

Unclassified

DAF/COMP/WD(2014)111

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

27-Nov-2014

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

DAF/COMP/WD(2014)111  
Unclassified

**ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES**

-- Note by Chinese Taipei --

**17-18 December 2014**

*This document reproduces a written contribution from Chinese Taipei submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.*

*More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.*

**JT03367307**

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

## CHINESE TAIPEI

1. The competition authority in Chinese Taipei, Fair Trade Commission, Executive Yuan, was established on January 27, 1992. In harmony with the reform of government organisation, the “Organic Act of the Fair Trade Commission” was promulgated on November 14, 2011 and went into effect on February 6, 2012. It was renamed the Fair Trade Commission (FTC) accordingly. This paper will illustrate the history of the institutional change of the FTC, independent status, as well as the debates while several proposals relating to consolidation of the FTC with other agencies were submitted during the organisational reform period.

### **1. Institutional Design of the FTC before 2012**

#### ***1.1 The Structure of the Fair Trade Commission***

2. The competition law of Chinese Taipei, the Fair Trade Act (FTA), was promulgated on February 4, 1991 and entered into force on February 4, 1992. The Act covers two areas: anti-competition and unfair competition. As a matter of fact, the FTA was part of the economic liberalisation policy planned in the 1980s so that the FTC was originally designed to be a law enforcement unit within the Ministry of Economic Affairs (MOEA) when drafting the FTA. However, as the legislative process took several years to come into force, the status of the FTA was elevated to that of a ministry-level agency to accommodate changes in the socioeconomic environment. Eventually the “Fair Trade Commission Organic Statute” (Organic Statute) that was promulgated on January 13, 1992.

3. According to the FTA (1992) and the Organic Statute (1992), the FTC was a second-level agency under the Executive Yuan; i.e., a ministerial-level agency that is responsible for policy and legislation as well as enforcement. There were nine full-time commissioners, including the chairperson and the vice-chairperson. Commissioners were to be nominated by the Premier and appointed by the President to serve a 3-year term and could be reappointed after the expiration of his/her term. Each commissioner was required to have an academic background and experience in law, economics, finance, accounting or management. Meanwhile, because the terms of all the commissioners began and expired at the same time, the Commission was referred to as the “First-term”, “Second-term” Commission, and so forth. There were seven terms before the FTC was reformed in 2012.

4. FTC staff is organised by sector and by function: five departments and five supporting offices to be respectively responsible for anti-competition and unfair competition in service and manufacturing industries, policy planning, legal affairs and administrative support.

#### ***1.2 The Organisational Features of the FTC***

5. Article 28 of the FTA stated, “the Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission.” Article 13 of the Organic Statute (1992) also specified, “the commissioners may not take part in any political party activities during their service in the Fair Trade Commission and shall exercise their duties independently according to law.” These two provisions served as double protection for the independence of the commissioners and the agency.

6. According to the Organic Statute (1992), the FTC was a collegial agency. The commissioners meet once a week and decisions were made by majority vote of a quorum of the membership which was more than half of the total. All meeting records, except confidential matters, should be open to the public. The number of commissioners with the same political party could not exceed one half of the total number of commissioners. Commissioners were required to be beyond party affiliations and exercise their duties independently so that unnecessary interference in the Commission's policies and law enforcement from political parties or other agencies could be prevented.

7. Although the FTC was subordinated to the Executive Yuan, its independence was well guarded due to the following institutional design: 1) the Commission operated under a collegial system in which meeting decisions were achieved with the approval of the majority of the commissioners; and 2) the commissioners were political appointees protected by a fixed term tenure and therefore not placed under supervision in the administrative system. Besides, there were comments from scholars that when the chairperson of the FTC, a ministerial-level decision-making body, attended Executive Yuan Council meetings to present the standpoint of the Commission toward a policy, the role of the FTC changed from an independent law enforcer into a participant in policy making. It was unique in its institutional design<sup>1</sup>.

## **2. Government Reform and Restructuring of the FTC**

8. The government of Chinese Taipei started to plan the reorganisation of administrative agencies in the 1990s. The objective was to build a "streamlined, flexible and effective government" to boost national competitiveness. After years of study and review, related legislation was finally completed in 2010. The most important pieces of legislation included the "Basic Code Governing Central Administrative Agencies Organizations" (the Basic Code), promulgated and enacted on June 23, 2004, and the "Organic Act of the Executive Yuan" promulgated on February 3, 2010 to take effect on January 6, 2012.

9. Article 3 of the Basic Code defines "independent agency" as "a commission-type collegial organisation that exercises its powers and functions independently without the supervision of other agencies, and operates autonomously unless otherwise stipulated." Article 4 provides that the organisation of independent agencies is to be governed by law. And moreover, Article 21 prescribes that "the term of office, and proceedings for the appointment, suspension and discharge of commission members of independent agencies shall be clearly stipulated. Nominations for full-time commission members of second-level independent agencies must be submitted to the Legislative Yuan for approval. For other independent agencies, commission members shall be appointed by the head of the first-level agency. When making appointments mentioned in the preceding paragraph, the head of the first-level agency shall designate one of the members as head of the agency and another member as deputy head. The number of commission members referred to in Paragraph 1 shall be five to eleven in principle unless otherwise required. The number of members belonging to the same political party shall not exceed a certain proportion."

10. Furthermore, Article 9 of the "Organic Act of the Executive Yuan," the Executive Yuan enumerates three independent agencies, which are equivalent to second-level agencies in the central government, the Central Election Commission, the National Communications Commission and the Fair Trade Commission. On the basis of the aforementioned regulations in the Basic Code, the FTC drew up the draft "Organic Act of the Fair Trade Commission" (Organic Act). It was passed by the Legislative Yuan on October 28, 2011 and officially took effect on Feb. 6, 2012. The main changes made to the FTC as a result of the organisational reform include: 1) reinforcement of the FTC's independent status; 2) reduction in the number of commissioners from nine to seven; 3) the appointment of commissioners subject to consent by the Legislative Yuan; 4) extension of the commissioner's term and the adoption of staggered terms.

---

<sup>1</sup> Su, Yeong-Chin: "Between Self-governance and Regulation," Wu-Nan Book Inc., p. 9.

## **2.1 *The Institutional Changes of the FTC***

11. According to the Organic Act, the seven commissioners hold full-time positions for a 4-year term and the term is renewable. They are nominated by the Premier and the appointment is subject to consent by the Legislative Yuan. When nominating commissioners, the Premier is to designate one of the commissioners to be the chairperson and another the vice-chairperson. As result of the staggered terms, 3 of the 7 commissioners under the Organic Act, excluding the chair and vice chair, were appointed to serve for a term of 2 years and in 2015 the 3 positions will be appointed to serve for a 4-year term.

12. Besides the changes in the appointment of commissioners, the Organic Act stipulates that the Premier may dismiss commissioners under one of the following situations: 1) too ill to perform their duties; 2) committing illegal acts, reckless disregard of duties, or other misconducts; and 3) held in detention or indicted for criminal commitments.

13. Another important change in the organisation is to set up the Information and Economic Analysis Office to strengthen the capacity of the Commission in economic analysis and the collection of economic and industrial data. In addition, the five Departments, i.e., the First, Second, Third, Planning and Legal Affairs, were renamed the Department of Service Industry Competition, Department of Manufacturing Industry Competition, Department of Fair Competition, Department of Planning and Department of Legal Affairs to highlight their functions. These units have continued to work on cases involving violations of the FTA as well as draw up fair trade policies and regulations.

## **2.2 *Reinforcement of Independent Status***

14. As mentioned above, while the FTC may remain a subordinate agency of the Executive Yuan, the name “Executive Yuan” has been removed from its title so that the independence of the agency is emphasised.

15. To further reinforce the independence of the FTC, the proposed amendment to the FTA states that appeals against decisions made by the FTC would be taken directly to the Administrative Court. The reason for this amendment is that, under current administrative system, the FTC is considered as a subordinate agency of the Executive Yuan, so the FTC’s sanctions and decisions would be appealed to the Appeal and Petition Committee of the Executive Yuan first as set forth in Subparagraph 7 of Article 4 of the Administrative Appeal Act. Considering the purpose of the regulations regarding independent agencies stipulated in the Basic Code, intervention and supervision from superior agencies on the decisions made by independent agencies should, within the boundaries of the law, be eliminated so that the professionalism and credibility of independent agencies can be maintained. Therefore, the proposed amendment specifies that appeals are to be made to Administrative Court to minimise inappropriate administrative intervention. Currently, the drafted amendment is being reviewed by the Legislative Yuan.

## **3. *Debates on Consolidation of the FTC with other Agencies***

16. During the government organisational reform, a number of proposals with regard to the consolidation of the FTC with other agencies were put forward, including its annexation with the Consumer Protection Commission to become the “Fair Trade and Consumer Protection Commission,” the International Trade Commission (ITC) of the MOEA to be merged with the to-be-established “Fair Trade and Consumer Protection Commission,” and the placement of government procurement complaint review work under the FTC as suggested by the Public Construction Commission (PCC) in 2009. However, after meetings and consultations, none of the above-mentioned proposals were adopted.

### 3.1 *Discussion on Consolidation with the Consumer Protection Commission*

17. The Consumer Protection Commission (CPC) of Chinese Taipei was set up on Jul. 1, 1994 to be responsible for formulating and supervising the implementation of consumer protection policies. It was also a collegial organisation with 11-19 members to serve a 3-year term. The Vice-Premier would be assigned by the President as the Chair of the CPC and the members included heads of related ministries, representatives from consumer protection organisations, corporate managers, and scholars as well as relevant field experts.

18. The main consideration behind the idea to consolidate the two commissions was that the legislative purposes of the FTA and the Consumer Protection Law were overlapping to some extent<sup>2</sup>. In addition to this, the duties of the two agencies were complementary to each other and the consolidation could effectively maintain market functions and protect consumer interests while the goal of streamlining government organisation would also be achieved. Moreover, the proposal had been encouraged by the fact that the competition authorities in several countries back then also concurrently served as a consumer protection agency, such as the US Federal Trade Commission and the Australian Competition and Consumer Commission. Therefore, the consolidation of the two commissions into an independent agency was deemed positive for government efficiency and the allocation of resources.

19. During the government reorganisation period, the two agencies met several times to discuss how they could be consolidated. The focus was set on how the two agencies with systemic and functional dissimilarities could be combined to create a new agency. As a competition authority, the FTC had the power to investigate and sanction enterprises that violate the FTA, and the FTC was a quasi-judicial body in terms of its function and independence. By contrast, the CPC was a co-ordination agency mainly to co-ordinate and oversee various competent authorities. In terms of functionality, it was not an independent agency. Consolidation of the two into an independent agency was bound to have an impact on the consumer protection operations and weaken the original functions of the CPC.

20. After several meetings and discussions, the Vice Premier decided at a meeting held in Apr. 2005 that the two agencies would not be consolidated. The organisation and functions of the CPC remained the same. Later, on Jan. 1, 2012, the CPC was restructured and annexed into the Executive Yuan as the Consumer Protection Committee and its operative units became the Department of Consumer Protection, Executive Yuan as the staff unit of the Consumer Protection Committee.

### 3.2 *Discussion on Consolidation with the ITC*

21. During 2004 when the consolidation between the FTC and the CPC was being discussed, the MOEA also suggested that its subordinate the ITC could be included as part of the new “Fair Trade and Consumer Protection Commission” to be created. The main reasons were 1) to be in line with major WTO members that have an independent and unprejudiced quasi-judicial agency to carry out trade remedy

---

<sup>2</sup> Article 1 of the FTA provides that, “this Act is enacted for the purposes of maintaining trading order, protecting consumers’ interests, ensuring fair competition, and promoting economic stability and prosperity,” while Article 1 of the Consumer Protection Law stipulates that, “the Consumer Protection Law is enacted for the purposes of protecting the interests of consumers, facilitating the safety of the consumer life of nationals, and improving the quality of the consumer life of nationals.”

measures<sup>3</sup> and 2) to conform to the requirements of objectivity and neutrality that would demonstrate the significance of investigations on trade injury.

22. The viewpoint of the FTC toward the proposal was that, despite both agencies' being collegial organisations and having the quasi-judicial authority to investigate businesses and industries, the consolidation was still debatable when the objectives in the protection of legal interests, the operations of the duties and the structure of independent agencies were taken into consideration<sup>4</sup>. As for the CPC, on the other hand, the ITC's "import relief" measures were to cope with dumping at low prices and the imposition of "countervailing duty" would be responses to unjustified subsidisation by foreign governments. However, when businesses engaged in dumping at low prices or received subsidies, the results could be advantageous to consumers. Hence, the operations of the ITC were entirely different from consumer protection work and the merger with the ITC would result in conflict with the spirit of consumer protection.

23. The three agencies met to review and discuss the proposal and the meeting minutes were presented to the Government Reform Committee of the Executive Yuan for evaluation. As mentioned above, after the CPC confirmed that it would not be consolidated with the FTC, and thus the proposal no longer needed any further consideration.

### **3.3 *The Proposal to Place Government Procurement Complaint Review Work under the FTC***

24. In 2009, the Public Construction Commission (PCC) put forth the suggestion that its government procurement complaint review work be placed under the responsibility of the FTC. The main reason was that the review and mediation of complaints with regard to government procurement required independence, objectivity and fairness. In order to accelerate the handling of disputes, experts had already suggested that the Complaint Review Board for Government Procurement should be made an independent

---

<sup>3</sup> According to the Foreign Trade Act and the Organic Regulation of the International Trade Commission, Ministry of Economic Affairs, the duties of the ITC include 1) Conduct investigation under paragraph of Article 18 of the Foreign Trade Act. 2) Deliberate an institution. Make injury determination, and draft trade remedy recommendation of the investigation prescribed in the preceding paragraph. 3) Conduct injury investigation under Article 19 of the Foreign Trade Act. 4) Provide advisory comments on improper relief issues. 5) Conduct research regarding import relief issues.

<sup>4</sup> The reasons behind the objection of the FTC included:

1) In the legal interests of protection, anti-dumping and anti-subsidy measures and the imposition of countervailing duty in cases involving import relief were mainly to prevent the dumping of foreign goods in the domestic market. The purpose was to protect domestic industries as industrial and trade policies were involved. The objectives of competition law, however, were to maintain market order and ensure that price advantages, quantity, quality, better service or other conditions were adopted to seek trading opportunities. Competition policies were a concern and the purpose was to promote competition and protect consumers.

2) Recommendations made by the ITC regarding behavioral remedy measures in import relief cases could not all be realised without the supervision of the MOEA and the co-operation of related competent authorities. This was inconsistent with the definition of an independent agency.

3) In practice, competition authorities in other jurisdictions may investigate whether there is a violation of competition law with regard to those abusing anti-dumping measures in cases that would lead to anti-competition or unfair competition. If the responsibility of the ITC were to be placed under the new agency, it would, on one hand, have to investigate trade injury based on the application from concerned parties and, on the other hand, initiate an investigation on the applicant should the trade injury application was considered as a conduct against the competition law. Under such circumstances, contradictions could occur as competition authority seldom dealt with anti-dumping cases.

agency. As the FTC is an independent agency with full-time commissioners to review cases under a collegial system, placing the complaint review work within the jurisdiction of the FTC would not increase the number of central government agencies and it would be consistent with the principle of organisational reform.

25. The FTC responded by stating that: 1) the Government Procurement Act (GPA) was governed by the PCC and the issues involved in the GPA were different from the functions of the FTC; 2) disputes over contract performance between procurement agencies and suppliers should be settled in accordance with the GPA or Civil Code. For these reasons, it would be inappropriate to place the work under the FTC and, as a consequence, the suggestion was not taken into consideration.