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Competition and Regulation in Professional Services – Note by Chinese Taipei

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www.oecd.org/competition/competition-and-regulation-in-professional-services.htm

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1. This report presents the recent competition advocacy activities of the Chinese Taipei Fair Trade Commission (hereinafter referred to as the CTFTC) in the field of professional services, and illustrates the CTFTC's enforcement stance on competitive practices within these services using specific cases.

1. Regulation of Professional Services in Chinese Taipei

2. Professions require intensive educational training and are cultivated through long-term experience, with the provision of services enabled by the accumulated human capital and professional competence. In Chinese Taipei, there are as many as 41 categories of professions, including attorneys, accountants, architects, physicians, pharmacists, engineers, bookkeepers, and others.

3. Compared to general goods or services, the quality of services provided by professionals is difficult to discern before receiving the service. Therefore, most countries regulate the qualifications of professionals through national exams and licensing systems. Specifically, professionals have to pass a national exam and obtain a license before they can practice, which ensures that the practitioners possess the required knowledge and capabilities.

4. In Chinese Taipei, the entry regulation of professional services is also supported by the Judicial Yuan Interpretations.¹ As provided by Judicial Yuan Interpretation No. 453 in 1998, due to the nature of business accounting matters involving public interest and private property rights and interests of the people, business accounting bookkeepers shall be equipped with a certain degree of professional accounting knowledge and experience in order to be qualified. Therefore, they are deemed to be one of the professionals and shall pass a legal examination in order to obtain a practicing qualification. However, Paragraph 2, Article 2 of the Certified Public Bookkeepers Act, amended and published in 2007, entitled bookkeeping and tax filing agents not otherwise qualified through examinations as certified public bookkeepers to summarily acquire, by converting certificates, the same status as certified public bookkeepers licensed through examinations. This provision was declared unconstitutional and void in Judicial Yuan Interpretation No. 655 in 2009.² Since then, all certified public bookkeepers have to pass an exam, obtain a certificate, register

¹ The Judicial Yuan has the authority over constitutional interpretation, judicial adjudication, disciplinary measures, and judicial administration. Pursuant to Article 78 of the Constitution, the Judicial Yuan is vested with the power to interpret the Constitution and to make uniform interpretations of statutes and administrative regulations. The Interpretations made by the Judicial Yuan shall be binding upon every government institution and person in the country.

² As held in the Reasoning Section of the Judicial Yuan Interpretation, that bookkeeping and tax filing agents not licensed through examinations practice in the same name and status as certified public bookkeepers, without their professional knowledge being examined, results in consumers having difficulties to distinguish their differences and to safeguard their interests, which contradicts the meaning and purpose of the provision of the Constitution providing that qualification for practice in specialized professions shall be determined through examinations administered by the Examination Yuan.

with the competent authority, and join a certified public bookkeepers' association before they can practice.

5. Besides, legislators, aiming to maintain the quality of professional services and protect public interest, often impose varying degrees of regulatory control over the practicing methods, hours, and locations of each type of the professions. Take pharmacists as an example. In consideration of maintaining medical quality and safeguarding public health, Article 11 of the Pharmacists Act originally stipulated that a pharmacist's place of practice be limited to one location. However, this provision was declared unconstitutional in Judicial Yuan Interpretation No. 711.³ Article 11 of the Pharmacists Act, amended in 2014, included a proviso allowing pharmacists to legally practice outside their registered practice locations.

6. Additionally, most professional regulations authorize the underlying associations to regulate members' professional conducts through bylaws in order to strengthen the competence of the associations for professional autonomy and self-supervision. However, from competition perspective, if associations excessively restrict members' practicing activities, such as setting uniform remuneration standards and imposing advertising restrictions, it may lead to negative effects such as hindering service innovation, reducing economic efficiency, and restricting competition in the professional services market. In response, the CTFTC not only investigates cases involving constraints with clear anti-competitive effects but also actively encourages regulatory authorities, through its competition advocacy, to deregulate or adopt measures that are less restrictive of competition. By doing so, competitive thinking is continuously introduced into the implementation and formulation of each professional regulation.

2. Application of Competition Law

7. Due to their nature of professionalism, which requires long-term learning and training, professional services were considered different from general commercial activities and thus exempt from the application of competition law. Article 46 of the Fair Trade Act, amended and promulgated on February 4, 2015 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 intent of this Act." As referred to in the explanatory statement for the amended article, the Fair Trade Act is established as the fundamental law regarding the economy such that the provisions of the Fair Trade Act have precedence in application for competitive conduct of the enterprises, and that other laws with relevant provisions may only take precedence if they do not conflict with the legislative intent of the Fair Trade Act.

8. In other words, one cannot make a case for exemption of professional services from competition law based on the societal expectation for professional occupations to serve a public interest role. Both professional practitioners and their associations are considered

³ As held in the Reasoning Section of the Judicial Yuan Interpretation, that Article 11 of the Pharmacists Act does not constitute a necessary reasonable exception, imposing unnecessary restrictions on pharmacists exercising the freedom of occupation, violates the Principle of Proportionality, and conflicts with the intent of the Constitution to safeguard the right of work.

"enterprises" as defined by Article 2 of the Fair Trade Act,⁴ with their competitive conduct subject to scrutiny under the Fair Trade Act using the same standards as other industries.

3. Competition Advocacy

3.1. Deregulation and Competition

9. As mentioned above, due to their professionalism-based nature, vocations such as engineers, attorneys, and accountants, whose services involve a certain degree of public interest and externality, price-cutting competition was previously considered to have the potential of diminishing service quality in these professions. Therefore, professional regulations granted professional associations the power to set remuneration standards in their bylaws, which would take effect after being approved by the competent industry regulatory authorities.

10. However, the CTFTC holds that such practices of associations setting uniform remuneration standards are substantially restrictive of competition in the professional services market and contrary to the spirit of "competition on the merit" pursued by the Fair Trade Act, which raises concerns of violating the provisions against concerted actions in the Act. Thus, since 1999, the CTFTC has engaged in multiple discussions with industry regulatory authorities such as the Public Construction Commission, Ministry of Finance, and Ministry of Justice, to advocate the idea of fair competition in a free market, and has advocated for the removal of provisions that authorize associations to set remuneration standards in the Engineers Act, the Certified Public Accountants Act, and the Attorney Regulation Act.

11. Subsequently, laws governing professional services have gradually been amended to remove provisions related to setting remuneration standards. The Certified Public Accountants Act was the first to remove provisions that require the Certified Public Accountants (hereinafter referred to as the CPA) associations to stipulate remuneration standards in their bylaws in 2007. This was followed by the removal of the Engineers Act in 2011 of the provisions for engineering associations to specify remuneration standards and the maximum and minimum fees in their bylaws, where the explanatory statement for the amendment included concerns that such provisions conflicted with the provisions against concerted actions in the Fair Trade Act.

12. Regarding the Attorney Regulation Act, despite the cautious stance then taken by the Ministry of Justice, the competent authority for the sector, against directly removing provisions concerning remuneration standards, the CTFTC had continued to engage in discussions with the Ministry of Justice and the bar associations about whether to abolish the remuneration standards. It wasn't until 2020 that the Attorney Regulation Act was finally amended to eliminate the provision that authorized bar associations to set remuneration standards. The explanatory statement for the amendment specified that the removal of the provision is due to the consideration by the CTFTC that it constitutes a form of concerted action restricting transaction prices and violates the prohibition against concerted actions in the Fair Trade Act.

⁴ As provided in Article 2 of the Fair Trade Act, "The term "enterprise" as used in this Act refers to any one of the followings: 1. a company; 2. a sole proprietorship or partnership; 3. any other person or organization engaging in transactions through the provision of goods or services. A trade association organized by businesses, or any other organization lawfully established to promote the interests of its members is deemed as an enterprise as referred to in this Act."

13. Additionally, the Attorney Regulation Act, amended in 2020, also relaxes the restrictions on attorneys practicing across different regions. Previously, attorneys wishing to practice in a different region had to first join the local bar association in the intended area of practice (currently, there are 16 local bar associations in Chinese Taipei), which posed a burden on the practice of attorneys. Following the 2020 amendment to the Attorney Regulation Act, attorneys are now only required to join one local bar association and concurrently apply for membership in the Taiwan Bar Association (hereinafter referred to as the TBA). Once a member of the TBA, attorneys may practice anywhere across the country, which is to facilitate their practice.⁵

3.2. Ongoing challenges

14. However, although the amendment of the Attorney Regulation Act in 2020 allowed nationwide practice for attorneys, legislators also considered that it might lead to the withering of the functionality of smaller local bar associations as their income from the membership fee suddenly shrinks.⁶ As a result, the Attorney Regulation Act stipulates that attorneys practicing across regions are required to pay a “cross-regional practice fee,” with the fee structure determined by the TBA through its bylaws. The CTFTC deems that the Attorney Regulation Act has not completely lifted restrictions on the scope of practice for attorneys. However, considering that the legislative intent of the article is not to restrict competition among attorneys, the CTFTC will continue to monitor the competitive conditions in the market for attorney services and advocate for competition when appropriate, in order to protect the order of market competition.

15. Additionally, although the CTFTC has induced the removal of provisions regarding remuneration standards in professional regulations, to date, there are still professional groups that, arguing that low-price competition leads to a decline in service quality, actively lobby regulatory authorities or legislators to restore the provisions authorizing professional associations to set remuneration standards. For example, in 2021, a legislator proposed amendments to the Certified Public Accountants Act to restore the requirement for the CPA associations to specify remuneration standards in their bylaws. The CTFTC, from its stance of competition advocacy, continued to express concerns during the amendment process that the associations' restrictions on members' price-setting contravene the provisions against concerted actions in the Fair Trade Act, and urged legislators and regulatory authorities to carefully assess whether the means adopted (setting remuneration standards by the associations) can achieve the desired goal (maintaining the quality of CPAs' certification). Although the process for proposal was not continued due to the end of the legislative session, the demand from professional groups to be exempted from competition law remains. Continuing advocacy and communication remains a challenge for the CTFTC in the future.

⁵ As provided in Article 19 of the Attorney Regulation Act, “Those who have received their attorney license and been admitted to a local bar association and the National Bar Association may practice law nationally in accordance with this Act.”

⁶ As pointed out in the explanatory statement for the amendment, local bar associations play a crucial role in maintaining attorney discipline, fulfilling the public service mission of attorneys, and communicating with local courts and prosecutors' offices.

4. Professional Activities and Competition Enforcement

4.1. Price Restraints

16. Whether professional services should be exempted from competition law has always been contentious in enforcement. Differing judicial opinions can be observed through the following two cases (Section 4.1.1 & 4.1.2): In the case of the Taipei Certified Public Accountant Association (Section 4.1.1), the court held that the CTFTC did not sufficiently consider the characteristics of professional occupations, and that the application of competition law to professional practices is not taken for granted. In the case of the Taipei Certified Public Bookkeepers Association (Section 4.1.2), however, the court affirmed that concerted actions conducted by the professional groups shall be inspected with the same standards as those applied in other sectors.

4.1.1. The case of the Taipei CPA Association Issuing a Document to Charge for Consultation — the CTFTC decision annulled in 2012

17. In 2009, the Taipei CPA Association, pursuant to Article 10 of the Certified Public Accountants Act, which allows accountants to reasonably charge agreed-upon fees from clients, resolved to issue the document notifying “Members of the Association must charge a consultation fee when discussing cases with clients.” This document was to be posted or displayed in accounting firms as a guideline for charging clients for consultations.

18. The CTFTC opined that whether to charge a consultation fee is one of the competitive factors in the market for services of the certified public accountants. By issuing the document on charging consultation fees to its members, the Taipei CPA Association induced, as an objective matter, member accountants to charge clients consultation fees, effectively restricting the transactions between service seekers and the accountants and impacting the supply and demand functions of the market for services of the certified public accountants. Consequently, the CTFTC issued the decision in 2011, finding the Taipei CPA Association in violation of the prohibition against concerted actions.

19. The Taipei Certified Public Accountants Association disagreed with the decision made by the CTFTC and sought administrative relief. Ultimately, the Supreme Administrative Court revoked the decision of the CTFTC in 2012. The Court held that the decision by the Taipei CPA Association to charge for consultations did not violate the Certified Public Accountants Act, and that the CTFTC did not consider the specific purposes of the Certified Public Accountants Act and should have considered from a different perspective the effects of the underlying competitive practices on consumer interests. Accordingly, the competition law aims to regulate ordinary profit-making enterprises should not be applied uncritically to professional occupations, and the CTFTC’s determination that “providing free consultation services” is a type of price competition among member accountants contravened the regulations governing professional occupations, which aim to protect public interest and the property rights and interests of the people.

4.1.2. The case of the Taipei Certified Public Bookkeepers Association Establishing Recommended Reference Prices — the CTFTC decision upheld in 2014

20. In 2010, the Taipei Certified Public Bookkeepers Association resolved in a meeting and notified its members via written text to recommend minimum fee standards. The CTFTC deemed such constraints on member activities as sufficient to impact the supply

and demand functions of the bookkeeping services market and constitutive of concerted actions. The court, upon reviewing the case, dismissed the arguments made by the Taipei Certified Public Bookkeepers Association, affirming that the CTFTC decision was legitimate and that the resolutions made by the bookkeepers' association indeed violated the provisions against concerted actions in the Fair Trade Act.

21. On appealing, the Taipei Certified Public Bookkeepers Association referred to the court's judgment in the case of the Taipei CPA Association, arguing that professional occupations, with the nature of profound public interest, differed from ordinary profit-making enterprises and thus that the competition law regulations dedicated to ordinary profit-making enterprises should not be applied uncritically to professional occupations.

22. However, the Supreme Administrative Court in this case held that professional occupations belong to "enterprises" as defined in Article 2 of the Fair Trade Act and should therefore be subject to scrutiny under the Act. As is stated by the judgment, "While vocations vary due to respective working environments or conditions, thus requiring different subjective and objective practicing conditions, it does not follow that professions are to be evaluated differentially under competition law. In a market economy, all participants in economic activities, whether they belong to professional occupations or not, provide goods or services of economic value with their own knowledge, experience, skills, and labor. They compete for transactional opportunities based on more favorable prices, quantities, quality, services, or other terms, which is the free competition mechanism as the cornerstone of the market economy and the universal principle across all vocations and industries, irrespective of the public interest, social responsibilities, or societal expectations inherent in the profession. Thus, the social role and public responsibility associated with professional occupations cannot justify their exemptions from competition law."⁷

23. In a nutshell, the court did not deny the public interest nature of the bookkeeping services, but held that this does not conflict with the operation of market competition mechanisms. If the Taipei Certified Public Bookkeepers Association engages in competitive conduct that violates the Fair Trade Act, it is still covered by the Act.

4.1.3. The Case of the Kaohsiung Association of Real Estate Appraisers Restricting Bid Amounts of its Members

24. In 2014, the CTFTC adopted the same enforcement stance in a case involving the Kaohsiung Association of Real Estate Appraisers. In this case, the Kaohsiung Association of Real Estate Appraisers had a self-regulatory agreement stipulating that "members shall not compete for business by reducing fees significantly or other improper means," and further defined "reducing fees significantly or other improper means,"⁸ thereby constraining the bid amounts of members. Although the association's resolution did not involve setting a uniform bid amount or bid rigging, the resolution restricted the bid amounts of the members. When determining their bid amounts, to avoid breaching the self-regulatory agreement, members had to adopt a more conservative bidding strategy and set higher bid amounts or communicate with other bidding firms in advance or jointly decide on the bid amounts. This inevitably suppressed price competition among members,

⁷ Line 616-627 of the Supreme Administrative Court Judgment Pan Zi No. 292 of Year 2014.

⁸ If the number of bidders for a case reaches three or more, and the winning bid amount is significantly lower than those of other bidders, it is considered a violation of the members' self-regulation agreement. The term "winning bid amount lower than other bidders" refers to a situation where the difference between the winning bid and the average bid amount of the non-winning bidders exceeds 20%.

constituting a form of price collusion. Therefore, the CTFTC determined that the Kaohsiung Association of Real Estate Appraisers restricted the bid amounts of members and prevented members from freely and independently deciding their bid amounts, which had the effect of suppressing price competition and violated the prohibition against concerted actions.

4.2. Non-Price Restraints

25. In addition to trade associations setting standards for members' service fees and imposing minimum fee restrictions, the CTFTC is also concerned about anti-competitive restrictions such as restrictions on advertising solicitations and inducements for members to engage in exclusive practices.

4.2.1. *The Case of Lifelaw Company*

26. Lifelaw Company, founded in 2000, was the first online platform to provide legal consultation and match clients with attorneys. When facing legal issues, people could find suitable attorneys for consultation through the platform. Lifelaw had a cooperation agreement with attorneys, where both parties shared the fees paid by the clients.

27. However, the TBA determined in a meeting that Lifelaw's business model, where the remuneration of attorney activities was proportionately distributed between the attorneys and Lifelaw, involved commission-taking and violated Article 12 of the Attorney Code of Ethics, which prohibits attorneys from soliciting business by paying referral fees. TBA then sent letters to local bar associations asking them to notify their member attorneys to withdraw from Lifelaw to avoid causes for disciplinary actions. This action significantly reduced the daily consultation traffic on the Lifelaw platform, leading to the cessation of its services in August 2009.

28. The CTFTC found through investigation that the Attorney Regulation Act does not regulate the channels through which attorneys provide legal consultation services. The collaboration between attorneys and online operators to launch real-time consultation services was a response to consumer demand resulting from advancements in internet and telecommunications technology. With regard to consumers, the legal services market itself is characterized by a high degree of information asymmetry. The TBA's action in inducing attorneys to withdraw from the online consultation platform would reduce the opportunities for consumers to obtain legal consultation through various channels, exacerbating information asymmetry, harming competition in the market, where consumers are burdened by additional search costs and market failure is deepened. The TBA's actions certainly impacted the supply and demand functions in the domestic legal services market, involving a violation of the prohibition against concerted actions in the Fair Trade Act. The CTFTC sanctioned the TBA and ordered that it not require attorneys to withdraw from similar legal consultation websites.

29. The TBA filed a complaint to the Executive Yuan, and finally the Executive Yuan Administrative Appeal Review Committee revoked the original decision by the CTFTC. The main reason for the revocation was that the TBA, under the authorization of the Attorney Regulation Act, holds the power to establish and interpret Attorney Code of Ethics. Based on the principle of autonomy of the attorneys, asking local bar associations to inform member attorneys to withdraw from Lifelaw was within the scope of autonomy of the attorneys. The resolution and the notification made by the TBA to its members were conducts performed in accordance with the law and justified by legitimate reasons, which is not a concerted action under the Fair Trade Act.

30. Although the CTFTC's original decision was overturned, the case highlighted the emerging demand for new types of services in the attorney services market to relieve the problem of "information asymmetry" regarding professional knowledge between service providers and consumers. Currently in Chinese Taipei, there have been many institutions and websites for attorney evaluations providing not only channels for real-time legal consultation but algorithmic technology for extracting and compiling objective data such as the case handling experiences of the attorneys as included in court rulings, providing the public with more comprehensive and transparent information to choose the attorney services they need.

4.2.2. The Case of the Taichung City Certified Public Bookkeepers Association Restricting Advertising Solicitation

31. In 2008, the Taichung City Certified Public Bookkeepers Association (hereinafter referred to as TCCPBA) resolved in a meeting to include in its code of conduct for members a prohibition against "using advertising to solicit business," and to advise members against publishing advertisements with "prices deviating from market conditions." The CTFTC considers advertising activities as one of the essential competitive tools for enterprises as they provide transaction counterparts with more comprehensive information, facilitating competition in price or quality. Therefore, restricting advertising activities of enterprises is equivalent to narrowing the range of competitive tools available to enterprises and harbors anti-competitive risks.

32. The TCCPBA's restriction on its members' ability to advertise prices impacts the effectiveness of using price as a competitive strategy. Even if a member's fees are lower than those of competitors, the inability to use price advertising to attract business prevents them from quickly capturing a significant number of transaction opportunities. This reduces the incentive for members to engage in price competition, restricts price competition in the relevant market, and substantially affects the supply and demand functions of the market. Consequently, the CTFTC determined that the TCCPBA was involved in concerted behavior prohibited by the Fair Trade Act and imposed sanctions accordingly.

4.3. Recent Competition Advocacy

33. Although the outcomes of court judgments vary for cases concerning CTFTC decisions on professional associations, it does not alter the determination of the CTFTC on whether a concerted action by professional associations is established. Concerted actions by professional associations have always remained a focus of enforcement for the CTFTC. A recent example for competition advocacy includes the sanctions by the CTFTC in various cases during 2023 and 2024 on the engineer associations collectively deciding through board meetings on fees for appraisals, contractual engineers, and seismic capability assessments.

34. Furthermore, in 2024, the TBA sought from the CTFTC an interpretation of the Fair Trade Act regarding its plan to set a uniform fee standard for "self-paid additional study on attorney ethics" taken by attorneys who are disciplined. In response, the CTFTC held that the Attorney Regulation Act does not explicitly mandate that bar associations set a uniform fee standard for "self-paid additional study on attorney ethics" taken by disciplined attorneys. Besides, that trade associations or other legally established organizations of enterprises offer reference prices could form "benchmarks" for prices. Thus, if the TBA sets a uniform fee standard, it could create an "anchoring effect" on the market prices for ethics courses offered to attorneys. Not only can the providers of such courses cite the "benchmarks" prices as standards for adjusting their prices, but it could be

expected that other competitors to follow the same “benchmarks” when setting prices, which would raise concerns for constraining market competition.

5. Conclusion

35. Even though laws on professional services have gradually incorporated the concept of competition, to date, there are still instances of concerted actions involving professional associations, which remain a long-term enforcement focus for the CTFTC. During the process of competition advocacy, the CTFTC has also recognized that the goals of deregulation and competition promotion are not achievable within one step. Furthermore, with ongoing demands from associated interest groups for the exemption of professional occupations from competition law, the CTFTC must continue its competition advocacy and communication with the public and industry regulators.

36. Additionally, regulation for professional practitioners in the current legal system in Chinese Taipei is still based on the traditional in-person business model. It typically imposes regulatory norms such as those on professional qualifications, locations of practice, and methods of practice. When professional services are integrated into new types of business models in the platform economy, there would be challenges regarding the adaptation of regulation. It is crucial that competition law functions to ensure that pro-competitive innovative services can enter the market. The CTFTC will continue to monitor policies related to professional services and the state of market competition, and will collaborate with industry regulators as appropriate.