

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Working Party No. 3 on Co-operation and Enforcement**

**Roundtable on challenges and co-ordination of leniency programmes - Note by  
Chinese Taipei**

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More documentation related to this discussion can be found at

[www.oecd.org/daf/competition/challenges-and-coordination-of-lenieny-programmes.htm](http://www.oecd.org/daf/competition/challenges-and-coordination-of-lenieny-programmes.htm)

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## *Chinese Taipei*

This paper explains Chinese Taipei's leniency programme of the Fair Trade Act and discusses the experiences as well as challenges of its implementation.

### **1. The Development and Legal Framework of the Leniency Programme in Chinese Taipei**

1. The Fair Trade Act (FTA) of Chinese Taipei took effect in 1992. Similar to other countries, Chinese Taipei encountered many difficulties in detecting and collecting evidence of concerted actions during the law enforcement process since the implementation of the FTA. On February 9<sup>th</sup>, 2006, Chinese Taipei accepted a competition law and policy peer review by more than 70 competition authorities in the OECD Global Forum on Competition. One of the policy options for consideration recommended in the report of the review was to implement a leniency programme to invigorate the FTC's enforcement against hard core cartels. After considering international trends and communicating with related agencies for many years, an amendment to the FTA was announced on November 23<sup>rd</sup>, 2011, adding Article 35-1 to include the leniency programme with a view to effectively preventing and investigating illegal concerted actions<sup>1</sup>. The Fair Trade Commission (hereinafter referred to as the "Commission") immediately enacted the "Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases" (hereinafter referred to as the "Regulations") on January 6<sup>th</sup>, 2012 based on its authorization from the FTA<sup>2</sup>, so as to provide specific items for implementing the leniency programme.

2. Chinese Taipei's leniency programme for illegal concerted actions adopts "administrative leniency" (fine reduction and exemption) rather than "criminal immunity" (exemption from criminal liability) due to the current system that prioritizes administration over justice in the FTA. The Regulations have also taken into consideration precedents in other countries, which include two forms of leniency: "fine exemption (all)" and "fine reduction (partial)." According to the Regulations, the first

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<sup>1</sup> The leniency programme was added as Article 35-1 of the FTA in the amendment in November 2011. In the amendment in 2014, Article 35-1 was changed to Article 35, and the text was slightly revised to the current content: "The competent authority may grant exemption from or reduction of fines to be imposed in accordance with Paragraphs 1, 2 of Article 40 on enterprises in violation of Article 15 but meeting one of the following conditions: (1) The enterprise files a complaint or informs the competent authority in writing about the concrete illegal conduct of the concerted action in which it has partaken and also submits the evidence and assists the investigation before the competent authority is aware of the said illegal conduct or initiated an investigation in accordance with this Act. (2) The enterprise reveals the concrete illegal conduct as well as submits the evidence and assists the investigation during the period in which the competent authority investigates the said illegal conduct in accordance with this Act. The competent authority shall enact the regulations with regard to the eligibility of the subjects to whom the preceding paragraph applies, the criteria of the said fine reduction and exemption and the number of enterprises to be granted the said fine reduction or exemption, evidence submission, identity confidentiality, and other matters in relation to the enforcement of the said regulations.

<sup>2</sup> Please see <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1302&docid=12223>.

applicant for the leniency programme that is approved by the FTC may be exempted from the entire fine, and at most 4 subsequent applicants will be eligible for a 30-50% fine reduction, 20-30% fine reduction, 10-20% fine reduction, and under 10% fine reduction, respectively. The FTA has also raised the maximum fine for specific actions (illegal monopoly or severe concerted actions) up to 10% of the company's revenue in the previous fiscal year while adding the leniency programme to increase the incentive for companies participating in illegal concerted actions to apply for the leniency programme.

3. The Regulations clearly specify the leniency programme's conditions, qualifications, number of applicants, applicable subjects (limited to 5 companies, companies that force other companies to take part or restrict other companies from withdrawing from concerted actions are not eligible), application time, procedures and methods (applications may be submitted in writing or verbally before and after the competent authority begins its investigation, and evidence must be attached), matters requiring cooperation from applicants (confidentiality obligation, assistance with investigation, etc.), and possible fine exemption or reduction.

4. When the leniency programme was first established, applications originally could only be submitted in writing. The Commission referred to international legislation trends in the EU and Japan and amended the Regulations on August, 22<sup>nd</sup>, 2012 to increase companies' willingness to apply for the leniency programme, and relaxed the application method from only written applications to allow companies to also submit applications verbally.

## 2. Implementation and Challenges of the Leniency Programme

### 2.1. Implementation Results of the Leniency Programme

5. The provisions of the leniency programme of Chinese Taipei are considered to be in line with trends in international competition law. Not long after the leniency programme was introduced to the FTA, the Commission received the first application which led to the Commission's disposition on September 12<sup>th</sup>, 2012 that 4 CD drive manufacturers from Japan, South Korea and Holland had engaged in a concerted action in violation of Article 14 (now Article 15) of the FTA. In this case, the first applicant applied for a fine exemption and was granted a marker from the Commission.

6. Aside from the case above, there were also 2 applications for the leniency programme in 2015 that assisted in the Commission's detection of concerted actions: the Commission's disposition in its 1240<sup>th</sup> meeting on August 12<sup>th</sup>, 2015 that 2 freezing equipment companies engaged in a concerted action through bid rigging in violation of the FTA, as well as the Commission's disposition in its 1257<sup>th</sup> meeting on September 9<sup>th</sup>, 2015 that 7 aluminum capacitor companies and 3 tantalum capacitor companies, including companies from Japan and Hong Kong, had engaged in a concerted action. In the capacitor case, due to the period of violation lasting nearly a decade and considerable illegal profits in Chinese Taipei's market, the total fine imposed reached NT\$5.7966 billion (approximately US\$ 193 million). Even though the Commission cooperated with

competition authorities of other countries in the case<sup>3</sup>, it did not coordinate the leniency programme.

## 2.2. Challenges of Implementing the Leniency Programme

7. The cases mentioned above are all major cases in which the leniency programme was applicable in the Commission's disposition, showing that the leniency programme is gradually having the effect of fighting against illegal concerted actions in Chinese Taipei. However, domestic companies generally consider it to be immoral to report peers for taking part in concerted actions, and snitchers have no place in traditional society. Companies are also unwilling to submit applications because they worry about taking the blame for their business ethics. Hence, Chinese Taipei does not have much experience with the leniency programme as there have only been three successful cases up to now.

8. Sanctions on hard core cartels are mainly divided into criminal sanctions and administrative sanctions in international competition law enforcement. Hence, the legislation of the leniency programme in different countries can be divided into exemption from criminal prosecution or administrative penalty exemption or reduction. In Chinese Taipei, under the system to prioritize administration over justice for illegal concerted actions, the penalty for the first violation is to impose an administrative fine. Only when the company does not cease or correct the concerted action or adopt other necessary measures within the specified period after receiving a penalty will the company be subject to criminal punishment. Hence, the leniency programme of Chinese Taipei is only for an administrative fine exemption or reduction rather than an exemption for criminal liability. Cases in Chinese Taipei involving the leniency programme have not yet involved criminal prosecution by competition authorities in other countries, and do not affect class actions brought by infringed companies or consumers for the damages they sustained as a result of the concerted action.

9. Even though the leniency programme of Chinese Taipei was established after referring to the system of other countries and is not much different, the challenges it faces mainly involve the national conditions of Chinese Taipei, as well as how to raise incentives and increase the penalty for concerted actions. With regard to the implementation of the leniency programme, increasing incentives is only the first step. From the perspective of the competition authorities, future challenges include: how to eliminate concerns that companies have when applying for the leniency programme, as well as communicating and promoting the leniency programme among lawyers and the business sector. The Commission has dedicated efforts to organizing special topic lectures, presentations, and forums for sharing experiences over the years to help companies fully understand the leniency programme's content and application procedures. The Commission is also actively communicating with companies and lawyers to increase the willingness of companies to apply for the leniency programme.

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<sup>3</sup> The Commission cooperated with competition authorities in the US, EU and Singapore when it first began investigating the concerted action case of capacitor companies. Besides agreeing to simultaneously start the investigation on March 28<sup>th</sup>, 2014, the Commission also engaged in numerous telephone conferences or e-mail contact with other competition authorities during the investigation to exchange experience and thoughts on evidence collection and case investigation for an effective investigation on the cross-border concerted action.

10. Based on the cases that successfully applied the leniency programme in Chinese Taipei, applicants are mainly multinational enterprises. They applied the leniency programme to competition authorities in different jurisdictions simultaneously for involvement in a cross-border cartel case. Hence, future coordination with other competition authorities will only become even more important. Furthermore, the statutes of limitations on concerted actions and provisions on search and seizure vary in different countries. If a company involved in a cross-border concerted action applies for the leniency programme to the competition authorities in different countries at the same time, it must provide evidence in accordance with the application regulations of each country, and this may result in inconsistent investigation results among countries. Furthermore, the statutes of limitations are not recalculated after being interrupted in Chinese Taipei and this has therefore limited the time period in which the Commission may handle complicated, severe concerted actions, which also affects possible coordination with other competition authorities.

11. Current provisions of the leniency programme in Chinese Taipei do not include any provisions or policies on waivers, and they may also cause difficulties when coordinating with other countries for the leniency programme. In practice, even though the Commission may obtain the applicant's prior consent before providing the applicant's information to competition authorities of other countries, international society recognizes the importance of information exchange (especially confidential information) to an investigation, especially cross-border cartel cases. The Commission will continue to follow up on developments in regard to this issue and consider whether or not to add waiver provisions in the future.

12. Due to the short period of time the leniency programme has been in effect in Chinese Taipei, the Commission has only approved 3 applications for the leniency programme. The purpose in implementing the leniency programme is not only to boost investigations on concerted actions, but also to deter companies from engaging in concerted actions. In order to encourage third parties (especially company employees) who are aware of illegal concerted actions to have enough incentive to report illegal actions, Article 47-1 was added to the FTA in 2015 to setup an anti-trust fund to provide rewards that will encourage citizens to provide evidence of illegal concerted actions. The Commission also announced the Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions<sup>4</sup> in October 2015 to provide a maximum reward of NT\$50

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<sup>4</sup> The Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions were established by the Commission on October 7<sup>th</sup>, 2015 with authorization from the FTA, so as to increase incentives for reporting that will help the Commission to effectively investigate concerted actions. Provisions of the regulations related to persons that may not be informers, the calculation method and issuing standards for reporting rewards, reporting reward payment standards and raising the limit of reporting rewards, the reporting reward payment method, and the time limit for requesting reporting rewards were amended on April 19<sup>th</sup>, 2016. According to Article 47-1 of the FTA, the Commission may set up an anti-trust fund to provide rewards for the reporting of illegal concerted actions, and thereby strengthen the investigation of concerted actions. According to Article 2 of the Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions, informants who provide the competent authority with evidence of illegal concerted actions not yet known by it shall be given a reporting reward once the involved enterprise is confirmed to have violated the FTA after investigation by the competent authority and a fine is imposed. Persons who force other companies to take part in a concerted action or restrict companies from withdrawing from a concerted action may not be informants due to the maliciousness of their actions. Hence, Article 4 was added to the regulations in 2016 to effectively prevent illegal actions. Article 6 was

million (about US\$1.67 million) for reporting illegal concerted actions. Up to now the Commission has decided to issue 3 rewards amounting to about US\$20,000.

### 3. Conclusion

13. Chinese Taipei has added provisions on the leniency programme to the FTA in line with international law enforcement trends for strengthening law enforcement against cartels. The Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases were announced on the Commission's website for the general public to fully understand and also to step up promotion. The Commission hopes to strengthen the elements of application and the clarity and predictability of effects through the design of a complete system and policy communication. This will increase incentives for applications and also deter companies from engaging in concerted actions, thereby preventing hard core cartels from forming while maintaining market competition order.

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further added in 2016 to increase incentives by adjusting the interval and calculation method for issuing standards, thereby raising the maximum reward to NT\$50 million. For the details, please visit <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1430&docid=14680>.