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Global Forum on Competition

CARTEL CASE STUDIES

Case submitted by Chinese Taipei

-- Session III --

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CONCERTED ACTIONS IN THE CABLE TV SECTOR

CHINESE TAIPEI

1. The Practice and Policy Concerned

1. In Chinese Taipei, the Government Information Office (hereinafter the GIO) is the competent authority for the cable television market and many related industries, including upstream cable television channel providers and downstream cable television broadcasting system operators. Article 27 of the Cable Television Act of 1993 stipulated that the number of cable television broadcasting system operators in the same service area shall be limited to five. The drawing up and modification of the boundaries for such service areas were publicly announced by the GIO after it had consulted with the Ministry of Transportation and Communications, and in 1994, the GIO announced that there would be 51 service areas nationwide.

2. In February 1999, with its name changed to the Cable Radio and Television Act, the former Cable Television Act was amended and went into effect. This revised law lifted the restrictions that had limited the number of cable television broadcasting system operators in the same service area to five. Even today, most of the existing 51 cable television service areas have only one, or perhaps two, cable television broadcasting system operators, which continues to substantiate an earlier claim that cable TV subscribers do not have many options in terms of cable TV broadcasting system operators. In addition, the revised Cable Radio and Television Act still stipulated that cable TV system operators can only operate (their businesses) in their respective service areas, as originally approved by the GIO.

3. Although price caps were set by the GIO, there has always been room for competing cable TV system operators to engage in price competition. The use of contracts, agreements, or other forms of mutual understanding by competing cable TV system operators to jointly decide on cable TV programming subscription fees has always been governed by the Fair Trade Act which prohibits concerted actions. This is the case even when the subscription fees set by cable TV system operators are below the price caps set by the GIO. Thus, if cable TV system operators were to engage in conspiracy practices in their service areas, it is well understood that such concerted actions would have the effect of limiting market competition, impeding the adjustment of subscription fees, and harming consumer benefits.

2. The Factual Context and the Competition Problem

4. Paragraph 1, Article 51 of the Cable Radio and Television Act states, "system operators shall report the subscription fees to the special municipal or county/city government within one month as of August 1 of each year. The fees shall be announced by the special municipal or county/city government after they have been approved according to the subscription fee standards set by the review committee." Besides that, Article 13 of the Provisional Measures Governing Cable TV Programming Broadcasting System states, "system operators shall report the next year's subscription fees to the GIO within one month as of July 1 of each year, and charge subscribers the subscription fees pursuant to the subscription fee standards approved by the GIO." Accordingly, based on the above Provisional Measures Governing Cable TV Programming Broadcasting System, in December 1998, the GIO formulated the "Standards on Subscription Fees for Cable TV Programming in 1999" to regulate the cable TV programming provided by cable TV system operators. It requires that the subscription fees charged by cable TV system operators be in complete compliance with the standards. Based on the standards, the GIO set the maximum allowable

monthly subscription fees within the range of NT\$541 to NT\$600. More specifically, if cable TV system operators provide at least 35 channel programming from among 50 popular channels which had been previously investigated by relevant institutions, then the system operators have the right to charge subscribers the maximum allowable subscriptions fees which range from NT\$541 to NT\$600.

5. Starting in January 1999, the Fair Trade Commission (hereinafter the FTC) was repeatedly receiving complaints that some cable TV system operators had greatly increased their subscription fees to NT\$600 per month at the beginning of that month; similarly, other cable TV system operators within the other area had allegedly raised their fees at the same time. The FTC therefore dispatched personnel to conduct questionnaire surveys and undertook investigations in the following cable TV service areas: Taipei city's Neihu and Chungshan districts, Keelung, Hsinchu, Taichung, and Kaohsiung County's Fengshan district. The scope of the investigations covered the alleged changes in the subscription fees, the factors taken into consideration for the increase in the subscription fees, the decision-making process involved and any changes in the cost structure of the relevant operators in 1998 and 1999. The detailed findings uncovered by the FTC, especially in Taipei city's Neihu and Chungshan districts, are discussed in the followings.

6. Cable TV system operators Hsin Yi Huan Le Corporation (H Corporation), Fu Shih Corporation (F Corporation), and Lung Chih Corporation (L Corporation) were operating their businesses in Neihu district, while Chin Pin Tao Corporation (CPT Corporation) and Chang Te Corporation (CT Corporation) were operating in Chungshan district, and all of them had originally used their own different methods to determine the subscription fees they collected on a monthly, semi-annual, or annual basis in 1998. These 1998 fees are shown in the following table.

Corporation	Monthly Fees	Semi-annual Fees	Annual Fees	Other
H	NT\$600	NT\$3,000	NT\$6,000	NT\$100-250 ¹
F	NT\$600	NT\$3,000	NT\$6,000	NT\$100-250 ¹
L	NT\$300	NT\$1,800	NT\$3,600	NT\$150 ¹
CPT	NT\$600	NT\$3,000	NT\$5,000	NT\$4,500 ²
CT	NT\$300	NT\$1,800	NT\$3,600	NT\$200-500 ¹

Note: 1: The monthly charges for each individual subscriber within the same residential building
2: The annual charges for each individual subscriber within the same residential building

7. However, regardless of the previous varying amounts of payment, in January 1999, the 5 cable TV system operators began to collect subscription fees at the uniform rate of NT\$600 per month, NT\$1,800 per quarter, NT\$3,300 for 6 months, and NT\$6,500 per year, and NT\$450 to NT\$500 per month for each individual subscriber within the same residential building. The detailed adjustments to the subscription fees are shown in the following table:

Corporation	Monthly Fees	Quarterly Fees	Semi-annual Fees	Annual Fees	Other
H	NT\$600	NT\$1,800	NT\$3,300	NT\$6,500	NT\$450-500 ¹
F	NT\$600	NT\$1,800	NT\$3,300	NT\$6,500	NT\$450-500 ¹
L	NT\$600	NT\$1,800	NT\$3,300	NT\$6,500	NT\$500 ¹
CPT	NT\$600	NT\$1,800	NT\$3,300	NT\$6,500	NT\$5,500 ²
CT	NT\$600	NT\$1,800	NT\$3,300	NT\$6,500	NT\$400-500 ¹

Note: 1: The monthly charges for each individual subscriber within the same residential building
2: The annual charges for each individual subscriber within the same residential building

8. As for the changes in the number of subscribers in Neihu district, L Corporation had approximately 5,000 subscribers in January 1998, but this increased six-fold to 31,000 by December of the same year. H and F Corporations had approximately 70,000 and 46,000 subscribers in January 1998, respectively, but these numbers decreased considerably to 60,000 and 40,000 by the end of that year. In Chungshan district, CT Corporation had approximately 10,000 subscribers in January 1998, but this more than tripled to 35,000 in January 1999. CPT Corporation had approximately 72,000 subscribers in January 1998, but this dropped to 61,000 in January 1999. In 1999, the market share of H, F, and L Corporations in the relevant market Taipei city's Neihu district was 46%, 30% and 23%, respectively. Furthermore, CPT, CT, and another company's market share in Chungshan district was 48%, 28%, and 24%, respectively. Since January 1999, however, there have been no apparent changes in terms of the number of subscribers or the market share that the cable TV system operators have had reason to be concerned about.

9. In 1998, the cable TV system operators individually conducted different promotional campaigns to compete for customers. L Corporation employed a lower price strategy to lure customers, and this resulted in some of the original subscribers to H and F Corporations transferring to L Corporation. In response, H and F Corporations conducted give-away promotional campaigns, such as "pay NTD\$3,000 for semi-annual fees, and get one electric fan for free", "pay NTD\$17,500 for semi-annual fees, and get one air conditioner for free", "pay semi-annual fees, and get the following six-month subscription at no charge", and so on. During the same period in Chungshan district, CT Corporation also conducted a lower price strategy to lure customers, and this resulted in some of the original subscribers to CPT Corporation transferring to CT Corporation. There is no question that the two companies were competing by conducting different promotional campaigns. CT Corporation provided a favourable price "NTD\$1,800 for annual fees". Against this, CPT Corporation competed by providing subscribers with give-away gifts, such as "new subscribers can get a free two-month subscription to the China Times newspaper", "original subscribers continuing the service for over a half year are offered one radio or a couple of pens free of charge". After January 1999, the previous price competition and promotional campaigns that had widely prevailed in 1998 had virtually disappeared. Aside from this, group subscribers in residential buildings were given even less room for price negotiation, with their subscription fees being raised shortly thereafter.

10. Until 1999, the cable TV system operators had been engaged in price competition, which unfortunately resulted in huge financial losses. H, F, and L Corporations encountered a financial loss of approximately NTD\$98 million, NTD\$53 million, and NTD\$68 million, respectively. CPT and CT Corporations suffered a financial loss of roughly NTD\$100 million and NTD\$43 million, respectively. The FTC investigation showed that different costs were incurred for the channel programming purchased by the different system operators. Yet, if we consider the changes in the number of subscribers, no significant differences were found in the average cost of the channel programming for each of the subscribers.

11. Also important to note, many of the same players were involved in different corporations at more-or-less the same time. To cite a few examples, some shareholders in L Corporation were also shareholders in H Corporation. One former manager of L Corporation was also a shareholder in H Corporation. A former general manager of CPT Corporation became general manager of CT Corporation. Moreover, two-thirds of all employees of CT Corporation were from CPT Corporation. The two companies' employees and sales representatives were in fact all acquainted with each other. Even worse, all 5 cable TV system operators admitted that certain major shareholders or managers of some cable TV system operators had attended various non-formal meetings to exchange greetings, have small talk, and in so doing, they reached the consensus that they should no longer compete by lowering prices starting in 1999; they subsequently disclosed information regarding adjustments to their subscription fees. This information was relayed to the decision-makers of the different cable operators and was then used as the basis for the increases in their subscription fees effective January 1999.

12. After completing its investigation, the FTC concluded that the degree of competitiveness in the market had definitively declined in Taipei city's Neihu and Chungshan districts since January 1999. H, F, and L Corporations had approximately 60,000, 40,000, and 31,000 subscribers at the end of December 1998, for a total of more than 130,000. And CPT and CT Corporations had approximately 61,000 and 35,000 subscribers in January 1999, for a total of 96,000. If the cable TV system operators had jointly decided on the subscription fees or coordinated their price increases, then in light of the large number of subscribers and the fact there were no other cable TV system operators in the said service areas, such alleged concerted actions to increase the subscription fees may very well have adversely influenced the function of supply and demand of cable TV programming in those particular markets; hence, this would have been harmful to consumers' benefits.

3. Actions Taken to Solve the Problem

13. Article 7 of the Fair Trade Act defines concerted actions as "by means of contract, agreement or any other form of mutual understanding", where the phrase "any other form of mutual understanding" means other than contract or agreement--that is, a meeting of minds whether legally binding or not which would, in effect, lead to joint actions. "Any other form of mutual understanding" also covers "consistent action" which is so-called tacit understanding, thus referring to cases where the parties enter into conscious communication and expression of intent but do not mean to be legally bound.

14. "Any other form of mutual understanding", as in Article 7, is an extremely uncertain concept, and there remain practical difficulties in acquiring concrete evidence to support invoking the phrase. Therefore, during its investigations, the FTC is always particularly cautious in this regard. As a general rule, whenever it is unable to obtain direct evidence of such non-contractual agreements, the FTC makes every attempt to obtain as much indirect evidence as possible from its observation of competitors with the same or similar conducts in order to support the notion of a "mutual understanding of a cartel" among competitors; with the same evidence, it also attempts to substantiate a "meeting of minds", such as through the public exchange of sensitive market information related to competition, communication of operation strategy, and direct exchange of business information. The FTC contends that such a "meeting of minds" is generally much more than an act of conscious parallelism on the part of oligopolistic enterprises. In addition, the FTC further makes inferences based on its observations of the "inducement, economic benefits, the timing of a price increase, the possibility of substituting different actions, the frequency, the duration of the acts which are deemed harmful to market order, plus the concentration and concordant degree of the conduct."

15. The FTC investigated the 5 cable TV system operators in Taipei city, namely H, F, L, CPT, and CT Corporations in 1998, and it found they had noticeably different subscription fees in 1998; what's more, the system operators had individually been conducting their own different promotional campaigns to compete for customers. In January 1999, however, even though the domestic economy was not conducive to even a marginal increase in subscription fees, the above operators significantly raised their subscription fees, resulting in uniform subscription fees. In essence, as of January 1999, the previous competitiveness in price or preferential activities in the respective service areas had also disappeared. It was determined that because there had been few changes in the numbers of subscribers after January 1999, the degree of competitiveness had decreased. Taking into consideration the uniformity in the subscription fees as of January 1999, the parallel timing of the price increases, the degree of market competition before and after the price increases, and the domestic state of economy, the FTC came to the conclusion that there were no reasonable economic factors to validate the uniform pricing.

16. The 5 cable system operators defended themselves claiming that they had not been engaged in coordinating price increases through formal meeting consultations. They argued that the uniform pricing reached in January 1999 was solely based on the fact they had all sustained a huge financial loss in 1998. For this reason, they went on, they adjusted their subscription fees in accordance with the price caps set in

the subscription fee standards announced by the GIO. In addition, they contended that the uniform pricing was actually the natural outcome of market information circulating fast and that they had not violated the Fair Trade Act. Yet, it could not be ignored that concerted actions had actually occurred because of the informal contacts among the major shareholders, managers, sales representatives and employees, among others. Furthermore, there was the issue of “overlap” when it came to hiring managers and shareholders. On these grounds, the alleged acts were deemed to be a form of “mutual understanding” with regard to the raising of subscription fees after January 1999. This was decidedly brought about by both the exchange of market information and a “meeting of minds” to prevent price competition, even though the 5 cable system operators contended that they had individually decided on their respective 1999 subscription fees.

4. Final Outcome of the Case

17. At its 397th Commissioners’ Meeting on 16 June 1999, the FTC made the decision that the actions of the 5 cable TV system operators were concerted actions, as defined in Article 7 of the Fair Trade Act, wherein “the conduct of any enterprise, by means of contract, agreement, or any other form of mutual understanding, with any other competing enterprise, acted jointly to determine the price of goods and services.” Such actions constituted a “meeting of minds” and, as a consequence, represented prohibited “concerted actions” in violation of Article 14 of the Fair Trade Act.

18. In view of this, the FTC ordered the cable TV system operators to cease such actions pursuant to Article 41 of the Fair Trade Act. In addition, the FTC imposed administrative fines of NT\$5 million, NT\$2.5 million, NT\$2.5million, NT\$5million, and NT\$2.5million on cable TV system operators H, F, L, CPT, and CT Corporations, respectively. The amount of the fines was determined after taking into account the respective changes in the subscription fees, the number of subscribers, the general business conditions, and the duration of the violations of the different system operators.

19. Besides the disposition on the abovementioned operators serving Taipei city’s Neihu and Chungshan districts, the FTC observed and investigated other service areas in question, namely Keelung, Hsinchu, Taichung, and Kaohsiung County’s Fengshan districts. The FTC found that there was a certain kind of competition in the geographic areas in question and that there were also different subscription fees among competing enterprises. This meant that, there was no concrete evidence to deem a “meeting of minds” had taken place among the competing enterprises, despite the fact there had been a simultaneous raising of subscription fees in the service areas in question. To avoid any decrease in the degree of competitiveness which would have disadvantaged market competition order, the FTC issued warning letters to the cable TV system operators in question and required that they inform the FTC if they were to proceed with promotional activities or adjust their subscription fees for cable TV programming during the warning period which was in effect until 1 September 2000.

20. The FTC is the sole competent authority of the Fair Trade Act. The Act is the general competition law and can be applied to all sectors in Chinese Taipei. However, given that the subscription fee caps for cable TV programming were regulated by the GIO and that conformity in terms of pricing within the subscription fee standards in no way exempts concerted action from the applicability of the Fair Trade Act, the FTC further recommended the GIO urge all system operators, even those charging less than the price caps set by the GIO, not to engage in jointly setting prices or simultaneously raising prices in violation of the Fair Trade Act, if the GIO announces the subscription fee caps for cable TV programming in the future.