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**Assessing and Communicating the Benefits of Competition Interventions – Note by
Chinese Taipei**

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More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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1. This paper focuses on the impact of enforcement activities and interventions taken by the Chinese Taipei Fair Trade Commission (hereinafter referred to as the “CTFTC”). In this regard, the paper aims to outline the CTFTC’s internal assessment approaches to measure effectiveness/benefits, in terms of both quality and quantity, as well as its strategies to communicate such outcomes to the general public.
2. In addition to a well-designed legal system and effective enforcement, growing understanding of and compliance with the Fair Trade Act (hereinafter referred to as the “FTA”) in all sectors plays a critical part of safeguarding market competition. The CTFTC has thus developed an advocacy plan each year to promote competition through multiple avenues.
3. In addition to the various competition advocacy activities undertaken, the CTFTC has voluntarily published annual reports on enforcement outcomes and policy implementations, to summarize the important progress it has made in the previous year. The CTFTC is also obligated to report biannually its current policy priorities and outcomes of implementing policies to the Legislative Yuan (i.e., the Congress). Furthermore, the CTFTC issued different publications to increase public awareness of the overall economic benefits associated with the CTFTC’s enforcement and other interventions.

1. Assessment of benefits of competition interventions

1.1. Evaluation of competition advocacy

4. In order to objectively evaluate the impacts of competition advocacy activities on target participants and refine its annual competition advocacy plan accordingly, the CTFTC commissioned a third party to conduct a survey questionnaire on the “Effectiveness of Competition Advocacy in 2011¹.” The results of this survey are outlined as follows:
 - Governmental agencies and other stakeholders: 89 percent of the respondents agreed that advice and feedback provided by the CTFTC were helpful for their future decision making. 87 percent of respondents stated that such advice and feedback would be considered or included in their decision’s process.
 - Private businesses: more than 90 percent of respondents acknowledged that the benefits of the competition advocacy activities included “promoting fair competition”, “reducing the risk of competition law infringement”, “building a reputation in regulatory compliance”, and “keeping up on trends of industrial development.”
5. In total, the survey respondents also proposed to the CTFTC 71 recommendations. For example, some suggested that public opinion needs to be considered when planning to

¹ The survey questionnaire was conducted between June 3, 2011 and July 1, 2011. Since the survey respondents could be classified as two groups - governmental agencies and other stakeholders, and private businesses, the questionnaires were delivered respectively by mail and telephone. In total, 35 questionnaires were completed by governmental agencies and other stakeholders, and 602 questionnaires were completed by private businesses. Individuals’ data was obtained under the Personal Data Protection Act.

amend the FTA. Some suggested illustrating relevant regulations with case studies to enhance participants' understanding. These recommendations generally reflected participants' high expectations on the CTFTC and its competition interventions. Following the 2011 survey, the CTFTC included the recommendations in subsequent years to develop more sophisticated advocacy plans.

1.2. Evaluation of competition law enforcement

6. Under the FTA, the merger control regime requires filing of a pre-merger notification. In a horizontal merger case, the CTFTC normally defines a relevant market(s), and then assesses changes in market shares and levels of market concentrations (commonly measured by the HHI) before and after the merger. Economic tools such as GUPPI test may be applied for further assessment if any concern arises that the merger is likely to lessen competition. In mergers that may substantially lessen competition, the CTFTC can conduct market inquires, collecting data associated with diversion ratios of relevant products to measure likely price rises after mergers. In the merger review process, the CTFTC often organizes consultation meetings to seek opinions from relevant governmental agencies, merging parties and academics/experts.

7. A recent example is PX Mart's proposed acquisition of RT-Mart in 2022. The CTFTC applied different economic tools, including GUPPI, CMCR, and merger simulation and found the likely price increase after the merger to be more than 5%. The assessment indicated that the merger might substantially lessen competition. To diminish specific anti-competitive concerns and ensure that the overall economic benefit of the merger outweighed the disadvantages resulting from competition constraints, the CTFTC granted conditional clearance on this planned merger.

8. The CTFTC commissioned academics to conduct a research on "Ex-Post Review of the CTFTC's Merger Decisions." This empirical study selected representative horizontal merger decisions and applied event study and evaluation method to analyze the ex-post impacts of the decisions².

- Event study³: By reviewing nine merger cases involving karaoke franchises, instant noodles and steel products, the results showed that: (i) for the merger that the CTFTC cleared without specific conditions, no significant changes in share prices were observed when the CTFTC announced its decisions; (ii) for the mergers that the CTFTC prohibited or imposed specific conditions for clearance, the CTFTC's decision had negative impacts on share prices of merging parties.

² The cases were selected for this empirical study based on the following criteria: (1) whether it is a horizontal merger; (2) whether the data associated with analysis is available; and (3) whether the data can be applied to an event study, or to the difference-in-difference method used in an evaluation method.

³ The event study methodology is used to assess the impact of the CTFTC's merger decisions on returns of merging parties' market stocks. To satisfy the purpose of the event study, cases were selected on the basis of three conditions: the nature of mergers (whether they are horizontal mergers); the CTFTC's merger decisions (the merger under review was blocked or cleared); and data availability (merging parties are public listed companies). The assessment period starts from 50 trading days prior to the CTFTC's merger decision to 5 days after the decision is announced. The study found that the CTFTC's merger decisions had an immediate impact on the rates of return for the merging parties when stock market participants could not foresee and predict the decision and its outcome. In other words, the CTFTC's merger decisions did not impact the stock market when they met market expectations.

- Evaluation method⁴: The methods were applied to three merger cases in three different sectors - cable TV, satellite communications, and food sectors. With the difference-in-difference method, the analytical results showed that: (i) Earnings as dependent variables: Following the trend of absolute changes in earnings, it was observed that the post-merger earnings of the merging parties increased while the growth level was not as high as the control groups within the same period of time; (ii) Operating costs as dependent variables: in most cases, declining trends were observed either by comparing with the control groups or in absolute terms.

9. The conclusions of the study are summarized as follows: (1) Provided that the required data is available and accessible, ex-post review of merger decisions should be based on the analytical tool – evaluation methodology; (2) Given that the tools for ex-post review of merger decisions were not fully-fledged at the time of conducting this research, it would be difficult to find general rules for the application of the evaluation methodology. The following limitations in the study are also evident due to the legislation for data protection. The study could only rely on public information, i.e., financial statements of merging parties and share prices. The study limitations are that: (1) merger decisions on unlisted companies were unable to be reviewed; (2) the study was required to define competitors and clarify the selection criteria of control groups.

10. The CTFTC has been dedicated in consulting stakeholders in the process of either reviewing merger notifications or investigating evidence or allegations of anti-competitive behavior. For the latter, opinions from regulatory agencies, expert reports, submissions of business associations and tax documents could be considered by the CTFTC. In legal proceedings, the CTFTC often leverages external resources to support its decisions. A typical example is a cartel case where agreements were reached among 21 Container Freight Station operators to charge fees for loading/unloading/transporting export cargo under three tons. During the investigation stage, the CTFTC requested data and viewpoints from the regulatory agency, Maritime Port Bureau, Ministry of Transportation and Communications (MoTC). During litigation, the CTFTC also presented academic expert opinions, such as market definition and determination of the geographical area, to the Taipei High Administrative Court. They were recognized and adopted in the judgment.

11. The study on “Application and Improvement of Competition Law Leniency Program in Cross-Border Cartel Cases” commissioned by the CTFTC in 2022 aimed to increase its understanding of the latest developments of leniency programs across different countries, the relationships between designs of leniency programs and effectiveness of implementation, and the impact of whistleblowers rewards. It ultimately provided informed recommendations to the CTFTC’s leniency program and further amendments. The study conducted a literature review and looked into leniency programs adopted by competition agencies in different jurisdictions, including the U.S., EU, Japan and Korea. It found that the determination of cartel fines is bound by Article 36 of the Enforcement Rules of the FTA⁵ where most factors stipulated therein are in essence qualitative and general legal

⁴ The evaluation methodology is used to assess the impact of the CTFTC’s merger decisions on the following variables that affect market equilibrium: price, output, quality, diversity, entry level and innovation. The difference-in-differences method was used in the commissioned study to assess the impact of the CTFTC’s decisions to clear proposed mergers on profits and costs of merging parties.

⁵ Article 36 of the Enforcement Rules of the FTA provides that:

“When assessing fines in accordance with the Act, all circumstances shall be taken into consideration, and the following items shall be noted: 1. motivation, purpose, and expected improper benefit of the acts; 2. the degree of the act’s harm to market order; 3. the duration of the act’s harm to market order; 4. benefits derived on account of the unlawful act; 5. scale, operating condition, and

concepts, which cannot provide clear and predictable standards. In addition, the study suggested that the deterrent effect of the FTA may be diminished in the case where the leniency program grants too generous reductions in fines.

12. The study proposed the following recommendations to enhance the incentives of cartel (cross-border) participants to apply for leniency: (1) higher fines and whistleblower rewards: the study suggested that the CTFTC can make use of advocacy activities to enhance businesses' awareness of significant risk of legal non-compliance and whistleblowers' incentive schemes; (2) clear standards for calculating fines: it could allow businesses to foresee consequences of non-compliance, encouraging them to avoid engaging in illegal cartels; and (3) utilizing the limited quota for leniency applicants to destabilize cartels and to significantly increase the incentive to report by (cross-border) cartellists.

1.3. Evaluation of other competition interventions

13. The CTFTC's 2022 performance report shows that between 2012 and 2022, the number of firms on which the CTFTC imposed sanctions (including warning letters issued in 2022) amounted to 2,054, of which 547 firms appealed the CTFTC's decisions. Among the appeals, 104 firms were overruled, including 24 firms that were revoked by the CTFTC itself. Given that 95 percent of the CTFTC's decisions remained upheld, the statistics indicated that the quality of the CTFTC's enforcement activities was highly recognized. Furthermore, the statistics revealed that the yearly number of investigations by the CTFTC or ex officio investigations initiated on the basis of complaints between 2012 and 2022 was in the range of 2,024 - 2,560 cases. The CTFTC received 25,711 complaints, applications and notifications in the eleven years to the end of 2022.

14. To improve the transparency of administrative procedures and streamline the processes, the CTFTC has introduced the pre-merger consultation process and launched an online system for merger notifications. Since July 1st, 2021, merging parties filing proposed mergers would be able to check the reviewing status online. In addition to written submissions, merging parties could upload documents online from October 1st, 2021 to save the time from postal delivery of merger filings and supplemental documents. The results of the survey on merging parties and stakeholders show that 83.3 percent of respondents were satisfied with the online system. In 2022, 60 percent of merger filings were submitted online.

15. Located in the subtropical zone, most domestic households in Chinese Taipei rely heavily on air conditioners to lower indoor temperature throughout the year. A successful example of early intervention was a cartel investigation on 15 air-conditioner manufactures in 2022. In May 2022 the CTFTC launched an investigation triggered by complaints from the general public. It found that the 15 manufactures jointly agreed to cut the warranty period from 7 years to 3 years. The CTFTC took preemptive actions to prevent the manufactures from implementing their agreements, and their negative impacts on the general public.

market position of the enterprise; 6. types of, number of, and intervening time between past violations, and the punishment for such violations; and 7. attitude shown on rectification of the act, cooperation in the investigation, and so on."

2. Communication of competition interventions

2.1. Annual advocacy plans and activities

16. To create a culture of competition, the CTFTC develops its competition annual advocacy plan to meet the needs of enforcement by organizing well-rounded advocacy activities targeting at governmental agencies, business sectors and the general public, respectively. These advocacy activities comprise: consultation with governmental agencies to avoid regulations, policies or regulatory measures that may harm competition; communication with governmental agencies at seminars to exchange views on specific issues; promoting public awareness of competition law to improve compliance, and reinforcing the value of competition by collaborating with academia and the education sectors.

2.2. Advocacy activities targeting governmental agencies

17. When joining a multi-agency task force, the CTFTC not only exercises its power under the relevant legislation for its assigned tasks, namely cartel investigations, but also continues to communicate with other governmental agencies, relevant businesses and industrial groups to ensure that all relevant parties fully comprehend the risks of competition law infringements and call for joint efforts to safeguard market competition.

18. One of the examples was the 2021 task force on co-prosperity of domestic industries and online platform giants. The task force consisted of the Ministry of Digital Affairs, the National Communications Commission, the Ministry of Culture and the CTFTC. The CTFTC made contributions on potential competition issues, particularly with regard to the legality of collective bargaining between domestic news businesses and platform giants. The CTFTC suggested that news businesses could apply for a cartel exemption under the proviso of Paragraph 1, Article 15 of the FTA if they intended to collectively bargain with the platform giants. This reflects the reality where collective bargaining is likely to offset the significant bargaining power imbalance between news businesses and the gigantic online platform operators, and news business can also benefit from lower transaction costs.

19. The CTFTC is often invited to attend workshops and seminars organized by other governmental agencies. To enhance understanding of competition law enforcement in public and private sectors, the CTFTC sees these venues as advocacy opportunities to clarify the FTA and provide an update on international competition laws. In 2022, the CTFTC was invited to participate in the following meetings: “The taskforce meeting on stabilizing international sea freight sectors” hosted by the Maritime Port Bureau, MoTC, and “The meeting on steel for public works” held by the Executive Yuan. In those meetings, the CTFTC made competition law and policy advocacy, and prompted businesses to comply with the FTA.

20. The CTFTC released its draft of the “White Paper on Competition Policy in the Digital Economy” in March 2022. After consulting governmental agencies, academics/experts, industry stakeholders, research institutes and business professionals, the CTFTC revised the draft and finalized the White Paper in December 2022.

21. As COVID-19 surged in May 2022, the number of disputes over insurance claims for COVID-19 skyrocketed. The Financial Supervisory Commission (FSC) directed the Life Insurance Association and Non-life Insurance Association to establish a set of guiding principles for COVID-19 insurance claims. Precautionary action was taken by the CTFTC with the aim of eliminating potential concerns around this concerted action that may restrict

individual insurers' discretion over their decisions on insurance claims. The CTFTC requested the FSC to provide the draft of the guiding principles for review. These principles did not come into effect until the CTFTC confirmed that no competition concerns arose.

2.2.1. Advocacy activities targeting private businesses

22. The CTFTC selected several sectors highly concerns the public as its advocacy priorities. These sectors included real estate, cosmetics and medical supplies. In 2022, the CTFTC organized 58 advocacy activities with tailored topics and materials to meet individual needs in different sectors. Across the activities, 96.4 percent of participants found that the advocacy events helped them to have a better understanding of the competition law. The overall satisfaction rate reached 95.1 percent.

23. To raise awareness of competition law compliance, in 2013 and 2018 the CTFTC organized two seminars for executives of TFT-LCD manufacturers who were involved in price fixing and sentenced to serve prison time in the U.S to share their experience with the seminar attendees. Given the success of the seminars and the importance of promoting legal compliance, the CTFTC hosted a similar seminar for senior managers across different sectors at the workshop on the "Fair Trade Act and its Case Study for the Northern Elite" in 2022. The overall satisfaction rate was 100 percent, suggesting that this activity met the needs of business sectors.

2.2.2. Advocacy activities targeting the general public

24. In addition to printed brochures, flyers, publications and offline advocacy activities, the CTFTC has used various venues to promote competition law and policies to the public. These avenues include the internet, news tickers, magazines, advertising sites at metro stations, interchange stations and in carriages of electric multiple units, digital TV advertising at metro station platforms and convenient stores, and smart displays in elevators in apartment buildings.

25. In response to the rise of e-reading in the digital era, the CTFTC particularly values effective delivery of messages to the public through digital media by using precise and concise language. Creative attempts at expanding communication channels have been made by the CTFTC – uploading videos on important activities to YouTube, filming videos in short format and issuing e-newsletters – to attract more audience. The CTFTC also made efforts to present information in plain language along with photos, infographics and PowerPoint slides so that readers/viewers can understand it quickly and easily. In terms of individual case decisions, to ensure that important information can be communicated promptly, text messages containing discussion items at Commissioners' meetings are sent to the news media, and updates on the Commission's decisions on major cases are provided via an instant messaging app.

26. Legal terms are not always easily understood by the general public. To reach a wider audience, the CTFTC has published a bimonthly - the "FTC Newsletter," containing succinct information on the CTFTC's enforcement activities, legislative changes and updates on international developments. This publication is distributed via different channels, for example, mailing the printed version to governmental agencies, leading firms in private sectors, foreign companies, industrial associations, and local public libraries and university libraries. The online version is uploaded to the FTC's website for public access and sent to subscribers separately.

27. The FTC Newsletter is also an effective tool to communicate with the public for competition and consumer issues. An example is the CTFTC's investigation in 2022 into unlawful restrictions imposed by a food delivery platform operator on restaurants. The

CTFTC found that the food delivery platform had substantial market power from the larger number of participating individual consumers and partnering restaurants. The CTFTC not only updated timely its decision in the press release, but also provided the rationale behind the decision in the Newsletter to emphasize that the restrictions imposed on restaurants, including maintaining the same prices for dine-in and delivery service customers and setting “pick-up” as the default option, were considered an infringement of the FTA. Such materials could be also leveraged to increase businesses’ understanding of the FTA and potential illegal business practices.

2.2.3. Communication with the Legislative Yuan in a timely manner

28. When tackling issues requiring timely responses to the Legislative Yuan, the CTFTC has been taking a two-pronged approach: effective communication and timely action. The CTFTC will gather relevant data and information, clarify whether any competition concerns may arise and outline the CTFTC’s approaches to competition issues within a specific time frame. Throughout the decision-making stages, the CTFTC will endeavor to inform the Legislative Yuan or the public of its positions by using press releases, news tickers, or formal submissions to the Legislative Yuan.

29. The most recent example is a rise in egg prices due to avian flu, pellets and transportation costs at the start of 2023. The CTFTC launched a market inquiry requesting data on prices and egg production, and consulting wholesalers, distributors, relevant associations and the competent authority of Agriculture to acquire a full picture of price fluctuations in the supply chain and their reasons. In addition, the CTFTC is also a member of a multi-agency task force responsible for investigating egg prices of daily necessities and clarifying whether there are any price cartels in the supply chain of eggs.

30. The Legislative Yuan expressed serious concerns around concert actions in the egg industry and requested the CTFTC to report its findings. The CTFTC made a full report to the Legislative Yuan and presented the information collected from investigation activities as well as its competition assessments. A clear message was also conveyed to the public on the CTFTC’s website that price fixing is a violation of the FTA and whistle blowers are encouraged to come forward.

3. Conclusion

31. Article 1 of the FTA states clearly that the purpose of competition law is to maintain trading order and protect consumers’ interests⁶. The CTFTC has committed to ex-ante assessments and ex-post evaluations to enhance the effectiveness of its enforcement activities. The outcomes of competition interventions have also been delivered to the public in various communication channels.

32. A culture of competition needs to be supported by three pillars: the government’s self-knowledge, industry self-regulation and consumers’ self-awareness. Following the more experienced competition authorities, the CTFTC continues to build up rules under competition law and to adopt evidence-based approaches to evaluate the benefits of competition interventions. The CTFTC also pursues effective competition advocacy

⁶ Article 1 of the FTA provides that “This Act is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity.” For the full context, please see: <https://www.fc.gov.tw/internet/english/doc/docDetail.aspx?uid=644&docid=15182>.

through different communication channels to carry on promoting competition and growing public understanding of competition law.