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**Competition Enforcement and Regulatory Alternatives – Note by Chinese Taipei**

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More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/competition-enforcement-and-regulatory-alternatives.htm>

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## *Chinese Taipei*

1. This paper describes the interactions between enforcement of economic and industrial regulations, and competition law in Chinese Taipei. It also provides case examples to illustrate how sector regulators and the Fair Trade Commission (hereinafter referred to as the “CTFTC”) cooperate with each other.

### 1. The interactions between economic and industrial regulations and competition law in Chinese Taipei

#### 1.1. Economic and industrial regulations in Chinese Taipei

2. After World War II, the Government implemented a series of policies in pursuit of economic stability and development. Different industrial policies, such as import substitution and export-orientation were adopted successively. At that time, the Government intended to regulate business activities to the extent which it can effectively guide industries to preferred developments. This resulted in a burgeoning number of regulatory rules and sector regulators. Currently, the industries, including communication, telecommunication, financial and petrochemicals, are respectively supervised and monitored by sector regulators under specific regulatory rules.

**Table 1. Sector regulators in Chinese Taipei**

| Sector                | Service Provider                                   | Regulator                              | Regulated Matter(s)  |
|-----------------------|--|--|--|
| Water                 | Taiwan Water Corporation                           | Water Resource Agency, MoEA            | Determination of water tariffs   |
| Electric Power        | Taiwan Power Company                               | Bureau of Energy, MoEA                 | License grants and determination of electricity tariffs                              |
| Petroleum             | CPC Corporation, Formosa Petrochemical Corporation |  | Pre-notification of petroleum prices   |
| Natural Gas           | A single provider in each designated area          |  | Adoption of regional monopolistic management and determination of price tariffs      |
| Bus                   | Bus operators                                      | Directorate General of Highway, MoTC   | Determination of bus routes and fares  |
| Taxi                  | Taxi companies and independent taxi drivers        |  | Determination of fare rates and operating areas                                      |
| Maritime Transport    | Vessel carriers                                    | Maritime and Port Bureau, MoTC         | License grants, determination of fare rates, and pre-notification of maritime routes |
| Air Transport         | Air transport operators                            | Civil Aeronautics Administration, MoTC | Determination of airfares, airline routes and flight schedules                       |
| Tourism               | Travel agents                                      | Tourism Bureau, MoTC                   | Registration and license grants  |
| Financial services    | Banks  | Financial Supervisory Commission       | Banking license, capital adequacy and coverage of banking services                   |
| Education             | Schools  | Ministry of Education                  | Determination of tuition fees  |
| Telecommunication     | Telecommunications companies                       | National Communications Commission     | Spectrum auctions and telecommunication licenses                                     |
| Broadcasting services | Broadcasting operators, program suppliers          |  | License grants and operating areas   |

3. Following a wave of economic liberalization in the 1980s, new economic and industrial policies on “liberalization, internationalization, and institutionalization” were announced in 1984. Since then, the degrees of industrial regulations have been eased, and the Government’s main priority has shifted toward pro-competitive policies from industrial regulations. The Fair Trade Act (hereinafter referred to as the “FTA”), Chinese Taipei’s competition law, was enacted in this historical context. The draft bill was sent to the Legislative Yuan (the legislature) in 1986, was passed after its third reading in 1991 and then came into effect in 1992.

## 1.2. Application of the FTA in Chinese Taipei

4. The FTA is a set of rules governing anticompetitive conduct by businesses, and applies to all sectors. Following its mandates, the CTFTC, the enforcement agency of the FTA, pays constant attention to business practices in both regulated and non-regulated industries, which may have an impact on market competition. It has initiated various types of competition advocacy programs to encourage sector regulators to incorporate competition policy into their industrial regulations and policies. Through developing such pro-competitive policies and embodying the policies into the economic and industrial laws, these sector regulators are expected to take more effective approaches to promote competition in the regulated industries.

5. Due to differences between legislative purposes of economic regulations and the FTA, two sets of rules may be concurrently applicable to the same business activity, and may lead to potential conflicts. Article 46 of the FTA<sup>1</sup> explicitly states that the Act takes precedence over other applicable laws when addressing competition issues arising from business conduct. Other applicable laws (for example, economic and industrial laws) can prevail only if the stated bases of the other laws do not conflict with the FTA’s legislative purposes. Furthermore, in terms of the CTFTC’s authorities and responsibilities, it can initiate a consultation meeting with an applicable government agency under Paragraph 2, Article 6 of the FTA<sup>2</sup> when there is overlapping jurisdiction.

6. The 2016 amendments to the Cable Radio and Television Act and the Satellite Broadcasting Act serve as clear examples regarding concurrent application of different laws. These two laws incorporate competition-enhancement provisions to prohibit illegal discrimination in the cable TV industry and satellite television industry<sup>3</sup>. The FTA has a

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<sup>1</sup> Article 46 of the FTA provides 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.”

<sup>2</sup> Paragraph 2, Article 6 of the FTA provides that “For any matter provided for in this Act that involves the authorities of any other ministries or commissions, the competent authority may consult with such other ministries or commissions to deal therewith.”

<sup>3</sup> Paragraph 1, Article 37 of the Cable Radio and Television Act states that “System operators shall set up fair, reasonable, and unbiased on / off shelf standards for satellite channel program provider, other type channel program provider, foreign satellite broadcasting business, and wireless television business, and implementations shall be carried out according to the said standards.” In addition, Paragraph 1, Article 25 of the Satellite Broadcasting Act stated that “A direct satellite broadcasting business and the branch office of a foreign satellite broadcasting business that operates direct satellite broadcasting business shall not treat satellite channel and program supply business and the branch office or agent of a foreign satellite channel supply business differently without justification.”

similar provision with regard to unjustifiable discrimination<sup>4</sup>. The concurrent application of sector-specific regulations and the FTA leads to an overlap in jurisdiction between the National Communications Commission (NCC, the independent regulator of telecommunications and broadcasting) and the CTFTC. To resolve potential conflicts over matters and promote legal compliance of relevant businesses, the CTFTC organized consultation meetings with the NCC in January 2019. Both agencies had discussions on the concurrent application of applicable laws and followed the principle of *lex specialis derogat legi generali*<sup>5</sup> to reach an agreement and establish general rules for respective responsibilities. Cable TV operators were informed of the details of the agreement.

## 2. Cooperation and conflicts between economic and industrial regulations and the FTA in Chinese Taipei

### 2.1. Introduction of pro-competitive provisions in economic and industrial regulations

7. It is generally a slow-moving process to include competition provisions into regulatory rules, despite the positive example above where the sector-specific regulations underwent reform and then the competent agencies actively worked to resolve potential conflicts. Where economic and industrial rules are contradictory to the legislative purpose of the FTA, i.e. the promotion of competition in free markets, such frictions cannot always be removed through consultation and negotiation between sector regulators and the CTFTC.

8. Take legal and accounting professions for the examples. Prior to the 2019 amendments to the Attorney Regulation Act (ARA) and the 2007 amendments to the Certified Public Accountant Act (CPAA), the two professional associations comprising lawyers and certified public accountants (CPAs) were respectively authorized to set remuneration (service charges) standards in their articles of association under the applicable laws<sup>6</sup>. Along with individual articles of association, the remuneration standards would come into force after obtaining the approval from the sector regulators, which were referred to as the Ministry of Finance (MoF) and the Ministry of Justice (MoJ). The proponents for price regulation argued that the nature of legal and accounting services was in essence different from for-profit businesses. They considered that “aggressive” price cuts would inevitably affect service quality provided by lawyers and CPAs.

9. However, a different view was held by the CTFTC that the remuneration standards set by bar and CPA associations virtually restricted competition in the legal service and

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<sup>4</sup> Article 20 of the FTA states that “No enterprise shall engage in any of the following acts that is likely to restrain competition: ... 2. treating another enterprise discriminatively without justification;...”

<sup>5</sup> Article 16 of the Central Regulation Standard Act provides that “While a regulation stipulated otherwise for the same object from other regulations, the regulation should govern, notwithstanding other regulations have been amended and the regulation remained as it was.”

<sup>6</sup> Article 16 of the Attorney Regulation Act (prior to its amendments on 13 December 2019) provided that “the charter of a bar association shall contain the following matters: ... 6) remuneration standards of legal services.” Subparagraph 6, Article 34 of the Certified Public Accountant Act (prior to its amendments on 27 November 2007) provided that “the articles of association of a provincial or municipal CPA association shall expressly set forth the following items: ... 6) remuneration standards of accounting services and maximum prices...”

accounting service sectors. Such standards were incompatible with the purpose of promoting competition expressly specified in the FTA, and could potentially constitute a cartel violation<sup>7</sup>. From 1999, the CTFTC met with the MoF and MoJ to advocate the principles of free and fair competition and advised the sector regulators to remove the provisions on fixed charges in their articles of association.

10. Following the conclusions of the consultation meetings, the proposed amendments to the CPAA removed the provision pertaining to remuneration in 2003, and the bill was passed by Congress in 2007. With regard to the ARA, while a series of stakeholder consultations on the legitimacy and appropriateness of the fixed fees for legal service were held with the competent agency (the MoJ) and legal professionals, the MoJ remained skeptical about removal of relevant statutory provisions.

11. In 2011, the CTFTC launched investigations targeting anti-competitive practices by professional associations that included bar and CPA associations. The investigation results showed that a bar association printed and distributed a notice requesting its members to charge consultation fees specified in the articles of association when they discussed cases with their clients. The CTFTC alleged that the request might violate the cartel provisions under the FTA while the MoJ held an opposing view. The MoJ argued that every bar association was granted the authority to set standard fees for legal services in its articles of association under the ARA. As discussions with clients regarding their own cases formed part of *legal services*, under the applicable law the bar association in question was allowed to require its members to charge the consultation fees specified in the articles of association.

12. The CTFTC contended that the bar association's request fell outside the remuneration provision of the ARA. First, the ARA did not impose any restriction on the types of service fees charged by lawyers. Rather, the ARA granted bar associations the power to set remuneration standards so that their members could charge the fees in reference to the standards when they delivered legal services to clients. Second, the notice published by the bar association in question resulted in a consequence where its individual members' ability to determine whether or not to charge certain fees was impaired. Given that the request made by the bar association impeded free and fair competition, and distorted price competition in the relevant market, the CTFTC concluded that the restriction violated the cartel provisions of the FTA<sup>8</sup>.

13. The provisions regarding remuneration standards were removed from the 2019 amendments to the ARA. In the proposed amendments<sup>9</sup>, the MoJ articulated that

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<sup>7</sup> Article 15 of the FTA provides that "No enterprise shall engage in any concerted action..."

<sup>8</sup> For more information, please refer to Gong Chu Tzu No. 100015 and 100016. In the case Gong Chu Tzu No. 100016, the CTFTC explicitly states that the FTA takes precedence over other applicable laws when addressing competition issues arising from business conduct. Other applicable laws can prevail only if they are compatible with the FTA's legislative purposes. The request made by the bar association that required its members to charge consultation fees was considered as exclusionary conduct, which violated the legislative purposes of Article 46 of the FTA. While the bar association was authorized to set remuneration standards under Subparagraph 6, Article 16 of the Attorney Regulation Act (ARA), the provision did not necessarily require lawyers to charge consultation fees. The request made by the bar association of charging consultation fees went beyond the scope of the ARA.

<sup>9</sup> The provision regarding remuneration standards in the 2019 amendments to the Attorney Regulation Act (enacted on 13 December 2019) was removed from Article 58. The proposed amendments explicitly explains that remuneration standards set by bar associations under Subparagraph 6 have been considered by the CTFTC as price fixing, a type of concerted action specified in Article 7 of the FTA, and violated Article 14 prohibiting cartel conduct. To ensure free

remuneration standards set by bar associations were considered by the CTFTC as price fixing, a type of concerted action specified in Article 7 of the FTA, and thus violated cartel provisions.

14. In Chinese Taipei, the competition agency may engage in competition advocacy to encourage sector regulators to include pro-competitive provisions in applicable rules, and take approaches alongside competition law enforcement activities. In the case where regulatory rules are not consistent with the purposes of the FTA for the protection of free competition, the CTFTC may initiate ex officio consultation meetings, or even launch investigations into alleged violations of anti-competitive conduct under applicable regulations. By doing so, the CTFTC provides the impetus for sector regulators to encourage them to lift regulatory restrictions that may harm fair and free competition in order to meet the ultimate purposes of the FTA, to maintain trading order and consumers' interests<sup>10</sup>.

## 2.2. Taking regulatory rules into consideration when enforcing competition law

15. Interaction between agencies is a two-way process. As indicated above, through competition advocacy and enforcement, sector regulators were encouraged to introduce pro-competitive provisions or remove provisions against market mechanisms in economic and industrial regulations. Alternatively, the CTFTC may also take industrial policies and regulatory rules into account from time to time in its enforcement activities. One example of this relates to Internet Protocol television (IPTV), which was promoted by the NCC with the aim of revitalizing the cable TV industry, which had been declining. IPTV businesses and system operators of cable TV both require licenses granted by providers of TV program content so that they can deliver services to their subscribers (viewers). The NCC's policy in support of IPTV can be adversely affected if IPTV businesses cannot acquire copyright licensing of TV programs.

16. Based on the policy considerations, the CTFTC imposed behavioral remedies on a proposed merger notified by Want-China Broadband Co., Ltd. (WCBC) and China Network Systems Co., Ltd (CNS)<sup>11</sup>. The WCBC's subsidiaries were TV program providers, and the CNS controlled certain cable television system operators, and agents of TV program providers. Given that the WCBC would own both program providers and cable TV system operators after acquiring the CNS, to minimize the impact where the acquiring party could leverage its power in the upstream market (provision of TV programs) in the downstream market, the CTFTC gave a conditional approval to prohibit the acquiring party from engaging in unjustifiable discriminatory practices. For example, the abilities of rival companies (television broadcasting service providers), such as IPTV could be restricted where the WCBC was free to charge different prices to and impose different conditions on its affiliated companies and other competitors in the relevant market<sup>12</sup>.

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competition and fair trade in the professional services sector, the proposed Article 58 removed Subparagraph 6 in respect of the remuneration standards.

<sup>10</sup> Article 1 of the FTA provides that "This Act is enacted for the purpose of maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity."

<sup>11</sup> China Network Systems Co., Ltd is one of the top five multiple system operators in Chinese Taipei, controlling twelve cable TV system operators.

<sup>12</sup> The full text of the seventh remedy imposed by the merger decision (No. 100003, April 29, 2011) states that: "The same satellite broadcasting program produced or purchased by any of the merging

17. Another example is the proposed acquisition by Microsoft of Nokia's Devices and Services (D&S) business in 2014. The existing FRAND (fair, reasonable and non-discriminatory) terms of the relevant standard setting organizations were referred to in the CTFTC's conditional approval decision. The CTFTC required Nokia to comply with the FRAND terms whenever it or its assignee(s) licenses Nokia's standard-essential patents (SEPs)<sup>13</sup>.

18. With these examples, it is clear that there are mutual influences between competition law enforcement and economic regulation. Not only does the CTFTC consider economic and industrial regulations in its enforcement activities, but regulatory frameworks under economic and industrial laws also evolve through competition advocacy and enforcement. While the inherent differences on legislative purposes and policies may lead to conflict and contradiction, as described above, the CTFTC and sector regulators both have endeavored to enhance mutual cooperation and coordination.

### 3. Challenges in seeking harmonization of competition law and economic and industrial regulations

#### 3.1. Divergent voices for re-regulation of professional services remuneration under the Certified Public Accountant Act

19. Despite mutual cooperation and coordination, the progress of attempts to harmonize economic regulation and competition law is not always a linear path. Influential interest groups' lobbying and legislators' attitudes can both interrupt the progress, or lead to a detour. Consultations within governmental agencies for CPA remuneration standards serve as a clear example. As specified above, with the CTFTC's competition advocacy efforts and sustained communications, the remuneration provision was removed from the 2007 amendments to the CPAA. After a few incidents involving financial statement fraud occurred, which affected legitimate rights and interests of shareholders and investors, some stakeholders contended that one of the root causes might relate to a long-term price war in the sector. The proponents for price regulation proposed to revive the old remuneration provision authorizing CPA associations to establish standard services fees. Currently, with the support of legislators, a draft bill concerning remuneration standards has been submitted for review. This will allow CPA associations to specify certain service fees in their articles if the bill is passed.

20. The example demonstrates ongoing challenges faced by the CTFTC. Overall, rules and policies in regulated sectors lean toward free competition instead of market regulation. Along with the CTFTC's enforcement efforts, advocacy and engagement with sector regulators, economic and industrial regulations have become more competition-oriented that will include the considerations of market mechanisms and abolishment of provisions

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parties and their affiliated businesses, which are controlled by and controlling the merging parties, cannot be licensed to rival businesses based on different prices or any other different trade conditions unless justified otherwise. Rival businesses may include other cable TV system operators, direct satellite broadcasting service operators, multimedia content transmission service providers, and other channel program providers, which data is either transmitted via cable or wireless."

<sup>13</sup> The full text of the second remedy imposed by the merger decision (No. 103001, February 19, 2014) states that "Nokia shall license its SEPs under fair, reasonable and non-discriminatory (FRAND) terms on a continuous basis, and ensure that any assignee to whom Nokia transfers its SEPs, also complies with the FRAND requirement."

that might cause harm to competition. The example of the CPA remuneration standards rings a warning bell however. Voices to limit or prevent competition are ongoing. How the CTFTC continues effective advocacy and communication with all stakeholders to ensure that competition is not restricted in every sector remains challenging for its policy and law enforcement.

#### 4. Conclusions

21. The interactions between economic and industrial regulations and competition law in Chinese Taipei can be summarized as follows:

1. There has been a trend toward deregulation and pro-competitive regimes in many regulated sectors in Chinese Taipei. Aligning with the trend, the FTA explicitly states that the Act takes precedence over other applicable laws when addressing competition issues arising from business conduct. Other applicable laws can prevail only if the same conduct is set out in the applicable laws and the laws do not conflict with the FTA's legislative purposes. Once there is overlapping jurisdiction, the CTFTC has discretion to initiate a consultation meeting with an applicable government agency.
2. One example associated with successful advocacy initiated by the CTFTC is the abolishment of the remuneration provision under the Certified Public Accountant Act. The CTFTC's concerns were addressed by means of agency-to-agency consultations. In terms of competition law enforcement, the CTFTC considers relevant regulatory rules, industrial policies and future industrial growth where it is necessary and appropriate. For example, the CTFTC imposed remedies on certain acquiring parties in cases concerning copyright and patent licensing in order to minimize potential harm arising from the proposed mergers.
3. Nonetheless, sector regulators do not always support competition when the CTFTC makes suggestions about changes in their regulatory rules. One example relates to the Attorney Regulation Act (ARA). The sector regulator, the MoJ, argued that every bar association was granted the authority to set standard fees for legal services in its articles of association under the ARA. Despite this, the CTFTC concluded that the ARA's provision did not necessarily require lawyers to charge consultation fees. The CTFTC considered that the request made by the bar association to charge consultation fees went beyond the scope of the ARA. The 2019 amendments to the ARA removed the remuneration provision in support of the CTFTC's decision.
4. Economic and industrial regulations and competition law enforcement have close and complementary relationships. However, conflict may sometimes arise. Any progress made toward pro-competitive regulation does not always guarantee a free market. Influential interest groups' lobbying and legislators' attitudes can both interrupt the progress, and even lead to a revival of regulatory provisions that impair competition. For the purpose of ensuring competition in economic sectors, how the CTFTC dedicates itself to effective advocacy and enforcement to create and maintain a cooperative and collaborative relationship with individual sector regulators continues to be a challenge.