

Unclassified

DAF/COMP/AR(2013)42

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

27-Sep-2013

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2013)42
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHINESE TAIPEI

-- 2012 --

This report is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 June 2013.

JT03345202

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

1.	Changes to competition laws and policies, proposed or adopted.....	3
1.1	Summary of new legal provisions of competition law and related legislation	3
1.1.1	The structural reform of the Fair Trade Commission (FTC)	3
1.2	Other relevant measures including amended guidelines	3
1.3	Government proposals for new legislation	3
2.	Enforcement of competition laws and policies	4
2.1	Action against anti-competitive practices, including agreements and abuses of dominant market positions	4
2.1.1	Summary of Activities	4
2.1.2	Description of significant Anti-competitive cases (including those with international implications)	4
2.2	Merger and acquisitions	6
2.2.1	Statistics on the number, size and type of mergers notified and/or controlled under competition laws	6
2.2.2	Summary of significant cases	7
3.	The role of competition authorities in the formulation and implementation of other policies, e.g., regulatory reform, trade and industrial policies.....	8
4.	Resources of competition authorities	9
4.1	Resources overall	9
4.1.1	Annual budget.....	9
4.1.2	Number of employees (person-years).....	9
4.2	Human resources (person-years) applied to:.....	10
4.2.1	Enforcement against anti-competitive practices and merger review	10
4.2.2	Advocacy efforts.....	10
4.3	Period covered by the above information	10
5.	Summaries of or references to new reports and studies on competition policy issues.....	10

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 latest amendment to the Fair Trade Act (FTA) came into effect on November 25, 2011. The main changes of that amendment included introduction of a leniency program and an increase in the maximum administrative fines for abuse of dominance and concerted actions as well as the imposition of civil liabilities for the false endorsement of goods or services.

1.1.1 The structural reform of the Fair Trade Commission (FTC)

2. The new “Organic Act of the Fair Trade Commission” (Organic Act) was promulgated on November 14, 2011, and became effective on February 6, 2012. The FTC’s name was changed from the “Fair Trade Commission, Executive Yuan” to the “Fair Trade Commission” on the same day.

3. The organization of the FTC was restructured to accommodate itself to the new Organic Act. 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. In addition, the name of each enforcement unit has been changed to the “Department of Service Industry Competition,” “Department of Manufacturing Industry Competition,” and “Department of Fair Competition,” respectively in line with its designated work.

4. In accordance with the new Organic Act, the nomination of Commissioners is subject to the consent of the legislature instead of Presidential appointment. The seven full-time Commissioners (reduced from nine) must have knowledge and experience with regard to law, economics, finance and taxation, accounting, or management. The terms of the Commissioners are staggered rather than consecutive. At the recent appointment of Commissioners (Feb. 2013), three of the seven Commissioners, not including the Chairperson and Vice Chairperson, were to serve for a term of two years. These changes drew attention to the fact that the application of competition law should to the fullest extent possible be free of political considerations to gain wider support for competition policy from the general public. The seven commissioners following the implementation of the new Organic Act were sworn into office on February 1, 2013.

1.2 Other relevant measures including amended guidelines

5. To cope with the latest amendment on implementation of the leniency program and the increases in administrative fines, the FTC issued the “Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases” on January 6, 2012 and the “Regulations for Calculation of Administrative Fines for Serious Violation of Articles 10 and 14 of the Fair Trade Act” on April 5, 2012. The FTC also revised all guidelines and policy statements to consist with the FTC’s and name change.

1.3 Government proposals for new legislation

6. The FTC has established a taskforce to overhaul the FTA since 2006. The proposed amendment has been approved by the Cabinet on Dec. 13, 2012 and is currently pending in Congress. The key points of this proposal include¹:

¹ For more detail of proposed amendment, please see Chinese Taipei 2011 annual report: DAF/COMP/AR(2012)48, P. 5-7.

- (1) revising the pre-merger notification threshold and review period;
- (2) revising relevant exemptions on concerted actions;
- (3) employing search and seizure powers and to increase the expiration length of power to impose administrative penalties;
- (4) differentiating administrative penalties for various violations; and
- (5) applying the rule-of-reason standard to RPM.

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*

7. The FTA permits the existence of monopolies as long as they do not abuse their market power. Concerted actions which would affect market function are forbidden by the FTA. However, while some exceptions are allowed for, these do require the FTC's prior approval and its decision is based on overall economic benefit and public interest. The FTA also bans resale price maintenance but requires the FTC to apply the rule-of-reason standard to other types of vertical restraints.

8. In 2012, the FTC processed 2,293 cases, including 2,114 cases received in 2012 and 179 cases carried over from the preceding year. By the end of 2012, 2,053 cases had been closed, and 240 cases remained pending. A total of 408 complaint cases applicable to the FTA were concluded in 2012 and, of these, 86 concerned anti-competitive practices.

9. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 203 cases in 2012, and only 28 of these fell into the category of anti-competitive practices. The FTC also initiated investigations into 19 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
2012	28	-	1	18	4	6

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 in waste electrical appliances market

10. The FTC Service Center received a phone call from a citizen alleging that waste electrical appliances disposal firms had established an "allocation center." Prior to the establishment of this center, the waste disposal firms offered different purchasing prices for waste items, while after the center was established, the waste disposal firms convened periodically to jointly decide the purchasing prices of waste electrical appliances. The FTC hence initiated an ex officio investigation on July 2009.

11. The FTC's investigation revealed that 12 waste electrical appliances disposal firms were qualified for receiving government subsidies from the "Recycling Fund Management Board" (RFMB) of the Environmental Protection Administration (EPA) for recycling the listed recyclable waste electrical appliances (TV, washing machines, refrigerators, air conditioners, fans) in accordance with the environmental regulations. The 12 firms were competitors in the same relevant market and should have handled their collection of waste electrical appliances independently. However, between March 2001 and October 2011, the 12 firms not only signed an "Agreement on the Joint Recycling and Management of Waste Electrical Appliances," but also established a "Management Rules Regarding Joint Recycling Agreement." These firms met regularly to discuss and decide their purchasing prices for the waste electrical appliances, the ratio of waste electrical appliances to be disposed by each firm, and the division of trading counterparts as well as cost sharing.

12. To ensure fulfillment of the Agreement, each firm had to submit 3 million NT dollars in the form of a check or promissory note as a performance bond. Furthermore, every two firms regularly checked each other's inventory and filled out the daily recycling report as a way of monitoring. Those engaging in price jacking, hoarding, or cross-boundary purchasing would be subject to monetary penalties.

13. According to the Management Rules, a board that consisted of signatories to the Agreement was the ultimate decision maker. Under this board, there was a management team and also an operations center in charge of overseeing joint recycling, keeping stock inventory, and the income and expenditure accounts. In principle, the board meeting would be held every three month and the management team met once a month. The management team and the operations center allocated the volume of waste household appliances among the participants, despite the differences of the capital expenditures, cost structure and capacity of each participant. In order to comply with the established allocation volume, those with higher processing capacities had to share their excess volumes with smaller processing capacities through the operations center.

14. The FTC concluded that this concerted action distorted resource allocation and had led to rigid purchasing prices, which resulted in serious harm to the market competition. The firms were clearly in violation of Article 14 (1) of the FTA and the FTC imposed administrative fines ranging from NT\$ 650,000 to NT\$ 25 million. However, the Petitions and Appeals Committee determined that the FTC failed to justify the amount of the administrative fine and revoked the original sanction. The FTC re-imposed the fines on June 24, 2013. The 12 firms were respectively fined for an amount ranging from NT\$ 200,000 to NT\$ 12.5 million, a total of NT\$ 58 million.

- Case 2: cartel in optical disc drive makers

15. The FTC accepted a leniency application relating to optical disc drive (ODD) cartel in late 2011 and then initiated an ex-officio investigation. After investigation, the FTC found that four ODD manufacturers between September 2006 and September 2009 had contacted one another by emails, phone calls or meetings to exchange sensitive information during the bidding process held by computer manufacturers Dell Inc. and Hewlett-Packard Company. The four companies discussed the bidding prices and the expected bidding results before or during the bidding procedures. In several bidding cases, they even reached agreements on the final price and ranking in advance. They also frequently exchanged competitively sensitive information such as productivity and output.

16. ODDs are devices such as CD-ROMs, CD-RWs, DVDRWs, DVD-ROMs, Combos, and BD DVDs that use laser light to read and write data on compact discs. In terms of size, they can be half-height, slim, or ultra-slim. The half-height drives are often used in desktop computers, and the other two are built into laptops. According to the statistics from an independent market survey company, the four companies

account for over 75% share of ODD market, while HP and Dell nearly have 10% shares of the PC market in Chinese Taipei.

17. Because 90% or more of ODDs used in HP and Dell companies were purchased through procurement events, the alleged bid-rigging conspiracies affected competition on the domestic ODD market. The FTC concluded that the four companies in violation of Article 14 of the FTA. In addition to ordering the said companies to immediately cease the unlawful act, the FTC also imposed administrative fines amounting to a total of NT\$54 million on September 12, 2012.

18. This is the first cartel case on the basis of a leniency application after the FTA was amended on Nov. 23, 2011 to include the leniency program.

- Case 3: Resale price maintenance

19. The FTC found that Shine-Mei Marketing and Distribution Co., Ltd. (Shine-Mei), responsible for the distribution of the frozen and refrigerated products of I-Mei Foods Co. Ltd. (I-Mei), in January 2012 asked downstream retailers not to sell I-Mei soybean and rice milk products below a given price. The FTC initiated an investigation into this case.

20. The FTC's investigation revealed that, between January and February in 2012, the lowest price for sales promotion of I-Mei soybean milk and rice milk was NT\$49 for two liters in most retail channels. After Shine-Mei notified retailers, either orally or in writing, that it would suspend supply of the products if retailers don't increase the price of these two products from NT\$40 to at least NT\$55 per 2L bottle.

21. Soybean and rice milk are the two commonly consumed beverages for consumers in Chinese Taipei. I-Mei is one of the three leading brands in the market and the 2L bottle is the most popular package in the hypermarket. The FTC's investigation revealed that most retailers were afraid that Shine-Mei would suspend the supply and therefore maintained the price of the two products above NT\$55 after March 2012.

22. The FTC decided that, by preventing the downstream retailers from selling I-Mei soybean and rice milk below a price floor, Shine-Mei had deprived them of their freedom to determine their prices and lessened price competition on products of the same brand among different retailers and violated Article 18 of the FTA. The FTC ordered Shine-Mei to cease the unlawful act and imposed an administrative fine of NT\$1,000,000.

2.2 Merger and acquisitions

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

23. 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		Total	Results of Processing			Cases Pending at Year-end
	Carried Over from 2011	Received in 2012		Mergers not Prohibited	Mergers Prohibited	Termination of Review	
2012	2	52	47	26	-	20	7

Statistics on Enterprise Mergers (Unit: Number of cases)

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
2012	26	2	21	6	2	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: Nexon Co. Ltd. and Gamania Digital Entertainment Failed to file Pre-merger notification

24. The FTC received a complaint alleging that Nexon Co., Ltd. (hereinafter “Nexon”) acquired over one third of the voting shares of Gamania Digital Entertainment Co., Ltd. (hereinafter “Gamania”) and Gamania accounted for one quarter of the domestic online game market share, but Nexon didn’t file a notification under Article 11 of the FTA.

25. The FTC’s investigation revealed that, as of April 16, 2012, Nexon indeed acquired 34.6% of the issued shares of Gamania and acquisition met the criteria of Subparagraph 2, Paragraph 1 of Article 6 of the FTA. According to the statistics compiled by the Industrial Development Bureau of the Ministry of Economic Affairs, the total production value of the online game industry in 2011 was NT\$24.7 billion, including NT\$5.274 billion of revenues from overseas markets and NT\$19.426 billion from the domestic market. Meanwhile, the sales of Gamania by online game businesses in 2011 in Chinese Taipei amounted to NT\$5.543 billion, accounting for about 28.53% of the total share of the relevant market and thus reaching the merger filing threshold set forth in Subparagraph 2, Paragraph 1 of Article 11 of the FTA.

26. The FTC concluded that, Nexon had to file with the FTC before the merger. Therefore, by failing to fulfill its obligation to notify the merger, Nexon violated Paragraph 1 of Article 11 of the FTA. The FTC ordered Nexon to make necessary corrections within three months and imposed an administrative fine of NT\$900,000 on Nexon.

- Case 2: Merger of MediaTek and Mstar

27. MediaTek Inc. intended to acquire over 40% of the shares of Mstar Inc. first and MediaTek would merge Mstar at a later date after the acquisition was completed. MediaTek would be the surviving company while Mstar would be the dissolved company. The merger met the type of merger prescribed in Subparagraphs 1 and 2, Paragraph 1, Article 6 of the FTA. In addition, the sales of merger parties in the previous fiscal year exceeded the notification threshold set forth in Subparagraph 3, Paragraph 1, Article

11 of the FTA and none of the exceptions prescribed in Article 11-1 applied. Thus, MediaTek Inc. was required to file a premerger notification with the FTC.

28. The FTC's investigation showed that the two parties' competed in the cellular phone chip market and TV (display) control chip market, but market structure of cellular phone chip remained competitive after the merger. As for TV control chip market, the merger parties faced strong competition from international players and the merger would not create significant barriers to market entry. In addition, the downstream firms had countervailing power to curb abuse of market power by the merging parties. Therefore, the merger in question was deemed unlikely to raise any significant competition concern.

29. Since the merger would not result in any significant competition restriction in the relevant markets while it could also improve the overall capacity of domestic TV (display) control chip makers, the FTC concluded that the overall economic benefits outweighed the disadvantages from the competition restriction and didn't prohibit it in accordance to Article 12 (1) of the FTA.

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

30. 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.

31. 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.

32. In 2012, the FTC organized and participated in seminars and consultation meetings with other government authorities related to competition issues, as summarized in the following:

- Requested price and quantity supply information from the Council of Agriculture (COA), the place of productions, fruit and vegetable whole sale markets, and called related agencies, major meat markets to learn the poultry price changes before important traditional holidays such as Lunar New Year, Dragon Boat Festival, the Moon (Mid-Autumn) Festival.
- Consulted with the Agricultural and Food Agency and Fisheries Agency, both under COA, for price and quantity information of pig, chicken, fish feed, and import fruits when investigated the cases involved pork, chicken, eggs, and fish feed during April and September 2012.
- Coordinated with Public Attorneys, the Police, the Council of Agriculture, and local governments for the surveillance of prices on important necessities, agricultural products and livestock to prevent price fixing.
- Participated in the "Meeting on the investigation of the prices of infant formula and related issues" coordinated by the Bureau of International Trade (BOT). The meeting decided that the importers or distributors of infant formula should inform the BOT if there is to be an expected rise in the price of products. The BOT should then pass on the information to all related agencies

and the FTC will investigate whether such price increase results from a concerted action or abuse of market power that might violate the FTA.

- Organized a meeting entitled “The application of relevant laws among the Bureau of National Health (now the Ministry of Health and Welfare), Ministry of Economic Affairs, Ministry of Justice, Department of Consumer Protection and the FTC on false labels and advertisements” to coordinate the divisions of the regulation on false labels and advertisements on food products and over-the-counter medicines.
- Organized a meeting entitled “The Application of Relevant Laws on the False Label between the Fair Trade Commission and Ministry of Economic Affairs.” The FTC invited representatives from Ministry of Economic Affairs, Ministry of Justice, and Department of Consumer Protection to discuss about the division of regulations on false label and advertisements on the Internet. The meeting decided that whether pictures of commodities or labels and relevant information on commodities should be categorized as product labels or advertisements would be discussed in the cross-ministry’s meeting on E-commerce held in the near future.

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget

- NT\$356.593 million in 2012 (approximately equivalent to US\$11.89 million in August 2013).

4.1.2 Number of employees (person-years)

33. There were 209 employees at the end of the year 2012, including all staff in the operations and administrative departments and eight full-time Commissioners. The operations departments include the Department of Service Industry Competition, Department of Manufacturing Industry Competition, Department of Fair Competition, 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.

34. In terms of the educational background percentages, 26%, 22%, 9%, 5% and 41% of the employees majored in law, economics, business administration, accounting, and other related fields (including information management, statistics, and public administration), respectively.

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

Category	No. of employees
Economists	45
Lawyers	55
Other professionals & support staff	109
All staff combined	209

4.2 Human resources (person-years) applied to:

4.2.1 Enforcement against anti-competitive practices and merger review

36. Apart from the Department of Fair Competition, which is responsible for unfair competition practices, such as false and misleading advertisements, counterfeiting and multi-level sales cases, the Departments of Service Industry Competition and Manufacturing Industry Competition of the FTC handle all kinds of anti-competitive cases, including the abuse of dominant market positions, merger reviews, cartels and various vertical restraints.

37. The Department of Service Industry Competition is responsible for cases related to the services and agricultural sectors, and the Department of Manufacturing Industry Competition is responsible for cases related to the manufacturing sectors. There are 30 staff members in the Department of Service Industry Competition and 29 in the Department of Manufacturing Industry Competition.

4.2.2 Advocacy efforts

38. In 2012, 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. The FTC organized 83 seminars in 2012 for the public, students, and local governments to introduce the regulations of the FTA.

39. Furthermore, in 2012, the FTC held 10 seminars for the various business sectors to introduce the leniency program and administrative fines to ensure acquaintance with the new provisions of the FTA. The FTC also held 27 seminars for business sectors to introduce the “Code of Conduct for Antitrust Compliance of Enterprises.”

4.3 Period covered by the above information

- January through December 2012

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

40. The FTC studied and published reports on competition policy issues in 2012 with the following titles. None of them is available in English.

- A Study of Merger Control under China’s Anti-monopoly Law.
- A Study on Price Variation Used as a Screening Method to Detect Cartels.
- A Study on Regulations in the LPG Market.
- A Study on Regulations and Administration of Multi-Level Sales.
- A Study on the History and Reform of the FTA’s Administrative Fine Regime.

41. The FTC also engaged in outsourced research, and published the following research reports in 2012. None of them is available in English.

- A Study on Harmonization of Competition Policy and Industrial Policy in the Energy Industry.
- A Study on the Defense of Regulated Sectors in Competition Law.