of Article 19(vi) of the Fair Trade Act. The FTC ordered HCG to cease such an unlawful act immediately and imposed total amounts of administrative fines of NT\$3,000,000.

## 2.2 *Mergers and acquisitions*

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

31. Mergers involving parties reaching a certain sales volume or a particular level of market share require the giving of notification to and obtaining 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 2010	Received in 2011	Total	Mergers not Prohibited	Mergers Prohibited	Termination of Review	
2011	5	57	60	28	-	32	2

#### **Statistics on Enterprise Mergers (Unit: Number of cases)**

Year/ Item	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
2011	28	4	24	2	5	16

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: Extraterritorial Merger of Google Inc. and Motorola Mobility Holdings Inc.

Google Inc. and Motorola Mobility Holdings Inc. (hereinafter “Motorola Inc.”) proposed to merge outside of the territory of Chinese Taipei. The merging parties signed the merger contract and plan on August 15, 2011. This contract involved a total amount of transactions of about US\$12.5 billion. Google Inc., through its wholly-owned subsidiary RB 98 Inc., intended to merge with Motorola Inc. After the merger, Motorola Inc. would be the surviving company and become a wholly-owned subsidiary of Google Inc. Google Inc. would have direct control of the business operations and the appointment or discharge of personnel of Motorola Inc. Such a merger constituted the merger type set forth in Subparagraph 2 of Paragraph 1 of Article 6 of the Fair Trade Act as “where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise,” and in Subparagraph 5, “where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.” At the same time, as Google Inc.’s Android mobile operating system used in smartphones already had more than a 25% market share of the domestic smartphone market in 2010, this reached the threshold for pre-merger notification as required by Subparagraph 2, Paragraph 1, Article 11 of the Fair Trade Act and also did not fall into the exceptions provided in Article 11-1 of the same Act. Therefore, Google Inc. filed a merger with the FTC according to the Fair Trade Act.

As for the definition of the product market, due to the industry in question possessing the characteristics of network effects and a two-sided platform, the FTC took into consideration the relations between the merging parties and the characteristics of such industry, and therefore defined the product market as a mobile software platform market, online search and advertising market, and mobile device market.

The merging parties provided products and services all over the world, whereas their principal competitors (Apple, RIM, Microsoft in the mobile software platform market; Yahoo!, Microsoft in the online search and advertising market; and Apple, HTC, Nokia, Sony Ericsson, and Samsung in the mobile device market) also provided their products and services globally. Hence, the geographic market in this case was defined as the global market. However, since the case was an extraterritorial merger and also involved the jurisdiction of the competition law authority of different countries, the FTC made substantial reviews on such a merger which has an impact on the territory of Chinese Taipei.

After measuring the market power of merging parties as well as a merger based on vertical foreclosure, the leverage of market power, and patents based on the product market and geographic market defined through the aforesaid approaches, the FTC was of the view that this merger would not result in substantial lessening of competition in the market and that it did not give rise to a significant concern about causing competition restraints. The FTC made its decision that a merger of Google Inc. and Motorola Inc. did not give rise to a significant concern about causing competition restraints and the overall economic benefit of the merger outweighed the disadvantages resulting from competition restraints. Therefore, the FTC did not prohibit the merger.

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

32. In its first amendment in 1999, the new provision of the Act required that the Act 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.

33. The FTC has completed a comprehensive review of all relevant laws and regulations since 2001 to minimize 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.

34. In 2011, the FTC organized and participated in seminars and consultation meetings with other government authorities related to competition issues, as summarized in the following:

- Participated in the “Review on Enforcement Program Concerning Cross-Ministry Cooperation and Coordination against Improper Practices of Loan Acquisition Services” meeting to exchange views with the Financial Supervisory Commission, the Ministry of Economic Affairs, and the Ministry of Interior;
- Organized 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;
- Participated in the “Standard Form Contract on Pharmaceutical Transaction Under the National Health Insurance (draft)” meeting held by the Bureau of National Health Insurance to exchange views concerning the draft contract format for the written contract and other recorded or unrecorded matters;
- Organized relevant meetings entitled “Rice Price Increase Issues Related to the Fair Trade Act” and “Analysis of the Causes of Recent Rice Price Fluctuations” at which the FTC consulted with the Council of Agriculture to coordinate and cooperate on related issues so as to jointly maintain the competition mechanism of the agricultural products market.
- Co-organized a seminar entitled “Enhancing Antitrust Education on Enterprises with Overseas Operations” at which the FTC, the Ministry of Economic Affairs, and the Ministry of Foreign Affairs worked out a cooperative mechanism to conduct an “Antitrust Education Training Course on Enterprises with Overseas Operations” program and consolidate government’ resources to improve the antitrust law awareness of enterprises with overseas operations.

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

##### ***4.1 Resources overall***

###### ***4.1.1 Annual budget***

- NT\$ 354.641 million in 2011 (approximately equivalent to US\$ 11.79 million in September 2012)

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

35. There were 216 employees at the end of the year 2011, 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 90% of employees have bachelor degrees with majors in different subjects at the university level.

36. In terms of the educational background percentages, 25%, 26%, 4%, 4% and 41% of the employees majored in law, economics, business administration, accounting, and other related fields (including information management, statistics, and public administration), respectively.

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

<b>Category</b>	<b>No of employees</b>
Economists	56
Lawyers	53
Other professionals & support staff	107
All staff combined	216

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

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

38. Apart from the Third Department<sup>1</sup>, 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 abuse of dominant market positions, merger reviews, cartels and various vertical restraints.

39. 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 29 in the Second Department.

##### 4.2.2 *Advocacy efforts*

40. In 2011, 9 of the 26 staff members in the Department of Planning of the FTC were primarily charged with public outreach programs. However, since most of the outreach programs 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 2011

<sup>1</sup> With the new “Organic Act of the Fair Trade Commission” came into effective on February 6, 2012, the Third Department’s name was changed to “Department of Fair Trade.” At the same time, the First Department and the Second Department changed their names to “Department of Manufacturing Industry Competition” and “Department of Service Industry Competition”, respectively.

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

41. The FTC has studied and published reports on competition policy issues in 2011 with the following titles. None of them is available in English.

- A Study on Financial Institution Mergers and the Fair Trade Act.
- A Study on the Structure of the Domestic Steel Industry and the Fair Trade Act.
- A Study on the Fair Trade Act Governing Slimming and Beauty Service Advertising as well as Related Cases.
- A Study on Developments in Enforcement after the Amendment of Article 46 of the Fair Trade Act.
- A Study on the Economic Analysis System of the Competition Authorities.

42. The FTC has also conducted outsourced research, and has published the following research reports in 2011. None of them is available in English.

- Research on Unilateral Conduct.
- Research on the Effects of Approved Concerted Actions on Commodity Price and Market Competition.
- Research on the Integrated Regulations of Digital Convergence in Related Industries (Telecommunications, Cable Television, Computer Networks, and E-Commerce).