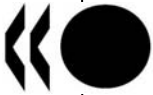


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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

-- 2005 --

*This report is submitted by the Delegation of Chinese Taipei to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 October 2006.*

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## **1. Changes to competition laws and policies, proposed or adopted**

### ***1.1 Summary of new legal provisions of competition law and related legislation***

1. The Fair Trade Act ( hereinafter the “Act”) and its related legislations, the Enforcement Rules to the Fair Trade Act, have not been revised since February 2002.

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

2. With the experience gained from handling past cases and the knowledge learned from foreign competition authorities, the Fair Trade Commission ( hereinafter the “FTC”) has issued/revised 9 guidelines and policy statements for particular industries or sectors to build a fair competition environment in response to requests from the public. These guidelines involve, for example, the aviation industry, gasoline industry and academic short-term tutorial schools, among others. The FTC:

- Issued “Guidelines on Merger Notification Proposed by the Civil Air Transport Enterprises”;
- Issued “Guidelines on Application of Joint-Purchasing Gasoline for Industrial Gasoline-Station”;
- Issued “Policy Statements on the Disclosure of Information by Academic Short-Term Tutorial Schools”;
- Issued “Guidelines for Handling Telemarketing Cases by the Fair Trade Commission”;
- Issued “Policy Statements on Use of Endorsements and Testimonials in Advertising”;
- Revised “Guidelines for the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement Copyright, Trademark, and Patent Right”;
- Revised “Guidelines on Cases Concerning Promotion by Means of Gifts and Prizes”;
- Revised “Guidelines on Investigations in Multi-level Sales Cases”; and
- Revised “Directions for Enterprises Filing for Mergers”.

3. In addition to the above 9 guidelines and policy statements, the FTC has applied 14 years of experience it has gained and benefited from thus far to further develop and refine its policy on fines; in this regard, the FTC has revised the table of setting administrative fines imposed on undertakings where an enterprise infringes Articles 41 or 42 of the Act. In order to ensure the transparency and impartiality of its decision, this item “FTC Table of Administrative Fines and Application Instructions” is posted, both in Chinese and English on the FTC website for the public reference.

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

4. The FTC has made plans to develop new legislation under the Act, as explained in the following, but it has not yet presented any draft amendments to the legislature.

### *1.3.1 Revising Relevant Restrictions on Joint R&D*

5. The FTC acknowledges that developing R&D projects jointly with competitors could enhance the incentives to create and more than that, it would reduce the costs of innovation. Thus, the FTC is now planning to revise the relevant provisions of the Act to ease the current restrictions on joint R&D projects amongst enterprises, but will do so by referring to the experiences of developed countries.

### *1.3.2 Introducing Leniency Programs*

6. Due to the difficulties it faces to obtain substantive evidence of cartels, the FTC is also planning to introduce leniency programs so that cartel members who first voluntarily reveal to the FTC or a judicial organisation such collusive agreements, and assist in the investigation, may receive immunity or reductions in their administrative and criminal liability.

### *1.3.3 Drafting the Multi-level Sales Regulation Act*

7. Since its enactment 14 years ago, the Act has regulated multi-level sales enterprises and authorised the FTC to enact the Supervisory Regulations Governing Multi-Level Sales. However, the current Act and Supervisory Regulations do not sufficiently regulate multi-level sales practices. To avoid serious disturbances caused by fraudulent practices involving illegal multi-level sales enterprises and to protect the interests of participants, the FTC is presently drafting the Multi-Level Sales Regulation Act that will integrate some provisions of the Act related to multi-level sales with the Supervisory Regulations Governing Multi-Level Sales.

### *1.3.4 Drafting the Merger Guidelines*

8. On December 29, 2005, the FTC issued its draft Merger Guidelines, the purpose of which is to streamline its current regime. The draft Merger Guidelines both screen notifications of mergers and shorten the waiting period for the approval of a merger without apparent competition concerns. This will assist in making the FTC's merger reviewing process more reasonable, transparent and predictable.

9. In 2006, the FTC will hold public hearings on the draft Merger Guidelines and in those hearings, the FTC will have the opportunity to consult with and listen to the opinions of scholars and experts from academia and business, alike. The FTC will then amend the draft Merger Guidelines, and it plans to release the final Merger Guidelines by the end of the year 2006.

## **2. Enforcement of competition laws and policies**

### ***2.1 Action against anti-competitive practices, including agreements and abuses of dominant positions***

#### *2.1.1 Summary of activities*

10. 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, but although 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 principle to other types of vertical restraints.

11. In 2005, the FTC processed 2,160 cases, comprising 1,834 cases received in 2005 and 326 cases carried over from the preceding year. By the end of 2005, 1,739 cases had been closed, and 421 cases were

pending. A total of 333 complaint cases applicable to the Act were concluded in 2005, and of these, 65 concerned anti-competitive practices. The FTC also initiated investigations into 1 anti-competitive case.

12. Decision rulings on complaints and FTC self-initiated investigations were undertaken in 141 cases in 2005, and only 15 of these fell into the category of anti-competitive practices.

### Decision Rulings by the FTC in 2005

Unit: Number of cases

	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2005	15	1	-	10	2	2

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 cases, including those with international implications *Cartels*

##### Cement Market

13. In November 2001, cement downstream manufacturers and industry associations filed a complaint with the FTC alleging the possibility of a cartel of domestic cement manufacturers which jointly raised the list prices of their products to prevent new suppliers from entering the relevant market.

14. After conducting four years of comprehensive investigation and using a new formal hearing process pursuant to the Administrative Procedure Act for the first time, the FTC concluded that 21 cement enterprises, that is, 11 cement manufacturers and 10 cement silo holders or distributors, had reached an industry agreement to fix prices, divide the market, limit capacity and discourage imports, thus violating the Act.

15. The background of this case involved an international cement cartel formed by international cement groups after the 1997 Asian financial crisis. With a sharp decline in cement consumption in southeast Asia, the surplus supply and low price of international cement products influenced the market of that area and it produced significant effects in some countries. In 1999, several international cement groups, including Cemex (based in Mexico), entered the Philippine cement market in pursuit of merger opportunities with local cement manufacturers.

16. In 2000, Cemex proposed mergers with Taiwan Cement Co. and Asia Cement Co. in Chinese Taipei and terminated their exports to the Philippine cement market. Rejected by Taiwan Cement Co. and Asia Cement Co., Cemex turned to other Chinese Taipei domestic cement importers in search of cooperation. After its successful entry into the Chinese Taipei market, Cemex slashed the market price of cement from NT\$1,900 to NT\$1,100 per metric ton, and it then acquired the "silos" located in Keelung and Taichung as outposts to strengthen its competitive edge within Taiwan market. After another acquisition of a silo in Taichung, Cemex aggressively sought to merge with another silo in Kaohsiung. As a result, it has affected Chinese Taipei cement market and has been increasing its market share by means of takeover or merger.

17. Based on the FTC's ongoing investigation, it found that Chinese Taipei's cement manufacturers had filed an anti-dumping case against South Korea and the Philippines in June 2001, and the Philippine manufacturers retaliated against manufacturers in Chinese Taipei and Japan. Local cement manufacturers

reached an agreement to conduct anti-competitive practices in order to dominate the market and increase the price of domestic cement. The manufacturers' practices included the following:

- the domestic manufacturers reached an agreement to set up a joint venture to acquire the silo of harbour to prevent the international cement groups from establishing domestic marketing channels;
- in order to reduce price competition resulting from any oversupply of cement, cement manufacturers negotiated the retreat of some enterprises from the market;
- the international cartel and local manufacturers reached an agreement to allocate the marketplace among themselves, to stay out of each other's territories, and to use a counterpart's silo to keep foreign enterprises out of the market;
- domestic cement manufacturers and importers reached an agreement to sell domestic cement to each other instead of importing from other countries at a lower price so as to restrict market competition and facilitate the joint increase of the cement prices;
- by reducing their production capacity and the quantity supplied, shortening the effective term of order, and fixing their terminal selling price, cement suppliers jointly increased the price of cement substantially from NT\$1,300 to the present NT\$2,250 per metric ton;
- the cement manufacturers in southern Taiwan who supplied bagged cement had individually invited their cement distributors to have a meeting and concurrently requested that they raise the price of bagged cement; and
- viewing that slag (the substitute product of cement) had severely affected the sales of cement, domestic cement enterprises had engaged in cartels by means of exchanging related information or coming to a form of mutual understanding with steel enterprises in Japan to reduce the annual exporting volume of slag to Chinese Taipei.

18. The FTC further noted that the volume of imported cement had gradually been reduced after 2001 and that the production capacity utilisation rate of rotary kilns had also been manipulated to a lower degree. It was also noted that while the production capacity of cement is far higher than market demand, its production cost has remained unchanged, and the domestic price has been getting higher and higher in recent years. The anti-competitive practices and agreements constitute economic infringements designed to maximise the profits of the participating enterprises. The harmful effects on the markets and consumers are particularly serious in the cement sector since they are passed on to the construction and housing sector and to the real-estate market in general.

19. In its decision, the FTC issued a cease-and-desist order to all cartel members and imposed administrative fines ranging from NT\$5 to NT\$18 million against 21 cement enterprises for their anti-competitive practices, in accordance with their business scale, their market position, the undue profits they received, the duration of the acts which are deemed harmful to market order, the number of their past concerted actions, and their degree of co-operation during the investigations. However, the ceiling on the administrative fines for each violator per offence, as stipulated in the Act, is NT\$25 million; therefore, the total amount of the fines was only NT\$210 million.

20. In order to build a competitive cement market at home and abroad, the FTC appealed that the competition authorities in each country and the international organisations concerned should scrutinise the

emerging problems of the international cement cartel and co-operate with each other to crack down on these illegal infringements.

#### Abuse of Dominant Market Position

##### Cargo Clearance Information Transmission Network Market

21. In 1990, the Ministry of Finance established the Cargo Clearance Automation Division to set the Electronic Data Interchange (EDI) standard to facilitate cargo clearance procedures. In 1996, the Division was then reformed as Tradevan Information Services Co. (“Tradevan”), and it monopolised the cargo clearance information transmission network market.

22. Later in 2002, a new entrant Universal EC Inc. (“Universal”) attempted to enter the market and requested access to Tradevan’s network. Numerous complaints were soon filed with the FTC that included Tradevan’s refusal to provide Universal with the EDI standard, its refusal to interconnect with most of Universal’s services, its setting of access fees high enough to prevent Universal from entering the market, its unreasonably disconnecting the interconnection from time to time and its deployment of an unlawful fidelity discount scheme.

23. The FTC found that Tradevan’s trading counterparts included nearly 3,000 major cargo transportation enterprises. On the other hand, the trading counterparts of Universal were mostly customs brokers with small economies of scale. The services of the cargo clearance information transmission network have to be simultaneously accessed by custom officials, custom brokers, cargo transportation enterprises, and financial institutions so as to achieve the network effects. Thus, the users of the cargo clearance information transmission network tend to participate in the network on a larger scale and with numerous customers. The incumbent Tradevan in the market with the network effect had the first mover advantage compared with the new entrant Universal and was able to eliminate the competition. Thus, Tradevan was deemed a monopolistic enterprise, as set forth in Article 5 of the Act.

24. Tradevan offered different preferential plans to compete for customers from January to December 2003. It employed a lower price strategy to lure original users in the following way: Its program A offered a 20% discount off the original fee to the users access to Tradevan’s network during the promotional period; its program B offered a 40% fidelity discount off the original fee to the users only promised access to Tradevan’s network during the same period. However, Tradevan had the right to terminate its program B and collected the differences between the promotional price paid and the original fees as a penalty if the users failed to keep their promises.

25. Furthermore, Tradevan imposed penalties on those users who wished to switch access to the Universal network within one year after participating in its program B. The FTC considered that this fidelity discount scheme resulted in a cost increase when switching transaction partners and the incentive to gain access to the Universal network therefore decreased. In addition, over 80% of Tradevan’s users were prohibited from switching trading counterparts. Since Tradevan used such discounts to “lock in” customers, the trade opportunities of competitors were restricted. This fidelity discount was obviously anti-competitive and needed to be prohibited.

26. After the FTC reviewed the market structure, the network effect, interconnection conditions, and the pricing schemes of both sides, the FTC reached the conclusion in 2005 that the incumbent Tradevan had been misusing its market position by deploying a fidelity discount scheme to prevent market entry. Therefore, the FTC imposed an administrative fine NT\$ 1.5 million against Tradevan in accordance with Article 41 of the Act.

27. The FTC is the sole competent authority of the Act. The Act is the general competition law and can be applied to all sectors in Chinese Taipei. However, since the “Regulations Governing the Operating Approval of Cargo Clearance Information Transmission Network” was regulated by the Ministry of Finance, the FTC further recommended the Ministry of Finance to amend the aforesaid regulations in adding relevant obligations such as network connections, access fee regulation and opening up the EDI standard for improving fair competition in the cargo clearance information transmission network market.

## 2.2 *Mergers and acquisitions*

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

28. Mergers involving parties reaching a certain sales volume or a particular level of market share must give notification to and obtain no objection from the FTC. The FTC makes its decision based on whether the benefits to the economy as a whole will exceed the anti-competitive effects of the proposal.

### Notifications for Mergers

Unit: Number of cases

Year	Cases under Processing		Results of Processing				Cases Pending at Year-end
	Carried Over from 2004	Received in 2005	Total	Mergers not Prohibited	Mergers Prohibited	Termination of Review	
2005	3	54	54	34	-	20	3

### 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
2005	34	6	23	4	3	12

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.

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

29. In its first amendment in 1999, the new provision of the Act requires that the Act should 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.

30. The FTC 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.

31. In 2005, the FTC organised and participated in seminars and consultation meetings with other government authorities related to competition issues, as summarised in the following:

- participated in relevant meetings held by the Council of Agriculture regarding draft amendments to the Agricultural Products Market Transaction Act;
- participated in relevant meetings held by the Bureau of Energy, Ministry of Economic Affairs, concerning competition issues in the liquefied petroleum gas market;
- participated in relevant meetings held by the Financial Supervisory Commission regarding “Draft Guidelines on Handling Cash Card Practices by Financial Institutions” and “Draft Guidelines on Disclosure Trading Price Information in relation to Consumers Credit” to exchange views and share experiences;
- organised a meeting entitled “Regulation on the Setting of Premiums Standards for Business Fire Insurance by the Non-Life Insurance Association and Restraints on the Compensation Expenses Ceiling of Travel Liability Insurance” to consult with the Financial Supervisory Commission;
- organised a meeting entitled “Fresh Milk Market and the Fair Trade Act” at which the FTC consulted with the Council of Agriculture and related trading counterparts regarding the resolution of seasonal demand and supply in the fresh milk market;
- participated in relevant meetings organised by the Government Information Office on competition issues regarding false advertisements presented in the TV media and on the Internet.

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

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

4.1.1 *Annual budget: NT\$ 348.665 million in 2005 (approximately equivalent to U.S.D. 10.56 million in September 2006)*

Number of employees (person-years):

32. There were 215 employees at the end of the year 2005, including all staff in the operations and administrative departments and nine full-time Commissioners. The operations departments include the First Department, Second Department, Third Department, Department of Planning and the Department of Legal Affairs. Over 86% of employees have bachelor degrees with majors in different subjects at the university level.

33. Most staff members of the FTC have majored in law, economics or both. Among the total employees for 2005, 29.03% have a background in law, 19.82% have a background in economics, 7.83% have a background in business administration and 43.32% have a background in various other fields, such as information management, human resources and accounting.

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



Economists	43
Lawyers	62
Other professionals & support staff	110
<i>All staff combined</i>	<i>215</i>

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

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

35. All kinds of anti-competitive cases, including the misuse of dominant positions, merger reviews, cartels and various vertical restraints, are handled by the FTC's First and Second Departments which are responsible for cases related to the services and agricultural sectors and the manufacturing sectors, respectively. There are 28 staff members in the First Department and 27 in the Second Department.

##### *4.2.2 Advocacy efforts*

36. In 2005, 12 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 are case-oriented, almost every department staff member played an active role in outreach activities.

##### *4.2.3 Period covered by the above information:*

37. January 2005 through to December 2005.

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

38. The following are the tentative translations of the titles of studies carried out by the FTC in 2005. None of them are available in English.

##### Commissioned studies:

1. Commentary on the Fair Trade Act, Vol. 3
2. Regulations Governing the Transportation Industry under the Fair Trade Act

##### Staff reports:

1. Research on Restrictive Competition Practices in the Domestic Cement Market
2. Research on Openness in and Regulation on the Direct Sales Market in China
3. Regulations and Measures on Cartel Practices in the Era of Globalisation
4. Reasonableness of Additional Fees Charged by Distribution Businesses from the Perspective of Competition Law