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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHINESE TAIPEI

-- 2013 --

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This report is submitted by Chinese Taipei to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 17-18 December 2014.

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CHINESE TAIPEI

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. There has been no change in the FTA since then.

1.2 Other relevant measures including amended guidelines

2. The Fair Trade Commission (FTC) amended the following guidelines in 2013:

- “Disposal Directions (Policy Statements) on the Business Practices of Digital Convergence Related Enterprises”;
- “Regulations on the Confidentiality and Disclosure of Commissioners’ Meetings’ Documents”;
- “Disposal Directions (Guidelines) on Investigations in Multi-Level Sales Cases”;
- “Disposal Directions (Policy Statements) on the Use of Endorsements and Testimonials in Advertising”; and
- “Disposal Directions (Guidelines) on Handling Cases Governed by Article 21 of the FTA.”

1.3 Government proposals for new legislation

3. The FTC’s proposed amendment was approved by the Cabinet on Dec. 13, 2012, and it is currently pending in the Congress. The key points of this proposed amendment include:

- Revising the pre-merger notification threshold and review period;
- Introducing the procedure of commitment;
- Increasing the expiration length of power to impose administrative penalties;
- Differentiating administrative penalties for various violations; and
- 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

4. 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.

5. In 2013, the FTC processed 2,213 cases, including 1,973 cases received in 2013 and 240 cases carried over from the preceding year. By the end of 2013, 1,987 cases had been closed, and 226 cases were pending. A total of 379 complaint cases applicable to the Act were concluded in 2013 and, of these, 80 concerned anti-competitive practices.

6. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 214 cases in 2013, and only 29 of these fell into the category of anti-competitive practices. The FTC also initiated investigations into 6 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
2013	29	3	6	7	10	3

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)

2.1.2.1 Case 1: Cartel

7. The FTC decided on March 13, 2013 to impose the largest fine on 9 independent power producers (IPPs) of a single cartel, which is a total of NT\$6.32 billion (US\$213.08 million) for colluding to jointly refuse to adjust the prices of power they sold to TPC, a state-owned power company which is the main supplier in the retail electricity market in Chinese Taipei, during the period from August 2008 to October 2012.

8. In response to the increases in the natural gas price between December 2003 and July 2007, the TPC held several negotiation meetings with IPPs between August and October 2007 and eventually reached a conclusion to revise the contract provision concerning the adjustment of fuel cost in order to reflect the price change of natural gas in time. Furthermore, the TPC and IPPs also agreed to continue discussions on other factors affecting the purchased price, such as interest rate.

9. Following the aforesaid agreement, from September 4, 2008 to September 26, 2012, in 19 negotiation meetings, of which 13 were held by TPC and 6 were convened by the Bureau of Energy (BOE), MOEA, no conclusions could be reached. The Legislative Yuan suspected the existence of cartels and then the FTC decided to initiate an investigation on October 2, 2012.

10. Based on the FTC's investigation, it was found that for the TPC, the 9 IPPs were a few of private power suppliers that were chartered by the government. All of these 9 IPPs supplied electricity with thermal power plants, and the power generated by them was only able to be sold to the TPC. In this sense, the IPPs could be treated as competitors in the domestic market of electricity generation. The collusion among IPPs may violate the FTA although each IPP signed the power purchase agreement (PPA).

11. The FTC's investigation showed that the 9 IPPs reached a consensus through the IPP Association on their refusal of the TPC's proposal for the capacity rate adjustment. From August 2008 to October 2012, the 9 IPPs met at least 20 times through the IPP Association to discuss how to respond to the TPC's requests for negotiating a lower capital rate. Moreover, each IPP Association member, who represented each IPP, also took the opportunity to attend the negotiation meetings to exchange ideas for achieving the goal of refusing to lower the purchase prices.

12. The FTC concluded that the IPPs had established a mutual understanding to restrain the freedom of each IPP from negotiating with TPC over price adjustment, and such conduct distorted competition in the power generation market, which violated Article 14 of the FTA. Considering seriousness of the case and the critical impact of the unlawful act in the market, the FTC decided to impose fines which didn't exceed 10% of the total sales of the offenders in accordance to Paragraph 2, Article 41 of the FTA that has been effective since November 25, 2011.

13. However, the Petitions and Appeals Committee of the Executive Yuan determined that the FTC failed to justify the amount of the administrative fine and revoked the original sanction. The FTC re-issued the sanction by imposing a total of 6.05 billion fines on the 9 IPPs, ranging from NT\$1.82 billion to NT\$100 million, respectively, on November 13, 2013. The decision on penalty was revoked again by the Petition and Appellation Committee in May 2014 and the FTC issued a new decision reducing the total fine from NT\$6.05 billion to NT\$6.007 billion on July 10, 2014. Apart from the penalty decision, the IPPs appealed the decision on violation of the FTA to the Taipei High Administrative Court. The Court disagreed with the FTC's finding that a horizontal conspiracy existed between 9 IPPs in this case so it revoked the FTC's decision in October 2014.

2.1.2.2 Case 2: Resale Price Maintenance

14. In April 2013, the FTC received complaints that Apple Asia LLC (hereinafter referred to as Apple Asia) required the telecommunication companies to sell iPhone at certain prices. The FTC hence decided to initiate an investigation into the allegations of resale price maintenance.

15. The investigation of the FTC showed that Apple Asia is a subsidiary of the US's Apple Inc. (Apple) and is responsible for the sales of Apple's products in Chinese Taipei. Currently, the major distribution channels for iPhone products in the domestic market are the top 3 telecommunication companies: Chunghwa Telecom, Taiwan Mobile, and Far EastTone. Each of them entered a distribution contract with Apple Asia respectively. In view of the transaction process conducted under the contract in question, the ownership of the iPhone products would be transferred to the telecommunication companies after full payment was made. Moreover, each telecommunication operator would take the responsibility on its own risk for storage and overstock following the transfer of ownership.

16. The FTC discovered that, under the terms and conditions of the contract between Apple Asia and the three domestic telecommunication operators, each telecommunication company was obligated to submit the initial rate for its iPhone plan (bundled packages of handset prices associated with various telecom rates) to Apple Asia for approval. The FTC further found that each of the three telecommunication companies did submit their respective rate packages to Apple (emails were sent to apple.com) for review, and received "approval" or "confirmation" prior to going to the market.

Furthermore, the emails between Apple and domestic telecommunication operators showed that Apple had requested all three operators to amend and adjust the handset prices, handset subsidies, and the price differences between old and new contracted phones. Ultimately, it was through the contract between Apple Asia and domestic telecommunication operators, Apple could grant its approval to such price adjustments, which were duly followed by the telecommunication operators.

17. The FTC concluded that the conduct of Apple Asia has clearly deprived telecommunication operators of the freedom to determine prices of iPhone in accordance with their cost structure and market competition conditions, to the extent of restricting intra-brand and inter-brand competition, thereby violating Article 18 of the FTA. In addition to a cease order issued, the FTC also imposed an NT\$2 million administrative fine on December 25, 2013.

2.2 *Merger and acquisitions*

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

18. 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				
	Carried Over from 2011	Received in 2012	Total	Mergers not Prohibited	Mergers Prohibited	Termination of Review	Combined into other Case	Cases Pending at Year-end
2013	7	51	50	30	-	19	1	8

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
2013	30	5	21	2	9	18

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*

2.2.2.1 Case 1: Mobile Payments Joint Venture

19. The FTC decided on Jan. 23, 2013 not to prohibit the joint venture which will be set up by Chunghwa Telecom Co., Ltd., Taiwan Mobile Co., Ltd., Asia Pacific Telecom Co., Ltd., VIBO Telecom Inc., EasyCard Investment Holding Co., Ltd., and Far EasTone Telecommunications Co., Ltd. to operate a Trust Service Management (TSM) platform. However, the FTC attached 11 conditions to ensure that the overall economic benefits would outweigh the disadvantages from the competition restrictions thereof incurred.

20. After measuring the market power of merging parties and co-ordinated effect as well as entry barriers in the telecommunication market, the FTC was of the view that this merger would not

result in substantial lessening of competition within this market. And furthermore, mobile number portability allows consumers to switch to a new service provider without difficulty.

21. However, the joint venture would also relate to vertical integration associated with the secure element market, the micropayment tool market, the smartcard ticketing market and the mobile payment platform market. Some competition concerns remained, such as differentiated treatment between the new business and the merging enterprises, boycotts against specific businesses, obstructions to prevent other mobile payment platform operators from entering the mobile payment market, which is likely to result in market foreclosure.

22. The FTC concluded that it was necessary to attach conditions to the implementation of this joint venture in order to eliminate the likelihood of disadvantages derived from competition restrictions and protect the overall economic benefits. The conditions included:

1. Four years after the new business is set up, the total shares held by or the capital contributions from the merging parties (and their subsidiaries and affiliates) may not exceed one half of the voting shares or total capital of the new business.
2. Four years after the new business is set up, the shares held by or the capital contributions from EasyCard Investment Holding Co., Ltd. (and its subsidiaries and affiliates) may not exceed one tenth of the voting shares or total capital of the new business.
3. Without justification, the new business and the merging enterprises may not prevent competitors (including mobile communications service providers and smartcard ticketing businesses) from entering or exiting (through share holding, acquisition or disposal) the new business. The new business and the merging enterprises shall make a public offering according to law and based on the principle of open and free capital investment, and the investors recruited shall include but not limit to the competitors of the merging enterprises.
4. The new business may not engage in any business or services related to exclusive financial service. However, such an operation is excluded when its overall economic benefit outweighs the disadvantages from competition restrictions with the FTC's approval in writing.
5. To ensure that other payment platforms could take part in the competition, the new business and the merging enterprises may not refuse, without justification, requests from other mobile payment platforms for connection directly or through an interface or obstruct other mobile payment platforms from entering the market.
6. Without justification, the new business may not treat the merging enterprises (and their subsidiaries and affiliates) preferentially on the terms for service providers or secure element suppliers.
7. Without justification, the new business may not treat any service provider or secure element supplier differentially.
8. The new business and the merging enterprises may not engage in any practices to restrict competition or impede fair competition, such as boycotting, against any specific enterprises.
9. Two months before the TSM platform begins operation, the new business is required to provide the FTC with the management regulations for the TSM platform (including but not

limited to details of co-operation between service providers and secure element suppliers) and publicly announce the regulations before they take effect.

10. Two months before the TSM platform begins operation, the new business is required to provide the FTC with a set of regulations regarding the protection of personal and transaction information and publicly announce the regulations before they take effect.
11. Five years after it is set up, the new business is required to provide the FTC with the following information before the end of March each year: a list of shareholders, total sales in the previous year, the number of names of service providers worked with, the regulations for the operation of the TSM platform, and new business items not registered in the declaration.

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

23. 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.

24. 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.

25. In 2013, the FTC organised and participated in various consultation meetings with other government authorities related to competition issues, as summarised in the following:

- Organised a meeting inviting the Council of Agriculture, Ministry of Welfare and Health, Ministry of Economic affairs, Ministry of Justice, and the Department of Consumer Protection of the Executive Yuan for the “Application of Relevant Laws and Regulations to False Labeling and Advertising on Seedlings, Fertilizers, Ranch Products, Packaged Rice, and Organic Foods” to co-ordinate the divisions of applicable laws and competent authorities.
- Participated in the meeting organised by the National Communication Commission and Executive Yuan for the “Prevention of Broadcasting and Television Monopoly and the Maintenance of Diversity Act” (draft) meetings and provided the Commission’s opinions on the draft. The draft is now pending in the Legislative Yuan for review.
- Participated in the pricing meetings of junior-high and elementary schools’ text books collective procurement for the 2013 school year and provided opinions on the prices of papers.
- Organised two meetings to discuss the “Procedures for Fighting Illegal Stocking and Price Gauging of Vegetables” with Council of Agriculture, Council of Economic Planning and Development, Department of Consumer Protection of the Executive Yuan, Ministry of Economic Affairs, Ministry of Justice and National Police Agency of the Ministry of Interior.

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget

26. NT\$341.146 million in 2013 (approximately equivalent to US\$11.46 million in Dec. 2013).

4.1.2 Number of employees (person-years)

27. There were 212 employees at the end of the year 2013, including all staff in the operations and administrative departments and 7 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 91% of employees have bachelor degrees with majors in different subjects at the university level.

28. In terms of the educational background percentages, 28%, 21%, 7%, 5% and 39% of the employees majored in law, economics, business administration, accounting and other related fields (including information management, statistics, and public administration), respectively.

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

Category	No. of employees
Lawyers	60
Economists	45
Other professionals & support staff	107
All staff combined	212

4.2 Human resources (person-years) applied to:

4.2.1 Enforcement against anti-competitive practices and merger review

30. Apart from the Department of Fair Competition, which has 32 staff and 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.

31. 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 27 in the Department of Manufacturing Industry Competition.

4.2.2 Advocacy efforts

32. In 2013, 9 of the 26 staff members in the Department of Planning of the FTC were primarily in charge of 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 organised 95 seminars in 2013 for the public, students, and local governments to introduce the regulations of the FTA.

33. Furthermore, in 2013, the FTC held 3 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 5 seminars for business sectors to introduce the “Code of Conduct for the Antitrust Compliance of Enterprises.”

4.3 *Period covered by the above information*

34. January through December 2013

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

- The FTC studied and published reports on competition policy issues in 2013 with the following titles. All of them are only available in Chinese.
- A Study of Cross-Border Cooperation on Anti-trust Enforcement from the Extraterritorial Application of Competition Law.
- A Study on Regulations on the Business Conducts of Franchise Enterprises.
- A Study and Analysis of Competition Cases in the Tobacco and Wine Markets after Deregulations of the two Markets.
- A Study on Article 21 of the FTA on Regulations of Advertisement and its Interactions with other Related Acts.
- A Study on the Interface between of Professional Personnel Laws and the Fair Trade Act.

35. The FTC also engaged in outsourced research, and published the following research reports in 2013. A short English abstract is available for both reports.

- A Study on Factors to Be Considered in the Application of “Rule of Reason” in the Non-Price Vertical Restraints.
- A Study on the Application of Economic Analysis on Competition Law Issues.