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English - Or. English

21 May 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Information Sharing in Competition Policy – Note by Chinese Taipei**

24 June 2026

This document reproduces a written contribution from Chinese Taipei submitted for Item 5 of the 149<sup>th</sup> OECD Competition Committee meeting on 22-24 June 2026.

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**JT03587507**

## *Chinese Taipei*

1. Information sharing among market participants in the same sector is a common business practice that can, depending on the circumstances, either promote competition or raise significant anti-competitive concerns. To examine the legality of information exchange and concerted actions, this paper provides an overview of relevant legal elements and presumptions under competition law, competition assessment of information exchange among competitors and recent enforcement cases. From these perspectives, the paper explores the interface between information exchange and competition policy, together with advocacy initiatives in Chinese Taipei.

### 1. Legal criteria to consider concerted actions under competition law in Chinese Taipei

2. Paragraphs 1 and 2 of Article 14 of the Fair Trade Act (hereinafter referred to as the ‘FTA’) provide that:

*‘The term “concerted action” as used in this Act means that competing enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding, jointly determine the price, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, or any other behavior that restricts each other’s business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services.*

*The term ‘any other form of mutual understanding’ as used in the preceding Paragraph means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.’*

3. To strengthen enforcement against concerted actions, Article 14 of the FTA was amended in February 2015 by adding Paragraph 3, which provides that:

*‘The mutual understanding of the concerted action may be presumed by considerable factors, such as market condition, characteristics of the good or service, cost and profit considerations, and economic rationalization of the business conduct.’ The introduction of a presumption regarding the existence of a mutual understanding allows the Chinese Taipei Fair Trade Commission (hereinafter referred to as the ‘CTFTC’), in addition to direct evidence, to determine the causal relationship based on market conditions and indirect evidence. If the conduct is shown to have a sufficient degree of probability of resulting from a mutual understanding, the CTFTC may infer the existence of such a mutual understanding.*

4. However, a recent judicial decision indicated that the Taipei High Administrative Court adopted a different view on the required threshold for the presumption of mutual understanding:

5. The CTFTC investigated allegations that Taipei Oxygen & Gas Co., Ltd. (‘Taipei Oxygen’) and Taida Gas Co., Ltd. (‘Taida Oxygen’) jointly increased prices of medical oxygen. The investigation found that Taipei Oxygen sent messages via the LINE app to downstream distributors, promising a ‘lowest price guarantee’ in the central region and offering to coordinate competition issues between the downstream distributors of the two companies. The evidence also showed that both companies had previously exchanged

views regarding adjustments to industrial gas prices. Given the tacit understanding of the price adjustments, and the resulting high degree of predictability of each other's pricing strategies, in combination with the characteristics of the oligopolistic market structure and general economic rationale underlying price rises, the CTFTC concluded that the evidence was sufficient to infer the existence of a mutual understanding to increase prices.

6. The Taipei High Administrative Court revoked the CTFTC's decision, holding that the mutual understanding may be presumed where such mutual understanding constitutes the only reasonable explanation for parallel conduct among competitors in the relevant market. This reflects a substantial divergence in legal interpretation between the competition authority and the Court. The CTFTC has filed an appeal and maintained that, under the legislative purpose of Paragraph 3 of Article 14 of the FTA, the Commission is only required to establish the existence of a mutual understanding on the basis of a reasonable inference drawn from indirect evidence, without the need to demonstrate that it is the sole reasonable explanation.

## 2. Competition assessment of information exchange among competitors

7. In 2017, the CTFTC engaged academia to conduct a study on the relationship between information exchange and competition policy<sup>1</sup>. With reference to Bennett and Collins (2010)<sup>2</sup>, the study categorized sensitive information exchange into three types based on their impact on consumer welfare and market competition:

1. The Good: pro-competitive information exchanges that can enhance market competition and contribute to ensuring consumer welfare.
2. The Bad: information exchanges that may facilitate coordination among competitors on prices or quantities, and establish a monitoring mechanism to oversee compliance. They also include exchanges that may enhance internal stability of collusive arrangements, create barriers to entry so as to deter new entrants, and foster market conditions that aid sustained collusion. Such information exchange, when supported by direct evidence, may constitute a concerted action prohibited under the FTA.
3. The Ugly: information exchanges are required to be assessed on a case-by-case basis to determine if they constitute a restriction of competition by object or by effect.

8. Information exchange is more likely to be regarded as a restriction by object where it involves: exchanges via backchannels or other clandestine means; individual firm-specific information; information that reveals future intentions or may affect future intentions; information sharing involving businesses with significant market shares; flexible information that can be adjusted at any time; strategic information on prices, quantities or costs, and frequent exchanges over an extended period.

9. By contrast, information exchange is more likely to be assessed as a restriction by effect where it involves: exchanges through public channels; aggregated data/information; historical data/information; information sharing involving businesses with insignificant

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<sup>1</sup> Chin-Tsun Shih, *Sensitive Information Exchange among Competitors and Concerted Actions under Competition Law*, Chinese Taipei Fair Trade Commission Commissioned research report, 2017

<sup>2</sup> Matthew Bennett & Philip Collins, *supra* note 3, 311-337.

market shares; rigid information that cannot be revised; non-strategic information, and infrequent exchanges during a short period of time.

10. In the ‘Ugly’ category, where the information shared among competitors is characterized as a restriction by object (or by effect), the competition authority will further assess it based on the substance of the information shared among competitors and its potential impact on competition. If the overall conduct is closer in nature to the ‘Bad’, it is more likely to facilitate collusion and raise anti-competitive concerns. On the contrary, if it is closer to the ‘Good’, it is less likely to satisfy the criteria of a concerted action.

11. In cases where the information shared among competitors is regarded as a restriction by object and effect, the above analytical principles remain applicable. However, greater emphasis will be placed on assessing competitive effects, and a stricter approach will be adopted to determine whether the conduct in question should be considered as a restriction by object or by effect.

12. Taking into account the prevailing business culture in Chinese Taipei, it is common for market participants to exchange information, for example prices, quantities, customer data, costs, and technology, through private gatherings, meetings, or instant messaging apps such as LINE or WeChat. Comparing these communication channels, instant messaging apps offer greater flexibility than in-person meetings or gatherings. They will not be constrained by transportation or venue availability. In group chats, participants do not need to be online at the same time, and can respond to text messages or other communications at their own convenience. Where the information sharing involves numerical data, text-based communication can also enhance the accuracy.

13. By contrast, in-person meetings or gatherings require coordination of participants’ schedules and venue arrangements, and participants may incur additional time and transportation costs to attend, resulting in increased communication costs. However, face-to-face interactions allow for discussions of more complex or time-sensitive issues. They also enable participants to observe visual and verbal cues such as eye contact, facial expressions, body language and tone of voice, which can help determine participants’ genuineness and reduce the risk of misunderstanding.

14. Through its enforcement activities, the CTFTC has observed that depending on the purpose of the information exchange and the content of the information, market participants may select one or multiple communication channels. When there is a need to reach a consensus among market participants, for example, to set fee standards or fix prices, it is more common to communicate through in-person meetings or gatherings. For the purpose of confirming individual matters such as sharing information on respective prices or quantities, or providing survey links, instant messaging apps are often used as the primary communication channel.

15. Trade associations also act as a common platform for information exchange in an industry. To enhance awareness of what type of information exchange may constitute of a violation of competition law, the CTFTC has issued the ‘Disposal Directions on Trade Associations and Other Business Groups.’ These Directions list the following collective practices that typically are not considered as anti-competitive conduct: distributing market surveys to collect industry data; organizing education and training programs; conducting seminars related to research and development, business promotion and management; complying with adjustment mechanisms in production and sales adopted by the competent agricultural authority; performing a part of duties commissioned by competent authorities and adopting compliance programs.

16. However, when a trade association restricts competition conditions by means of its charters, resolutions of general meetings, board or supervisory meetings, or other means,

such conduct may be deemed to infringe Article 15 of the FTA. For example, a trade association may request its members not to engage in price competition, set prices of goods or service fees, or limit trading areas, trading counterparts, transaction terms, market entry or exit, or sales conditions.

### 3. Enforcement cases

#### 3.1. Illegal information exchange

##### *3.1.1. Concerted action among fifteen ready-mix concrete suppliers in Taoyuan City*

17. The CTFTC's investigation found that, since November 2018, fifteen ready-mix concrete ('RMC') suppliers in Taoyuan had met regularly at the trade association's premises, or at each other's plants to discuss and coordinate their business activities. During these meetings, individual RMC suppliers reported new construction projects, and expressed their interest in supplying concrete for specific projects. They then jointly determined which supplier would win a particular tender, which suppliers would assist with logistics, and whether suppliers other than the agreed bidding winner should submit cover bids.

18. The suppliers also created a WeChat group chat. Through this group chat, they informed one another of the time and venue of their meetings, established a market investigation team to monitor and cross-check respective business activities, and exchanged information on tender prices, and winning bid prices. They also used the group chat to seek information on whether cover bids were required, and what prices should be submitted to specific tenders. To verify the accuracy of reported output, monitoring devices were installed at the suppliers' plants, and the footage was transmitted to the trade association to track the number of delivery trucks, thereby enabling the calculation of the quantities supplied by each supplier.

19. The investigative findings also showed that RMC is a highly homogeneous product and its supply chain is inherently constrained by geography. Demand for concrete on construction sites is generally supplied by local RMC suppliers in the same city or county. Furthermore, information including construction projects, tender prices, winning bid prices, contracted volumes is considered highly confidential in the normal course of business. If the fifteen RMC suppliers in Taoyuan had engaged in competition, under reasonable business operation rules, they would not have shared the information with each another.

20. The RMC suppliers frequently exchanged sensitive information — including prices, quantities, and trading counterparts — through clandestine channels such as private meetings and a WeChat group chat. They also utilized monitoring devices to track each other's supply volumes. The purpose of such information exchange was not only to ensure that existing construction projects were allocated to designated suppliers in accordance with their arrangements, but also to reach a tacit understanding of disclosing tender prices in advance in order to avoid price competition for unallocated projects. The CTFTC concluded that such conduct constituted a 'hardcore cartel' involving price fixing and market allocation, in violation of Article 15 of the FTA.

### ***3.1.2. Pricing fixing among eight ferry operators running services between Donggang Pier and Xiaoliuqiu in Pingtung County***

21. It was alleged that Leuco Sapphire Shipping Co., Ltd. (Leuco Sapphire), Tai Fu International Shipping Co., Ltd. (Tai Fu) and the Tunglieline joint operation center of six businesses (comprising Ching Chiang Shipping Co., Ltd., Fei Ma Shipping Co., Ltd., Guan Guang Steamship Co., Ltd., Chung Yi Steamship Co., Ltd., Tung Hsin Steamship Co., Ltd., and Chrng Shyang Shipping Co., Ltd.) held multiple meetings in December 2022 to discuss fare increases. The fares under discussion included special offers for passengers who stayed in partner bed and breakfast accommodation, and standard passenger fares between Donggang Pier and Xiaoliuqiu. The meeting minutes among the eight ferry operators were circulated and confirmed via the LINE app. The operators also proactively updated each other on the progress of fare adjustments under review by the competent authority, in order to ensure the smooth implementation of their agreed arrangements. As a result, between January and March 2023 three of the eight ferry operators including Leuco Sapphire announced fare increases in succession.

22. Xiaoliuqiu is an offshore island lacking fixed road or airport links to the mainland. The CTFTC found that Xiaoliuqiu relied entirely on ferry services between Donggang/Yanpu and Xiaoliuqiu. The CTFTC determined that the route itself could be defined as a passenger ferry service market. In the relevant market, Leuco Sapphire, Tai Fu and the Tunglieline joint operation center together accounted for more than eighty percent of the market. Passenger fares played a key factor when ferry operators competed for customers. The more competitive prices a ferry business could offer, the more competitive advantage it could have. Ferry fares were considered highly sensitive commercial information for market participants. The eight ferry operators discussed raising fares and reached a consensus on fare standards in order to eliminate price competition in the relevant market. The CTFTC concluded that such conduct was highly damaging to market competition by object and that it constituted a violation of Article 15 of the FTA.

### ***3.1.3. Minimum hourly rate of locum pharmacists set by the Chiayi City Pharmacists Association***

23. On July 12, 2022 the Chiayi City Pharmacists Association (the ‘CCPA’) initiated a meeting with the Chiayi City Medical Association (the ‘CCMA’). The CCPA suggested to increase the minimum hourly rate of locum pharmacists to NT\$600 and requested the CCMA to notify its members. Both associations were unable to resolve their differences and reach an agreement over the minimum rate during the initial meeting. The CCPA proposed their revision to the CCMA on the following day, specifically providing that ‘the hourly rate is set at NT\$600 for locum pharmacists when working on weekends, public holidays, evening shifts, and during high-volume consultation periods, while the rate for all other periods remains at NT\$500.’ The CCMA sent this revised proposal to its chairperson for consideration via the LINE app, and the chairperson confirmed acceptance of it. Both associations sent links to questionnaires with this fee standard to respective official group chats to inform their members.

24. Based on its investigation, the CTFTC found that locum pharmacists provide services with varying levels of individual professional competency. The remuneration for such services should reflect each pharmacist’s competency, experiences and skills, which is not only a core criterion in clinics’ recruitment decisions, but also a fundamental and highly confidential element of individual pharmacists’ competitive advantage. The CCPA set the minimum hourly rates for locum pharmacists and coordinated this with the CCMA to use the instant messaging application and the online form system to disseminate the sensitive information in the professional market. The CTFTC concluded that such

information exchange distorted competition by object and by effect in the relevant market. It intended to restrict price competition and gave rise to increased market transparency on the sensitive competition element, leading to price rigidity in the market. The conduct therefore seriously impaired competition and allocative efficiency of the relevant market, in violation of Subparagraph 4, Article 20 of the FTA.

### 3.2. Legal information exchange

25. In recent years, environmental sustainability became a central, strategic pillar of global industrial development. To strike a balance between businesses' environmental protection objectives and the maintenance of market competition, the CTFTC issued the 'Guidelines for Concerted Actions of Enterprises in Response to Environmental Sustainability.' (the 'Environmental Sustainability Guidelines') The Guidelines set out the following three scenarios to explain potential competition concerns arising from different types of joint activities among competitors:

1. The 'Green Light' scenario refers to joint activities that are unlikely to raise competition concerns. Examples include joint advocacy initiatives, joint employee training programs, sharing information relevant to environmental sustainability information, and establishing databases specific to sustainability.
2. The 'Yellow Light' scenario refers to situations where businesses engage in cooperative activities with the aims of achieving environmental sustainability purposes, but may nonetheless restrict competition. For example, competitors jointly purchase environmentally friendly materials or equipment, or develop standard specifications for environmentally sustainable products or materials. An application of such cooperation has to be submitted to the CTFTC for an exemption from concerted actions under the FTA.
3. The 'Red Light' scenario refers to business practices that give rise to substantial anti-competitive concerns, for example, price fixing, market allocation, joint decision on output, procurement or sales, or collective boycotts preventing other enterprises from entering markets.

26. In 2024, Dell Global B.V. ('Dell'), a Netherlands-based company in pursuit of its carbon neutrality objectives, proposed a joint procurement mechanism for renewable energy together with another eleven companies operating in the supply chain of electronics manufacturing, power supply equipment, and IC chips. The CTFTC assessed and determined that this fell within the 'Yellow Light' scenario under the 'Environmental Sustainability Guidelines'. An application was submitted to the CTFTC by the companies involved in the mechanism.

27. The joint procurement mechanism adopted a rigorous 'pseudonymized data'. Each applicant submitted a separate electricity procurement demand request to an independent consulting firm. After aggregating the individual volumes, the consulting firm divided the companies into several groups, and facilitated them to obtain quotations from power suppliers. Then the members in each buyer group separately negotiated and entered into agreements with power suppliers through the procurement consulting firm. This approach ensured that individual companies were unable to access sensitive commercial information relevant to other applicants, including procurement volumes, prices, or contract terms and conditions with power suppliers.

28. Electricity demand is heavily correlated with an enterprise's production capacity utilization and production scheduling. Once this type of information is shared between competitors, it may enable them to calculate a more precise estimate of each other's

production costs and supply strategies, thereby minimizing competitive uncertainty in the market. The abovementioned de-identification information sharing approach removed the exchange of sensitive information among competitors. In doing so, this could prevent continuous monitoring through long term joint procurement of renewable energy. The joint procurement mechanism was only applicable to secure green energy, which did not spill over to affect other downstream markets.

29. The CTFTC concluded that collective bargaining could enhance the individual businesses' buying power vis-à-vis power suppliers and generate environmental sustainability efficiencies. Despite strict information firewalls, the CTFTC assessed that the renewable energy market was evolving rapidly, and granted conditional approval. A general behavioural condition was imposed to prohibit the applicants from exchanging or disclosing sensitive information by any means, including procurement volumes, actual procurement quantities, prices, inventory volumes, trading counterparts and capacity utilization rates.

#### 4. Industry trends and policy advocacy

30. Competition assessment of information exchange between competitors is highly fact-specific, as it is dependent on specific industry characteristics and market concentrations. For example, in the highly concentrated semiconductor industry and its technologically interconnected ecosystems, information exchange is imperative to research and development of advanced technologies and manufacturing. Information exchange is also part of an adaptive mechanism that is designed to facilitate technology risk coordination. In the semiconductor industry, strategic alliance and collaborative partnership is generally formed to solve pressing issues rather than to exclude competitors<sup>3</sup>. Data integration between IC designers and foundries can significantly enhance yields and shorten time-to-market. This reflects high-efficiency specialization and serves as a typical example of complementary cooperation within the ecosystem.

31. However, such deep interdependencies may give rise to significant competitive concerns. For example, a core foundry may act as an information chokepoint, facilitating tacit coordination on prices or capacities among competitors, or even engagement on exclusionary practices or tying. When assessing business practices in industries involving multiple relevant markets without clear boundaries, competition authorities must carefully collect and evaluate evidence to determine whether it is sufficient to prove that the intent, methods and effects of information exchange are likely to restrict competition<sup>4</sup>.

32. Traditional cartel investigations have primarily focused on detection of secret or covert agreements. With the evolution of concerted practices, businesses can also communicate through public channels to achieve the intended purposes of information

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<sup>3</sup> Brian C. Albrecht, Geoffrey A. Manne, David Teece, Mario A. Zúñiga, "From Moore's Law to Market Rivalry: The Economic Forces That Shape the Semiconductor Manufacturing Industry", 2025.

<sup>4</sup> Konstantinos Stylianou and Bruno Carballa-Smichowski, "'Market' definition in ecosystems", Oxford University Press, November 2024.

exchange during clandestine meetings. Harrington (2008<sup>5</sup>,2022<sup>6</sup>) explores similar issues in cartel detection and the use of public announcements to restrict competition. Concurrances (2026)<sup>7</sup> award-winning article also proposes using NLP technology to analyze public disclosures to identify and detect potential collusion, which may include businesses' announcements, news articles, press releases and earnings reports. Competition authorities have to expand their oversight beyond private channels and extend them to include 'plausible' exchanges of public information. Competition authorities in particular can enhance the deterrence effect by developing automated screening tools as a part of an effective enforcement regime.

33. In response to industrial transformation and market development trends, and to enhance businesses' compliance awareness, the CTFTC has issued the 'Code of Conduct for Antitrust Compliance of Enterprises' and the 'Environmental Sustainability Guidelines'. Both Guidelines enumerate various considerations and list the 'Do's and Don'ts' around information exchange. Furthermore, the CTFTC holds periodic seminars to clarify the criteria of 'information sensitivity,' aiming to provide businesses with clear guidance.

## 5. Conclusion

34. As the prevailing business practices and culture in Chinese Taipei, it is common for businesses to discuss market conditions, including but not limited to product prices and price trends of raw material, as well as respective business approaches in response to policy and regulatory changes. These discussions can occur through industry gatherings, trade associations and social media. When assessing whether information exchange constitutes a concerted action in violation of the FTA, or merely sharing of industry information, competition authorities must take various factors into consideration, including market structures, the content of information shared with competitors, and its effect to competition.

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<sup>5</sup> Harrington, Joseph E., "Detecting Cartels," in Paolo Buccirossi, ed., *Handbook of Antitrust Economics*, The MIT Press, 2008, pp. 213–258.

<sup>6</sup> Harrington, Joseph E., "Collusion in plain sight: Firms' use of public announcements to restrain Competition", *Antitrust Law Journal*, 2022, 84 (2), 521–563.

<sup>7</sup> Tomaso Duso , Joseph E Harrington, Jr. , Carl Kreuzberg , Geza Sapi," *Public Communication and Collusion: New Screening Tools for Competition Authorities*",2025.