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Competition in the Food Supply Chain – Contribution from Chinese Taipei

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Competition in the Food Supply Chain

- Contribution from Chinese Taipei -

1. This paper outlines how Chinese Taipei assesses the stability of production and distribution, and effective competition in the food supply chain, from the perspectives of competition law and consumer protection. It also provides case examples and shares enforcement experiences in the food industry.

1. Upstream food suppliers in the food supply chain: high reliance on imports and low food self-sufficiency

2. In 2022, the average calorie-based food self-sufficiency rate stood at 30.7% in Chinese Taipei. The self-sufficiency rates for grains (excluding rice), tuber crops, sugar and honey, oilseeds and dairy products were below 30%. This shows that the domestic demand of these commodities, in particular soybeans, corn, wheat and barley, is heavily reliant on imports. They are typically imported through joint purchase and shipment arrangements. These import cartels and agreements between importers may apply for exemptions from the Fair Trade Act (hereinafter referred to the 'FTA'). In contrast, the self-sufficiency rates for vegetables, fruits, meat, eggs and fish & seafood exceeded 70%, suggesting a higher production capacity to meet domestic needs. However, the production of these foods also required imported inputs, for example plant-based fertilizers and animal feed such as urea, soybeans, and corn, which are less available domestically. In this context, the supply of these foods can also be considered indirectly reliant on imports. In sum, the stability of the food supply chain in Chinese Taipei tends to be influenced by global markets due to its limited natural resources and high dependency on imports of staple foods and key raw materials.

3. Since the second half of 2020, the prices of soybeans, corn, wheat and other commodities have risen significantly as a result of the COVID-19 pandemic and the impact of extreme weather conditions. This surge in commodity prices has placed continued cost pressure on animal feed manufacturers and flour producers in Chinese Taipei. In response to the inflationary pressure, upstream suppliers in the food supply chain, who are also major importers of soybeans, corn, and wheat in Chinese Taipei, gradually increased their product prices. Between 2021 and 2022, the supply and demand among global agricultural commodity markets were further disrupted by the following factors: post-pandemic economic volatility, prolonged global port congestion and geopolitical conflicts. In Chinese Taipei, despite stable reserves of soybeans, corn and wheat reserves resulting from advanced purchases, the Executive Yuan announced tax cut measures to allow food businesses to cope with the rapid increase in procurement costs and shipping fees of bulk commodities. The government reduced tariffs on wheat and beef in the fourth quarter of 2021 and later lowered the business tax on soybean, corn and wheat. The tax relief measures aimed to mitigate increased cost pressure on upstream food suppliers, and alleviate the impact of rising commodity costs on midstream and downstream firms in the food supply chain.

2. Coordination and cooperation between independent regulators and the competition agency

4. Sufficient quantities of food and agricultural products supplied with stable prices, and well-functioning food supply chains are critical to consumer interests, public livelihoods and national security. Article 1 of the Agricultural Development Act (the ADA) specifies mandates of the Ministry of Agriculture (MoA), which include: ensuring sustainable agriculture development in alignment with agricultural globalization and liberalization; promoting the appropriate use of agriculture land and adjusting agricultural structures; enhancing stability of agricultural production and sales and improving farmers' income and welfare to raise their living standards. Under relevant laws, including the ADA, the Food Administration Act, the Animal Industry Act and the Fisheries Act, the MoA has implemented a series of regulatory measures to maintain a stable supply of agricultural and fishery products and to smooth volatility in market prices. These measures include: releasing government rice stocks to markets, maintaining a balance between agricultural production and distribution; procuring and storing fishery products; facilitating food processing and exports, and subsidizing warehouse storage. Upstream and downstream suppliers as well as industry associations are required to follow the government-initiated measures and take actions accordingly in order to effectively stabilize agricultural production and distribution, and ultimately manage price fluctuations and volatility.

5. Article 1 of the FTA specifies the purpose of the Act is to 'maintain trading order, protect consumers' interests, ensure free and fair competition, and promote economic stability and prosperity.' Due to differences between the legislative purposes of economic regulations and the FTA, two sets of rules may be concurrently applicable to the same business activity. Article 46 of the FTA provides a guiding principle to address this issue, stating that:

'The Act has 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.'

6. The Chinese Taipei Fair Trade Commission (hereinafter referred to the 'CTFTC') acknowledges the importance of agricultural development, farmer welfare, sufficient food supply and affordable prices for consumer welfare and the overall economic benefit. Generally, the CTFTC will not intervene into administrative measures employed by the MoA that are in compliance with the FTA's legislative purposes. In particular those aimed at maintaining the distribution orders and stabilizing markets in the food supply chain in response to drastic changes in supply due to extreme climate conditions, pandemics or market failures in a global context. In addition to the above-mentioned measures, further measures include adjustment and allocation of agricultural product supply and distribution, purchase limits for frozen pork suppliers, ad-hoc import programs, wholesale pricing intelligence, financial incentives for export, and the procurement, preservation and storage of vegetables.

7. However, the FTA applies to any practice, such as abuse of dominance, and concerted actions based on contracts, agreements or any form of mutual understanding reached among competing enterprises at the same production and/or marketing stage to jointly determine prices or restrict outputs. Such anti-competitive behavior may occur in all sectors, including in each stage of the food supply chain. To tackle these issues, the CTFTC set up the 'Price Manipulation Prevention Team' in May 2007. The primary goal of this Team is to proactively monitor prices of essential agricultural, livestock, and fishery products, as well as commodity prices and prices of their finished goods. Data is sourced

from multiple channels, including publicly available government databases, subscription databases operated by private businesses, and market surveys outsourced to independent third parties. Through monitoring markets, the CTFTC can respond and intervene in a timely manner when the Team detects unusual price increases or significant fluctuations in upstream commodity or daily necessity prices. The CTFTC typically issues warnings about competitive concerns to individual businesses or trade associations before launching a formal investigation, and utilizes press releases to manage public expectations on future price increases. In July 2015, the CTFTC and the MoA reached an agreement for price manipulation. According to this agreement, the MoA will first implement administrative measures within its regulatory jurisdiction, and then initiate investigations under Article 6 of the Act on Transactions in Markets of Agricultural Products where necessary. Cases involving price fixing will then be referred to the CTFTC for further investigation under the FTA.

8. In 2008, the Executive Yuan established the inter-ministerial ‘Commodity Price Stabilization Task Force’ that was convened by the Vice Premier. The members of the Task Force include the Ministry of Economic Affairs, the Ministry of Interior, the Minister of Transportation and Communication, the Central Bank, the MoA, the Ministry of Finance, the Ministry of Justice, the CTFTC, the Ministry of Health and Welfare, the Public Construction Commission, the Directorate General of Budget, Accounting and Statistics, the Consumer Protection Committee and the National Development Council. In the Task Force, the Ministry of Agriculture is responsible for developing and implementing measures with the aim of maintaining stable prices on essential agricultural products such as rice, meat, seafood, eggs, vegetables, fruits and agricultural commodities. At the same time, the CTFTC looks into abnormal price setting for goods and labour costs, and launches probes to detect if price increases are manipulated by specific businesses or through collusion. If the CTFTC finds evidence in its investigations, showing that individual enterprises or persons intend to inflate prices or hoard daily necessities, relevant cases will be referred to prosecutor’s offices, which would involve criminal liabilities under the Article 251 of the Criminal Code. The CTFTC and the MoA have used this platform to coordinate respective enforcement activities and maintain close communication to share up-to-date information on the production and distribution in the food supply chain. This close collaboration ensures effective cooperation between the agencies.

3. Investigations in the food supply chain

9. Between 2020 and 2023, the CTFTC actively looked into wholesale and retail operators in the food supply chain. For example, the CTFTC requested the Taiwan Chain Stores and Franchise Association to provide information on whether its large domestic restaurant members reported any price gouging or significant price increases for pork and beef offered by food suppliers. The CTFTC also conducted on-site inspections across various levels of the pork supply chain, from upstream frozen pork suppliers, midstream distributors, restaurants and catering service providers and retailers such as supermarkets. This section summarizes the CTFTC’s responses to food price increases during this period:

- Urea fertilizer: Chinese Taipei relies entirely on imports of urea, with the majority sourced from China. During the COVID-19 pandemic, China imposed stricter urea export controls, leading to a shortage of urea supply. Domestic farmers then filed complaints to the CTFTC in October 2021. Shortly after receiving the complaints, the CTFTC wrote to the MoA and request information on its responsive measures and the domestic fertilizer market. The information revealed that the MoA had implemented the following measures to prevent hoarding: 1) real-name registration

was required for fertilizer procurement; 2) procurement details were registered and shared directly with distributors to reduce the supply chain inefficiency; 3) the government provided subsidies covering 50% of the price increases for imported urea. Furthermore, Taiwan Fertilizer, the largest domestic fertilizer supplier supported the MoA's policies without raising fertilizer prices. The MoA was the majority shareholder of the company, having more than 30% of shares. As a result, the upward pressure on prices of urea-based fertilizers was effectively managed.

- **Corn:** In October 2021, the spot price of corn in Chinese Taipei increased by 42.99 per cent. The CTFTC initiated an investigation into Chung Hua Global Foods Corporation (transliteration) and its top five trading partners to look into whether they engaged in a concerted practice through a spot trading platform. The CTFTC's investigation found no evidence of price fixing among the market players. The price surge in the domestic corn spot market was considered a consequence of the supply-demand imbalance caused by several interrelated events. A substantial decline in corn imports occurred due to the following factors: sharp increases in global shipping costs; rising corn futures prices, port congestion, and a lack of shipping containers. Moreover, with delayed container shipments, domestic feed manufacturers turned to the domestic spot market for corn, further driving up demand.
- **Garlic:** In August 2020, the wholesale price of garlic grown in Chinese Taipei surged by over 100 per cent. The MoA considered this increase excessively high and referred the case to the CTFTC for investigation. The CTFTC found that the domestic garlic shortage occurred after the international price of garlic increased sharply between August and September 2020, and the volume of imported garlic decreased following quarantine requirements. As a result, supply could not meet the expected domestic demand, resulting in wholesale price hikes for both locally grown and imported garlic.
- **Dried scallops:** Dried scallops are a popular food during the Lunar New Year. In February 2022, during the New Year holiday the price of dried scallops increased by more than 20 per cent. In Chinese Taipei, two major import groups accounted for 70 per cent of total dried scallop imports. The CTFTC's investigation revealed that the two groups attempted to attribute price increases to port congestion, but there was no evidence to support rising import costs. The investigative findings showed that prior to price adjustments, the businesses had communicated with each other via the instant messaging app LINE to exchange market information and price-related sensitive data, and raised prices simultaneously. The CTFTC concluded that this constituted a violation of the FTA and imposed a fine of NT\$ 5 million (approximately USD 156,000) on the import groups.
- **Flour:** The domestic need for wheat for flour production in Chinese Taipei relies almost entirely on imports. Given that individual domestic flour producers have only limited capacity, they normally enter into agreements for joint procurement and bulk shipping. This requires participating businesses to apply for a cartel exemption under the FTA. In practice, the CTFTC has typically granted such an import cartel exemption. It was reported that the costs of wheat imported into Chinese Taipei had increased in the fourth quarter of 2020 due to climate change, which led to a complaint where seven major domestic flour producers allegedly engaged in price fixing in April 2021, by requesting their downstream distributors to increase flour prices by the same percentage change. After its investigation, the CTFTC found that the domestic flour market was controlled by a few companies, and should be considered as oligopoly. Since these flour producers procured and

shipped wheat jointly with the same vessel schedules, similar procurement costs resulted in similar price adjustments within a short period of time. Furthermore, it was observed that smaller producers followed higher prices set by larger flour producers. No evidence had shown the existence of collusion among the domestic flour producers. The CTFTC concluded that these price adjustments did not constitute a concerted action.

- Eggs: In early 2023, Chinese Taipei faced a decline in egg production as a result of the avian influenza outbreak, rising feed costs and forced molting of laying hens. Extensive media coverage of egg shortages further fanned consumer's demand, creating a sudden surge in demand for eggs, and ultimately leading to a market imbalance with unmet demand and price hikes. Under Subparagraph 4, Paragraph 1, Article 27 of the Animal Industry Act, the MoA employed administrative measures to facilitate production and distribution in the egg market. For example, egg suppliers and distributors collectively discussed market information and set prices through the Egg Production and Distribution Supervisory Committee of the Poultry Association. This administrative measure was exempt from competition law under Article 46 of the FTA.

10. However, the CTFTC might intervene if egg businesses engaged in collusive behavior beyond the scope of relevant regulatory rules. The CTFTC took a series of proactive approaches in response to egg price spikes, which included: requesting information on egg production and distribution from industry associations, and urging associations and their members to refrain from engaging in concerted actions on the pretext of supply shortages and increased costs. The CTFTC also probed the imports, sales and inventories of egg businesses, and conducted on-site inspections of retail outlets such as traditional markets and supermarkets. No evidence had shown collusion among egg businesses. The CTFTC also set up a dedicated hotline for the general public to report price gouging through concerted actions. Reports that identified specific businesses and that lead the CTFTC to form a reasonable belief of suspicious hoarding or pricing behavior could be submitted to the 'Price Inspection Task Force' under the Executive Yuan for further review. Interagency on-site joint inspections could be conducted to cope with high-priority cases.

11. The Executive Yuan established an inter-ministerial 'Price Inspection Task Force' on December 10, 2021, consisting of the Ministry of Justice, the MoA, the Ministry of Economic Affairs, the Ministry of Finance, the Consumer Protection Department and the CTFTC. To investigate alleged price-gouging, hoarding or concerted actions, the Task Force conducts on-site inspections of retailers, distributors and suppliers, thereby monitoring price fluctuations at each stage of the food supply chain. As at April 2022, the Task Force investigated 34 chain restaurants in downstream markets and 74 mid-to-upstream businesses including food suppliers, manufacturers and frozen meat processors. Through intensive trace-back investigations, the Task Force has effectively stabilized domestic food prices.

4. Roles of large retailers in the food supply chain and the application of competition law

12. In recent years, large retail chains in Chinese Taipei have gradually replaced traditional markets and grocery stores, increasingly becoming the critical distribution channels for various food products. With substantial market power, these retail giants have far greater bargaining power than their trading counterparts, for example individual farmers, fishers, midstream and upstream food manufacturers and suppliers. In this context, the CTFTC issued its 'Policy Statements on Distribution Industry' to provide detailed guidance on business practices in the distribution sector that may fall under the scope of

the FTA. Between 2020 and 2022, the CTFTC received 3 high-profile retail merger notifications. In defining relevant product markets, the CTFTC made use of regression models and diversion analysis. In terms of geographic markets, the CTFTC adopted catchment areas and defined local markets in these mergers as districts and municipalities where the majority of consumers reside, serving as a basis for further competition analysis. To protect the collective interests of farmers, fishers, small and medium-sized food suppliers, and to promote consumer welfare, the CTFTC conditionally approved the mergers by imposing behavioral remedies. A summary of these merger cases is provided as follows:

- Carrefour’s acquisition of Wellcome: Carrefour and Wellcome ran hypermarket and supermarket businesses respectively. In June 2020, Carrefour filed its proposed acquisition of Wellcome with the CTFTC. The CTFTC assessed supermarkets and hypermarkets as the same product market and found that Carrefour and Wellcome were the third and fifth largest businesses in the ‘hypermarket and supermarket’ sector, respectively accounting for 12.33 per cent and 2.36 per cent of the national market share in 2019. A similar market presence was observed across 13 overlapping administrative divisions where both businesses had outlets. This merger did not raise significant horizontal competition concerns. However, Carrefour was jointly owned by the largest domestic food supplier Uni-President and the French Carrefour Group. To eliminate potential concerns around vertical restraints and safeguard the interests of small- and medium-sized food suppliers, the CTFTC imposed the following conditions: in the three years after the acquisition took effect, Carrefour was required to have procurement programs for small- and medium-sized suppliers whose average monthly purchase amounts were below NT\$1 million. Carrefour must not remove or terminate any small or medium-sized supplier from its supplier list without any justification and reasonable notice.
- PX Mart’s acquisition of RT-Mart: PX Mart and RT-Mart ran hypermarket and supermarket businesses respectively. In July 2021, PX Mart filed its proposed acquisition of RT-Mart with the CTFTC. Data for 2020 showed that PX Mart and RT-Mart held national market shares of 32.86 per cent and 5.91 per cent in the ‘hypermarket and supermarket’ sector. In the 12 administrative divisions where both had retail outlets, the combined market shares of the merging parties remained substantial. To eliminate horizontal competition concerns and ensure the interests of small- and medium-sized food suppliers, the CTFTC imposed the following conditions:
 - - PX Mart must not arbitrarily increase any additional charges imposed on individual suppliers.
 - - PX Mart must not charge its suppliers slotting fees or sponsorships for newly opened stores for three years following the acquisition. PX Mart must not impose any changes to annual supply agreements or trade terms that would make them worse off than under pre-existing terms and conditions.
 - - After the merger, the Most Favored Customer (MFC) clauses terminate and PX Mart must delete such clauses from its supply-marketing agreements and implementation measures.
- To enhance the overall benefit of this proposed merger, PX Mart committed to support farmers by promoting agricultural products when food supply chain disruptions occur.

- Uni-President’s acquisition of Carrefour: Uni-President Group is a major player in the domestic food production sector, and its subsidiary, President Chain Stores Corp., operates the 7-Eleven convenience stores, accounting for the largest proportion of the convenience store market. Carrefour, is the third-largest operator in the hypermarket and supermarket sector. As a result, this proposed merger, filed to the CTFTC in 2022, drew public attention to potential competition concerns. The CTFTC considered hypermarkets/supermarkets and convenience stores as two distinctive and separate product markets. Given Uni-President Group’s diversified presence in both hypermarkets/supermarkets and convenience stores, the CTFTC focused its competition assessment on vertical restraints and buyer power resulting from this conglomerate merger. To protect the interests of small and medium-sized food suppliers, the CTFTC imposed the following conditions:
 - Following behavioural remedies imposed from the 2020 Carrefour-Wellcome merger, Carrefour must continue its procurement programs with small- and medium-sized suppliers with average monthly purchase amounts below NT\$1 million for a further three years. Carrefour must not terminate with or remove any small- or medium-sized supplier from its supplier list without any justification and reasonable notice.
 - In the three years after the acquisition, Carrefour is prohibited from engaging in joint procurement activities with President Chain Stores Corp. to source goods from suppliers.
 - Carrefour must not arbitrarily increase additional fees charged to individual suppliers for three years following the merger, or impose any changes to annual supply agreements or trade terms that would make them worse off than under pre-existing terms and conditions

To enhance the interests of farmers, fishers, and small and medium-sized food suppliers, Uni-President Group committed that Carrefour will maintain a minimum of 100 suppliers to provide organic food or eco-farm certified products every year, and ensure annual sales of these products are not less than NT\$800 million (approximately USD 25 million).

13. Since the above mergers were conditionally approved, the CTFTC has been closely monitoring whether the merging parties have implemented the behavioral remedies. For the merger between Carrefour and Wellcome, in early 2021, the CTFTC received a complaint from a food suppliers association, alleging that as Wellcome Supermarkets were rebranded as Carrefour Market following the merger, food suppliers who had entered into supply contracts with Wellcome prior to the acquisition were requested to pay sponsorships for the rebranding as ‘new shops’. The CTFTC’s investigation revealed that most of these food suppliers were small and medium enterprises, and Carrefour held a superior bargaining position with substantial buyer power. For existing suppliers of both Carrefour and Wellcome, the merger did not create any new distribution channels or outlets. Furthermore, when the existing food suppliers signed contracts, they were unable to forecast the number of new shops, their operating models and sales resulting from the merger in December 2020. Carrefour compelled the application of the 2020 contractual terms and conditions and charged new store sponsorships, which was determined to be an obviously unfair conduct that affected trading order and constituted a violation of Article 25 of the FTA. The CTFTC then imposed an administrative fine of NT\$1.5 million (approximately USD 46,900) on Carrefour.

14. Another example is PX Mart’s acquisition of RT-Mart. When monitoring the conditions attached to this approved transaction, the CTFTC’s investigation revealed that

PX Mart removed the MFC clauses from its supply contracts after the merger, however, the following measures remained in its business practices, which led to a failure to fulfill its merger commitments: 1) PX Mart required its suppliers to set prices as a fixed percentage of prices the suppliers offered to other distribution channels. If PX Mart discovered non-compliance, suppliers had to reduce their prices proportionately, and in some supply contracts penalties applied; 2) During promotional periods, through price inquiries and price adjustment, losses resulting from price competition among distribution channels were passed through to PX Mart's suppliers. PX Mart misused its buyer power to force suppliers to absorb costs to support its own profit margins, and pressured suppliers not to offer prices to other channels lower than prices offered to PX Mart. This impaired competitors' capacity to set lower prices, ultimately affecting competition among distributor channels. This also limited consumers' ability to benefit from lower prices across different outlets. The CTFTC concluded that PX Mart's business practices failed to meet the conditional requirements specified in the approved merger decision. An administrative fine of NT\$20 million (approximately USD 625,000) was imposed on PX Mart.

5. Conclusion

15. In response to inflated prices, maintaining a balance between supply and demand in the food supply chain and stabilizing prices have been a key policy priority for the government. Since December 2021, the inter-ministerial 'Price Inspection Task Force' under the Executive Yuan has been operating on a regular basis. A deterrent effect on market manipulation through trace-back investigations initiated by the Task Force has been perceived. The CTFTC continues to pay close attention to mergers between large retail chains, and actively looks into anti-competitive practices involving misuse of buyer power.