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**Procompetitive Industrial Policy – Note by Chinese Taipei**

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More documents related to this discussion can be found at  
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## *Chinese Taipei*

1. This report elucidates the statutory basis underpinning the intervention of the Fair Trade Commission of Chinese Taipei (CTFTC) in the formulation and deliberation of industrial policies to advocate competition policy. It also illustrates, through case studies, how the CTFTC interacts with authorities responsible for industrial policies when enforcing the Fair Trade Act (FTA).

### **1. General competition legal framework**

2. Pursuant to Article 46 of the FTA, “The Act has precedence over other laws with regard 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 provision reveals the application relationship between the FTA and other laws concerning business activities related to competition. In market economies, where free competition remains a principle, industrial policies or special laws are only exempted from the application of the FTA if they do not contravene the legislative intent of the FTA, as defined in Article 1: “To maintain the order of transactions and consumer interests, ensure free and fair competition, and promote economic stability and prosperity.”

3. For the sake of clarity in application, the CTFTC has promulgated the Standards on the Application of Article 46 of the FTA, which stipulate the factors to be comprehensively considered when determining whether the interpretation and enforcement of other laws or regulations are in conflict with the legislative intent of the FTA. These factors include:

1. the enactment, amendment, and enforcement of other laws or regulatory orders:
  - whether the legislative purposes of the Act has been taken into consideration at the time of or in the process of amendments of rules and regulations;
  - the reason for the imposition of regulatory controls by the competent authority responsible for the regulation of the industry. For example, upon reviewing and examining at its discretion, the competent authority decides there are justifiable reasons that the industrial policy should have priority over the competition policy;
  - whether the competent authority responsible for the regulation of the industry has exercised appropriate and necessary oversight on the area which is exempt from the application of the Act and whether there are other means, as much as they can, of ensuring market competition, such as the periodic review and assessment on the effectiveness of regulatory controls.
2. relevant market competition:
  - competition means: whether the enterprise uses the price, quantity, quality, service or any other terms as a means of market competition;
  - market Scope: look into conditions such as cause of action, commodity features, industrial characteristics, information attributes and other factors of the individual case at issue, as well as matters such as demand substitution and supply substitution;

- number of competitors and market performance: whether the competitors participating in the market have a considerable number of enterprises, and should also take into account the market performance;
  - market concentration: whether the concentration of the relevant market is conducive to the state of competition;
  - entrance barriers of the market: whether the existence of barriers to entry into the relevant market is conducive to the state of competition;
  - economic efficiency: whether the productivity, configuration efficiency and innovation efficiency of the market can be improved;
  - consumer benefits: whether the overall consumer welfare can be effectively improved;
  - transaction costs: whether the impact of transaction costs can be reduced.
3. Other circumstances related to the legislative purpose of the FTA: examples often seen in practice such as cases involving a natural monopoly in a specific industry. Because the most efficient allocation result of resources cannot be achieved through market competition in such industry, the price control mechanism implemented under provisions of other laws can be regarded not contravening the legislative purpose of the FTA.
4. The FTA establishes reporting thresholds for mergers, which include market share thresholds as well as sales revenue thresholds. The CTFTC is not only required to publish the thresholds but is also authorized to establish and publish the thresholds for selected industries. This clearly indicates that the CTFTC has the authority to assess industry-specific factors, such as size and competitive conditions, to determine whether intervention in market concentration resulting from such mergers is necessary based on industry policy considerations.
5. Furthermore, when reviewing merger cases, the CTFTC is required by law to assess whether the economic benefits of the merger outweigh the adverse effects on competition, serving as the basis for clearance or objection. The CTFTC has also established the Guidelines on Handling Merger Filings, which indicate that it may consider the opinions of industry regulatory authorities in evaluating the overall economic benefits and adverse effects on competition. In addition, the CTFTC has separately established handling principles for specific industries. For example, in the financial industry and domestic civil aviation industry, the CTFTC has respectively issued Policy Statements on the Financial Industry and the Guidelines for Handling Mergers and Concerted Actions Cases of Domestic Civil Air Transportation Enterprises. These guidelines allow the CTFTC to consider the policies enacted by the financial and civil aviation regulatory authorities when evaluating the overall economic benefits from and adverse effects on competition in cases of mergers in these industries.
6. To prevent hindrance to market competition and adverse effects on consumer welfare, the FTA strictly prohibits joint actions among competitors in the same industry that may affect the functioning of production, goods trading, or service supply-demand markets. However, the law also authorizes the CTFTC to weigh relevant industry policy factors and determine whether joint actions among businesses would benefit the overall economy and public interest. Such joint actions may be permitted upon prior application if they involve:
1. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, because of economic downturn, that the

enterprises in the same industry have difficulty to maintain their business or encounter a situation of overproduction;

2. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises ; or
3. joint acts required for the purposes of improving industrial development, technological innovation, or operational efficiency.

## 2. Case experience

### 2.1. Case of the Chinese Goose Association’s Decision on the Price Quoting Mechanism for Goslings

7. The Chinese Goose Association (CGA) was reported to have convened meetings of the gosling pricing group on November 16 and December 1, 2020, where decisions were made on a price quoting mechanism for goslings, resulting in a decrease in the prices of locally produced goslings, which was deemed to violate the provisions of the FTA.

8. In its 1637<sup>th</sup> Commissioners’ Meeting on February 15, 2023, the CTFTC deliberated on the decision of the CGA to set gosling purchase prices, which, while constituting a joint action regulated by the FTA, was found to be in accordance with Subparagraph 4, Paragraph 1, Article 27 of the Animal Industry Act (AIA). This provision mandates the National Animal Industry Foundation (NAIF), commissioned by the Ministry of Agriculture (MOA), to coordinate industrial organizations (including the CGA) in setting production quantities and appropriate prices as part of its statutory duties. Therefore, the CGA’s regular meetings to decide on gosling prices were considered to be cooperating with the NAIF to accept the entrustment to implementing Article 27 of the AIA. This situation involved a conflict between competition policy and industry policy, necessitating the consideration of whether the AIA provisions contravene the legislative intent of the FTA under Article 46 of the latter.

9. In this regard, the CTFTC acknowledges that due to the significance of agricultural production to national welfare, its close interrelation with other industries, and its inherent vulnerability, the affairs concerning all agricultural producers nationwide are beyond the capacity of individual farmers and require coordinated efforts by the government. The MOA is responsible for the overall administration of agricultural, forestry, fisheries, animal husbandry, and grain affairs, including regulating agricultural product supply and demand, maintaining price stability, increasing farmers’ income, improving marketing channels, and reducing marketing differentials. The tasks undertaken by the MOA to assist in the development of the livestock/poultry farming business are in accordance with the AIA, which mandates the formulation and regulation of production plans to maintain the balance of the supply and demand of livestock/poultry products and reasonable prices, to meet agricultural policy objectives. These actions are not in conflict with the legislative intent of the FTA, which seeks to maintain transaction order, protect consumer interests, and promote economic stability and prosperity. Therefore, they are exempted from the application of the FTA under Article 46 of the FTA.

### 2.2. The Non-Life Insurance Association’s Decision on the Floor of Commercial Fire Insurance Additional Fee Rates

10. The Non-Life Insurance Association (NLIA) was reported to have discussed and resolved to establish the floor of commercial fire insurance additional fee rates at the 7<sup>th</sup>

session of its 14<sup>th</sup> Board of Directors meeting on November 23, 2017, which was deemed to violate the prohibition on joint actions under Paragraph 1, Article 15 of the FTA. The case was decided upon by the CTFTC in its 1539<sup>th</sup> Commissioners' Meeting on April 28, 2021.

11. During the investigation process, the CTFTC consulted the Financial Supervisory Commission (FSC), the regulatory authority for the insurance industry, for their opinion and invited them to communicate the case situation at the CTFTC. The FSC's position was that, according to the authorization under Article 165-2 of the Insurance Act, the NLIA can establish self-regulatory rules to enhance market order for the purpose of ensuring the sound operation of its members. The self-regulatory actions of the NLIA also assist the FSC in its supervisory role. In this case, the NLIA calculated the additional fee rates required for the operations of its members in accordance with the Supervisory Measures for the Third Stage of the Implementation of Liberalization of Non-Life Insurance Rates issued by the FSC to reflect reasonable operational costs. The action aligned with the intent of Subparagraph 1, Paragraph 1, Article 8 of the Regulations Governing Pre-sale Procedures for Insurance Products issued by the FSC, which stipulates that insurance rate determination should be adequate, reasonable, and fair.

12. However, from the perspective of the CTFTC, the Insurance Act, the Supervisory Measures for the Third Stage of Implementation of Liberalization of Non-Life Insurance Rates, and the Regulations Governing Pre-sale Procedures of Insurance Products do not expressly authorize the NLIA to regulate the determination of fee rates for non-life insurance companies through self-regulation. Therefore, Article 46 of the FTA does not apply to this case. Moreover, the NLIA, as a business group established by non-life insurance companies to enhance their collective interests, may employ self-regulation to restrict price determination by member companies, tends to exceed the necessary scope of ensuring adequacy, reasonableness, and fairness in pricing. Furthermore, the additional fee rates reflect the management and distribution expenses of non-life insurance companies, which vary among individual companies based on their efficiency and operational costs. Imposing a unified floor of the additional fee rates for member companies by the NLIA would prevent individual companies from determining prices based on their own operational costs, competing for business opportunities, and thus losing the incentive to improve operational efficiency and reduce operating costs. The CTFTC considers the NLIA's decision to establish a floor of the additional fee rates for commercial fire insurance to involve price collusion, thereby violating Paragraph 1, Article 15 of the FTA which prohibits concerted action.

### **2.3. Proposal by the Nantou County Government to Establish a Single Ticket Window for Passenger Boats at Sun Moon Lake**

13. In 2018, the Nantou County Government, in response to price-cutting competition among passenger boat operators at Sun Moon Lake resulting in poor service quality, convened a local briefing session and invited operators to discuss the establishment of a single ticket window. The government also sought advice from the CTFTC.

14. In its response to the Nantou County Government, the CTFTC pointed out that the sale of boat tickets by passenger boat operators constitutes a private economic activity and is subject to regulation under the FTA. If the county government were to establish a single ticket window, allowing operators to set their own ticket prices according to their fee standards, operators would still retain freedom in pricing and a mechanism for price competition in the relevant market, which would not contradict the legislative purpose of the FTA. However, if all operators decided to sell tickets at a unified price through this

window, it would not only conflict with the regulations and intentions of the self-government ordinance and fee standards but also go against the spirit of free and fair competition, thus potentially violating the prohibition on joint actions under Paragraph 1, Article 15 of the FTA.

15. On December 22, 2022, the Nantou County Government amended and removed the provisions regarding the establishment of fee standards in Article 9 of the Nantou County Sun Moon Lake Water Area Passenger Ship Operation Management Self-Government Ordinance. Subsequently, on July 10, 2023, based on the principle that ticket prices for passenger boats should be subject to market mechanisms, thereby allowing operators to independently determine prices based on their operating conditions, the “Fee Standards for Passenger Boats in the Sun Moon Lake Water Area in Nantou County” were abolished.

### 3. Advocacy

#### 3.1. Discussion on a Fixed Book Price System

16. In March 2023, the online bookstore Books.com launched a promotion offering a 34% discount on ten thousand books, sparking widespread discussion in the industry. Representatives from 14 publishing houses initiated a petition urging the government to establish a “Fixed Book Price System,” which garnered over 300 co-signers. Legislators convened a public hearing on “Malicious Competition in the Market Channels: Where Is the Future of the Cultural Industry?” on April 11, inviting representatives from the public sector, publishing industry, and scholars to discuss countermeasures. Representatives from the CTFTC also attended to explain relevant regulations under the FTA and the CTFTC’s enforcement stance.

17. The Ministry of Culture subsequently held a workshop on the “Dialogue Platform for Fixed Book Price Issues” on May 19, and on May 25 organized a seminar on the “Exceptions and Application Procedures for Joint Actions in the Publishing Industry.” The CTFTC was invited to attend both events to explain relevant regulations, procedures, and reviewing criteria under the FTA. The CTFTC’s position is as follows:

1. The Fixed Book Price cannot be exempted from the current regulations under the FTA: The “Fixed Book Price System” refers to price maintenance or discount restrictions in book retailing to ensure that the same book can be sold at a fixed price or discount at different locations simultaneously. According to Paragraph 1, Article 19 of the FTA, businesses are expressly prohibited from engaging in price-fixing behavior without justifiable reasons. In determining its illegality, it is necessary not only to consider the market power possessed by the businesses implementing price-fixing measures, but also to comprehensively assess whether such behavior results in substantial restrictive effects. On the other hand, businesses may argue for justifiable reasons for implementing price-fixing measures downstream, and the CTFTC will make their validity on a case-by-case basis.
2. Application for Exceptions of Joint Actions by Businesses: Paragraph 1, Article 19 of the FTA expressly prohibits businesses from engaging in price-fixing behavior without justifiable reasons. However, in the negotiation process between book publishers and distribution channels, if there is a need for joint bargaining to enhance bargaining power, businesses should apply for exceptions of joint actions from the CTFTC before implementing such arrangements. Upon receiving and processing cases, the CTFTC will first review and analyze them, and the Commissioners will review the application and its content in accordance with

Articles 1, 14, and 16 of the FTA, deciding whether to permit businesses to engage in joint actions. If necessary, the CTFTC may assist participating businesses in understanding the relevant legal provisions, application procedures, and required documents for the application.

### **3.2. Discussion on the Feasibility of Opening Multiple Distributors to Operate Sports Lotteries**

18. In accordance with Paragraph 1, Article 4 of the Sports Lottery Issuance Act, it is stipulated that “The issuance of sports lottery shall be handled by the professional issuance agency, established by the competent authority or selected through a public selection process.” The competent authority, the Ministry of Education (MOE), should have the right to determine the number of sports lottery issuance agencies. However, under the MOE’s guidance, sports lotteries have long been operated by a single issuance agency. There have been discussions by stakeholders about future distribution strategies for sports lotteries, with some supporting the continuation of a single distributor and others supporting the opening of two or more distributors. Legislators therefore held a public hearing on May 30, 2022, inviting representatives from industry, government, and academia to discuss the feasibility of opening a second sports lottery distributor.

19. The MOE expressed during the meeting that it is still preferable to select one distributor through an open bidding process. The reasons provided were as follows:

1. Many countries with publicly-run private lotteries typically adopt a single distributor.
2. The issuance of sports lotteries is stable, and the current market size is limited, making it unsuitable for multiple competitors.
3. The issuance of sports lotteries serves a strong public interest purpose.
4. Underground gambling is a crime that should be cracked down upon.
5. The issuance of sports lotteries embodies a responsible gambling system.
6. The division of risk and responsibility between two distributors may be difficult to clarify and could increase government regulatory costs.

20. The CTFTC provided the following opinions during the meeting:

1. From the perspective of market competition, the CTFTC generally favors increasing the number of distributors and opening up competition.
2. The FTA does not prohibit monopolies but rather prohibits their abuse. Therefore, regulatory authorities may consider factors such as industry characteristics, public interest, and operational performance when deciding whether to open up the market to competition.
3. Competition is not a ferocious beast, and the interaction between competition and public interest is not a zero-sum game. Through competitive means, public interest objectives can also be achieved.
4. Whether excessive competition will lead to commission rebates, vicious competition, and increased regulatory costs requires empirical research and analysis.

### 3.3. Draft Regenerative Medicine Preparations Management Bill

21. Regenerative medicine involves the reconstruction or repair of human structures or functions using genes, cells, or their derivatives to treat or prevent human diseases. This includes both regenerative medicine technologies and regenerative medicine preparations. However, due to the novelty of regenerative medicine types and technologies, the existing regulatory framework may not fully meet the needs of regenerative medicine or facilitate its development. Considering the heterogeneity of regenerative medicine preparations, the uniqueness of their production processes, and the complexity of their treatments, the risk management of regenerative medicine differs from that for chemical or biological preparations. The existing relevant regulations cannot fully cover or be uniformly applied to regenerative medicine preparations. Taking into account international legislative management of regenerative medicine preparations, a regulatory framework should be constructed to accommodate the development trends of regenerative medicine in Chinese Taipei. This framework should regulate the suitability assessment of organizations and cell providers, informed consent and recruitment of providers, patient rights to receive advanced treatment, and post-marketing surveillance. It should provide clear standards for regenerative medicine preparations, ensuring that businesses comply with the standards for the commercialization, specification, and processing of cells and genes. This will promote the robust development of the regenerative medicine industry. Therefore, numerous legislators proposed a Draft Regenerative Medicine Preparations Management Bill and invited the CTFTC to attend the review meeting.

22. The CTFTC acknowledged that the draft Bill took into account the heterogeneity of these preparations, their special production processes, and the complexity of their treatments. Although Subparagraph 2, Paragraph 1, Article 10 of the draft Bill specifically requires permits for certain preparations to include additional provisions such as “fees and their collection methods,” which differs from the typical situation where prices are determined through market competition, the CTFTC is aware that the legislation contributes to the overall innovation in regenerative medicine technology, promotes the development of innovative applications in regenerative medicine, strengthens the management and regulation of regenerative medicine technology and preparations, and benefits cancer patients and those with rare diseases. This protects the rights and interests of domestic patients, demonstrating considerations for public interest. Therefore, the CTFTC accepts the result of the Legislative Yuan’s deliberations of the draft Bill.

## 4. Conclusion

23. This report clearly states that, according to Article 46 of the FTA, industrial policies or special laws can only exclude the application of the FTA when they do not contravene the legislative intent of the FTA. Empowered by the FTA, the CTFTC actively intervenes in the formulation process of industrial policies/laws to advocate competition policy, thereby avoiding industrial policies/laws that violate the legislative intent of the FTA. Furthermore, in case adjudication involving violations of industrial policies/laws, the CTFTC makes decisions based on the principles of a balanced competition policy and industrial policy. In addition, the CTFTC has the authority to publish sales thresholds for combination in individual industries and to clear or object applications for joint conducts among horizontally competing businesses by taking into account various factors related to industrial policies.