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Competition and Regulation in the Healthcare Sector – Note by Chinese Taipei

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1. This paper explains the role of the Chinese Taipei Fair Trade Commission (hereinafter referred to as the 'CTFTC') in maintaining fair competition in the healthcare and insurance markets under the National Health Insurance (hereinafter referred to as the 'NHI') system, and describes the interface between administrative regulations and competition law. It further explores, through case studies, the CTFTC's enforcement actions in the healthcare and commercial health insurance sectors.

1. Introduction: Market Operations under the NHI System and Competition Trade-offs

2. Healthcare services are characterized by strong specialization and severe information asymmetry, which can lead to market failure. Given these characteristics, it would be difficult to ensure equitable access and healthcare quality through market mechanisms alone. The NHI system, implemented by Chinese Taipei, is a compulsory social insurance program featuring a single-payer system and a global budget payment scheme. Overall medical expenditures and NHI reimbursements are strictly controlled under these regulatory schemes. Registration fees, however, are legally classified as administrative fees rather than as medical fees, and constitute one of the few competitive parameters over which medical institutions can exercise discretion under the highly-regulated NHI system. On the other hand, the NHI system, though comprehensive, does not cover all advanced treatments and drugs. The government thus encourages individuals to take out commercial health insurance, as a supplement to the NHI, to spread the risks of high medical costs. This has accordingly given rise to an interlocking system involving the NHI, the out-of-pocket market, and the commercial health insurance market.

3. In Chinese Taipei, both the healthcare and insurance sectors are highly regulated. The competent authorities for healthcare and insurance are the Ministry of Health and Welfare (hereinafter referred to as the 'MOHW') and the Financial Supervisory Commission (hereinafter referred to as the 'FSC'), respectively. Generally speaking, the main purposes of their respective regulations are to maintain the quality and accessibility of healthcare and to safeguard the stability of the financial market. However, these regulations may also have anticompetitive effects. This paper thus aims to examine the interaction between administrative regulations and competition law in the Chinese Taipei healthcare sector, and to illustrate how the CTFTC and sectoral regulators attempt to strike a balance between maintaining market competition and ensuring healthcare affordability.

2. Fair Trade Act and Regulations Governing the Healthcare and Insurance Industries

2.1. Major NHI-related Regulations

4. As a social health insurance program characterized by a strong public interest, the NHI system consists of the following regulatory schemes:

- A Global Budget Payment Scheme: The NHI system has been implemented since 1995. In its initial stage, it adopted a fee-for-service model. However, in view of the rapid surge in medical expenditures and increasing financial deficits, the government has gradually introduced a global budget payment scheme since 1998 in order to control healthcare expenditures and enhance financial sustainability. By

2002, all types of medical institutions had been incorporated into the scheme. Under the global budget payment scheme, the National Health Insurance Administration, (hereinafter referred to as the 'NHIA'), an agency operating under the MOHW, negotiates with healthcare provider representatives to determine a fixed annual budget for healthcare expenditures in advance. This fixed budget serves as a prospective cap on total reimbursement claims by medical institutions. Medical institutions submit reimbursement claims to the NHIA based on the volume of services actually provided, expressed in medical points. After review and conversion by the NHIA, payments are disbursed to the medical institutions. Ideally, each medical point is equivalent to NTD 1 (approximately USD 0.032). However, if the total claimed volume exceeds the predetermined fixed budget, the conversion value per point may fall below NTD 1.

- A Copayment and Tiered Healthcare Scheme: Chinese Taipei implements a copayment scheme based on the user-pays principle. Medical institutions are classified into four tiers by their service capacity: medical centers, regional hospitals, district hospitals, and primary care clinics. Patients are required to pay different levels of copayments depending on the tier of the medical institution they visit. For instance, the copayment for a visit to a primary care clinic is NTD 50 (approximately USD 1.58), while the copayment for visiting a medical center without a referral rises to NTD 420 (approximately USD 13.28). The combination of tiered healthcare and differentiated copayments steers patients with minor conditions toward primary care clinics. This consequently allows large hospitals to prioritize the treatment of acute and severe illnesses, and thereby enhances the efficiency of healthcare resource allocation.
- The Regulation of Medical Fees: There are a number of provisions imposing strict constraints on the pricing of medical services. For example,[1] Article 21 of the Medical Care Act authorizes local health authorities to develop standards for medical fees charged by medical institutions. In addition, Article 22, paragraph 2 of the same Act prohibits medical institutions from charging medical fees that exceed the standards and from independently setting fees for other service items. The purposes of these provisions are to prevent medical institutions from arbitrarily overcharging patients and to ensure the sound development of the healthcare industry.

5. Due to public financial constraints, the NHI system does not cover all healthcare needs. Commercial health insurance therefore functions as a supplement to bridge gaps in service coverage, thereby enabling individuals to spread their financial risks and improving their access to advanced medical services.

2.2. Administrative Actions do not Automatically Exclude the Application of the Fair Trade Act

6. Pursuant to Article 46 of the Fair Trade Act (hereinafter referred to as the 'FTA'), the FTA has precedence over other laws with regard to the governance of any conduct of enterprises in relation to competition; however, an exception may apply where other laws

[1] Article 21 of the Medical Care Act provides that 'Standards for medical fees charged by the medical care institution shall be determined by the municipal or county (city) competent authority.' Article 22, paragraph 2 of the same Act provides that 'Medical fees charged by medical care institutions shall not violate or exceed the standard for the fees, nor shall medical institutions charge for items without authorization.'

provide otherwise and such provisions do not conflict with the legislative purposes of the FTA.[2] In determining whether the FTA is preempted, it is necessary to take into consideration whether the legislative purposes of the relevant provisions of such laws are inconsistent with the legislative purposes set forth in Article 1 of the FTA, namely, 'maintaining trading order, protecting consumer interests, (and) ensuring free and fair competition.'[3] For example, sectoral regulations may not be considered to be inconsistent with the purposes of the FTA in the case where the industry exhibits the characteristics of a natural monopoly in which market mechanisms fail to allocate resources efficiently. Another case is where restrictions on market competition may be deemed to be necessary and proportionate in consideration of the public interest derived from higher-order social objectives. On the other hand, sectoral regulators may set prices or restrict competition via administrative rules. Such rules, however, are not promulgated through the statutory procedures required for legally binding regulations and thus do not meet the 'other laws provide relevant provisions' requirement under Article 46 of the FTA. Accordingly, these rules do not exclude the application of the FTA.

7. The CTFTC works closely with sectoral regulators to reconcile competition law with sectoral policy objectives. Taking the healthcare sector as an example, in 1992, the CTFTC and the MOHW reached an inter-agency understanding through administrative coordination. By means of the administrative coordination, the CTFTC and MOHW agreed that medical institutions charging medical fees in accordance with the standards, as provided for in Article 21 of the Medical Care Act, may be exempt from the application of the FTA pursuant to Article 46 thereof. In addition, the MOHW formulated a draft 'Pilot Program for In-Kind Benefits of Hearing Aids' in 2024, and sought the CTFTC's opinion on the draft.

- According to the draft, the MOHW proposes to determine the specifications and prices of hearing aids in advance. Hearing-aid agents or direct-sales operators would apply to the MOHW for product inspection. The MOHW would announce a list of approved hearing aid brands and models after inspection. Then, medical device distributors would enter into agreements with local governments to sell hearing aids at prices determined by the MOHW. After providing hearing aids to users, these distributors would claim reimbursement from the local governments.
- In its response to the MOHW, the CTFTC pointed out that the legal hierarchy of the proposed Pilot Program remains unclear; if price-related or other anticompetitive restrictions are to be introduced through administrative rules rather than administrative regulations, such a program may fail to satisfy the 'other laws provide relevant provisions' requirement under Article 46 of the FTA. Consequently, business operators following such administrative rules in refraining from or reducing competition would not be exempt from the application of the FTA. In addition, the CTFTC noted that, although the proposed Pilot Program is well-intentioned, the specified price cap may create anchoring effects on the market price of hearing aids, thereby constituting a benchmark for pricing decisions and thus

[2] Article 46 of the FTA provides that 'The Act has precedence over other laws with regard 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.'

[3] Article 1 of the FTA provides that 'This Act is enacted for the purposes of maintaining trading order, protecting consumer interests, ensuring free and fair competition, and promoting economic stability and prosperity.'

producing anticompetitive effects. To date, there have been no further updates on the proposed Pilot Program.

8. The CTFTC has also proactively engaged in competition advocacy activities with the FSC regarding the insurance sector. For example, in 2022, amid the resurgence of the COVID-19 pandemic, the CTFTC became aware that the Life Insurance Association of the Republic of China (hereinafter referred to as the 'LIA') intended, at the FSC's direction, to convene a meeting to discuss whether to issue claims-handling guidelines for policyholders who had purchased pandemic insurance and met the criteria for home care. Prior to the meeting, the CTFTC took the initiative to contact both the FSC and LIA to ascertain the actual circumstances. The CTFTC explicitly stated that claims conditions constitute a key parameter in competition among insurers, emphasizing that if the LIA or industry participants were to restrict individual insurers' discretion regarding how to interpret insurance contracts and how to determine conditions for claims, this could impede their ability to offer more favorable claims conditions to policyholders and might constitute a concerted action in violation of the FTA. Eventually, the FSC and the LIA took the CTFTC's view and resolved that each life insurance company should independently determine claims conditions in accordance with its respective insurance contracts.

2.3. Healthcare-Related Cases Handled by the CTFTC

2.3.1. Case 1 - Yeezen General Hospital and Ten-chen General Hospital Engaged in a Concerted Action to Raise Registration Fees

9. The CTFTC received a complaint in 2022 concerning a concerted action involving hospitals. Yeezen General Hospital and Ten-chen General Hospital, both located in Yangmei District, Taoyuan City, simultaneously raised their outpatient registration fees from NTD 200 (approximately USD 6.33) to NTD 250 (approximately USD 7.91) on September 1, 2022. Upon further investigation, the CTFTC found that, in addition to the outpatient registration fees, their emergency registration fees had also previously been simultaneously raised from NTD 300 (approximately USD 9.49) to NTD 350 (approximately USD 11.07) on January 1, 2022. The CTFTC's findings indicated that the date, amount, and scale of the increases for both registration fees were identical.

10. The MOHW issued a guideline entitled 'Reference Range for Registration Fees Charged by Medical Institutions' (hereinafter referred to as the 'Guideline') in 2010 to reduce disparities in registration fees among medical institutions, which could have an adverse effect on healthcare accessibility and affordability. Under the Guideline, medical institutions are required to submit the relevant information for reference to the local health authorities where outpatient registration fees exceed NTD 150 (approximately USD 4.74) or emergency registration fees exceed NTD 300 (approximately USD 9.49). Notwithstanding the submission, the local health authorities are in principle not permitted to conduct substantive reviews of the registration fees, because registration fees are classified as administrative management fees charged by medical institutions, which are not reimbursable under the NHI system, rather than medical fees provided for in Article 21 of the Medical Care Act. Accordingly, even though the new registration fees were submitted to the local health authorities, the increases in the registration fees were not exempted from the application of the FTA.

11. In this case, Yeezen General Hospital and Ten-chen General Hospital are the only two district hospitals in Yangmei District, Taoyuan City. All other medical institutions in Yangmei District at the time were primary care clinics. The CTFTC held that the healthcare services provided by hospitals and clinics are different in scope and quality due to their differences in staffing, clinical equipment, and medical capabilities. Although hospital

outpatient services may serve as a substitute for healthcare services provided by clinics, the clinics' healthcare services cannot effectively substitute the inpatient treatments provided by hospitals. Accordingly, there exists an asymmetric demand substitutability between hospitals and clinics.

12. The two hospitals argued that their decisions to raise registration fees were primarily driven by the following factors: a significant rise in the reduction rate (the proportion of reimbursement claims rejected following review by the NHIA) under the global budget payment system, rising inflationary pressures, and marked increases in administrative stipends and overtime pay for medical and nursing personnel during the COVID-19 pandemic. In addition, each hospital cited its own specific cost considerations: Yeezen General Hospital pointed to increased employee meal expenses, while Ten-chen General Hospital referred to the procurement of new medical protective equipment and instruments.

13. Although both hospitals respectively asserted that the increases in the registration fees were determined independently, the CTFTC presumed a mutual understanding of a concerted action for the following reasons:

- The two hospitals are located in close geographic proximity, and offer highly similar hospital specialties. From the patients' perspective, there is a high degree of demand substitutability between the two. Furthermore, barriers to entry are high because of the difficulty in establishing a hospital. The market structure in this case is thus conducive to the formation and maintenance of concerted actions. Consequently, the relevant market conditions provided incentives for the two hospitals to engage in a concerted action to raise registration fees.

14. Although the two hospitals submitted the relevant information for reference on different dates, Ten-chen General Hospital, which submitted later, was already aware of Yeezen General Hospital's planned increase amount prior to its public disclosure. Furthermore, the CTFTC found that their submitted documents had considerable similarities, which indicated an exchange of pricing information and a mutual understanding to raise the registration fees on the same dates. The simultaneous increases could not be reasonably explained in the absence of a mutual understanding. The CTFTC thus presumed a mutual understanding of a concerted action between the two hospitals pursuant to Article 14, paragraph 3 of the FTA.[4]

15. Registration fees are charges that patients must pay when using healthcare services. Such fees constitute a core dimension of competition among medical institutions, and have a direct impact on market supply and demand, except in cases where patients have a strong preference for specific medical personnel. After its investigation, the CTFTC concluded in November 2023 that the two hospitals had reached a mutual understanding of a concerted action to jointly raise registration fees, thereby constituting a prohibited concerted action under the FTA. It imposed administrative fines of NTD 900,000 (approximately USD 28,466) on Yeezen General Hospital and NTD 700,000 (approximately USD 22,140) on Ten-chen General Hospital, respectively.

[4] Article 14, paragraph 3 of the FTA 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 conducts.'

2.3.2. Case 2 - The MOHW rescinded its Guideline 'Reference Range for Registration Fees Charged by Medical Institutions' in March 2024

16. From late 2023 to early 2024, media reports indicated that multiple medical institutions across Chinese Taipei's six special municipalities[5] had raised their registration fees. The CTFTC reviewed publicly available information on the websites of the health bureaus of these municipalities to ascertain the actual circumstances of the medical institutions' registration fees. The CTFTC's preliminary review found that the registration fees submitted by clinics in Taoyuan City exhibited uniformity in terms of their amounts. Further investigation revealed that the Taoyuan City Government's Department of Public Health had set out simplified criteria for the fast-track processing of submissions by clinics. Increases in registration fees to NTD 200 (approximately USD 6.33) or below could be processed through an expedited procedure, whereas higher amounts required the submission of additional documentation. This suggests that, although the mechanism for submitting registration fees for reference does not constitute a substantive review, it indeed creates barriers to price adjustment for medical institutions, and may lead to uniformity in pricing.

17. Subsequently, the MOHW announced the rescission of its Guideline 'Reference Range for Registration Fees Charged by Medical Institutions' on March 4, 2024, with the result that medical institutions are no longer required to submit the relevant information for reference to the local health authorities when raising their registration fees. The MOHW explained that it had received ongoing feedback from medical institutions indicating that local health authorities were, in practice, conducting substantive reviews of registration fee adjustments based on the Guideline. In addition, many medical institutions had already set registration fees exceeding the reference range. Accordingly, the MOHW rescinded the Guideline in order to allow registration fees to be subject to market mechanisms. To prevent medical institutions from taking advantage of the opportunity to jointly raise registration fees, the CTFTC promptly issued a written request to the MOHW, asking it to notify medical institutions and relevant associations across all municipalities and counties to comply with the FTA and to refrain from reaching agreements to adjust registration fees collectively. In addition, the CTFTC visited the medical associations in Taipei City and New Taipei City to gain an understanding of the healthcare services market, the impact of the rescission of the Guideline, and justification for increases in registration fees. The CTFTC also requested that these associations remind their members not to engage in concerted actions.

18. However, local health authorities have adopted varying approaches in response. One county maintained the requirement for submitting registration fees for reference. A few counties required medical institutions to notify the local health authorities or fill out a notification form when raising registration fees. A few other counties requested that local medical associations assist in monitoring such increases. The remaining counties generally required medical institutions to prominently post their registration fees, and integrated the practices of registration fee charges into annual supervisory reviews.

19. Between March and September 2024, the CTFTC spoke to 1,600 medical institutions by telephone with regard to their registration fees. The inquiries aimed to uncover leads and gather evidence on whether medical institutions had engaged in concerted actions to raise registration fees. It was found that 124 of the medical institutions under inquiry had raised their registration fees following the rescission of the Guideline.

[5] The six special municipalities refer to Taipei City, New Taipei City, Taoyuan City, Taichung City, Tainan City and Kaohsiung City.

The MOHW further provided the CTFTC with a list of 185 medical institutions that had raised their registration fees in March 2024 for further investigation.

20. The CTFTC took the following factors into account when making a preliminary assessment as to whether medical institutions that raised registration fees might be involved in concerted actions.

- Uniformity in price increases: Whether the timing of the increases is similar and whether the amount of the increases is identical.
- Geographic and service substitutability: Institutions that are geographically distant or provide different medical specialties are generally not considered to be competitors.
- Market structure: The market structure is less conducive to the formation of concerted actions where there are numerous substitutable medical institutions in a relevant market.
- Affiliated or chain medical systems: Typically, such systems are jointly or cooperatively operated, and administrative fees are often aligned. Therefore, in the case of the affiliated or chain medical systems, adjusting registration fees uniformly does not match the requirement of a concerted action under the FTA, which provides that 'competing enterprises at the same production and/or marketing stage…jointly determine the price.'

21. After a preliminary review, the CTFTC identified 35 medical institutions that were reasonably suspected of jointly raising registration fees, and conducted on-site inquiries with them. After the inquiries, the CTFTC found that the increases in registration fees were basically attributable to the increase in costs, including prices, pharmaceuticals, equipment, and personnel salaries. In addition, following the easing of COVID-19 restrictions, patient volumes rapidly increased. However, under the constraints of the global budget payment scheme and a reasonable outpatient volume policy, a higher number of patient visits actually resulted in a lower reimbursement per patient. The CTFTC eventually concluded that no concerted action was involved, given that the considerations underlying the increases, the timing of decisions, and the standards for registration fee reductions differed among the medical institutions, and that no evidence was found to support a finding that an agreement to jointly raise registration fees had been reached.

2.3.3. Case 3 - The Insurance Associations' Restrictions on the Maximum Number of Indemnity-Based Medical Insurance Policies for Its Member Companies

22. The CTFTC received a complaint in 2023 concerning a concerted action by insurance companies, which allegedly violated Article 15 of the FTA. The LIA and the Non-Life Insurance Association of the Republic of China (collectively referred to as the 'IAs') had jointly revised their guideline entitled 'Self-Regulatory Standards on Insurance Solicitation and Underwriting Procedures' (hereinafter referred to as the 'Self-Regulatory Standards'), which limited each insured individual to purchase a maximum of 3 indemnity-based health insurance policies and required insurance companies to incorporate this control measure into their internal underwriting procedures.

23. In Chinese Taipei, life insurance companies have been offering hospitalization expense insurance since 1962. Following the implementation of the NHI system, the government has been encouraging individuals to purchase commercial insurance, and has established relevant regulations in order to protect consumer interests and to strengthen the

role of commercial insurance in supplementing social insurance.[6] Indemnity-based health insurance is a form of reimbursement-based insurance intended to cover out-of-pocket medical expenses that are not reimbursed under the NHI. To adhere to the principle of indemnity, policyholders are required to submit diagnostic certificates and original receipts to ensure that the reimbursement reflects the actual medical expenses incurred. However, some insurance companies have allowed claims to be made using duplicate receipt copies since 2006, enabling policyholders to obtain insurance payouts exceeding their actual medical expenses by purchasing multiple policies.

24. The CTFTC found in its investigation that the revision to the Self-Regulatory Standards at issue was not autonomously determined by the IAs. Rather, it resulted from a decision made by the FSC in 2019, after discussions with the IAs, to adopt a regulatory measure limiting each insured individual to a maximum of 3 policies. Although the IAs had expressed their view that such controls should be left to individual insurance companies, their view was not accepted by the FSC. The IAs were left with no alternative but to revise the Self-Regulatory Standards according to the FSC's instructions. Accordingly, the CTFTC found that the IAs had not engaged in a concerted action in violation of the FTA.

25. In its response to the CTFTC, the FSC stated that, in the absence of a cap on the number of policies held by an insured, payments in excess of the actual loss would violate the principle of indemnity. Moreover, from the perspective of market economics, insurance is intended to distribute risk across a pool of insured individuals through the risk-spreading mechanism. However, moral hazard and adverse selection often lead to market failure. Taking indemnity-based health insurance as an example, once an insurance-related event occurs after the policyholder has purchased the insurance, the medical expenses derived from healthcare services are borne by the insurer, leaving both medical providers and policyholders with insufficient incentives to control medical costs or avoid unnecessary healthcare services. In addition, excessive payments will bring about an increase in overall insurance costs, which in turn necessitates a rise in insurance premiums. High insurance premiums further induce adverse selection, whereby low-risk policyholders drop out of the insurance pool while high-risk individuals remain, thereby worsening the risk pool and undermining the risk-spreading mechanism. In the end, this may lead to market dysfunction.

26. Subsequently, the FSC revised the 'Directions for the Review of Products for Insurance of the Person' in June 2024, requiring that medical insurance claims be supported only by original receipts. In response, the IAs revised Article 21 of the Self-Regulatory Standards, allowing insurance companies to determine, based on their own risk-bearing capacities, reasonable limits on coverage amounts or the number of policies held by an insured. Apart from the present case, the CTFTC also handled several concerted action cases involving financial institutions or their associations. These cases generally involved conduct occurring in the context of meetings convened by, pursuant to instructions from, or with the knowledge of the FSC. The CTFTC thus proactively conducted competition advocacy activities with the FSC in December 2024. The FSC responded by stating that it would provide appropriate guidance to industry associations regarding compliance with the FTA and, where potential concerted action issues arise, would seek the CTFTC's opinion in order to jointly prevent a concerted action from taking place.

[6] The FSC has developed 'Model Provisions for Hospitalization Expense Insurance Policies,' which contain two types of hospitalization expense insurance: fixed indemnity insurance and reimbursement-based insurance.

3. Conclusion

27. The core challenge faced by the CTFTC lies in how to strike a balance between administrative regulation and market competition. In the healthcare sector, the extent of price competition is rather limited due to the sector's characteristics including information asymmetry and the inherent public interest. Nevertheless, the cases discussed in this report demonstrate that even in a highly regulated environment, competition law continues to play a vital role in maintaining market functions and preventing competitive distortions.

28. Through Cases 1 and 2, the CTFTC observed that, although the purpose of the mechanism for submitting registration fees for reference is intended to protect the public interest, it may, in practice, unintentionally become an external factor that restricts competition among enterprises. Meanwhile, Case 3 indicates that inter-agency competition advocacy and communication mechanisms are of critical importance when administrative guidance is in conflict with competition law.

29. Regulatory measures and policies implemented by sectoral regulators should be grounded in explicit legal authorization, and their purposes must not conflict with the legislative purposes of competition law in order to be exempted under Article 46 of the FTA. In this regard, sectoral regulators and competition authorities should establish close early-warning and consultation mechanisms to ensure that policy instruments, while promoting healthcare accessibility, do not hinder market competition, thereby achieving the dual objectives of consumer welfare and economic stability.