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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from Chinese Taipei**

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Interactions between Competition Authorities and Sector Regulators

- Contribution from Chinese Taipei -

1. This paper introduces the role of the Fair Trade Commission, the statutory authority enforcing competition law, as well as the functions of sector regulators in Chinese Taipei. It also provides case examples to illustrate how sector regulators and the competition agency cooperate with each other and ongoing challenges in practice.

1. Introduction of the competition agency and sector regulators in Chinese Taipei

1.1. The role of the competition agency

2. The mandate of the Fair Trade Commission (hereinafter referred to as the “CTFTC”) includes the universal application of competition law to all businesses. The competition law of Chinese Taipei, the Fair Trade Act (FTA), was promulgated in 1991, and the CTFTC was established the following year. The CTFTC is an independent authority that administers the competition law and investigates anticompetitive behaviors with regards to monopoly power, merger and concerted actions, and unfair business practices thereunder. The Commission comprises 7 commissioners that make its decisions collegially.

3. The FTA prescribes multiple goals for competition policy and enforcement. They include maintaining trading order and ensuring fair competition in each sector with the ultimate aim of protecting consumers’ interests. The competition rules laid down by the FTA are applicable to business behaviors in each and every industry.

1.2. The functions of sector regulators

4. Regulated industries in Chinese Taipei are subject to governance by specific government bodies. These governmental agencies normally have statutory responsibilities to implement respective industry policies and have the power to oversee and conduct inquiries into these industries. They are also equipped for the development of industry policies and supervision of industries in their capacities as sector regulators. As a result, a sector regulator will be required to have an in-depth understanding and knowledge of the current business climate, operating practices, technology advancements and trends in regulated industries that it is responsible for. To be able to access up-to-date information on regulated industries, sector regulators are empowered to gather information from businesses by requesting submissions of industrial data.

5. Taking the National Communications Commission (NCC) as an example – the NCC is the independent regulator of telecommunications and broadcasting. With substantial fixed costs including server rooms, cables and equipment, this industry has inherent characteristics of a natural monopoly, which may easily lead to a market failure. The NCC thus pays close attention to the market power of respective cable TV operators and to market competition. The number of household subscriptions in each designated area, such as a city or a county, is generally used in practice to assess market power of a cable TV operator. Under Article 24 of the Cable Radio and Television Act, cable TV operators

need to submit the number of household subscriptions they have to the NCC quarterly so that the NCC can monitor market competition and changes in market power of respective operators, aiming to prevent market failures.

6. As the FTA applies to businesses in all sectors, to keep up with industry trends, the CTFTC continuously watches and monitors business practices in either regulated or non-regulated industries, which may have an impact on market competition. The CTFTC maintains constant communications with sector regulators through its active participation in meetings, seminars related to competition matters and competition advocacy activities. In the process of investigations on competition cases, the CTFTC may also consult with sector-specific regulators where it is necessary. Their opinions can be used to inform the CTFTC of its decision on whether an enterprise's conduct may violate the FTA. This communication goes both ways. Sector-specific regulatory agencies may also seek the CTFTC's comments on competition related matters in the industry under their oversight, and invite the CTFTC to discuss the amendments to laws and regulations that may have an impact on market competition.

2. Limits and resolution regimes under the competition law

2.1. Conflict and overlap between the competition law and sectoral regulations

7. Due to the differences between the legislative purposes of economic regulations and the FTA, two sets of rules may be concurrently applicable to the same business activity, or may not be compatible without conflict. In this regard, Article 46 of the FTA provides that "The Act takes precedence over other laws with regards to the governance of any enterprise's conduct in respect of competition. However, this stipulation shall not be applied to where other laws provide relevant provisions that do not conflict with the legislative purposes of this Act." This establishes the role of the FTA as an "economic basic law". The FTA has precedence over other applicable regulatory rules when addressing competition issues arising from business behaviors. Other applicable regulatory rules would not apply unless such behaviors are otherwise stated in these rules and do not conflict with the FTA's legislative purposes.

8. To be clear, regardless of regulatory rules created by sector regulators, the application of Article 46 focuses on two aspects: whether the alleged practices or acts are relevant to market competition, and whether the regulatory rules are compatible with the legislative purposes of the FTA and thus are applicable. When determining the requirement of "do not conflict with the legislative purposes of this Act", a number of factors need to be considered, which may include strategies that businesses use to compete with others, market scope, the number of competitors and their market performance, market concentrations, barriers to market entry, economic efficiency (productive efficiency, allocative efficiency and dynamic efficiency), consumers' interests, transaction costs and other factors that may be associated with the legislative purposes of the FTA.

9. Furthermore, Paragraph 2, Article 6 of the FTA provides that "For any matter provided for in this Act that involves the authorities of any other ministries or commissions, the competent authority may consult with such other ministries or commissions to deal therewith." When questions or conflicts arising from overlapping jurisdictions between the competition agency and sector regulators, the CTFTC can initiate a consultation meeting under this provision to coordinate respective policy directions or enforcement actions. Consultation outcomes with sector regulators will be taken into account for in the CTFTC's final decisions.

10. The CTFTC also issued the “Operational Guidance on Coordination between the Fair Trade Commission and other administrative agencies”. Point 2 of the Guidance lists the following key factors for the CTFTC’s consideration while deciding the extent of its interventions, which include but are not limited to: 1) the level of scrutiny required by industrial laws and regulations; 2) whether industrial laws and regulations contain competition-related provisions; 3) the level of impacts on public interest; 4) resources and tools available for sector regulators. Point 4 of the Guidance states that the above factors listed in Point 2 will also be applied to the circumstance where other government agencies draft or amend industrial laws or regulations that relate to market competition or issues that are concurrently covered by the FTA.

11. Regarding merger cases, Article 15 of the “CTFTC’s Guidelines on Handling Merger Filings” provides that the CTFTC may consider the opinions of the competent authority of the industry, and thereby assess the overall economic benefit of a proposed merger as well as disadvantages from competition restrictions.

3. Cooperation between the competition agency and sector regulators

3.1. Cooperation models through formal agreements

12. Take the interactions between the CTFTC and the NCC as an example. Prior to the 2016 amendments to the Cable Radio and Television Act and the 2016 amendments to the Satellite Broadcasting Act, the 2010 coordination agreement between the CTFTC and the NCC provided a cooperation framework for both agencies to coordinate their actions in tackling the disputes over the shelving and de-shelving of TV programs between cable TV operators and program providers. However, after the amendments on January 6, 2016, the amendments have included provisions expressly prohibiting cable TV operators and satellite broadcasting program suppliers from engaging in discrimination and refusal to deal, and prohibiting cable TV operators from requesting or facilitating satellite broadcasting program suppliers to engage in discrimination and refusing to deal. Due to similar provisions set out in Paragraphs 1 and 2, Article 20 of the FTA, the concurrent application of sector-specific regulations and the FTA led to an overlap in jurisdiction between the two agencies. The CTFTC therefore organized consultation meetings with the NCC in 2019 and both agreed on some further changes be made to the 2010 coordination agreement.

13. The illegality of unfair competition methods including boycotts and discriminations is set out in Paragraphs 1 and 2, Article 20 of the FTA. The 2016 amendments to the Cable Radio and Television Act introduced specific rules governing unfair competition methods in the cable TV related sectors. Paragraph 1, Article 37 of the Cable Radio and Television Act provides that system operators shall set up fair, reasonable, and unbiased standards for shelving/de-shelving satellite channel program providers, other types of channel program providers, foreign satellite broadcasting businesses, and wireless television businesses. Paragraph 4 of this Article prohibits system operators’ unfair means from causing satellite channel program businesses, other types of channel program businesses, foreign satellite broadcasting businesses and wireless television businesses to discriminate against other system operators. Both agencies agreed that unfair competition methods that are expressly set out in Article 37 of the Cable Radio and Television Act should be regulated by the NCC.

14. Similarly, in the case where specific business acts or practices are regulated by the 2016 amendments to the Satellite Broadcasting Act promulgated on June 1, 2016, this Act

takes precedence over the FTA. Paragraphs 1 and 2, Article 25 of the Satellite Broadcasting Act provides that:

- “Any direct satellite broadcasting business and the branch office of any foreign satellite broadcasting business that operates direct satellite broadcasting business shall not treat satellite channel and program supply businesses and the branch offices or agents of foreign satellite channel supply businesses differently without justification.
- Any satellite channel and program supply business and branch offices or agents of any foreign satellite channel supply business that provides satellite channels and program supply services shall not treat cable radio/television system operators (including the cable television program broadcasting systems), direct satellite broadcasting service businesses or other public audio and visual broadcasting platforms differently without justification.”

15. Upon a mutual agreement, any conduct subject to Article 25 of the Satellite Broadcasting Act should fall within the NCC’s regulatory jurisdiction.

16. The FTA will be applied to any act or practice, such as boycotts, discrimination, tying, concerted actions (including joint purchases and joint sales) and mergers that are not covered in regulatory rules governed by the NCC.

17. The 2016 amendments to the Cable Radio and Television Act and the Satellite Broadcasting Act serve as clear examples regarding concurrent application of different laws and overlapping jurisdictions. In addition to Article 6 and Article 46 of the FTA, consultation meetings can help both agencies to diminish overlapping issues, clarify mandates and avoid unregulated grey areas.

3.2. Ad hoc cooperation models

18. In 2021, the CTFTC approved a merger between Far East Tone Telecommunications Co., Ltd. and Asia Pacific Telecom Co., Ltd. to share spectrum in the 3.5GHz band and network. As the NCC was responsible for the regulation of the telecommunication sector, the two telecom companies were also required to submit an application to the NCC for its approval of spectrum sharing. When reviewing the application, the NCC needed to determine if such cooperation via spectrum sharing met regulatory requirements, of which the regulator’s policies on overall development of industrial technology and industrial plans would be taken into account. To coordinate the activities of the two agencies, during the merger review process the CTFTC consulted the NCC about this proposed merger in accordance with Paragraph 2, Article 6 of the FTA and Point 15 of the Guidelines on Handling Merger Filings.

19. The CTFTC held a workshop titled “Improving trading order of the real estate market” on October 18, 2021, calling for a joint effort among real estate businesses to fulfill corporate social responsibility so as to build robust trading order. At the workshop, the CTFTC, the Ministry of Interior, the Consumer Protection Committee under the Executive Yuan and the Ministry of Finance explained relevant laws and regulations in details and provided examples of common illegal business practices. The local governments shared their observations and insights gained from compliance inspections in the industry. The CTFTC also exchanged opinions with stakeholders including real estate associations at the workshop.

20. To build a healthy housing market, the Executive Yuan hosted two meetings respectively on November 4 and November 26, 2021 with relevant governmental agencies. The agencies invited included the Ministry of Interior, the National Development Council,

the Central Bank, the Ministry of Finance, the Financial Supervisory Commission and the CTFTC. Following the Ministry of Interior’s presentation for an overview of the policy on building a healthy housing market, each invited agency added its enforcement activities or regulatory measures. Given the enforcement authority under Article 21 and 25 of the FTA, the CTFTC focuses on the investigations of false advertising and deceptive acts or practices.

21. The CTFTC also participated in a preliminary meeting on January 19, 2022, hosted by the Executive Yuan regarding partial amendments to the Equalization of Land Right Act and amendments to Article 24-1, Article 29 and Article 40. The main purpose of these amendments to the Equalization of Land Right Act is to improve transparency in the presale housing market and prevent price gouging due to misleading claims by real estate developers and agents that fabricate strong demand for the presale properties. The amendments require the real estate businesses to: 1) submit detailed information on presale properties to local governments prior to sales; 2) list true sale prices on “red slips” (i.e., pre-order slips/purchase orders), and 3) prohibit red slips of holders from reselling the slips. The ranges of fines that can be imposed on acts in violation of the above regulatory requirements vary from NT\$30,000 to 150,000 or from NT\$150,000 to 1,000,000. The aims of these punitive measures can be used to deter real estate businesses from inflating values and prevent house price soaring.

22. The housing market in Chinese Taipei has been heating up in recent years. Since 2020, the CTFTC has worked collaboratively with sector regulators, the Ministry of Interior and other government agencies, which include the Consumer Protection Committee under the Executive Yuan, local government agencies and national taxation bureaus. Every year, these agencies carry out joint on-site inspections of 7 selected cities/county during peak periods for supply of presale properties, which are the period of March 29 and the period of September 28. The selected cities/county are New Taipei City, Taoyuan City, Hsinchu County, Hsinchu City, Taichung City, Tainan City and Kaohsiung City. In each of the selected cities/county, the agencies conduct three unannounced inspections of presale cases, amounting to 21 cases in each joint effort.

4. Conclusions

23. The ways in which the CTFTC interacts with other regulatory agencies can be summarized as follows:

- Choosing a cooperation model contingent on its corresponding context for the optimal effect of cooperation: A formal cooperation agreement is a binding arrangement between two governmental agencies that come to mutual conclusions through formal consultation meetings, recorded in writing. For example, the above-mentioned agreement between the CTFTC and the NCC was approved by their Commissioners’ meetings and then published to the public. In terms of ad hoc cooperation models, they are normally subject to certain case scenarios and each agency’s authority as well as its responsibility. They are more flexible and more quickly adaptable making them more suitable for cases required to be solved in a relatively short period of time.
- Challenges faced by the CTFTC in cooperation with other governmental agencies: Taking the 2019 coordination agreement between the CTFTC and the NCC as an example – the CTFTC started its own research on the relevant issues in as early as 2017. Through a series of consultation meetings, the agreement was finalized and approved by the Commissioners’ meetings of the CTFTC and the NCC. It then took

nearly two years before it was published to the public in 2019. Another example relates to the housing market interventions, which include the meetings for a healthy housing market, the preliminary meeting for amendments to the Equalization of Land Right Act and joint on-site inspections of presale cases. Coordinating appropriate responses in this type of the cooperation model is also challenging as it involves effective communication among multiple governmental agencies.

24. Regardless of which cooperation model and which agency the CTFTC works with, the common goal is to safeguard free markets and ensure fair competition through regular cooperation and close coordination between the competition agency and sector regulators.