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Competition Compliance Programmes – Note by Chinese Taipei

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This document reproduces a written contribution from Chinese Taipei submitted for Item 1 of the 133rd OECD Working Party 3 meeting on 8 June 2021.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

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1. This paper presents practical experiences of the Chinese Taipei Fair Trade Commission (hereinafter referred to as the “CTFTC”) in implementing its competition compliance programmes and organizing compliance-related advocacy activities over the last decade. The end of this paper provides a summary of the measures adopted by the CTFTC to evaluate the effectiveness of the compliance programmes.

1. The purpose of competition compliance programmes

2. To increase businesses’ general knowledge of antitrust laws, and prevent domestic firms from unknowingly infringing foreign competition laws, since 2010 the CTFTC has taken a more proactive approach to foster businesses to develop their own internal competition compliance regimes, or consider competition compliance as part of their legal compliance systems. In addition to responding to inquiries from private businesses, the CTFTC’s initiatives on competition compliance aim to equip domestic firms with adequate knowledge of competition laws in Chinese Taipei and other jurisdictions in order to avoid any infringements and their potential losses. A “by-product” of the CTFTC’s initiatives is that these programmes are conducive to the overall reputation of Chinese Taipei-based firms with a global presence as they are able to compete with their rivals in a legally compliant manner.

2. Elements of competition compliance programmes

3. To achieve the above-mentioned purposes, the CTFTC published the “Guidance for Enterprises’ Drafting of Antitrust Compliance Programmes” (the “Compliance Guidance”) in 2011 and the “Code of Conduct for Antitrust Compliance of Enterprises” (the “Code of Conduct”). Since then, these two documents have featured in the agenda items of educational seminars and other advocacy activities hosted by the CTFTC.

4. The CTFTC has sent and handed out printed documents regarding the Compliance Guidance and the Code of Conduct to the top 500 companies and other businesses that participated in advocacy activities. The CTFTC also requested the National Federation of Industries and the General Chamber of Commerce to forward the information to their affiliated trade associations. Moreover, the information on competition compliance is available on the CTFTC’s website and can be provided upon businesses’ requests.

5. Since 2010, to meet the needs for global strategies of industries in Chinese Taipei and the knowledge required to ensure legal compliance across national borders, the CTFTC has planned and organized a series of advocacy activities with a focus on the competition laws in Chinese Taipei and other jurisdictions. The CTFTC invited antitrust experts from enforcement agencies and academia, as well as experts from the private sector, in particular, those companies that have been involved in antitrust litigations and those with comprehensive compliance programmes in place to share their experiences and insights with other businesses.

6. The CTFTC’s competition compliance programmes have been delivered in various forms, such as international forums, educational workshops and seminars. Initially, international antitrust laws and competition litigation processes featured largely in the

CTFTC's compliance programmes. Companies in violation of competition laws overseas were invited to share the experience concerning antitrust risk, litigation, and to speak on the importance of corporate compliance and its implementation methods. The highest-ranking officers, such as Presidents and General Managers of the companies, were invited to deliver speeches in the events organized by the CTFTC. In addition, speakers from foreign competition enforcement agencies and legal professions were also invited to present their first-hand observations. Of these speakers, some were indeed in charge of investigating, prosecuting or defending the cases involving anticompetitive practices by firms based in Chinese Taipei. For example, the prosecutor responsible for the TFT-LCD cartel, and the legal counsel for DRAM price fixing were invited. Furthermore, external and internal experts, including the CTFTC's commissioners, who have expertise in foreign competition laws or legal proceedings, were invited to serve as speakers.

7. 19 seminars on international competition laws and corporate compliance have been held by the CTFTC since 2010. The CTFTC used tailored post-evaluation surveys to evaluate the effectiveness of each seminar. The survey results showed that at least 96% of respondents were satisfied with the seminar arrangements and the educational materials. In some seminars, the self-reported satisfaction scores were even 100%. In terms of the number of participants, each seminar had more than one hundred participants. The CTFTC received very positive feedback from most participants. In 2018, the number of the participants in the competition compliance campaign hit a record high of 203. The CTFTC sometimes organized additional seminars or increased their sizes of participation to provide businesses more opportunities to attend.

Table 1.

| Session | Date | Topic |
|---------|----------------|--|
| 1 | July 9, 2010 | Antitrust enforcement in key exporting industries (Electronics, Auto parts, Steel and Petrochemical) |
| 2 | Apr. 22, 2011 | International antitrust in critical and innovative industries |
| 3 | May 6, 2011 | International antitrust in critical and innovative industries |
| 4 | Sept. 19, 2011 | International antitrust enforcement in critical and innovative industries |
| 5 | May 11, 2012 | Antitrust law and corporate compliance |
| 6 | Aug. 3, 2012 | Antitrust law and corporate compliance |
| 7 | Jan. 22, 2013 | Experience sharing of global antitrust compliance |
| 8 | July 9, 2013 | Antitrust law and corporate compliance |
| 9 | Nov. 1, 2013 | Antitrust law and corporate compliance |
| 10 | Nov. 14, 2013 | Antitrust litigation in the EU and the United States |
| 11 | Aug. 15, 2014 | Experience sharing of antitrust law and corporate compliance |
| 12 | Oct. 6, 2014 | Antitrust law and its enforcement in the United States |
| 13 | Dec. 4, 2015 | Antitrust litigation and corporate compliance |
| 14 | Oct. 28, 2016 | Antitrust litigation and corporate compliance |
| 15 | Mar. 27, 2017 | Advocacy for international antitrust compliance—competition law and its enforcement on vertical restraints in the EU and Chinese Taipei |
| 16 | Sept. 19, 2017 | Advocacy for international antitrust compliance—vertical restraints in competition law and corporate compliance |
| 17 | July 27, 2018 | Advocacy for international antitrust compliance—the provisions of competition law against anticompetitive conduct and corporate compliance |
| 18 | Sept. 2, 2019 | International antitrust and trade remedy regulations |
| 19 | Aug. 3, 2020 | Trends in international competition law enforcement and legal proceedings |

8. Customized legal education programmes and general telephone consultation services are available for businesses. As compliance needs may vary depending on business size and operational strategies, educational programs provided by the CTFTC are adapted for characteristics of specific businesses, their compliance costs and global deployments. Since the Compliance Guidance was published in 2011, the CTFTC has been invited to present on the Fair Trade Act (the FTA) and relevant guidelines on more than 80 occasions across a spectrum of industries. These include the high-tech sector, the aviation industry, the financial and insurance services sector, the transport industry, the petrochemical industry and the distribution industry. Telephone consultation services are also available in response to businesses' inquiries.

9. A dedicated section for antitrust compliance is on the CTFTC's website. To encourage a sustainable learning environment, the CTFTC created a dedicated section on its website where businesses can access resources on competition laws in different jurisdictions, as well as educational materials used in the seminars and forums and recorded files. All materials have been granted licenses from copyright owners, i.e. speakers. Businesses can freely use the information available and accessible on the indicated section "international antitrust laws and corporate compliance" for the purpose of internal education programmes or online learning. This section comprises two sub-sections - "online learning section" and "international antitrust laws".

3. Effectiveness evaluation of competition compliance programmes

10. The CTFTC conducted surveys in 2012, 2016 and 2018 to get an understanding of whether the top 500 domestic firms adopted antitrust compliance programmes and how the programmes have been implemented. The survey results showed that the number of firms increased year by year, in which the firms have dedicated to implementing antitrust law compliance, setting up compliance units, holding internal educational trainings, as well as conducting internal control, auditing and notification mechanisms.

Table 2.

| Compliance level | 2012 (191 survey respondents) | 2016 (241 survey respondents) | 2018 (213 survey respondents) |
|---|----------------------------------|----------------------------------|----------------------------------|
| The ratio of firms with specific rules on antitrust law compliance to all survey respondents | 12% (23 firms) | 15.02% (35 firms) | 20.66% (44 firms) |
| The ratio of firms with a dedicated compliance unit to all survey respondents | 14.1% (27 firms) | 21.08% (47 firms) | 24.88% (53 firms) |
| The ratio of firms with internal trainings to all survey respondents | 17.8% (34 firms) | 21.58% (52 firms) | 27.7% (59 firms) |
| The ratio of firms with a internal control mechanism to all survey respondents | 9.95% (19 firms) | 15.77% (38 firms) | 14.08% (30 firms) |
| The ratio of firms that refer to the CTFTC's Compliance Guidance to implement compliance programmes to all survey respondents | - | - | 39% (irms) |

11. Each survey was not completed by the same respondents. By comparing the respondents of each survey, there were a cumulative total of 80 firms that had developed specific rules on antitrust compliance, 107 firms that had established a dedicated compliance unit, and 118 firms that had provided compliance training for employees.

12. The 2018 survey results showed that most companies have gained a good understanding of the Compliance Guidance and the Code of Conduct. Only less than 10% of companies responded that they did not understand the content regarding competition compliance. The website traffic analysis and the increasing number of participants also showed that domestic firms have generally taken into account of antitrust laws in their business practices, and their awareness of legal compliance has been enhanced.

4. Compliance implication in the CTFTC’s decisions to fine a company for FTA infringements

13. Article 165 of the Administrative Procedure Act provides that “The term “administrative guidance” used in this Act denotes the act of an administrative authority within the scope of its duties or the functions under its control to urge specific persons to perform particular acts or omission of act, by way of the provision of aid, assistance, advice, recommendations or other manners without mandatory force in law, for the purpose of achieving specific administrative objectives.” Given the nature of the Compliance Guidance and the Code of Conduct published by the CTFTC falls in the scope of administrative guidance, both are not legally binding. Competition compliance programmes in businesses are developed on a voluntary basis. Every company has discretion to determine whether and how such programmes will be implemented depending on their own unique situations and organizational culture.

14. Provisions from Articles 39 to 44 of the FTA specify administrative responsibilities for violations of the FTA. According to the FTA, the CTFTC may impose administrative penalties on enterprises that engage in anticompetitive practices. Article 36 of the FTA lists the following factors that should be considered when determining the amount of a fine: 1) Motivation, purpose and expected improper benefit of the acts; 2) The degree of the act’s harm to market order; 3) The duration of the act’s harm to market order; 4) Benefits derived on account of the unlawful act; 5) Scale, operating conditions, and market position of the enterprise; 6) Types of, number of and intervening time between past violations, and the punishments for such violations, and 7) Remorse shown for the act and attitude towards cooperation in the investigation.

15. Since the FTA has not adopted the compliance programmes as the mitigating factors in determining the administrative penalty, there has been no case to date. However compliance programmes may serve as a factor to lessen the administrative penalties in the future. And for the purpose of legal certainty, it might be required to be expressly stated in the FTA or relevant regulations.