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GEOGRAPHIC MARKET DEFINITION

-- Note by Chinese Taipei --

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More documents related to this discussion can be found at ww.oecd.org/daf/competition/geographic-market-definition.htm

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-- CHINESE TAIPEI --

1. This report will introduce regulations on geographic markets set forth in the Fair Trade Act of Chinese Taipei, and illustrate the definition of geographic market used in specific industries.

1. Definition of geographic market and analytical methods

2. According to Article 5 of the Fair Trade Act (hereinafter referred to as the "FTA"): "The term 'relevant market' as used in this Act means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services." In general, product markets, geographic markets, and time horizon should be considered when defining relevant markets. The Fair Trade Commission (hereinafter referred to as the "FTC") shall assess an enterprise's market power and whether its conduct may result in anticompetitive effects when conducting investigations. Hence, the definition of relevant market is critical to the FTC's decision in merger and antitrust cases.

3. For enhancing transparency, the FTC has formulated the "Principles of the Fair Trade Commission Regarding the Definition of Relevant Markets" (hereinafter referred to as the "Principles") specifically to make explicit the definition of relevant markets. The Principles set forth basic principles in defining relevant markets and factors to be considered in defining a product market and a geographic market. The Principles also provide three examples to illustrate analytical methods used in defining markets, and further clarify items that must be taken into consideration when using specific method. Point 2 of the Principles defines a "Geographic Market" as referring to "region where trading counterparts of certain goods or services provided by an enterprise can easily choose or switch to other trading partners."

4. The FTC regards demand substitution as the primary review item in defining relevant markets, and depending on the features of such goods or services, the FTC may also consider supply substitution. The FTC will consider the following factors when defining a geographic market based on the demand and supply substitution of goods and services in question:

- price variations between different regions and shipping costs
- features and uses of the products
- the trading costs to trading counterparts when making product purchases from different regions
- the convenience to trading counterparts in obtaining the products
- the status when trading counterparts choose to make purchases in different regions when an adjustment is made to product prices
- the viewpoints of the trading counterparts and business competitors regarding the substitution between product regions
- the provisions of relevant laws or administrative regulations
- other evidences relating to the definition of a geographic market.

5. Furthermore, when defining relevant markets, the FTC reviews reasonable substitutability between the goods or services in question and their geographic regions and other goods or services and their geographic regions. In addition, the FTC also applies the cross-elasticity test and the hypothetical monopoly test to define relevant markets. Due to the large number of analytical methods for defining markets, the FTC will consider the facts of the case, the features of the goods or services in question, evidence and data, in order to choose an appropriate analytical method for handling a case. However, the above-mentioned analytical methods are not exhaustive, and the FTC doesn't set prioritization to the use of any of the analytical methods. The FTC once chose the LIFO and LOFI of the Elzinga-Hogarty method to define a geographic market.

6. In delineating the market of a specific industry, the FTC may refer to the opinion of the competent authority in charge of the specific industry. The FTC has also established corresponding administrative rules for special industries, such as cable TV, telecommunications and digital convergence. Therefore, the FTC complies with such principles or regulations for defining relevant markets in specific industries.

2. Defining the geographic market in specific industries

2.1 Pulp and cultural paper Industry

7. In most merger cases the FTC has reviewed in recent years, the geographic scope of the relevant product market was Chinese Taipei. However, the FTC in some merger cases defined a geographic market as a specific area within Chinese Taipei, a specific region beyond Chinese Taipei, or even the global market after taking industry characteristics and trading conditions into consideration. When the geographic market is defined as a region or global market, the FTC would also consider the impact on the domestic market when assessing the effect on market competition.

8. The Company A, the biggest firm in the market of paper manufactured for cultural purpose, proposed in 2012 an acquisition of 55% shares issued by the Company B that had significant market shares in the pulp market and in the market of paper manufactured for cultural purposes. In its merger notification, the acquiring firm alleged that the geographic markets should be defined as regional markets by using LIFO and LOFI- for example, the pulp market comprised Chile, Canada, Brazil, U.S.A. and Chinese Taipei, and the market of cultural paper comprised Korea, China, Japan, Indonesia and Chinese Taipei. The alleged geographic markets were challenged by the FTC due to lack of sufficient data such as import and export for defining the relevant markets in the acquiring firm's submission. The FTC found that in comparison with foreign rivals, the domestic firms benefited from the lower transportation and transaction costs; a certain amount of pulp and cultural paper were imported though. Considering the market shares of merging enterprises, domestic cost advantages as well as the impact on the domestic downstream firms, the FTC was of the view that the geographic markets would be confined to domestic markets; otherwise, it may not be able to reflect the market power of the merging enterprises.

2.2 Online game industry, online advertising industry, and online shop platform industry

9. According to the "Regulations on Cross-ownership in Digital Convergence-Related Industries", digital convergence-related industries refer to telecommunications, radio and television, internet, and e-commerce industries, including electronic telecommunication networks established by multiple devices, such as telecommunications, radio, and information and communication networks, as well as business activities provided through telecommunications, radio and television, electronic transactions, online games, and other digital content and application services using the above-mentioned electronic telecommunications network. The hierarchical structure of "infrastructure devices – transport platform services – content and application services" should be regarded as the primary review item for defining the relevant market under the trend of digital convergence. Because the Internet is borderless, digital

convergence-related services are often provided across borders, especially in content and application services. Digital content and application services are not confined by geographic region, and can be provided to any location with internet access. Hence, the FTC has not ruled out expanding the geographic market beyond borders. As for infrastructure devices and transport platform services, the physical network for signal transmission is mainly within Chinese Taipei; platform service providers mostly require permission to operate under sector-specific regulations, and their area of operation is also confined to Chinese Taipei. Therefore, the geographic market of the two sectors is Chinese Taipei. In the following cases, we will illustrate how the FTC defines a geographic market in the online game industry, online advertising industry, and online shop platform industry.

10. Online game industry: foreign Company A and domestic online game Company B violated the FTA by not filing a merger notification with the FTC in advance. The FTC referred to the opinions of the Industrial Development Bureau (the competent authority of the online game industry), the complainant, the two enterprises involved, and the game industry promotion association, and finally defined the product market as the online game market. In considering language (the traditional Chinese version is used in Chinese Taipei), local culture, social networks (domestic players prefer to interact with other domestic players), connection bandwidth (which affects gaming and service quality), and after-sales service, etc., game enterprises have to provide localized services to meet the market’s demand, i.e., the geographic market is highly localized. Finally, the FTC has defined the geographic market as the domestic market.

11. Online advertising industry: Online advertising refers to the use of multimedia technology (text, images, animations, audio, or video) by advertisers to promote their goods or services on the Internet, and is characterized by the application of multimedia and frequent user interaction. Online advertisements can be roughly divided into display ads, search ads, and social/buzz marketing.

12. Even though the Internet is borderless, online advertising platforms are typical two-sided markets, in which advertisers send a message to the target audience through the online advertising platform. Hence, the distribution, habits, and cultural background of the target audience must be taken into consideration when defining the geographic market. Considering that citizens are still accustomed to browsing traditional Chinese websites and there is still a significant difference in culture between Chinese Taipei and other Chinese-speaking regions, foreign search ad platforms cannot provide reasonable substitutability to domestic advertisers. Therefore, when investigating related cases as to whether online advertising enterprises have restricted the business activities of their trading counterparts, the FTC has defined the geographic market as the domestic market.

13. Online shop platform industry: Online shopping platforms make transactions through the Internet, and appear to be borderless. Although virtual products can be delivered through the Internet, most physical products still need to be delivered to the buyer by traditional logistics channels and shipping costs need to be considered. Moreover, enterprises prefer to open online shops on domestic online shopping platforms due to language and cultural differences between countries. Even if foreign online shopping platforms charge the same or a lower fee than domestic platforms, they do not provide reasonable substitutability as they cannot provide a similar channel for serving customers. Therefore, when investigating cases as to whether online shopping platform enterprises have restricted the business activities of their trading counterparts, the FTC has defined the geographic market as the domestic market.

2.3 Capacitor industry

14. The FTC previously imposed penalties on capacitor enterprises for exchanging sensitive information, such as that related to price, quantity, production capacity, and dealings with counterparts, through meetings or bilateral contacts, where agreement to restrict competition was reached. The enterprises' conduct resulted in an impact on the function of the capacitor market, and the FTC therefore determined that it constituted a concerted action and imposed an administrative penalty of TWN 5 796 600 000 (Taiwanese new dollars). In this case, there were only a few domestic manufacturers of capacitors, and their output value and production were far lower than those of foreign manufacturers. Most aluminum capacitors were imported in Chinese Taipei, and there were no domestic manufacturers of tantalum capacitors. Downstream enterprises could choose suppliers freely, and there were no laws or administrative rules that restricted the importation of such products. The geographic market should be defined as the global market. However, in considering the jurisdiction of competition law, the FTC should assess the impact of the enterprises' conduct on domestic competition and trading order. When gathering evidence and collecting data for this case, the FTC collaborated and coordinated its investigation with the competent authority for competition law in many countries. Besides scheduling investigations of the enterprises on the same date, the FTC convened numerous telephone conferences between competent authorities or contacted the competent authorities via e-mail during the investigation. The FTC's long-term efforts in international cooperation were apparent in terms of gathering evidence and exchanging experiences in this case.

3. Conclusion

15. The FTA defines a "relevant market" as a geographic area or coverage wherein enterprises compete in respect of particular goods or services. The Principles set forth basic principles of the FTC in defining relevant markets, as well as factors that must be taken into consideration in defining a product market and a geographic market.

16. When defining a geographic market, the FTC will consider price variations between different regions and shipping costs, features and uses of the products, the trading costs to trading counterparts when making product purchases from different regions, the convenience to trading counterparts in obtaining the products, the status when trading counterparts choose to make purchases in different regions when an adjustment is made to product prices, the viewpoints of the trading counterparts and business competitors regarding the substitution between product regions, the provisions of relevant laws or administrative regulations, and other evidences related to the definition of a geographic market. In other words, the FTC will consider industry characteristics, the trading situation, foreign trade, language, culture, and the provisions of relevant laws or administrative regulations when delineating a geographic market, in order to assess an enterprise's market power and the impact of its conduct on market competition.