

Unclassified**English - Or. English****13 November 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Independent Sector Regulators – Note by Chinese Taipei**

2 December 2019

This document reproduces a written contribution from Chinese Taipei submitted for Item 3 of the 68th OECD Working Party 2 meeting on 2 December 2019.
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<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

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Chinese Taipei

1. Independent regulatory agencies and their development in Chinese Taipei

1. Before the 1980s, industrial polices and sector-based supervisory regimes were mostly governed and controlled by government bodies under ministerial level agencies in Chinese Taipei. For example, the Directorate General of Telecommunication (Ministry of Transportation and Communications, MoTC) was responsible for telecommunication-related industries and the Ministry of Economic Affairs (MoEA) was in charge of public utilities, including water, electricity, natural gas and energy related industries (Table 1, sector-specific government agencies and their current regulatory matters in Chinese Taipei). Following the trend of global liberalization in economic sectors by the 1980s, establishment of independent regulatory agencies (IRAs) became an eye-catching topic in Chinese Taipei to explore timely regulatory measures in response to industrial changes, ensure the credibility of policies and maintain technology requirements.

2. After liberalizing markets in terms of financial services, air transport, petroleum and telecommunications in Chinese Taipei over the past 20 years, it was critical to initiate discussions on re-regulation to address issues that arose from liberalizing those highly regulated markets. In 2002, Chinese Taipei proposed to introduce independent administrative institutions in its bureaucratic restructuring plan. The nature of independent administrative institutions is similar to “IRAs”, which requires relatively high professional competence and a safeguard against political interference. Although such independent agencies were part of the executive government, they could exercise their authority autonomously without being directed or supervised by other agencies (including superior agencies)¹.

3. To avoid overextending and to streamline its organization structure, the Government in Chinese Taipei takes control of the total number of central administrative agencies. Before 2010, there were five independent agencies, including the National Communications Commission (NCC), the Central Election Commission, Central Bank, the Financial Supervisory Commission (FSC) and the Fair Trade Commission. The independent statutory statuses of the FSC and Central Bank were changed under the 2010 bureaucratic restructuring plan². Currently, there are ten ministries, six commissions and three independent agencies.

¹ Article 3 of the Basic Code defines independent agency” as “a commission-type collegial organization that exercises its power and functions independently without the supervision of other agencies, and operates autonomously unless otherwise stipulated.”

² Article 9 of the Organizational Act of the Executive Yuan provides that “The Executive Yuan establishes the independent administrative institutions equivalent to the second-level agencies of the Central Government:(1) Central Election Commission;(2) Fair Trade Commission; and (3) National Communications Commission.”

Table 1. Sector-specific regulators in Chinese Taipei

Sector	Service Provider	Regulator	Regulated Matter(s)
Water	Taiwater	Water Resource Agency, MoEA	Determination of water tariffs
Electric Power	Taipower	Bureau of Energy, MoEA	License grants and determination of electricity tariffs
Petroleum	CPC Corporation, Formosa Petrochemical Corporation		Pre-notification of petroleum prices
Natural Gas	A single provider in each designated area		Adoption of regional monopolistic management and determination of price tariffs
Bus	Bus operators	Directorate General of Highway, MoTC	Determination of bus routes and fares
Taxi	Taxi companies and independent taxi drivers		Determination of fare rates and operating areas
Maritime Transport	Vessel carriers	Maritime and Port Bureau, MoTC	License grants, determination of fare rates, and pre-notification of maritime routes
Air Transport	Air transport operators	Civil Aeronautics Administration, MoTC	Determination of airfares, airline routes and flight schedules
Tourism	Travel agents	Tourism Bureau, MoTC	Registration and license grants
Financial services	Banks	Financial Supervisory Commission	Banking license, capital adequacy and coverage of banking services
Education	Schools	Ministry of Education	Determination of tuition fees
Telecommunication	Telecommunications companies	National Communications Commission	Spectrum auctions and telecommunication license
Broadcasting services	Broadcasting operators, program suppliers		License grant and operating areas

2. Mandates of independent agencies

4. The Organic Act of each independent agency in Chinese Taipei explicitly sets out its establishment purposes and mandates. For example, the “Organic Act Governing the Establishment of the FSC”, which retained its independent status remained until 2010³, states that the FSC is responsible for development, supervision, regulation, and examination of financial markets and financial service business with the aims of promoting sound business management at financial institutions, maintain financial stability, and facilitate the development of financial markets⁴.

5. Mandates of an independent regulator are not only stipulated in its Organic Act. Sometimes the independent regulator also carries out missions to protect constitutional

³ When the FSC established on 1 July 2004, it was a second-level independent agency. Its independent statutory status was altered by following structural reforms of the central government in 2010. However, the mandates and missions of the FSC remain unchanged. To the extent that applicable laws permit, the FSC can exercise its power independently on financial supervisory matters irrelevant to policy making to ensure its independency and professionalism.

⁴ Article 1 of the Organic Act Governing the Establishment of the Financial Supervisory Commission states that “The Executive Yuan hereby establishes the Financial Supervisory Commission to promote sound business management at financial institutions, maintain financial stability, and facilitate the development of financial markets.” Paragraph 1, Article 2 of the same Act states that “The FSC shall be the competent authority for development, supervision, regulation, and examination of financial markets and financial service enterprises.”

rights. An interpretation delivered by the Constitutional Court⁵ acknowledged that independency of the NCC was to help the expression and distribution of diversified opinions in society and achievement of public supervision⁶.

3. Sector-specific regulatory control

6. To implement mandates stipulated by organic laws, regulatory agencies manage and supervise areas of oversight through various regulations and policies. The consequences of breaches of these statutory regulations are different from breaches of internal regulations developed by industries themselves. While the Bankers Association develops its own self-regulatory regime, a disciplinary action for a member in violation of these internal regulations will be taken on the basis of at least two-thirds of commissioners present at the disciplinary commission meeting, where more than half of them reach a consensus. Given that commissioners are representatives of banks, it is questionable whether they can make an independent and impartial decision. Furthermore, the Association only issues non-binding warning letters to first-time violators. In contrast, a bank in violation of applicable laws and regulations may be subject to the FSC's investigation and administrative penalties. Such a breach may also impact on extension or renewal of its banking license.

7. Considering the limited effect of self-regulation and self-discipline on individual businesses, Chinese Taipei intends to govern industry practices through specified sector-specific regulators or independent regulators in order to implement industry policies, and monitor and investigate any conduct that may raise concerns. In this regard, these regulators are required to have comprehensive understanding of industries, business practices, technology development and future trends. To facilitate this, individual firms in their related industries may be obligated to submit industry information to keep regulators informed of the latest updates on industry developments.

8. The NCC is the independent regulator of the cable TV industry. With substantial fixed costs (i.e. server rooms, cables and equipment), this industry has inherent characteristics of a natural monopoly, which may easily result in market failure. Therefore, the NCC pays close attention to the market power of respective cable TV operators and market competition. In practice, the number of household subscriptions in each designated area is used to assess market power of a cable TV operator. Cable TV operators are required

⁵ Constitutional Court, Judicial Yuan is the highest judicial organ set up under the Constitution in Chinese Taipei. The power of the Justices consists of providing rulings on the following four categories of cases: (1) Interpretation of the Constitution; (2) Uniform Interpretation of Statutes and Regulations; (3) Impeachment of the President and the Vice President of the Republic of China; and (4) Declaring the dissolution of a political party violating the Constitution.

⁶ Interpretation No. 613 of the Constitutional Court: "... if the lawmakers intend to make the NCC, which is in charge of the supervision and management of communications, an independent agency that may exercise its functions and duties independently pursuant to the law, thus removing it from the hierarchical administrative system of command and supervision while giving it more autonomy to make independent decisions based on its expertise, it should be considered to be consistent with the constitutional intent of protecting the freedom of communications in that it is conducive to the elimination of any potential political or inappropriate interference from superior agencies and political parties, thus ensuring the expression and distribution of diversified opinions of the society and serving the purposes of public supervision."

to submit the number of household subscriptions quarterly under Article 24 of the Cable Radio and Television Act⁷. By doing so, the NCC can monitor market competition and changes on market power of respective operators to more effectively prevent market failure.

4. Responses to innovative development

9. Theoretically, independence without political interference and industry expertise of independent regulators can enable them to respond to fast-changing regulated industries in a timely manner and develop more tailored-made regulations and policies. However, in Chinese Taipei, whether a regulator is independent or not does not seem particularly relevant to adaptive governance of industry innovation.

10. As noted above, the NCC is the independent regulator of telecommunications. Considering the development of 5G technology and its features, the NCC took a number of active actions to review and amend relevant telecommunication regulations to accommodate this latest cellular network technology into the current governance regime. For example, the winning bidder of 5G spectrum can share it in part with other bidders with the NCC's approval to improve spectrum efficiency. Another sector facing innovative technologies is the financial industry. Although the FSC was integrated into the executive body in 2012, the FSC was able to rapidly amend relevant regulations in response to emerging online-only banks along with innovative transaction models and identity verification. The FSC set out a framework containing basic rules, including: "prohibition of merging with physical banks", "separation between industry and financial sectors" and "separation between financial businesses". The FSC also lowered the entry requirements of online-only banks accordingly. Shareholders of an online-only bank are not required to be financial related businesses. An online-only bank may qualify to apply for a banking license if 25 percent of its shares are held by a financial business. The FSC has recently issued three licenses to online-only banking service providers.

11. These two examples show that the NCC, an independent regulator, is able to take prompt actions to deal with the development of 5G at its own professional and independent discretion. Likewise, the FSC is also well equipped with its professional capability to face challenges and impacts resulting from innovative technologies, even though the FSC is a sector-specific regulatory agency rather than an independent regulator.

5. Pro-competitive regulations and competition policies

12. The competition law of Chinese Taipei, the Fair Trade Act (FTA), was promulgated in 1991, and Chinese Taipei Fair Trade Commission (FTC) was subsequently established the following year. FTC is a collegial agency with 7 commissioners to enforce the FTA. The FTA covers anti-competitive conduct (abuse of dominance, merger notification and cartels) and unfair competition conduct. As the FTA generally applies to businesses in all sectors, the FTC has paid close attention to business practices in either regulated or non-regulated industries, which may have an impact on market competition. The FTC has

⁷ Paragraph 3, Article 24 of the Cable Radio and Television Act states that "the System operators shall report the number of their subscribers for the previous three months in January, April, July, and October of each year to the central regulatory agency."

initiated various competition advocacy programs to encourage sector-specific regulatory agencies (including independent regulators) to incorporate competition policy into industry policies for the purpose of effectively promoting competition and development in industries.

13. In 1996 the FTC set up a “Deregulation / Promotion of Competition Task Force”, to identify twelve industries⁸ and negotiate with relevant regulatory agencies to facilitate deregulation. In the process of investigations on competition cases, the FTC may also consult with sector-specific regulators if it is necessary. Their opinions may be used to facilitate the FTC’s determination on whether an enterprise has violated the FTA or not. Sector-specific regulatory agencies may also seek the FTC’s comments on competition related matters in the industry under their oversight, and invite the FTC to discussions on amendments that may have an influence on market competition.

14. Public utilities in Chinese Taipei are mostly conferred exclusive rights to operate in a given area, and their service charges are subject to applicable laws and regulations and pre-approval of regulatory agencies. With the wave of enhancing market openness, the electricity generation market has been gradually opening to private operators⁹ along with a proposal for a “trading market for electric power”¹⁰, which is designed to facilitate the exchange of electricity between generators and retailers.

15. In the case of cable TV, the previous industrial policy aimed to control the number of licenses and directly impose regulations on licensed operators. In 1993, the Government Information Office (GIO) set up 51 service areas, or zones, after considering natural environment, delineation of administrative regions, population density and economic conditions. Each designated area allowed no more than five cable TV operators providing services to customers, and a cable TV operator could only operate within its designated operating area. The GIO planned to maintain competition to some extent in each designated area, but also encouraged mergers within operating area to avoid duplicate investment and idle resources. Following this industrial policy, most of operating area were monopolized by a single operator, or were dominated by two operators.

16. In 2006, these and other GIO responsibilities were to be transferred to the NCC. In the meantime, the FTC continued to have discussions with the NCC on the openness of relevant markets and how to promote competition by integrating competition policy into industrial policy. In 2012, the NCC decided to reclassify the operating areas down from 51 to 22, and allow operators to provide services across different areas. It also removed certain barriers to facilitate market entry of newly established operators. Since that time competition in the cable TV industry has been more intense with a growing number of new entrants and operators providing services in multiple areas.

⁸ The identified industries included state-owned consumers cooperatives, cable TV industries, telecommunications, government procurement of freight services, warehouses of export processing zones, electronic information related to securities trading, wholesale markets regarding distant water fisheries, salt, petroleum products, liquefied petroleum gas, customs clearance information and digital system of telephone exchange.

⁹ The electricity industry covers the generation, transmission, distribution and sales of electric power. The generation function now can be carried out by private operators. Except for renewable power, electric power generated by private operators is required to be sold to the state-owned company (Taiwan Power Company) for further distribution, transmission and resale.

¹⁰ A trading market for electric power is planned to be ready in 2024.

17. While a number of anti-competitive practices (such as predatory pricing, abuse of dominance or price discrimination) were observed, potentially as a result from an increase in the level of competition, it is worth noting that the price decreased significantly in highly competitive markets, and operators provided verified value-added services to compete for consumers. For example, a 24-hour monitoring service for the safety of children and the elderly.

6. Coordination and cooperation between independent regulators and the competition agency

18. To coordinate competition law and industrial regulations in the case where sector-specific agencies are planning to introduce competition policy into regulated industries, or where competition law and industrial regulations concurrently apply, the FTA expressly states that the competition law will apply to any competition related practices, provided that other laws conflict with the legislative purposes of the FTA¹¹. Furthermore, the FTC can consult with relevant government agencies when sector-specific regulators overlap in jurisdiction with the competition agency in the process of implementing industrial policies¹².

19. The FTC issued the “Operational Guidance on Coordination between the Fair Trade Commission and other administrative agencies” for internal use. The Guidance lists key factors for the FTC to determine whether to intervene and the extent of any intervention: 1) the level of scrutiny required by industrial laws and regulations; 2) whether industrial laws and regulations contain competition related provisions; 3) the level of impacts on public interest; 4) resources and tools available for regulators¹³. The Guidance also sets out the following principles applying to the circumstance where other government agencies draft or amend industrial laws or regulations that relate to market competition or issues that concurrently apply to the FTA¹⁴:

1. Where the specific law or regulation is applied to a given industry, and its level of scrutiny is higher than competition law, the common principle is that general laws defer to specific laws. The specific industrial law or regulation has precedence over the FTA.
2. Where administrative penalties for breaches of the industrial law or regulation are more severe than those for violation of the FTA, the common principle is that the law with the most severe penalty applies.

¹¹ Article 46 of the FTA provides that “The Act has precedence over other laws with regards to the governance of any enterprise’s conduct in respect of competition. However, this stipulation shall not be applied to where other laws provide relevant provisions that do not conflict with the legislative purposes of this Act.”

¹² Paragraph 2, Article 6 of the FTA provides that “For any matter provided for in this Act that involves the authorities of any other ministries or commissions, the competent authority may consult with such other ministries or commissions to deal therewith.”

¹³ Point 2, the “Operational Guidance on Coordination between the Fair Trade Commission and other administrative agencies”

¹⁴ Point 4, the “Operational Guidance on Coordination between the Fair Trade Commission and other administrative agencies”

3. Where administrative penalties for breaches of the industrial law are less severe than those for violation of the FTA, it has precedence over the FTA due to the fact that the industrial law is considered as a “special law”.

20. The 2016 amendments to the Cable Radio and Television Act and the Satellite Broadcasting Act serve as clear examples that have concurrent application with the FTA. These two laws incorporate competition-enhancement provisions to prohibit illegal discrimination in the cable TV industry and satellite television industry¹⁵. The FTA has a similar provision¹⁶. The concurrent application leads to an overlapping jurisdiction between the NCC (independent regulator of telecommunications and broadcasting) and FTC (competition agency). To resolve potential conflicts over matters and promote legal compliance of relevant businesses, the FTC organized consultation meetings with the NCC and both agencies reached conclusions to allocate their responsibilities and set out general rules of respective jurisdictions.

21. As a result, the FTC has two approaches to address overlapping jurisdictions with other regulatory agencies and solve conflicts between the FTA and industrial laws – Articles 46 and 6 of the FTA. Through consultation meetings, the FTC can diminish overlapping issues and avoid unregulated “grey area”, where two government agencies may shirk their responsibilities due to a concurrent application of competition and industrial law.

7. Conclusions

22. Characteristics of independent regulators in Chinese Taipei, and their relationships with the competition authority are summarized as follows:

- Since the concept of independent administrative institutions was introduced by Chinese Taipei in 2002, they have been designed not only to be an agency with high levels of professionalism in independence from political interference, but also a forerunner to draw up industrial policies and lead future industrial development and innovation. The independent status of such institutions may infer structural protection of constitutional rights.
- The legal effects of breaches of industrial laws and regulations and self-regulations within industries are different. Regulators can impose penalties on any business failing to fulfill mandatory and legally binding obligations subject to industrial laws

¹⁵ Paragraph 1, Article 37 of the Cable Radio and Television Act states that “System operators shall set up fair, reasonable, and unbiased on / off shelf standards for satellite channel program provider, other type channel program provider, foreign satellite broadcasting business, and wireless television business, and implementations shall be carried out according to the said standards.” In addition, Paragraph 1, Article 25 of the Satellite Broadcasting Act stated that “A direct satellite broadcasting business and the branch office of a foreign satellite broadcasting business that operates direct satellite broadcasting business shall not treat satellite channel and program supply business and the branch office or agent of a foreign satellite channel supply business differently without justification.”

¹⁶ Article 20 of the FTA states that “No enterprise shall engage in any of the following acts that is likely to restrain competition: ... 2. treating another enterprise discriminatively without justification;...”

and regulations. In addition, compliance of industrial self-regulations cannot be used to grant an exemption under industrial laws or competition law.

- Both independent regulators and sector-specific regulatory agencies have high levels of professionalism and practical expertise to enable themselves to take appropriate action in response to innovative developments in industries. In recent years, the competition authority has continued to engage in competition advocacy and successfully work with independent regulators to form competition-oriented industrial policies.
- The FTC consults with relevant government agencies in the case of an overlapping jurisdiction over competition-related matters. If competition law and industrial laws concurrently apply, the FTA expressly states that the competition law will apply to any competition related practices unless otherwise specified in industrial laws and their legislative purposes do not conflict with the FTA.
- In practice, the FTC organizes coordination meetings to have discussions on respective jurisdictions with other sector-specific regulatory agencies. If it necessary, the FTC may seek opinions from sector-specific regulatory agencies and can take them into account in investigations and competition analysis.