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## Global Forum on Competition

### CRISIS CARTELS

#### Contribution from Chinese Taipei

-- Session III --

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## CRISIS CARTELS

-- Chinese Taipei --

### 1. Government policies and enforcement on cartels

1. Article 14 of the Fair Trade Act prohibits enterprises from engaging in concerted actions, save for specific conduct that is listed among exemptions and beneficial to the economy as a whole and in the interests of the public at large. In those cases, the parties may apply to the Commission for approval. The term “concerted action (or cartel),” as defined in Article 7 of the Fair Trade Act, means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the prices of goods or services or to limit the terms of quantity, technology, products, facilities, trading counterparts or trading territory with respect to such goods and services, etc., and thereby restrict each other’s business activities. This aside, it further qualifies a “concerted action” as being limited to a horizontal concerted action at the same production and/or marketing stage which would affect the market function of production, trade in goods or the supply and demand for services. In addition, the term “any other form of mutual understanding”, as referred to here, means other than by contract or agreement, a meeting of minds whether legally binding or not which would, in effect, lead to joint actions.

2. There are many different types of concerted actions, and their effects on markets vary. In principle, to have concerted actions is to limit competition, to impede the adjustment of prices and to harm consumer interests. For these very reasons, the Fair Trade Act makes it a point to impose tight scrutiny.

3. On the other side of the coin, some concerted actions are actually beneficial to the economy as a whole and are in the public interest, too; therefore, in order to be legal, intended actions must be approved by the Commission. Article 14 of the Fair Trade Act provides several exemptions for firms to be able to engage in concerted actions; for these exemptions to apply, a concerted action must satisfy one of the circumstances listed below:

- unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency (so-called standardization cartels);
- joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency (so-called rationalization cartels);
- each developing a separate and specialized area for the purpose of rationalizing operations (so-called specialization cartels);
- entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports (so-called export cartels);
- joint acts in regard to the importation of foreign goods for the purpose of strengthening trade (so-called import cartels);
- joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in an economic downturn, the market price of products is

lower than the average production costs so that the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction (so-called recession cartels); or

- joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium-sized enterprises (so-called small and medium-sized enterprise cartels).

4. The “economic downturn” used in Subparagraph 6 of Article 14 of the Fair Trade Act includes the impact of the overall economic depression on individual industries as well as recessions purely at the sectoral level. When the Commission receives an application for recession cartels, the Commission’s decision to grant approval will take into consideration whether the concerted action is beneficial to the economy as a whole, in addition to the situation of the individual industry in question. In other words, the Commission does not treat particular industries differently either based on applications for recession cartels by enterprises or during economic downturns. To determine whether a concerted action is beneficial to the economy as a whole and in the public interest, the Commission will consider “recession of the general economic environment or an individual industry” as one of the factors of concern. The Commission treats such applications in accordance with the Fair Trade Act and there is no different cartel enforcement during the economic downturn.

5. When enterprises apply for approval to engage in concerted actions, the Commission shall consider the following factors when deciding whether to grant approval:

- In line with the principles of the Fair Trade Act, when granting approval of these concerted actions, the Commission will take into account the positive contributions to the overall economy and the public interest as well as the adverse impact on the restriction of market competition, if the concerted action is brought into existence. Only when the advantages outweigh the disadvantages can such a concerted action be approved.
- The Commission shall consider the following factors when assessing the aforesaid overall economy and public interest: the extent of the overall technological improvement of the industry in question, predictions regarding the variations in product prices or service prices, upgrades for the convenience of users, as well as public safety, public health, and environmental protection issues.
- The Commission shall consider the following factors when assessing competition restraints resulted from the concerted actions: the extent to which the activities of enterprises not participating in the concerted action are impeded, the extent of the impact on the market competition and the upstream and downstream industries, and whether the participating enterprises are likely to abuse their market position and improperly infringe the interests of general consumers and related enterprises.

6. According to Articles 13 and 14 of the Enforcement Rules to the Fair Trade Act, with respect to the application for approval to engage in concerted actions, all participating enterprises should prepare relevant material and apply to receive approval prior to execution. Article 15 of the same Enforcement Rules provide that the enterprise should submit the concerted action assessment report which shall specify the following:

- the cost structure before and after the concerted action and analytical data on forecasted changes;
- the impact of the concerted action on enterprises not participating;
- the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;

- the impact of the concerted action on upstream and downstream enterprises and their markets;
- the concrete benefits and detrimental effects of the concerted action for the overall economy and public interest.
- other required information.

7. In addition, there are different types of concerted action applications for approval, and the items specified in their concerted action assessment report vary. For “recession cartels,” the concerted action assessment report shall specify the following information:

- a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and the pricing of specified goods for each participating enterprise;
- a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels for each participating enterprise;
- changes in the number of businesses in the relevant industry over the preceding three years;
- market prospects for the relevant industry;
- adopted or contemplated self-help methods, other than concerted actions, to turn around the business;
- anticipated results of the concerted action; and
- other related materials that the Commission may request the participating parties to provide.

8. In its granting approval for these concerted actions, so that market competition can be ensured, the Commission may impose conditions or require undertakings in its granting approval but it must always specify a limited period not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the Commission within three months prior to the expiration of such period provided, however, that the term of each extension shall not exceed three years.

9. In the event that after the approval of the concerted action, the basis for such approval no longer exists, the economic condition has changed, or the conduct of the enterprises involved exceeds the scope of the approval, the Commission may revoke the approval, alter the contents of the approval or order the enterprises involved to cease from continuing the conduct, rectify the conduct or take necessary corrective actions. The intention here is to prevent market competition from being harmed through such approved concerted actions.

10. Meanwhile, the Commission is required to establish a specific registry to record the approvals, conditions, undertakings, time limits, and relevant dispositions. It shall also publish these matters in the government gazette.

## **2. Case study: Recession cartels in man-made fiber industries**

11. The Commission grants exemptions in a very strict manner. Although the Commission was allowed to grant exemptions to recession cartels under Subparagraph 6 of Article 14, it rejected applications filed by certain man-made fiber industries under such a provision. Detailed information regarding the case is presented in the following.

12. At the end of 1998, the *Taiwan Man-made Fiber Industries Association* and *Taiwan Synthetic Texturize Industry Association*, on behalf of their member companies, respectively applied to the

Commission for approval to jointly lower the production volume of polyester filament by more than 20% and that of polyester textured yarn by 10%-15%. It was the first application for recession cartels the Commission had received since its establishment in 1992. After investigation, the Commission found that despite the domestic economic downturn at that time, market demand and sales of the two industries did not decline but were growing and the inventory on hand was not extraordinarily high. Meanwhile, as of October 1998, the “unintentional inventories” (the balance after subtracting the amount of inventory necessary under normal operating conditions from the total inventory) of polyester filament and polyester textured yarn companies respectively accounted for 1.15% and 1.46% of the total production volumes in that year. The increases in companies’ unintentional inventories were limited and the companies could respond independently and on their own accord with adjustments to their production volumes.

13. The Commission made a decision that the markets were still able to function and that the inventory on hand was not extraordinarily high. In addition, there was no evidence to prove that this concerted action to lower production volume would meet the requirement of “benefiting the overall economy and public interest”. Therefore, The Commission rejected those applications.

14. In April 1999, due to improvements in the supply-demand situation in the relevant markets, the fact that companies could respond on their own account by adjusting production volume, and because making a concerted action to lower production volume was deemed unnecessary, the two associations filed another application with the Commission to revoke the prior application. The Commission agreed to the withdrawal of the application.

### **3. Conclusions**

15. The Commission handles cartel cases in a very strict manner and the policy on cartel enforcement has not changed during the recent global financial crisis. Moreover, during the recent financial crisis, no domestic enterprises applied to the Commission for approval to engage in recession cartels.

16. Due to the difficulties in obtaining substantive evidence of cartels, the Commission has extensively surveyed the designs and the methods of enforcement of leniency programs in other countries. These findings have served as important reference to the Commission in drafting such a program now that will provide reduction or immunity from fines to cartel members who voluntarily reveal such evidence to the Commission and assist in the investigation regarding the illegal organization of the cartel.

17. As a result of globalization, more and more anti-competitive activities are subject to scrutiny under two or more competition agencies within different jurisdictions. It is often very difficult for the Commission to collect information to prove the existence of infringements. The Commission has entered into agreements with competition authorities in New Zealand, Australia, France, Canada and Hungary under which there are provisions for cooperation between the enforcement agencies in the respective jurisdictions. However, there has not been an agreement entered into by the Commission with those enforcement agencies of the foreign jurisdictions under which the Commission has been able to obtain useful confidential information to correct illegal activities. The Commission is exploring the possibility of entering into cooperation arrangements with its counterparts in other countries to ensure that enforcement activities can be undertaken in an even more effective manner and to improve the enforcement of competition law to combat cross-border anti-competitive practices and international cartels.