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COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Chinese Taipei

-- 2022 --

This report is submitted by Chinese Taipei to the Competition Committee FOR INFORMATION.

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Chinese Taipei

1. Executive Summary

1. This report covers the activities of the Fair Trade Commission (FTC) of Chinese Taipei from January 1 to December 31, 2022.
2. The latest amendment to the Fair Trade Act (FTA) came into effect on June 14, 2017. There has been no change in the FTA since then.
3. Regarding competition enforcement, the FTC processed 2,222 cases, including 2,081 cases received in 2022 and 141 cases carried over from 2021. By the end of 2022, 2,068 cases had been closed and 154 cases were pending.
4. The FTC reviewed 84 merger cases in 2022, which included 10 carried over from 2021 and 74 received in 2022. By the end of 2022, the FTC had completed the reviewing of 69 cases, none of which was prohibited, and 15 were pending.
5. In 2022, the FTC participated in various consultation meetings with other government agencies related to competition issues and organized 58 seminars for students, consumers, business communities, and local governments in order to explain the FTA, particularly the leniency program and the prohibition against concerted actions.

2. Introduction

6. This report describes key competition law and policy developments in Chinese Taipei during 2022.

2.1. Competition law of Chinese Taipei

7. The Fair Trade Act (FTA) is the competition law of Chinese Taipei. The purpose of the FTA is to maintain trading order, protect consumers' interests, ensure free and fair competition, and promote economic stability and prosperity¹. The FTA covers regulations not only on restrictive business practices, including monopolies, mergers, concerted actions, and vertical restraints (RPM, boycotting, tie-ins and other restrictive business practices), but also on unfair trade practices, including false, untrue or misleading advertisements, the counterfeiting of commodities or trademarks, the improper offering of gifts or prizes, as well as damage to business reputation and other deceptive or obviously unfair conduct capable of affecting trading order.²

¹ Article 1 of the Fair Trade Act: "This Act is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity."

² In 2022, 77 cases of complaints fell into the category of unfair trade practices. The FTC also launched ex-officio investigations into 42 cases of unfair trade practices.

8. The FTA has been amended 8 times since it took effect in 1992. The 6th amendment enacted on February 4, 2015 was considered to be the widest in range, the largest in scale and the most influential in terms of legal reforms³.

2.2. Institutional design

9. The Fair Trade Commission (FTC)⁴ is Chinese Taipei's competition authority⁵. The FTC was established in 1992 and reformed in 2011 under the newly-enacted "Organic Act of the Fair Trade Commission." The FTC is an independent government entity at the ministerial level and is responsible for the enforcement of the FTA and the Multi-Level Marketing Supervision Act.

10. The FTC consists of seven full-time commissioners who are appointed by nomination by the premier and approved by the Legislative Yuan (the Congress) for a 4-year term and may be reappointed. When making the appointment, the premier shall designate one of the commissioners as the chairperson and another as the vice chairperson. The commissioner appointees must have knowledge and experience with regard to law, economics, finance, taxation, accounting, or management. All commissioners must be politically impartial, are not allowed to participate in political party activities during their terms of service, and must also perform their duties independently according to related laws. In particular, the terms of the seven commissioners are staggered, and four of them took office in February 2019.

11. The Commissioners' Meeting is the highest policy-making organ of the FTC and is charged with drafting fair trading policy, laws and regulations, and with investigating and handling various activities impeding competition, such as monopolies, mergers, concerted actions, and other restraints on competition or unfair trade practices by enterprises. Moreover, it is also responsible for developing policy, completing regulations as well as investigating cases concerned with multi-level marketing.

12. Provisions on exemption from following the petitioning procedure have been added to the FTA, which allows concerned parties to file for remedies with judicial agencies by adopting the administrative litigation procedures directly to respond to sanctions imposed by the FTC according to the FTA. Those provisions also highlight the status of the FTC as an independent agency.

3. Changes to competition laws and policies, proposed or adopted

3.1. Summary of revised legal provisions of competition law and related legislation

13. The FTC amended 8 guidelines and abolished 3 guidelines providing more transparent and standardized regulations in order to guide market trading order and efficiently cope with complicated economic affairs. The significant revisions and amendments are as follows:

14. (1) Amendments to:

³ Please refer to "Annual Report (2015) on Competition Policy Developments in Chinese Taipei" DAF/COMP/AR(2016)50).

⁴ Please refer to the FTC's website at <http://www.ftc.gov.tw/internet/english/index.aspx>.

⁵ The FTC is also the competent authority of the Multi-Level Marketing Supervision Act. Please refer to <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1297&docid=13426>.

- “Partial Amendments to the Enforcement Rules of the Fair Trade Act”;
 - “Criterion for Multi-level Marketing Enterprises Filing Reports for Record or Amendment”;
 - “Regulations Governing Multi-level Marketing Enterprises for setting up the Plan of Security Measures for the Personal Information Files and the Process Measures for the Personal Information after Termination of Business”;
 - “Fair Trade Commission Directions on Application for Access to Files and Documents”;
 - “Fair Trade Commission Directions on Oral Arguments in Cases”;
 - “Fair Trade Commission Directions on the Procedure of Public Hearings”;
 - “Fair Trade Commission Disposal Directions (Guidelines) on Handling Cases Governed by Article 21 of the Fair Trade Act ”; and
 - “Directions on Filings for Approval or Extension of Concerted Actions.”
15. (2) Abolition of:
- “Fair Trade Commission Disposal Directions (Guidelines) on Handling Promotional Advertisements”;
 - “Fair Trade Commission Disposal Directions (Policy Statements) on the Telecommunications Industry”; and
 - “Fair Trade Commission Disposal Directions (Guidelines) on the Sales Practices of Overseas Holiday Resort Member Cards (Membership).”

4. Enforcement of competition laws and policies

4.1. Action against anti-competitive practices, including agreements and abuses of dominant market positions

4.1.1. Summary of Activities

14. The FTA permits the existence of monopolies as long as they do not abuse their market power. Concerted actions are strictly forbidden by the FTA. However, while some exceptions are allowed for, these do require the FTC’s prior approval and its decision is based on the public interest. The FTA bans resale price maintenance in principle, but allows exceptions with justifiable reasons. For other types of vertical restraints, the FTA requires the FTC to apply the rule-of-reason standard.

15. In 2022, the FTC processed 2,222 cases, including 2,081 cases received in 2022 and 141 cases carried over from the preceding year. By the end of 2022, 2,068 cases had been closed, and 154 cases were pending. A total of 77 complaint cases applicable to the FTA were concluded in 2022 and, of these, 22 concerned anti-competitive practices.

16. Decision rulings on complaints and FTC ex-officio investigations were undertaken in relation to 117 cases in 2022, and only 7 of these fell into the category of anti-competitive practices.

Table 1. Decision Rulings by the FTC in 2022

Unit: Number of cases

Year	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2022	7	-	2	5	-	-

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

4.1.2. Description of significant cases, including those with international implications

Case 1: Household Air Conditioner Businesses Jointly Shorten the Warranty Period

17. The FTC decided at the 1,597th Commissioners' Meeting on May 5, 2022 that 15 domestic air conditioner businesses had violated Article 15 (1) of the FTA by getting together for meals to establish a mutual understanding to jointly reduce the warranty period. Therefore, the FTC imposed an administrative fine of NT\$2.5 million on each of Johnson Controls – Hitachi Air Conditioning Taiwan Co., Ltd., Panasonic Sales Taiwan Co., Ltd., Ho Tai Development Co., Ltd. and Ya-kuang Electric Appliance Co., Ltd.; NT\$800,000 on each of Sampo Corporation, Heran Co., Ltd. and Taiwan Sanyo Electric Co., Ltd.; NT\$200,000 on each of Taiwan Gree Co., Ltd., Mitsubishi Electric Taiwan Co., Ltd., Action Electronics Co., Ltd., Nexgen Mediatech Inc., Maxe Taiwan Co., Ltd., Sharp (Taiwan) Electronics Corporation, and New Widetech Industries Co., Ltd.; and NT\$100,000 on Yu Hwei Technology Co., Ltd. The fines totaled NT\$13.90 million.

18. A number of private citizens filed complaints that domestic air conditioner businesses had held meetings and decided to jointly reduce the household air conditioner warranty period. There were also discussions on the Internet saying that the air conditioner warranty period was about to become shorter. Therefore, the FTC launched an investigation. The findings revealed that the top three air conditioner businesses, namely, Hitachi, Panasonic and Daikin, had extended the household air conditioner warranty period from three years to seven years one after another starting in March 2019. Other lesser brands with smaller market shares followed suit in order to remain in competition as far as warranty conditions were concerned. However, at a professional peer dinner on November 26, 2019, air conditioner businesses discussed and exchanged ideas about the possibility of reducing the warranty period for household air conditioners and in the end 15 air conditioner businesses achieved a mutual understanding to shorten the warranty period to three years beginning on January 1, 2020. They also wrote down the content of the mutual understanding to make it a written document that was passed around for signature.

19. Household air conditioners were highly homogeneous and substitutable. Any air conditioner business reducing the warranty period alone would have risked losing its market. Hence, by achieving the mutual understanding to jointly shorten the warranty period, the businesses could protect their mutual interests. Since the warranty period was an important consideration when consumers shopped for air conditioners and the total market share of the air conditioner businesses involved was more than 90%, objectively speaking, the conduct could have affected the market supply-demand function. It was in violation of the regulation against concerted actions set forth in Paragraph 1 of Article 15 of the FTA.

20. The FTC would like to remind enterprises that mutual understandings regarding prices, production, trading counterparts, trading areas or agreements to restrict the business activities of one another established among businesses of the same trade and likely to affect the market supply-demand function are considered to be concerted actions. Whether the businesses actually execute the mutual understanding or not is irrelevant. When businesses of the same trade get together, they should avoid exchanging information about product prices, transaction conditions and so on in order not to violate the regulations against concerted actions set forth in the FTA.

Case 2: Six Dried Scallops Businesses Engaged in a Concerted Action

21. Before the Spring Festival, the prices of Lunar New Year food products escalated and dried scallops in particular became much more expensive. The FTC thought there was something suspicious and launched an investigation. During the 1597th Commissioners' Meeting on May 5, 2022, the FTC concluded that Che Sheng Trading Co., Ltd., Chun Che Trading Co., Ltd., Tou Hou Trading Co., Ltd. and Feng Che Trading Co., Ltd. (together hereinafter referred to as the Tou Hou Group) as well as Ly An Trade Co., Ltd. and Jin Chu Trading Co. Ltd. (together hereinafter referred to as the Ly An Group) had established a mutual understanding to jointly increase the prices of dried scallops. The practice complied with the description of a concerted action in Article 15 of the FTA. Therefore, the FTC imposed administrative fines on the two groups. The fines totaled NT\$5 million.

22. Dried scallops are one of the Lunar New Year food products favored by people in the country. Each year, the prices always go up before the Spring Festival. However, this year the FTC discovered that the price increase margins and time points seemed unusual. The FTC's investigation revealed that the dried scallops available in the market mainly came from Hokkaido, Japan. There were many importers, but the major ones were in fact all affiliated with two groups, the Ly An Group in the north and the Tou Hou Group in the south. The dried scallops imported by the two groups accounted for 70% of the total dried scallop imports. The FTC suspected that the price increases were the result of a mutual understanding and, therefore, launched an investigation.

23. The FTC did not suspend its law enforcement missions because of the holiday and spared no effort to collect evidence in the market. Initially, the two groups claimed that the import cost of dried scallops had gone up nearly 30% and they had no choice but to raise the prices. Nevertheless, the FTC obtained import data from the Customs Administration, Ministry of Finance, the details of the two groups' transactions with trading counterparts from the Fiscal Information Agency, Ministry of Finance, and business registration information from the Department of Commerce, Ministry of Economic Affairs and analyzed the percentages of sales to downstream businesses and the price spread. At the same time, the FTC also interviewed competitors and downstream businesses and sorted out and analyzed the purchase prices and quantities of scallops of various sizes. The findings indicated that the purchase costs of the two groups were different. There was no reason for the consistent price increases.

24. In addition, the FTC also found out that the two groups had been dried scallop importers for many years. They used LINE to exchange market and sensitive price-related information to achieve a mutual understanding on price increases. In addition, the price increases were synchronized and consistent. Apparently, it was a concerted action that resulted from the mutual understanding. Hence, the FTC decided during the Commissioners' Meeting that the six companies of the Tou Hou Group and Ly An Group had engaged in a concerted action as described in Article 15 of the FTA by establishing the mutual understanding to raise dried scallop prices. The conduct was able to affect the supply-demand function in the dried scallop market. Therefore, the FTC imposed an

administrative fine of NT\$1 million on each of the Tou Hou Group members, namely, Che Sheng Trading Co., Ltd., Chun Che Trading Co., Ltd., Tou Hou Trading Co., Ltd. and Feng Che Trading Co., Ltd. as well as NT\$500,000 on each of the Ly An Group Members, that is, Ly An Trade Co. Ltd. and Jin Chu Trading Co.

25. While businesses may become familiar with one another after being in the same profession for a long time, they are advised not to exchange important and sensitive information with regard to price and quantity or to “test” the reaction of competitors in order not to violate the regulation against concerted actions in the FTA. The FTC will continue to keep a close watch on the market and take immediate action if any anomaly occurs. The determination of the FTC to guard market competition and order is not to be challenged.

Case 3: Imposition of Price Restrictions on Distributors by a Healthcare Foods Manufacturer

26. Company A, a healthcare foods manufacturer, marketed its products through around one hundred medical supply stores and pharmacies. The FTC was informed by Company B that Company A requested that it sign a product supply agreement and sell the latter’s products in its stores and on its online platforms in accordance with the price list in the agreement. Company B thought the practice was in violation of the regulation against the imposition of resale price restrictions.

27. By imposing resale price restrictions, suppliers make it impossible for distributors to determine their prices according to the competition they face and their cost structures. Such conduct weakens price competition among distribution channels marketing products of the same brand or different retailers. For this reason, without justifiable causes, businesses may not impose any resale price restrictions. To determine whether such a practice is against the law, besides taking into account the market power of the business imposing such restrictions, it is also necessary to assess whether the conduct can lead to substantial restraints.

28. The FTC’s investigation showed that the product supply agreement that Company A signed with distributors included a list of suggested prices, an agreement on refraining from engaging in price competition and a punishment mechanism. A number of distributors interviewed by the FTC over the phone said that they had not been forced to sell according to the price list, while Company B also confirmed that it had not sold the products according to the price list. Online searches performed by the FTC revealed that the prices posted by distributors for the healthcare food products in question on different shopping websites were inconsistent. It was hard to prove that Company A had actually imposed resale price restrictions. Meanwhile, according to the 2021 Almanac of the Food Industry, Company A did not account for a large share of the total value of the domestic health food product market. There were many health food product brands and the market was competitive. In addition, Company A had already deleted the clauses associated with resale price restrictions from the agreement during the period when the FTC’s investigation was in progress.

29. Based on the results of its investigation, the FTC found it difficult to consider that Company A had violated Paragraph 1 of Article 19 of the FTA. Nonetheless, since Company A had indeed previously included resale price restriction clauses and a punishment mechanism in the product supply agreement, the FTC sent a written notice to remind the company to abide by related regulations in the FTA in order not to break the law.

Case 4: Application for Extension of Joint Shipment of Soy Beans Approved

30. The FTC decided at the 1,584th Commissioners' Meeting on January 26, 2022 to approve to extend the joint shipment of 5 soy bean imports. The FTC cited Article 15(1) as well as Article 16(2) of the FTA and approved the concerted application by TTET Union Corp., Tai Hwa Oil Industrial Co., Ltd., Great Wall Enterprise Co., Ltd., Mei Lan Lei Co., Ltd. and Ever Light Oil Co., Ltd., thereby giving them the permission to extend their joint shipment for 5 years until March 12, 2027.

31. TTET Union Corp. and the 4 other companies had applied earlier for exempted concerted action approval to bring in soy bean imports through joint shipments. On February 17, 2017, the FTC issued the Letter Kung Lian Tzu No.106001 to approve the application with undertakings attached. As the previous approval was about to expire, TETT Union Corp. and the four other companies acted according to Article 16(2) of the FTA and applied for permission to extend their joint shipment.

32. The FTC decided that the joint shipment of soy beans could enhance the bargaining power of the participants and lower transportation costs. Moreover, the volume of soy beans imported by the participants (hereinafter referred to as "the southern group") did not account for a large percentage of total soy bean imports, and they still had to face competition from other joint shipment groups and importers. Therefore, the southern group had the incentive to reflect the cost saving in their selling prices. In turn, the consumers would share the advantage of the economic benefits. Meanwhile, the competent authority for the industry of concern also indicated that joint shipments could increase the negotiating power of participating businesses for better international shipping fares and ensure a steady supply to meet the continuous demand of the downstream industrial chain as well as urgent or sporadic needs in the domestic market.

33. The FTC concluded that the concerted action to make joint shipments would benefit the overall economy and public interest and resulted in its decision to approve the extension application with the following undertakings attached:

- The applicants may act according to the principle of autonomy of private law and establish the guideline and regulations regarding what the participants should do to facilitate the operations of joint shipments. However, the applicants shall not make use of this permission or related regulations to engage in any other concerted actions or refuse to allow other enterprises to join the concerted action without justifiable cause. Any changes made by the members of the concerted action must be reported to the FTC for reference.
- The applicants shall not make use of this permission or related regulations to restrict any one of the applicants' freedom to decide the quantity of imports to be brought in or to bring in imports independently.
- The applicants are required to report to the FTC on a quarterly basis regarding the implementation of the joint shipment operations, including the registered purchased quantity of each importer, the actual quantity purchased, the shipment date and purchase prices, the sailing date and date of arrival at the domestic harbor, the quantity of imports of each applicant each month, the quantity processed, the sales, and the inventory.

4.2. Mergers and acquisitions

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

34. Mergers involving parties reaching a certain turnover 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.

Table 2. Notifications for Mergers

Unit: Number of cases

Year	Cases under Processing			Results of Processing				Cases Pending at Year-end
	Carried over from 2021	Received in 2022	Total	Mergers not Prohibited	Mergers Prohibited	Termination of Review	Combined into other Cases	
2022	10	74	84	22	-	47	-	15

Table 3. Statistics on Enterprise Mergers

Unit: Number of cases

Year	Cases not Prohibited	Type of Merger (Article 10, Paragraph 1 of the Fair Trade Act)				
		Subparagraph 1	Subparagraph 2	Subparagraph 3	Subparagraph 4	Subparagraph 5
2022	22	-	21	2	8	19

Note: More than one type of merger may be applicable in some cases. Therefore, the total number of cases under different types of mergers exceeds the total number of approved cases.

4.2.2 Summary of significant cases

Case 1: Merger of PX Mart and RT-Mart Conditionally not Prohibited

35. The FTC decided at the 1,607th Commissioners' Meeting on July 13, 2022 to approve the high-profile PX Mart and RT-Mart merger in which the former would acquire 95.97% of the shares of the latter. However, certain undertakings were attached to ensure that the overall economic benefit after the merger would outweigh the disadvantages from the competition restraints.

36. Business mergers can lead to very important effects of management performance improvement, resource sharing and competitiveness enhancement. However, since mergers of large corporations can create negative impacts on market competition and arouse public concern, the FTC therefore has to look into such cases carefully. Considering that the merger between PX Mart and RT-Mart would have a major influence on consumers, suppliers and competitors, the FTC adopted a rigorous review procedure and invited trade associations to which the suppliers belonged, retail outlet operators, scholars and specialists as well as the consumer protection authorities to participate in discussions in order to obtain opinions from various sectors.

37. PX Mart thought the merger would create synergies of economies of scale and economies of scope to upgrade management efficiency, facilitate product deployment, reduce stock shortages and increase customer satisfaction. In addition, the company would remodel all of RT-Mart's existing retail outlets, install new equipment and improve the overall environment to offer better shopping experiences. The company also made a number of promises to enhance the overall economic benefit after the merger. Nevertheless, suppliers and the public had their doubts about whether the market would become overly concentrated, whether there would be price rises, and whether suppliers would be pushed into even more disadvantageous positions or even subjected to various new or increased additional charges.

38. The FTC did not prohibit the merger but, after a careful assessment, attached the following undertakings (see the appendix for the complete content) to eliminate doubts about competition restraints and ensure that the overall economic benefit would be greater than the disadvantages from competition restraints:

- PX Mart must fulfill its promises and may not increase prices at random, but causes not attributable to the merging parties, such as price increases as a result of changes in suppliers' cost structures, are not included.
- Within three years after the merger, PX Mart is to adhere to the pricing policy of maintaining consistent retail prices throughout the country and may lower prices in accordance with the competition in each region.
- After the merger, PX Mart may not randomly increase any additional charges imposed on any suppliers, but additional fee items derived from new services are excluded.
- Within three years after the merger, PX Mart may not collect slotting fees or new store sponsorships from its suppliers.
- Within three years after the merger, annual supply-marketing system changes and transaction condition revisions may not become more disadvantageous. If there are additional charges resulting from new services, suppliers must be given the liberty to choose and decide whether they would use such services and the imposition of such charges shall require the consent of the suppliers in advance.
- After the merger, the most favored customer clauses in the supply-marketing agreement and the implementation stipulations are to be deleted.
- Within three years after the merger, PX Mart is required to present reports on undertaking fulfillment and the achievements in terms of benefiting the overall economy to the FTC for reference before December 31 each year.

39. In the merger notification, PX Mart promised to make efforts to fulfill its corporate social responsibility, including stabilizing commodity prices, offering assistance to promote agricultural products, reinforcing services on offshore islands and in remote areas, and devoting itself to social welfare and emergency relief. The FTC hopes that the merger could achieve a win-win-win situation for PX Mart, consumers and the public.

Case 2: Joint Venture of Electronic Payment Operations not Prohibited

40. The FTC decided at the 1,565th Commissioners' Meeting on October 13, 2021 to cite Article 13 (1) of the FTA and approve the intended joint venture of FamilyMart Convenience Stores, E-Sun Commercial Bank and PI Mobile Technology Inc. to set up All Win Fintech Co., Ltd. to run electronic payment operations.

41. FamilyMart Convenience Stores, E.Sun Commercial Bank and PI Mobile Technology operated in different fields and respectively managed convenience store chain business, banking business and third-party payment business. However, each merging party provided mobile payment services. In addition, E.Sun Commercial Bank, the subsidiary of PI Mobile Technology Inc. and All Win Fintech Co., Ltd., the new company to be created, had all been approved by the Financial Supervisory Commission to run electronic payment business either as a sole operation or as a sideline. Therefore, the FTC evaluated the case from the angles of a horizontal merger and conglomerate merger.

42. As far as a horizontal merger was concerned, the content of the mobile payment services provided by and the market positioning of each merging party was not entirely the same. Competition in the relevant market to which each merging party belonged was fierce while there were also other powerful contenders. Consumers could easily change their trading counterparts. Hence, the merging parties would not have the ability to raise their product or service prices as a result of the merger. Meanwhile, the incentives for them to compete with one another would not be reduced either and the possibility and timeliness for new competitors to enter the mobile payment market also existed.

43. As for the conglomerate merger part, regulatory measures, technological progress and cross-industry development plans were unlikely to have any influence on the potential competition in the relevant markets. With regard to the purposes of the merging parties to create a joint venture to manage mobile payment operations, FamilyMart wanted to provide consumers with diverse and convenient payment services, whereas E.Sun Bank and PI mobile Technology intended to increase their cooperation with retail businesses. For this reason, the merging parties had no incentives to decrease or refuse cooperation with existing businesses in the relevant markets. Moreover, other competitors could also develop their mobile payment services or collaborate with other enterprises to cope with the merging parties. For this reason, the merger would not suddenly change the structure of the relevant markets and the original market status. On the contrary, it could have the positive effect of promoting competition in the mobile payment services market.

44. In addition, the FTC also made assessments in accordance with the user information and accumulated data involved in this case as well as digital competition issues such as the protection of personal information while taking into account the types and characteristics of user information and data that the merging parties could obtain through the merger as well as the market conditions. Competitors could collect such information from other sources or replace it with other information. Therefore, the FTC found it hard to consider that the user information and data that the merging parties could get hold of would bring them a competitive edge that other competitors could not duplicate. At the same time, the merger could not lead to the elimination of the competition pressure of the merging parties as far as the protection of personal information was concerned. In other words, it was not possible for competition to be weakened due to the merging parties' use of privacy protection as a pretext.

45. After reviewing the case, the FTC concluded that the merger would not result in significant competition restraints and the overall economic benefit would be greater than the disadvantages thereof incurred. The FTC thus decided to approve the merger by citing Article 13 (1) of the FTA.

Case 3: Merger between Medical Care Firms not Prohibited

46. The FTC decided at the 1,593rd Commissioners' Meeting on April 6, 2022 to cite Article 13(1) of the FTA and not prohibit the merger of Excelsior Medical Co., Ltd. (hereinafter referred to as "Excelsior Medical"), Excelsior Medical (Hong Kong) Co., Ltd.

(hereinafter referred to as “Excelsior HK”), British Cayman Islands-based Asia Renal Care, Ltd. (hereinafter referred to as “ARC”), British Virgin Islands-based Cardinal Medical Services Ltd. (hereinafter referred to as “Cardinal Medical Services”), Fresenius Medical Care Hong Kong Ltd. (hereinafter referred to “FMC HK”) and Hong Kong-based Nephrocare Ltd. (hereinafter referred to as “Nephrocare HK”).

47. Excelsior Medical intended to acquire about half of the shares of Cardinal Medical Services and Nephrocare HK from ARC and FMC HK, subsidiaries of German company Fresenius Medical Care AG & Co. KGaA (Fresenius Medical Care Group, hereinafter referred to as the “FME Group”) through its subsidiary Excelsior HK. Excelsior Medical would jointly manage the two companies with ARC and FMC HK. The condition met the filing threshold and, therefore, Excelsior Medical filed a pre-merger notification with the FTC.

48. Excelsior Medical, Cardinal Medical Services and Nephrocare HK were all suppliers of dialysis machines, artificial kidneys and other products associated with dialysis. Hence, there was horizontal overlapping in the operations of these three companies in the dialysis equipment market. Meanwhile, the FME Group was also the supplier of dialysis machines and artificial kidneys for Excelsior Medical. Therefore, the merger was both horizontal and vertical. Since Cardinal Medical Services and Nephrocare HK only sold products from their parent company, the FME Group, before and after the merger, Excelsior Medical would acquire less than half of their shares in the two companies and would not have the right to make adjustments to the distribution channels of either of them. Thus the merger would not lead to any changes in the domestic dialysis equipment market. Meanwhile, the downstream trading counterparts of dialysis equipment distributors were all medical institutions with a certain bargaining power and the increases in the market shares of the merging parties would be small after the merger. Hence the merging parties would not have the ability to raise the prices of dialysis equipment arbitrarily.

49. Moreover, the sales channels of the FME Group after the merger would remain the same as before. Although Excelsior Medical would acquire the shares of two subsidiaries of the FME Group, it would not be able to influence the management strategies of the FME Group. At the same time, the manufacturers of dialysis machines and artificial kidneys were all well-known international companies, and there were also other existing distributors in the market. For the above reasons, the merger would not restrict other dialysis equipment distributors and manufacturers from choosing their upstream and downstream trading counterparts.

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

50. In its first amendment in 1999, the new provision of the FTA required that the FTA not be applied to acts performed in accordance with other laws only if such other laws did not conflict with the legislative purpose of the FTA. This amendment thereby affirmed that the spirit and content of the FTA was the core of economic policy.

51. The FTC has completed a comprehensive review of all relevant laws and regulations since 2001 to minimize potential conflicts among laws, advocate free and fair competition, and 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 FTA and consult with relevant industry competent authorities to prevent related laws and regulations from impeding competition.

52. In 2022, the FTC organized and participated in various consultation meetings with other government authorities related to competition issues, as summarized in the following:

- Participated in the meeting on the “Recent Ready-Mixed-Concrete Price Fluctuation Response Measure Conference” held by the Public Construction Commission of the Executive Yuan to realize the reasons for price changes, as well as the feedback and recommendations from the Ministry of Economic Affairs, other competent authorities, and business operators.
- Participated in the 2nd meeting on the “Coordination Team for Co-Prosperty Development of Domestic Industry and Large Digital Platforms” held by the Executive Yuan and shared related views in practice.
- Participated in the meeting on “Issues Reflecting Domestic Steel Supply Insufficiency and Price Rising Conference” held by the Public Construction Commission of the Executive Yuan to realize business operators’ opinions.
- Participated in the meeting on the “Food Delivery Platforms Charging Platform Service Fees without Warning” hosted by the Executive Yuan’s Department of Consumer Protection.
- Participated in the meeting on the “Steel (Reinforcement Bar) for Public Construction” held by Vice President Shen of the Executive Yuan, and provided information on the recent cases that the association dealt with concerning the illegal joint behavior of the industry, and reminded the industry not to raise prices illegally.
- Participated in a hearing on the “Taiwan Mobile Co., Ltd.’s Report for Approval of its Merger with Taiwan Star Telecom Co., Ltd.” hosted by the National Communications Commission and provided the opinions of the expert witness.
- Participated in a hearing on the “Far EasTone Telecom Co., Ltd.’s Report for Approval of its Merger with Asia Pacific Telecom Co., Ltd.” hosted by the National Communications Commission and provided the opinions of the expert witness.
- Participated in the meeting on the “Research and Discussion Conference on the Need to Increase the Price of Ready-Mixed Concrete due to the Increase in Transportation Costs” held by the Public Construction Commission of the Executive Yuan, and learned about the relevant freight and price changes, the measures of the Ministry of Economic Affairs and other competent authorities, and feedback from the business operators.
- Participated in the meeting on the “Industrial Development and Market Competition Matters Related to the Report for Approval of Telecommunications Businesses Mergers.”
- Participated in meetings on the “International Maritime Transport Stability Working Group” hosted by the Maritime Port Bureau of the Ministry of Communications, and explained the views to the Bureau, the associations, and related companies, as well as reminded related companies to pay attention to avoid the violation of concerted actions under the FTA.
- Participated in meetings on the “Central Epidemic Command Center for Severe Specific Infectious Pneumonia,” and cooperated with relevant agencies according to the division of tasks assigned by the epidemic command center. Actively investigated illegal business operators that jointly gouged material prices during the epidemic period in order to effectively maintain the transaction order of epidemic prevention materials.

6. Resources of competition authorities

6.1. Resources overall (current numbers and change over previous year)

6.1.1. Annual budget

53. NT\$374.198 million in 2022 (approximately equivalent to US\$12.079 million in December 2022).

6.1.2. Number of employees (person-years):

54. There were 202 employees at the end of the year 2022, 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 Department of Legal Affairs. Over 99% of employees have bachelor degrees with majors in different subjects at the university level.

55. In terms of the educational background percentages, 17%, 51%, 4%, and 28% of the employees had majored in law and related fields, economics and related fields, both in law- and economics-related fields, and other related fields (including information management, statistics, and public administration), respectively.

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

Table 4. Structure of FTC Human Resources

Category	No. of employees
Lawyers	35
Economists	105
Lawyers & Economists	8
Other professionals & support staff	57
All staff combined	205

6.2. Human Resources (person-years) applied to:

6.2.1. Enforcement against anti-competitive practices and merger review

57. Apart from the Department of Fair Competition, which has 30 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.

58. 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 sector. There are 29 staff members in the Department of Service Industry Competition and 28 in the Department of Manufacturing Industry Competition.

59. There are 20 staff members in the Department of Legal Affairs, which is responsible for completing the competition law system, and mainly includes preparing and formulating the competition law and regulations and amendments thereof, handling administrative appeal cases, carrying out the execution of fines, handling the referral of

criminal offenders for prosecution, and studying and researching legal issues related to competition law.

6.2.2. Advocacy efforts

60. In 2022, 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.

61. The FTC participated in various consultation meetings with other government agencies related to competition issues and organized 58 seminars for students, customers, business communities, and local governments in order to explain the FTA, the leniency program and the prohibition against concerted actions.

6.3. Period covered by the above information:

62. January through December 2022.

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

63. The FTC finalized and released its “White Paper on Competition Policy in the Digital Economy” (White Paper) on December 20, 2022. The White Paper summarizes 14 competition issues in the digital economy and provides the FTC’s position and guiding principles of enforcement for enterprises’ reference. These issues include challenges to conventional market definition and assessment and analysis of market power, self-preferencing of platforms, tie-in sales, predatory pricing / inducement with low price, price discrimination, most favored nation clauses (MFNs), resale price maintenance (RPM), restrictions on online sales, data privacy and market competition, revenue sharing with news media, killer acquisition, algorithm, and false online advertising.

64. In addition, the White Paper also provides suggestions of possible regulatory amendments, such as to review the guidelines of market definition so as to adapt to the market features of digital economy, to revise guidelines of online advertising so as to incorporate new advertising issues emerged from advertorial marketing by internet celebrities, and to study whether to include and regulate both the collusions between horizontal enterprises and upstream / downstream enterprises as concerted actions under Article 14 of the FTA. Moreover, in the future, the FTC will progressively introduce information technology in the course of case analysis and improve its technological enforcement capability by employing digital tools. After accumulating considerable enforcement experience, the FTC may further promulgate guidelines on competition issues concerning digital economy.

65. The FTC studied and published reports on competition policy issues in 2022 with the following titles. All of them are only available in Chinese and only abstracts of them are provided in English:

- Research on the Role of Competition Law and Competition Policy in the Financial Industry
- Research on Competition Law and Issues of the Dairy Industry in Chinese Taipei
- Research on the Application and Improvement of the Competition Law Leniency Program Through the Case of Transnational Cartel Cases

- Research on Economic Analysis of a Multi-Sided Platform Business for Competition Law
- Research on the Competitive Analysis of Multinational Technology Companies in Major Digital Advertising Markets: Focusing on Advertising Resources
- Research on the Overview, Development and Competition Act Enforcement of the Digital Platform Industry in Chinese Taipei.