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Competition and Consumer Policy in Digital Markets – Note by Chinese Taipei

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1. This report explains the competition and consumer-protection issues faced by the Chinese Taipei Fair Trade Commission (hereinafter referred to as the ‘CTFTC’) in digital markets, the respective roles of the competition authority and the consumer-protection authority, and the relationship between the Fair Trade Act (hereinafter referred to as the ‘FTA’) and the Consumer Protection Act (hereinafter referred to as the ‘CPA’). It also illustrates the CTFTC’s enforcement position through relevant cases and studies.

1. Competition and consumer-protection issues in digital markets

2. With the advent of the digital economy, global economic systems are facing unprecedented challenges and opportunities. In a world where control over data and technology can create a competitive advantage, ensuring fairness and competition in digital markets has become a shared concern among competition authorities. In December 2022, the CTFTC published the *White Paper on Competition Policy in the Digital Economy*, which compiled numerous competition issues that also relate to consumers. For example, digital platforms’ ‘self-preferencing’ and biased search practices often involve leveraging market dominance to extend market power. Such conduct may not only exclude competitors but also deprive consumers of access to transparent and neutral information, thereby steering them toward suboptimal transaction decisions. On the other hand, platform ‘bundling’ practices—with their network effects—may lead to the development of integrated ‘ecosystems’ that offer one-stop services or more user-friendly consumption environments and experiences. Through economies of scale or scope, these practices may ultimately enhance consumer welfare.

3. With the development of digital markets, online shopping—characterized by convenient price comparisons, diverse cross-border options, and transparent review information—has evolved into a mainstream consumption model. New issues emerging on digital platforms in recent years, such as keyword advertising, dark patterns, and subscription traps have also highlighted how relevant they have become to consumer protection. From the perspective of competition law, false advertising or the failure to disclose important information online prevents consumers from making transaction decisions based on accurate information, places law-abiding competitors at an unfair disadvantage, and disrupts the order of market competition.

2. The relationship between the FTA and the CPA

2.1. The respective regulatory purposes and functions of the FTA and the CPA

4. Because the enforcement of competition policy and consumer-protection policy falls under different authorities in Chinese Taipei, clarifying the respective roles of the competition authority and the consumer-protection authority is crucial when handling cases related to digital markets. The competition authority in Chinese Taipei is the CTFTC, whose primary responsibility is to maintain market competition order. When the FTA was first enacted, it aimed to meet the needs of economic liberalization, internationalization, and institutionalization by establishing an environment in which enterprises could compete freely and by setting fair and reasonable competition rules. In essence, it is legislation

designed to regulate competitive order. According to Article 1 of the FTA, its legislative purpose is as follows: ‘To maintain trading order and protect consumers’ interests, ensure free and fair competition, and promote economic stability and prosperity, this Act is hereby enacted.’ In terms of its regulatory content, the Act targets conduct that restricts competition—such as the exercise of monopoly power, mergers, concerted actions, resale price maintenance, and other restraints on business activities—as well as unfair competition practices, including false advertising, deception, or other obviously unfair conduct. Therefore, the FTA regulates the behavior of individual enterprises or conduct among enterprises, with the primary objective of safeguarding market trading order. The CTFTC is not, however, concerned with whether such conduct causes actual harm to consumer rights. The reference to ‘consumer interests’ in Article 1 of the FTA reflects an indirect form of protection, achieved through the Act’s objective and mechanisms for maintaining trading order.

5. As for consumer-protection authorities, these include the Consumer Protection Committee of the Executive Yuan, the various competent authorities for specific industries, and local governments. Their core objective is to safeguard consumer rights and promote the safety of consumers’ lives. When the CPA was first enacted, it was a response to rapid economic development, the constant emergence of new products, and the rapid transformation of consumer behavior. To improve consumption quality and ensure consumer safety, the Act was established to create a sound legal and institutional framework for consumer protection. According to Article 1, paragraph 1 of the CPA, its legislative purpose is as follows: ‘This Act is enacted for the purposes of protecting the interests, facilitating the safety, and improving the quality of life of the consumers.’ It is therefore a special law enacted for the direct protection of consumer rights.

6. Therefore, from the perspective of legislative purpose and regulatory function, the core of the FTA remains focused on maintaining competitive order, whereas the CPA is aimed at safeguarding consumer rights. The ‘consumer interests’ referred to in Article 1 of the FTA are not the primary object of direct legal protection, but are instead protected indirectly through the Act’s mechanisms for preserving market order and ensuring fair competition, which in turn give rise to a spillover effect that benefits consumers.

2.2. Consideration of consumer interests in competition assessments under the FTA

7. When the CTFTC conducts competition assessments under the FTA, its primary focus is on evaluating market competition. In individual cases, consumer interests are also included as one of the relevant factors. For example, when the CTFTC reviews a merger, the guiding principle is whether the overall economic benefits outweigh the disadvantages resulting from restrictions on competition. According to Point 13 of the FTC’s Guidelines on Handling Merger Filings, for merger cases that raise significant concerns about restricting competition, enterprises may present considerations related to the overall economic benefits—such as economic efficiencies or consumer interests—for the CTFTC’s evaluation. Therefore, in assessing the overall economic benefits, the CTFTC focuses on whether a merger can, through a sound competitive mechanism, improve operational efficiency, enhance product-distribution efficiency, reduce stock-out rates, lower product costs, and ultimately raise the overall quality of goods or services, thereby safeguarding consumer interests. In short, when the CTFTC evaluates a case, its primary concern is whether the conduct promotes market competition efficiency. Any resulting consumer benefits are indirect effects that arise from maintaining competitive market order.

2.3. Distinguishing the applicability of Article 25 of the FTA from the CPA

8. According to Article 25 of the FTA, unless otherwise provided in the Act, enterprises may not engage in any deceptive or obviously unfair conduct that is sufficient to affect trading order. Within the regulatory framework of the FTA, the application of Article 25 requires first examining whether the conduct falls under the provisions governing restrictions on competition (such as monopolies, mergers, or concerted actions) before examining the unfair-competition provisions (such as false advertising). If these provisions do not exhaustively address the wrongful nature of the conduct, only then is there room for the application of Article 25. Furthermore, when addressing conduct by digital platforms that involves both competition and consumer-protection, the application of Article 25 of the FTA must be distinguished from civil disputes or matters that fall solely within the realm of consumer protection. According to the CTFTC's Guidelines for Handling Cases under Article 25 of the FTA, intervention based on consumer interests, in addition to requiring the constitutive elements of being 'deceptive' or 'obviously unfair,' is limited to conduct that meets the requirement of being 'sufficient to affect trading order' and 'involves the public interest.'

9. As for how to determine whether conduct is 'sufficient to affect trading order,' the aforementioned Guidelines indicate that several factors may be taken into account, including the number of victims, the quantity and degree of harm caused, the deterrent effect on other enterprises, whether specific organizations or groups have been targeted by the alleged acts, whether the case would affect a majority of future potential victims, the method or the means of the act, the frequency and size of the alleged acts, the reciprocity of the information with respect to the actor and his trading counterpart, the amount of dispute resolution resources, the size of the market power, the presence of the dependency, the trade habits and industry characteristics, etc. However, that the trading order has in fact been affected is not required. By contrast, isolated and non-recurring transactional disputes involving individual consumers do not meet the requirement of being 'sufficient to affect trading order.' In such cases, consumers should seek remedies under the Civil Code, the CPA, or other applicable laws.

3. Relevant Cases and Studies

3.1. Case involving advertisement of Company A that improperly used the name of a competitor Company B as a keyword

10. This case arose from a complaint alleging that Company A purchased its competitor Company B's name as a keyword for its advertisement on a digital platform, thereby misleading consumers by directing them to Company A's website. The conduct was suspected of violating Article 25 of the FTA. The CTFTC's investigation focused on whether Company A's actions constituted 'Exploiting the fruits of others' work' and whether they met the threshold of being 'sufficient to affect trading order.' The assessment was based on empirical data used to evaluate the actual impact of the keyword-purchasing behavior on market order.

11. From the perspective of a competition authority's analytical framework, keyword advertising has the potential to reduce consumers' search costs and provide diversified information. Therefore, in determining whether the conduct is unlawful, the assessment must consider not only whether it causes confusion regarding the source of goods or services, but also whether Company A's behavior harms the efficiency of market competition. In this case, the CTFTC evaluated the market impact by examining changes

in revenue and customer composition. Using empirical data, the Commission assessed the variations in the business performance of both Company A and Company B before and after the implementation of the keyword advertising during the advertising period, as described below:

- Regarding Company B’s operations: Based on sales-revenue data from the Ministry of Finance, a comparison of Company B’s sales figures before and after the keyword advertisements shows that its sales did not decline; instead, they increased. This indicates that Company B did not suffer any actual business loss as a result of Company A’s keyword advertising.
- Regarding the analysis of the composition of Company A’s customers: During the advertising period, Company A acquired only eight new customers, six of whom were referred by existing clients, while only two came from online searches. This shows that the keyword advertisement did not significantly influence the transaction-decision pathway of potential customers.
- Regarding the consistency of Company A’s revenue before and after the keyword advertising: After Company A stopped running the keyword advertisements, its sales did not exhibit any significant decline. This indicates that the keyword advertising was not a core source of its competitive advantage.

12. Ultimately, the CTFTC concluded that the keyword advertisement clearly displayed Company A’s name in the ad title, making it unlikely that consumers would be confused about the source. Moreover, based on the revenue data and customer-composition analysis, Company A’s conduct neither harmed its competitor nor enabled it to obtain an improper competitive advantage. Therefore, the CTFTC determined that the conduct did not meet the threshold of being ‘sufficient to affect trading order’ and thus did not constitute a violation of Article 25 of the FTA.

3.2. A Study on ‘Dark Patterns’ in the Digital Market Involving Competition and Consumer-Protection Issues

13. With the development of the digital economy, increasing attention has been given to the impact of ‘dark patterns’ in digital markets on competition order and consumer rights. Digital markets are built upon extensive analysis of users’ personal data and behavioral information, enabling companies to influence consumer choices with greater precision. The digital environment also allows firms to more easily test and evaluate the effectiveness of various choice-architecture designs, making it more difficult for users to detect carefully crafted transactional traps. To address these issues, in 2024 the CTFTC commissioned a study on ‘Dark Patterns in Digital Markets and Their Implications for Competition and Consumer Protection.’ The study compiled and analyzed research reports, investigations, enforcement decisions, and litigation cases concerning dark patterns from various competition authorities. It also drew on perspectives from legislative bodies, competition agencies, and academic scholars. Based on this comprehensive review, the study proposed recommendations regarding dark-pattern regulation, which serve as valuable reference for the Commission’s future enforcement efforts.

14. The commissioned study noted that ‘dark patterns’ refer to website or interface design techniques that deceive or manipulate users, causing consumers to make transactional decisions they would not otherwise make, and potentially leading to harm. Common category examples include ‘subscription traps’ (hidden subscriptions or forced renewals), which operate through ‘negative option’ mechanisms—interpreting a consumer’s silence or inaction as acceptance of an offer, thereby inducing the consumer

into an unintended or unwanted automatic subscription or renewal. Businesses often use ‘free trials’ or ‘buy one, get one free’ offers as bait to attract consumers to register, yet fail to clearly disclose—prior to checkout—that the service will convert into a paid subscription with automatic renewal and charges once the trial period ends. Such practices are frequently combined with a ‘roach motel’ design, in which the sign-up process is extremely easy and convenient, but the cancellation requires consumers to navigate lengthy, confusing, and intrusive multi-step pathways. This design effectively obstructs consumers from exercising their right to exit the subscription.

15. The commissioned study further found that ‘dark patterns’ are generally viewed as practices by a single business directed at consumers, and therefore are more closely associated with consumer-protection issues by nature. Internationally, jurisdictions such as the United States, the European Union, and South Korea primarily address dark-pattern conduct through their consumer-protection authorities under relevant consumer-protection laws. Since consumer-protection enforcement in Chinese Taipei operates under a ‘decentralized’ system—where responsibility is divided among sectoral regulators and local municipal and county (city) governments—the study recommends establishing a single, centralized consumer-protection authority. It also suggests strengthening the CPA by equipping it with more robust administrative enforcement tools.

16. The CTFTC also discussed the issue of ‘dark patterns’ in its 1,739th Commissioners’ Meeting in 2025, in which it examined how ‘subscription-trap’ dark patterns used by digital platforms should be assessed under the FTA and whether relevant provisions should be amended. From the enforcement perspective of a competition authority, the Commission considers subscription traps and similar dark-pattern practices to be fundamentally matters of civil-contract performance and consumer protection. Moreover, in January 2026, the Ministry of Digital Affairs announced proposed amendments to the ‘Mandatory and Prohibitory Provisions of the Standard Form Contract for Retail Online Trading’ which would prohibit businesses from including terms that pre-set consumer consent to automatic renewal and billing, or that allow automatic renewal and billing without providing separate notice to consumers, as well as similar wording or markings. Accordingly, whether dark-pattern practices such as subscription traps fall within the scope of competition-law intervention depends on whether the conduct meets the elements of ‘deception’ or ‘obvious unfairness,’ and whether it is sufficient to affect trading order and implicate the public interest. Only under such circumstances would Article 25 of the FTA have room for application.

4. Future Enforcement Approach

17. By taking a broader view of the implementation of competition policy in Chinese Taipei’s digital markets, the preservation of competitive order has always been the CTFTC’s foundational legislative purpose and primary enforcement objective under the FTA. Protecting the competitive mechanism and enhancing consumer welfare are not mutually exclusive goals. In the face of rapid environmental changes in digital markets and the emergence of new technologies, the CTFTC must continue to refine its analytical tools and enforcement strategies to ensure that market competition remains fair and effective. The CTFTC’s competition policy is centered on maintaining the contestability of markets. Its role is to prevent large digital platforms from abusing their market power or engaging in other anti-competitive or unfair practices, thereby ensuring that consumers in digital markets can enjoy transparent information and diverse choices. In other words, within digital markets, the protection of consumer interests under the FTA is achieved through

promoting competitive market mechanisms and safeguarding competitive order, rather than through direct consumer-protection regulation.

18. The *White Paper on Competition Policy in the Digital Economy* published by the CTFTC has already highlighted that many competition issues in digital markets are closely intertwined with consumer concerns. As a general principle, matters involving individual consumer disputes or consumer-protection issues—such as contract formation or renewal, or individual refund requests—should first be resolved through the CPA or civil-law remedies. Looking ahead, the CTFTC’s scope for intervention in such cases will continue to depend on whether the conduct meets the requirement of being ‘sufficient to affect trading order’ and whether it implicates the public interest. In practice, the CTFTC has already relied on empirical data to assess the impact of business conduct on market order and competition—for example, by examining changes in revenue, customer-source composition, and factors influencing transactional decision-making. These analyses help determine whether a firm’s conduct harms competitive efficiency or merely constitutes an individual civil dispute.