出國報告(出國類別： 其他公務有關活動)

出席 2015 年 10 月經濟合作發展組織(OECD)「競爭委員會」會議及第 14 屆「全球競爭論壇」報告

服務機關： 公平交易委員會

姓名職稱： 張宏浩　委員

卓秋容　專門委員

吳麗玲　科長

杜幸峰　視察

赴派國家： 法國巴黎

出國期間：104 年 10 月 24 日至 11 月 1 日

報告日期：104 年 12 月 29 日

目　　錄

附錄:

「競爭與管制第二工作小組」(WP2)會議議程
「合作與執法第三工作小組」(WP3)會議議程
「競爭委員會」(CC)會議議程
「全球競爭論壇」(GFC)議程
WP3「涉及中間商品卡特爾」之我國書面報告
CC「2014 年競爭政策年度報告」我國書面報告
CC「跨平台等價協定」我國書面報告
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壹、參與會議之緣起及目的：

一、經濟合作發展組織(OECD)「競爭委員會」（Competition Committee, CC）及其下轄之第2工作小組(WP2)、第3工作小組(WP3)每年定期於法國巴黎OECD總部召開競爭委員會相關會議，今年於6月及10月舉行2次會議。

二、「競爭委員會」各項會議主要討論競爭政策及競爭法之制定及執法方向與技巧，以促進執法活動之國際化及促進各國各項政策及法規之透明化；並制定競爭法執行之最佳實務，促進各國之執法合作並對開發中國家進行能力建置。今年10月之例會在10月26日至10月28日舉行。

三、OECD為推動國際競爭政策發展，並增進會員國與非會員國間對話，消弭彼此間之爭議，自2002年起，每年均會舉辦「全球競爭論壇」(Global Forum on Competition)，邀請各國競爭法主管機關(尤其是非會員國家)及國際組織派員與會，尋求各國間的相互瞭解，並促進各國自願性採認最佳實務（best practices）、建立各國競爭法主管機關間的合作管道、強化跨國結合案及國際卡特爾案件的調查合作。本年「全球競爭論壇」為第14屆會議，係安排於本次「競爭委員會」例會後 之10月29至30日召開。

四、我國於2002年1月1日正式成為OECD「競爭委員會」一般觀察員（regular observer，自2013年5月起改稱為「參與者」participants）後，即固定派員出席該委員會會議。本會 參與「競爭委員會」相關會議活動，除可與歐美國家直接進行密切互動、交換意見，強化彼此間交流合作外，亦有助於各國對我國競爭政策/競爭法執行成效的了解以及對我國執法面向的建議，且在「競爭政策」議題上， 參與相關會議得使我國從遊戲規則的追隨者成為遊戲規則的制定者，此對提升我國國際地位助益頗鉅。

貳、 OECD「競爭委員會」與會人員及「全球競爭論壇」與會人員

一、經濟合作發展組織（OECD）是由歐、美、日等34個國家所組成，自1961年9月迄今已成立54週年，會員國包括澳大利亞、奧地利、比利時、加拿大、捷克共和國、丹麥、芬蘭、法國、德國、希臘、匈牙利、冰島、愛爾蘭、義大利、日本、韓國、盧森堡、墨西哥、荷蘭、紐西蘭、挪威、波蘭、葡萄牙、斯洛伐克共和國、西班牙、瑞典、瑞士、土耳其、英國、美國、智 利、斯洛維尼亞、以色列、愛沙尼亞。

二、本次出席「競爭委員會」會議人員，除前開OECD 會員國代表外，尚有歐盟、工商諮詢委員會（BIAC）、本次會議前正式成為「準會員」(associate member)的羅馬尼亞、以及「競爭委員會」參與者(participants, 即2013年以前之observers)，包括我國、巴西、保加利亞、埃及、立陶宛、俄羅斯、南非、印尼、哥倫比亞、馬爾他 、祕 魯、埃及、烏克蘭 等國代表。另中國商務部反壟斷局代表亦受邀參加。

三、「全球競爭論壇」會議開會期間為10月29日至30日，OECD邀請會員國及非會員國等計117國競爭法主管機關及UNCTAD，WTO，CUTS等32個國際組織代表與會，參加人數共約有400多人。

四、本次我國出席上開2會議人員為公平交易委員會張宏浩委員、綜合規劃處卓秋容專門委員、杜幸峰視察及製造業競爭處吳麗玲科長等4人。

參、OECD「競爭委員會」會議重點

一、10 月 26 日「競爭與管制第二工作小組」(Working Party No. 2 on Competition and Regulation, WP2)會議，會議由 WP2 主席 Alberto Heimler 先生(義大利競爭委員會研究與組織關係處前任處長)主持，本日討論議題包括:

1、討論「結構拆解:建議書檢視」(Structural Separation: Review of Recommendation):

(1) OECD 總理事會在 2001 年 4 月公布採行「有關管制產業結構拆解建議書」(Recommendation of the Council Concerning Structural Separation in Regulated Industries)，鼓勵會員國在管制產業民營化、自由化或管制改革時，考慮採取結構拆解而非行為矯正方式，以強化競爭機制。建議書中並要求競爭委員會(CC) 採行建議書 3 年後，檢視會員實施該建議書之經驗並提出報告。

(2) 該建議書之前身為「重建公共事業的競爭」(Restructuring Public Utilities for Competition)，內容考量公共事業因為垂直整合而可能引起之競爭問題，探討垂直整合競爭與管制之比較，以及提供不同產業結構拆解方式之經驗檢視，包括機場、港口、電力、天然瓦斯、鐵路服務、電信、廣播及寬頻服務及郵政服務等。

(3) 2006 年 6 月 CC 提出第 1 份報告，並附有會員對電力、天然瓦斯、電信、鐵路等產業之詳細拆解案例經驗。2011 年 CC 再提出第 2 份報告，並在電力、天然瓦斯、電信及鐵路等產業做更進一步詳細之報告。

(4) 本次會議秘書處依上 2 次(2014 年 12 月及 2015 年 6 月)會議 WP2 會員所討論結果提出第 3 次報告草案，並擴及自來水、郵政服務、巴士及港口等其他非傳統管制產業。內容可分為:

I. 第 1 章:背景簡介。
II. 第 2 章:已適用產業實施經驗之更新報告:電力、天然瓦斯、鐵路、電信。
III. 第 3 章:適用建議書之新產業，本章中所列之新產業包括郵政服務、港口、自來水及排水系統、銀行、公共汽車(巴士)服務、支付系統(payment system)、消費者信用報告機構(Consumer reporting agencies)及其他(如機場、廢棄物等產業)。
IV. 第 4 章:結論。

(5) 就秘書處提出之修正版本，澳洲、美國及歐盟再提出內容文字修正意見，主席請秘書處依討論修正後提交 CC 會議審議。

2、「競爭法主管機關執法決定事後評估參考指南」最終版本(Final Version of the Reference Guide on Ex-post Evaluation of Competition Agencies' Enforcement):

(1)OECD秘書處就本案草稿內容依前2次會議討論內容提出修正報告，如將原名稱「手冊」(manual)改為「參考指南」(reference guide)，評估內容不再僅限於結合，包括卡特爾及濫用市場地位之決定等，並增列更多案例等。各國代表再提建議文字修正意見。

(2)德國經濟研究院(German Institute for Economic Research, DIW)及杜塞道夫競爭經濟學學院教授(Düsseldorf Institute for Competition Economics, DICE) Tomaso Duso先生，及英國東英吉利大學(UEA)教授Peter Ormosi先生報告本年4月22日在OECD總部舉辦之「競爭法主管機關執法決定事後評估能力建置研討會」(Capacity Building Workshop on the Ex-Post Evaluation of Competition Authorities' Enforcement Decisions)方法論總結。

(3)就會中討論學者表示有關競爭法主管機關事後影響評估資料取得不易問題，本會張委員發言:

(i) 有關事後評估資料不易取得問題，本會正籌建產業競爭資料庫，以行政機關所取得之產業資料做為評估，較易有公信力。
(ii) 在評估競爭法主管機關之決定及事後之結果，如果能取得競爭法機關決定

對各種機制(mechanism)之影響資料，更可確定其因果關係

3、TPP 現況報告:由美國聯邦交易委員會(USFTC)國際事務組副組長 Elizabeth Kraus 女士報告 TPP 簽約國及有關管制及競爭專章內容:

(1) TPP係以針對新貿易挑戰問題為主的整合性區域平台，目前計有12國簽約，主要以全面性市場進入，去除關稅及非關稅易障礙為主。

(2) TPP協定共有30章，包括競爭政策、國營事業與指定獨占等專章。

(3) 競爭政策專章條文包含:採行或維持競爭法體制，以調查限制競爭事業行為、建立或維持競爭法主管機關以負責國家競爭法之執法、確保正當程序及程序正義、提供私人對限制競爭之執法、國際共同合作執法等。

(4) 國營事業及指定獨占專章規定:確保國營事業及指定獨占事業在商業考量基礎上不得有歧視或差別待遇行為，且不得因有政府因素而在銷售或購買上有特別考量。

(5) 下一階段各國將尋求在2年內正式生效，並準備第二階段其他擬加入國家之談判。

4、「金融產業中之破壞性創新」聽證會(Hearing on Disruptive Innovation in the Financial Sector):本節會議討論金融產業創新對消費者及競爭執法機關之影響，主要討論之創新型態有:點對點借貸(Peer-to-peer lending)、私募基金(Crowd-funding equity)、數位貨幣(Digital currencies)及支付機制與貨幣交換(Payment mechanisms/currency exchanges)等。

(1) 秘書處報告：由 OECD 秘書處競爭組專家 Sean Ennis 撰寫秘書處發表之報告，報告內容略以：

(i) 近幾年來，金融產業已出現新的商業模式及創新產品，足以降低顧客的交易成本，這些新的交易模式及創新產品對於傳統金融商品或交易型態具有競爭性，同時亦有促進消費者福祉與經濟成長之可能性。本報告主要針對討論金融創新的範圍包括：點對點借貸、私募基金、虛擬貨幣及創新支付/貨幣交換清償。自 2002 年至 2013 年，金融市場創新最明顯之發展即是以市場為導向之金融擴張，例如「影子銀行」的出現即是。

(ii) 點對點(P2P)借貸：P2P 貸款服務平台源自於網路技術逐漸成熟、網路使

用普及化以及融資市場需求，故而衍生出此種特殊的金融中介平台。傳統的借貸，資金擁有者透過金融機構（如銀行、證券商等）將資金轉為存款等形式，金融機構再將資金以貸款形式提供給需要者，資金擁有者與需求者彼此是間接關係，惟於點對點借貸中介平台上，借款人與放款人處於共同平台而彼此具直接關係。借款人可以是個人、企業或機構等；放款人亦可以是個人、企業或機構等。因此，此一貸款服務平台的共同特性是讓個人可以透過該平台向其他個人進行小額貸款，而為微型企業或是有短期資金週轉需求的個人提供更方便快速且進入門檻較低的借貸管道，另一方面也提供欲謀求高報酬率之個人將部分資金投入此種網路籌款交易模式，以獲取較高之利潤。近年來，此種交易模式在中國大陸、英國及美國等發展極為快速。在法規方面，P2P 借貸平台要能成功運作還須有完善的監管法規，始能確保該平台有能力管理所有平台借貸參與者，確保資金的安全及客戶權益保護，以及確保信用評等資訊是有效的。

(iii) 私募基金:群眾募資（Crowdfunding）是指為特定目的而向一般大眾募集資金之融資方式，提案者藉由募資平台吸引投資者或贊助者提供資金。一般而言，依據群眾募資之籌集目的及回報方式，可以分為報酬性質群眾募資（rewards-based）與股權性質群眾募資（equity-based），本篇報告主要著重在股權性質群眾募資。股權性質群眾募資之投資者投入資金後，獲得公司的股權，若未來該公司營運狀況良好，價值提升，則投資者所獲得股權之價值也將相對應提高。目前對於群眾募資之法令規範仍待加強，以致此集資方式存有某些風險，包括提案的失敗、平台的失敗、詐欺、缺乏進出的選擇或對於新企業做出不適當之評估等。倘欲降低前述之風險，至少應有下列相關規範：

(A) 對公開發行限制之規範，尤其是發行人對於發行條件不得對投資人進行廣告。

(B) 對投資人要求之規範，例如確保投資人了解風險或要求投資人經驗豐富、淨資產較高等條件。

(C) 對發行人籌資時之資訊揭露及精確審核之規範。

(iv) 虛擬貨幣(Virtual currencies)：虛擬貨幣有時又稱加密電子貨幣(cryptocurrencies)，此種貨幣具有儲存價值並可在使用者間流通交易，一般眾所周知的就是比特幣（Bitcoin），歐洲央行（ECB）估計至 2015 年 2 月全球虛擬貨幣的價值總計約 33 億歐元。此類屬雙向貨幣流之虛擬貨幣架構

，均經由網路進行交換支付，也與一般貨幣一樣可支應虛擬及實體商品之買賣。惟虛擬貨幣具有以下特點：

(A) 虛擬貨幣發行總量是固定的，故不致產生通貨膨脹問題。

(B) 使用數位技術確保交易安全，例如以比特幣之交易方式而言，付款方透過電子設備依據收款方地址將比特幣直接支付對方，比特幣之交易資料將被傳輸到一個區塊（Block），此一交易因此得到初步確認（Confirmation），此一區塊會再連結到前一個區塊，以得到更多確認，進而使交易風險獲得最大控制。比特幣所有的交易歷史都儲存在「區塊鏈」（Block Chain）中，是對所有比特幣交易歷史的記錄。

目前虛擬貨幣交易量有限且欠缺廣泛的使用接受度，然使用上仍有其風險，亦欠缺妥適的法規管制。虛擬貨幣做為交換使用，因無須花費貨幣發行之費用，又能節省轉帳費用等交易費用，且又儲存於電腦中不需保管費用，就電子商務交易上頗具競爭性，然虛擬貨虛擬貨幣最大問題仍在易被利用作為洗錢或不法商品之買賣上。

(v) 支付機制/貨幣交換:支付可分為從個人支付給商人，或支付給第三人(包括跨境支付)。近年來為發展支付機制，已有各種不同的應用，甚至發展由電話支付，如 M-pesa 係以電話支付給商人，且已在非洲大量發展。產業管制對於支付機制有相當大的影響，其主要問題在於，支付提供者是否被視為銀行及如何在現行體系下取得以銀行為主之基金。而最新之發展之「數位錢包」(digital wallets)，如美國、歐盟的 Apple Pay，Google wallet，PayPal，日本 DoCoMo 的 Osaifu-Keitia 及中國大陸的 Alipay 等，其終極運作為可能跳過銀行體系管制的支付卡系統。另外一個支付系統發展是 P2P 貨幣交換。此一交換體系即媒介 2 個不同國家貨幣以某一匯率直接交換，以節省成本及立即完作跨境交易。上開這些交易制度跳脫原本銀行體系運作，其最大的挑戰在於:如何知道你的顧客，確保交易安全。

(vi) 創新發展對消費者保護議題在於:如何建立顧客的信任?平台業者的責任為何?平台使用者的責任又為何?如何瞭解你的顧客?

(2) 點對點借貸金融協會(Peer to Peer Finance Association, P2PFA)主席 Christine Farnish 女士報告「點對點借貸:規範與競爭」(Peer to Peer Lending, Regulation and Competition)，略以:

(i) 英國、美國及中國大陸為 3 大點對點(P2P)借貸國。P2P 借貸自 2005 年 Zopa

網站創立以來，已成為私人媒合借貸之創新模式，後來陸續又有 Rate Setter，Funding Circle 等網站。

(ii) P2PFA 成立於 2011 年，旨在 推動業者自我規範、倡導民眾瞭解 P2P 借貸、鼓勵業者在市場上採取高標準行為及推動有效與適當的規範及稅制。

(iii) P2P 在 2014 年英國的另類金融市場(alternative finance market)中已達 92%的整體市場活動，累計借貸金額亦從 2010 年的 1 千萬英磅到 2015 年第 3 季的 37 億英磅，可見其成長之快速。

(iv) P2PFA 自 2011 年開始推動的業者自律規範包括:高層經理人責任制、至少 5 萬英磅以上之資金、客戶資金分離、信用風險管理、健全的制度與程序、提供顧客明確、可靠及不誤導之資訊、建立顧客申訴管道等，2015 年並推動各項新標準，包括:投資者報酬應顯示淨損金額及費用、損失揭露方式標準化、借貸帳目透明化、散戶及大戶投資者一視同仁及不得在 P2P 平台上募集「私有資金」等。

(v)P2P 借貸在 2014 年開始成為立法管制活動，P2P 在法律上之定義為:「經營有關借貸之電子商務體系，而其中貸方與借方為個人或相關人員」。相關立法包括:資訊揭露之基礎、營運資金從 2 萬英磅提升至 5 萬英磅、客戶資金之保護、平台虧損之清算計畫及金融管制機關 2016 年之檢視。

(vi) F 女士認為，P2P 借貸業者應加強信用風險評估及提升顧客服務標準以強化競爭，因其他市場亦有創新，如票據貼現(invoice finance)、過橋貸款(bridging loan finance)、消費者債務(consumer debt)等，主要都以數位體系達到效率－低成本為訴求。

(vii) P2P 借貸市場未來發展主要視銀行及其他金融機構之反應，及消費者對市場變化之瞭解而定。

(3) 法國歐洲證券市場局(European Securities Market Authority, France, ESMA) Anne Chone 女士簡介 ESMA 對金融創新之處理方式:

(i) 金融創新之定義為:創造或傳播新的金融工具、程序、商業模式及市場之行動，包括以既有概念創新應用於不同市場內容。

(ii) 金融創新常務委員會(Financial Innovation Standing Committee)主要目標為:與管制及監理機關達成協調創新或新式金融活動之處理方式，及提供 ESMA 建議，俾於歐盟議會、理事會及委員會中報告。

(iii) 創新金融在歐盟之挑戰在於:歐盟 28 個會員國之金融市場體質各異，而各

國對於如何監理及管制金融創新各有不同看法。

(iv) 以群眾集資為例，ESMA 認為群眾集資可以加速專題項目規畫者(project owner)取得資金之經濟利益，故專注於投資性之群眾集資，而歐盟銀行管理局則認為群眾集資對投資人及專題規劃者有一定之風險，故注重對借貸性群眾集資之管理。

(v)ESMA 採逐步分析之方式，對各國及歐盟主管機關提出建言，與各國主管機關建立監管論壇，並在 2015 年與各國主管機關建立工作小組，進一瞭解科技在金融市場之應用，其潛在之風險及利益，如有必要再進一步探討可能之管制方法。

(4) OECD 金融及企業署(DAF Directorate, OECD) Adrian Blundell-Wignall 先生討論加密電子貨幣(crypto-currency)，如比特幣(bit coin)之交易，略以:

(i) 加密電子貨幣係以密碼學原理所發行的一種電子貨幣，且由私人發行，非由國家之中央銀行或金融機構所發行，其總發行量會事先固定，透過點對點運作。

(ii) 比特幣為創立者先利用「植入」市場，提供數學運算給早期「採礦者」(miners)發掘累計出第一筆「比特幣」，而持有人會因後續市場價格提升而獲利。藉由密集運用電腦網路，參加人可發掘更多之比特幣，而發行者在事先設定發行總數限定為 2100 萬個。透過類似電子信箱的「位元貨幣錢包」及類似電子郵件位置的「位元幣位址」，買賣雙方可以其與現行實體貨幣之兌換率進行交易。目前以類似之加密貨幣交易的尚有 Litecoin、Dogecoin 等。

(iii) 加密電子貨幣如比特幣的使用會產生消費者保護問題，如其市場價格兌換法定貨幣可能不穩定而產生劇烈波動，甚至因為沒有法定準備而價值降為 0，使消費者蒙受損失之風險。另外，交易者也可能受網路詐欺而受害。

(iv) 某些國家之政府已對此一類型貨幣進行管制規範，如中國大陸即禁止比特幣之交易，德國、法國韓國及泰國則否認比特幣作為貨幣之型式。

(5) 英國 Barclays 銀行競爭組執行長 (Managing Director, Competition Team, Barclays Bank) Nicola Northway 女士介紹新式支付工具及其對交易之影響，略以:

(i) 現代支付工具結合網路運用，已可見快速發展，再加上行動科技發展，支付工具的運用已是全年無休，如 PayPal，Apple Pay 等。以目前科技之發展，

在支付工具上已可預見是中長期的革命，但沒有人敢說「長期」的發展結果為何。

(ii) 金融科技的發展主要在「關鍵多數」(critical mass)，而這是取得市場地位的最主要關鍵。傳統金融機構一定要瞭解市場變化，順應消費者的習慣改變，才能在市場競爭中取得機先，而競爭法主管機關及金融管制機關也要保持其執法及管制政策之彈性，才能順應市場變化。

(6) 英國金融行為局(Financial Conduct Authority) Mary Starks 女士介紹管制機關對創新金融之管制經驗，略以:

(i) 傳統管制者可能必須考量競爭，以使消費者有更多及更好的選擇，允許新的潛在市場進入者及創新加入市場。但管制者如何確定「創新」是有益於消費者?

(ii) 管制主管機關可對小型創新廠商提供直接支援，而新型商業模式可能無法適用管制模式，管制機關可協助修改管制法規而使創新可以適用。

(iii) 何謂「創新」?我們可以觀察 3 個主要現象:低價搶進、科技改變及新的市場與功能。管制者仍得依賴大數據以決定是否對科技進行規範。

(iv) 目前金融市場的創新與傳統金融相比，仍屬較小規模。但傳統金融正在面臨「優步」(uber)式的競爭。

(7) 歐盟競爭總署支付組副組長(Deputy head of the Payments Unit, DG Competition) Alexander Gee 先生報告「創新支付解決方案－歐盟對新網路支付提供者之經驗」(Innovative Payment Solution-EU Experience with New Internet payment Providers)，略以:

(i) 簡單、便宜且安全的支付工具是達成數位單一市場的關鍵。目前網路支付主要方法為信用卡支付，但其缺點為手續費昂貴又不安全，而且在許多會員國中多數人並不擁有信用卡。而在 EU 另類的支付工具為 PayPal，註冊後容易使用，但對商人而言亦為昂貴之支付方法，安全但不普遍。其他支付方法尚有轉帳、直接扣款或貨到付款等。

(ii) 轉帳之優點為便宜(有時免費)安全，但其缺點為必須填具賣家的銀行碼及銀行帳號、地址、金額等資料，且銀行轉帳速度較慢，必須等至少 1 天以入帳。而網路支付服務提供者(payment initiation service providers, PIS)係以消費者網路銀行轉帳為主之服務。其優點為簡單即時，服務提供者可以直

接連結至商家之網站，自動填入商家之帳號等資料，立即支付，商家也可以立即出貨。與銀行有關之 PIS 有 Ideal, Giropay, EPS, Mybank, 非銀行體系之 PIS 有 Sofort, Trustly。

(iii) 歐盟支付理事會(European Payments Council, EPC)正努力設法使電子支付架構可整合所有之 PIS，但因為此一架構未納入非銀行體系之 PIS，EPC 認為有排除非銀行體系競爭之虞，決定停止此一架構之運作。

(iv) 歐盟議會在本年 10 月 8 日通過對「支付服務指令」修正案(Directives on Payment Services, PSD2) 主要強化及調合網路支付之安全性，要求銀行授予 PIS 其所需提供自我驗證之訊息，並要求歐盟銀行局(EBA)草擬執行辦法。該修正案將於 2015 年 12 月正式生效。競爭總署將持續觀察注意銀行阻礙 PIS 發展之行為。

(8) 加拿大報告該國在處理金融業破壞性創新之經驗，略以:

(i) 加拿大競爭局利用多種工具，如宣導、執法及倡議等，以確保支付系統之競爭及發展。

(ii) 在回復加拿大財政部「平衡支付方法的監督及創新」諮詢文件中，競爭局強調:消費者在不同的支付服務方法中應有選擇之彈性及容易轉換的方式；廠商應可有市場力，但不得濫用市場優勢地位；廠商可參與有益於競爭之討論，但不得有聯合行為。

(iii) Interac 是加拿大全國性之支付網路，由 5 家金融機構所共同創立。該網路在經過管制機關指控濫用市場地位而受調查後，競爭法庭在 1996 年發布同意令，稍後變成同意協定，該協定中 Interac 同意開放新會員加入及新會員得以創新之服務提供消費者及企業。

(iv) 競爭局認為，新科技、商品及服務不斷在金融業中出現，對消費者及企業都有提升產業及提供更好及更新的服務潛在能力。如何使這些新商品及服務在市場中出現才是確保金融產業競爭之要務。

5、未來工作及討論議題:WP2 明年 6 月會議除將繼續討論事後評估外，並擬與政府採購工作小組共同討論有關草擬政府採購準則。另會議將繼續討論有關破壞性創新議題，尤其在交通產業如計程車，及專門職業如律師及會計師等之破壞性創新議題

二、10月27日「合作與執法第三工作小組」(WP3)會議，由WP3主席美國司法部反托

拉斯署署長William Baer先生主持，討論議題包括:

1、「涉及中間商品卡特爾」圓桌會議(Roundtab1e on Cartels Involving Intermediate Goods):

(1) 本議題共有包括我國在內的16個國家提出書面報告，主要討論卡特爾行為涉及中間產品時，競爭法主管機關如何執法? 秘書處提出虛擬問題:A國有Alpha、Beta2家公司生產中間產品X，Alpha、Beta2公司達成協議共同訂定X之價格，但X僅出口至B國與其他零件合組成最終成品並出口至C國消費。A、B、C國競爭法主管機關在本案應如何認定管轄權及如何執法?

(2) 對本議題之討論，大多數國家同意各國競爭法主管機關所收到有關涉及中間產品卡特爾的案件逐漸增多，最近案例如汽車零件及電子產品等皆屬此類案件。各國代表皆強調，中間產品可能涉及1個以上之管轄權，對該等案件之執法，有關管轄權之建立、如何取得證據及確定罰鍰等問題上自然更複雜。

(3) 大多數競爭法主管機關在面臨此類案件時，皆以「效果論」來確定管轄權之建立，即以本國消費者是否受到損害來決定是否採取執法行動。實務上，競爭法主管機關在其國內如有卡特爾商品直接銷售，或最終商品有直接或間接銷售，即有管轄權之基礎而可採取行動。大多數與會代表同意，執法機關可以在間接銷售之基礎上建立管轄權，但目前尚無此類案例。

(4) 在卡特爾決定提高商品之金額轉嫁上，各國代表同意:如果國內廠商將該數額全額轉嫁到其他國家，則對國內市場不會產生影響，但如果該數額有部分被國內廠商吸收而致轉嫁到國內市場，則會對國內競爭秩序產生影響，競爭法執法機關應介入調查。

(5) 在罰鍰上，大多數國家討論到平行執法時會產生一罪二罰之風險。為避免此類雙重受罰之情形，部分機關會考量其他機關所處之罰鍰數額，或與其他機關合作取得證據及確保罰鍰之適當比例。

(6) 主席對我國報告所提之問題為:「1.在貴國報告中所提，如果卡特爾行為地發生在B國，但對B國不發生直接實質影響，則FTC(B國執法機關)通常不會宣告管轄或採取執法行動，惟仍視個案情節是否與市場有相當關聯性而保留屬地之管轄權。請說明屬地管轄權之重要意義。2.有關卡特爾超額費用之轉嫁(pass-through)，在我國報告中提及「如果B國組裝者僅收取『組裝費』，對該

零件未直接付費，則B國執法機關不會採取行動。請說明在此執法決定中「轉嫁」之角色。」我國代表答以:「1.如果聯合行為未對B國產生實質影響，FTC不會採取執法行動。但Alpha、Beta該2家公司在B國之行為是該當違法，為嚇阻該行為，宣告管轄權是採取調查行動之先決要件，故FTC仍保留屬地之管轄權。2.對於「轉嫁」是否執法，端視組裝廠之角色。如果卡特爾超額費用係100%轉嫁，亦即組裝廠僅收取「組裝費」，則組裝廠既非零件X買家，亦非成品之賣方，此對B國經濟沒有影響，故不採取執法行動。但如低於100%轉嫁，則有可能組裝廠必須買入X產品，除組裝費外亦須自行吸收部份之超額費用再把成品賣出，在此情形下則可能對B國產生實質影響，故B國執法機關可能採取執法行動。」

2、國際合作協定條文盤點(Inventory of Provision in International Co-operation Agreements):

(1) 秘書處報告，OECD除檢視會員間之合作協議外，並增加檢視76個國際合作備忘錄(MOU)條文，其中有59個為會員與非會員間之執法機關合作備忘錄。MOU的內容可大致區分為:專注於合作及溝通或僅在建立溝通之基本架構。

(2) 盤點結果將於OECD網站上公布，秘書處並提出網站雛形供會員檢視討論。主席請各會員國提出意見供秘書處修正

3、未來討論題目:

(1) WP3下次會議為2016年6月14日(星期二)，將舉行「結合評估中之公共利益考量」圓桌會議(Roundtable on “Public Interest Considerations in Merger Assessment”)，另外將討論結合審查中之管轄權問題(Discussion on “Jurisdictional Nexus in Merger Control Regimes”)。

(2) 另外，WP3將考慮在6月16日(星期四)上午與反賄賂工作小組(Working Group Bribery, WGB)舉行聯席會議，討論反貪腐與競爭執法者之共同執法，尤其是在公共工程採購議題上。此一討論將同時檢視2012年總理事會對圍標建議書及對採購人員打擊聯合行為之誘因。

(3) 澳洲競爭及消費者委員會(ACCC)提議:未來可討論各國競爭法主管機關可以提供協助調查之權責，以提升各國此一權責之能見度，並鼓勵強化此一權責之國內立法，以強化2014年國際合作建議書。主席同意ACCC提出此一議題

之書面建議以利各國進一步討論。

三、10月27日下4時起舉行「競爭委員會」(CC)會議，會議由CC主席Frédéric Jenny先生主持，討論議題如下:

1、2014年競爭政策年報(Annual Reports on Competition Policy)報告:本次共有包括我國在內共29個國家提出書面報告。主席將各國報告概分為下列4大主題，並邀請相關國家口頭報告:

(1) 執法機關體制變革:加拿大、英國。

(2) 競爭法制改革:智利、紐西蘭、我國。

(3) 執法機關行動之影響:歐盟、荷蘭。

(4) 對圍標之執法(日本、韓國)及倡議(匈牙利、冰島、瑞士、奧地利)。

(5) 我國由張委員代表在會中提出本(104)年公平交易法最新修法簡介。

四、10月28日繼續舉行CC會議:

1、「對經濟挑戰之新方法」計畫最新進展報告(Information on Status of NAEC Project)：OECD秘書長辦公室報告今年6月所提出之NAEC綜合報告，競爭組組長John Davies先生報告如何將NAEC計畫成果納入本年秋天開始的「工作與預算計畫」(PWB)內容中。

2、各工作小組報告:由WP2主席Alberto Heimler及WP3主席William Baer分別提出10月26日及27日各小組會議結果，ICN協調人加拿大競爭局局長John Pecman先生報告ICN各工作小組會議、研討會及工作成果，UNCTAD協調人François Souty先生報告本年7月26-30日UNCTAD專家會議結果。

3、「跨平台等價協定」聽證會(Hearing on Across Platform Parity Agreements):

(1) 本議題討論供給者與零售商間對競爭性商品間所訂之價格或有競爭關係零售商之價格訂定相對關係之協定。主要聚焦4大主題:

(i) 釐清此一協定所引發之關鍵競爭問題，以及可能帶給消費者之利益；

(ii) 瞭解這些問題實際具體發生情形及這些利益實際有效地帶給消費者之程度；

(iii) 確認這些限制競爭或有益競爭效果如何依協定的具體性而有所不同；

(iv) 討論不同競爭法主管機關如何處理這些協定。

(2) 會中邀請英國東英吉利大學競爭政策中心教授(Centre for Competition Policy, University of East Anglia, UK) Morten Hviid先生，英國Charles River Associates顧問公司副總裁Matthew Bennett先生，牛津大學競爭法與政策中心教授(The University of Oxford, Centre for Competition Law and Policy) Ariel Ezrachi先生及比利時Cleary Gottlieb Steen Hamilton律師事務所Antoine Winckler律師等4位專家參與討論。

(3) ACCC首先報告ICN年會特別企劃:「網路垂直限制:平台等價協定」(ICN special project 2015: Online Vertical Restraints-*Across platform Parity Agreements*)總結報告:

(i) 本企劃主要目的在更進一步瞭解相關法律架構之異同，擴大ICN會員對特定網路垂直限制優先順序之考量，針對網路垂直限制現有法律規範及分析工具之適當性及未來可能努力方向與建議。

(ii) 此一企劃主要包括檢視OECD及其他文獻與相關評估網路垂直限制之經濟架構及ICN會員問卷調查，所檢視之問題包括5種行為面向:維持轉售價格(RPM)、促進RPM行為、平台等價協定(APPAs)、網路銷售禁止及國際地域性價格歧視(Geographic Price Discrimination, GPD)。本報告主要係針對APPAs所產生之競爭問題。

(iii) 在該企劃中APPAs的定義為:「銷售者與平台間的協定，銷售者同意在平台上所銷售之價格不得高於該銷售者在其他平台上之價格。」此一限制定義亦適用於供貨者自身之網路或離線平台，或限制供貨者分配銷售管道存貨的能力以因應平台間之競爭。此一態樣為新型態之垂直限制，因為零售價格透過平台元素而為水平之連結，引起競爭之慮。

(iv) ACCC在ICN年會前對130個會員國發出問卷，主要在蒐集有關執法機關特色，法制架構、對上開5種行為之關切及執法程度以及相關案例。共有47國家回復此一問卷，其中有23%機關回應該國法律並未涵蓋有關APPAs問題。而在各國法制體系中，大多回應APPAs係屬垂直限制，其中39%回答屬合理原則，僅3%回答認為屬當然違法。

(v)依據ICN會員對問卷之回應，APPAs為僅次於RPM之垂直限制關注問題，在

歐洲較受重視，北美及亞洲僅有2個機關列為執法優先問題，而在非洲及大洋洲則逐漸引起重視，南美洲則不認為是競爭問題。

(vi) 從問卷中可見，APPAs對競爭及效率之影響仍較其他垂直限制問題不受重視與理解，未來可能須加強此類問題對市場影響之監控或事後檢視，並注意該類問題在涉及多個管轄權時處理方式是否相同。

(4) Morten Hviid教授就背景文件提出說明，報告略以:

(i) 本議題主要引起競爭關切在於垂直協議可能引起水平效果:利用垂直相關的2家廠商連結商品的價格水平關係。此類問題已在歐洲、美國及其他地區引發重視，而其關注點在於「零售商限制供應商或生產者之行為」。

(ii) 相關案例態樣為:「零售商告訴生產者你不得以更低的價格或更有利的條件銷售給其他零售商」。此類案例有:電子書、線上旅館訂房網、亞馬遜市集及英國汽車保險業案。此類案件主要關鍵在於:「零售商與比照銷售對手之價格」，此一行為可視為傳統零售商對消費者最低價之保證，也可視為生產者對消費者的「最惠國待遇」(MFN)承諾:沒有其他比這更低的價格，但消費者可能完全不知道有此一承諾。因為此類案件涉及電子商務故稱為「等價平台協定」。

(iii) 大多數的文獻在討論此一問題通常都未將消費者納入考量，因為消費者並不知道此一協定之存在。這將會有2個潛在問題出現:降低競爭之誘因，因為對手的反應早已在預料之中；影響市場進入決定:會被排擠或過度參進。而此2項問題都會對消費者產生不利效果。

(iv) APPA的垂直限制是由經銷商到大盤商，而其限制效果並不亞於傳統由上游限制下游的維持轉售價格(RPM)，故應與RPM等同視之。而且APPA的經銷商模式可能加強限制競爭效果而提升商品價格，甚至可能超越水平勾結模式效果，因為零售者可以提高銷售費用，生產者可以透過零售商提高價格而所有零售商皆會以同樣價格銷售，故APPA可能會出現較高之價格。而在參進效果上，APPA可能會阻礙新廠商參進，但高額的利潤亦可能吸引更多參進者。

(v)APPA亦可能產生利益而平衡其限制競爭效果，如影響投資誘因及搭便車效果。但整體效果要視兩者之綜合效果而定。競爭法主管機關在此議題上已走在經濟理論之前頭，多數的經濟理論都支持競爭法主管機關介入，因為APPA有淨限制競爭之效果。

(5) 歐盟競爭總署署長Johannes Laitenberger就「最優惠條款」(MFC)與品牌內競爭提出說明，略以:

(i) APPAs、MFCs、等價條款等，好像是新的不同名詞，新的效果，但其實都是新瓶裝舊酒，都是限制競爭效果。

(ii) APPA定義可以十分廣泛，可以包括不同形式之限制與效果，也可能不限於網站或平台之銷售。它可能是製造商所引發之品牌內限制，可能是平台與平台間市集所引發之限制，亦可能是零售商所引發之品牌間限制。零售商之最優惠條款(MFC)正是前述最後一項。這些最引人注意的是其品牌內限制競爭效果，而MFC經常涉及代理商問題並涉及RPM。

(iii) 歐盟處理零售商MFC案件有電子書、亞馬遜案等，ECN垂直限制工作小組亦經常討論這些議題及案例。

(iv) 競爭總署也接到電子商務產業有關數位單一市場策略之諮詢，其目的為釐清阻礙跨國電子商務之限制行為。歐盟將在2016年中提出初步報告，最終報告將在2017年初公布。

(6) BIAC認為，APPA應該以合理原則分析，不應以當然違法處理。狹義的APPA有時是維持經銷體系必要之方法，競爭法主管機關仍有很多需要探討的地方，且必要時應進行個別產業諮詢，就品牌間競爭及品牌內競爭進行分析。

(7) 牛津大學教授Ariel Ezeachi以「電子商務等價條款之競爭效果」(The Competitive Effects of Parity Clauses on Online Commerce)提出報告，他認為，狹義等價條款(price parity clauses)是針對維繫垂直關係所設計，且有促進下游平台業者投資及效率之效果，但如果運用太廣泛，可能會減損競爭及消費者福利。他認為競爭法主管機關應以事實為導向介入調查，而不應一昧的禁止。

(8) 英國Charles River Associates顧問公司副總裁Matthew Bennett討論MFN之損害程度、利益及可能救濟方法。

(i) MFN的主要關切在於平台業者面臨賣家或其他低品質平台搭便車(free riding)問題。平台業者投資以吸引買者到平台交易，但賣家卻在平台尋找買者，鼓勵他們離線交易以避免繳交佣金給平台業者，如旅館有強烈誘因直接銷售以避免平台抽佣。另低品質平台亦可利用成熟的搜尋網站，以低成本搶客，抽取較低之佣金。

(ii) 搭便車問題係因大多數平台業者只能在交易成立後抽取佣金，而非在搜尋或媒合時即抽取；而搜尋與媒合的功能與交易功能完全分開獨立。此2項特點前者提供了大部分的服務價值而僅就後者提供業者回饋金。問題是業者是否有辦法防止搭便車的行為?答案是否，其主要理由是:平台業者是雙面市場，其主要功能在媒介消費者與銷售者。如果平台向消費者或銷售者任一方收取平台使用費用，則將會流失其大多數的消費者/銷售者顧客，因此消費者選擇變少或銷售者將失去大量潛在客源，平台媒介成功率也會低落。如此，該平台在消費者或銷售者心目中自然失去其存在價值。自然而然，平台業者僅能在媒合成功才能收取費用而無法排除搭便車行為。

(iii) MFN對競爭最主要的傷害在於減損價格之競爭及使參進變得更困難。平台間的等價協定或可提供平台業者減輕搭便車問題，但也可能因減損平台間競爭而損害消費者權益。

(iv) 競爭法主管機關應注意區分平台間之MFN或銷售者間之MFN。平台間之MFN被認為比銷售者間之MFN對競爭應更值得關注。平台間之MFN有較清楚之經濟理由防止銷售者及其他平台搭便車行為，但也較有能力限制平台間之競爭。

(9) 比利時Cleary Gottlieb Steen Hamilton律師事務所Antoine Winckler律師則就平台等價協定/MFN條款在競爭法下之法律評估提出報告。他認為

(i) 零售業的等價協定可能引起法律上在濫用市場優勢位及RPM價格協定的關切。在EU，處理此一議題的法源在第101條禁止限制競爭協議及第102條禁止濫用市場地位。

(ii) 歐盟垂直指導原則(vertical guidelines)認為RPM是惡質卡特爾，MFN可能為構成達成RPM的「非間接方法」，故在第48段規定規範「最優惠顧客」(MFC)條款，但MFN亦有可能產生經濟效率，此部分在指導原則中第225段對直接及間接RPM已有考量。另在代理商模式下，因為代理商必須承擔相關之商品特性與成本、存貨、產品責任，及促銷、市場特定活動投資等財務或商業風險，故亦有可能不在101條適用範圍。

(iii) 對於102條之適用，MFN必須考量的是:買方或賣方是否有市場力。其主要理由在於MFN會產生排他效果，用來提高想以較低價格競爭之對手或參進者之價格。

(iv) 零售MFN不是新的行為模式，但在數位世界中可能成為一個常態。在法理

學中並無一定的理論，文獻中亦無成熟之論述，而各國執法結果亦有差異。各國在執法時對於所謂「效率」宣稱必須逐案個別審視，依經濟及法律綜合考量。

4、市場研究討論(Discussion on Market Studies):秘書處提出本年6月問卷調查結果報告，CC將以此問卷結果為基礎，繼續就此一主題之討論。秘書處報告略以:

(1) 秘書處所發出之問卷共收到51國競爭法主管機關回復，其中3個國家表示沒有市場調查之權責，故以48個國家49個機關之答復為問卷計算之基礎。

(2) 競爭法主管機關進行市場研究最主要目的在於倡議，其中有79%國家會在市場功能並未完全運作但並無違反競爭法疑慮下進行市場研究，63%表示市場研究目的係為立法干預做準備。而有65%機關認為市場研究可提供競爭倡議之方法。

(3) 85%競爭法主管機關認為研究結果用來支持執法調查行動，46%表示可用來建議消費者保護機關，69%認為可以用來建議事業自律行為，88%認為可以用來建議政府修訂法律、規範或公共政策，52%則認為可以用來建議政府改變市場結構(如民營化)，另有73%同意結果可用來建議產業主管機關在市場中採取行動。

(4) 在市場研究所得之機密資料保護方面，47個機關(98%)回復對機密資料有進行保護，其中36個主管機關表示對機密資料的保護程度與執法所得到之資料相同，而35個機關表示總是將所得到之資料用於後續調查，13個機關表示在某些條件下會用於後續執法調查。另有關非機密資料保護部分，16個機關(33%)表示會進行保護，其中15個國家表示其對資料保護程度與執法所得資料相同，30國家表示會將市場研究所得非機密資料用於後續執法調查，9國家表示在某些條件下會用於執法調查。

(5) 54%回復之機關表示可以要求政府及民營事業提供資料，27%表示其沒有明確法規可要求提供資料，15%表示僅能要求民間單位提供資料，2%表示僅能要求其他政府單位提供資料，另2%表示沒有權責要求提供資料。對於不提供資料者，62%表示可以逕行處分，17%表示無法處分，15%表示可以請求法院加以處分。

(6) 對於未來工作部分，秘書處認為可以依下列子題進行討論:

(i) 對市場研究依其主要目的進行分類。

(ii) 不同法體制下所進行之市場研究。

(iii) 競爭法主管機關依目的實施市場調查之權責。

(iv) 對於相關事業利益保護之程序保障。

(v) 各種不同制度設計之檢視。

(vi) 對於不遵行事業之處分及其有效性之檢視。

(vii) 其他競爭法主管機關建議事項。

5、「競爭中立」討論(Discussion on Competitive Neutrality)：秘書處就未來討論議題提出預定討論範圍文件(scope paper)供會員討論，歐盟建議應先釐清「中立」(neutrality)及「政府活動」(government activity)之定義。美國則表示願與CC合作，繼續此項工作之檢視並將提供討論範圍文件之修改意見，BIAC則表示支持繼續討論此一議題。

6、CC對「總理事會2013年圍標建議書」報告:會員同意WP3所提之報告提交總理事會。

7、未來工作及討論議題：下次會議為2016年6月14日至17日，距本次會議尚有8個月，CC將以書面徵詢會員未來工作計畫。至於未來討論議題則考慮競爭與數位創新、市場調查報告等。另圓桌會議議題暫定以「忠誠計畫」(Fidelity/loyalty program)及數位經濟中之承諾決定(Commitment decisions in digital economy)，明年11月議題則暫定以「汽車售後零件市場」(aftermarket)及「金融市場透明化」(transparency in banking sector)。

肆、第 14 屆「全球競爭論壇」

一、10月29日至30日舉行第14屆「全球競爭論壇」會議，共有105個國家代表團參加，其中有63個非會員國代表，另有世界銀行、美洲開發銀行、UNCTAD等10個國際組織代表參加。

二、第1場會議主題為「競爭與就業」圓桌會議－「競爭到底是扼殺或是創造就業?」(Roundtable on Competition and Employment-Does Competition Kill or Create Jobs?)」由 CC主席Dr. Frédéric Jenny主持，會議情形如下:

1、OECD秘書長(Secretary Genera1) Angel Gurría先生先生致開幕詞表示，OECD國家的就業率在過去雖有提升，但失業率仍高。許多人對競爭所帶來之益處並不

認同，認為競爭只會帶來失業，而政客、企業及媒體會不斷施加壓力給競爭法主管機關，要求停止執法。但是競爭事實上是有益就業，因為競爭會帶來生產力的提升，提高實質工資並提升就業水準，創造更多就業。競爭同時會降低產品成本加成而降低價格，對消費者及整體經濟都是有利的。

2、國際勞工組織理事會總長(Director General, International Labor Organization) Guy Ryder先生在專題演講中表示，勞動市場是與「人」有關，與產品市場不同。2015年經濟成長低落，預計2016年仍保持低成長。競爭在勞動市場上造成工作品質變低，兼差時薪工作壓低薪資，也降低了工作品質，造成不均衡成長而使社會貧富不均差距拉大，這種現象在巴西、印度及中國大陸等新興市場尤其明顯。另方面競爭也會創造更多就業機會，在競爭政策有利於就業及可能損及就業雙重壓力下，我們要面對的問題是:如何解決低薪資問題，如何有效更快速媒介工作機會。

3、義大利前總理，現任參議院參議員Mario Monti先生在其專題演講中表示，自2007-2008年以後，競爭政策之理念傳播到全世界，但最大的挑戰在於今後5年內各國在直接政治壓力下，執行競爭法與競爭政策之理念及能力。競爭政策究竟是會扼殺工作機會或能創造更多就業機會，決策者及執法者必須共同提出有效的改革，才能說服人民競爭政策可以帶來更多就業機會，有益於整體經濟利益。

4、挪威前勞工部部長Victor Norman先生就秘書處背景報告提出說明，略以:

(1) 競爭政策與就業對競爭法主管機關是一個相當重要的課題。一般民眾、媒體及政府其他單位都相信競爭會使工作流失而對競爭法主管機關施加壓力，要求在執法時考量就業因素，此一現象在結合案件審查時尤其容易出現，要求競爭法主管機關考量結合案對就業之「公共利益」。

(2) 許多經濟理論及經濟證據都顯示，競爭對於總體經濟就業有正面的影響，但是在個體經濟上效果是較模糊的。而創造就業的潛在機制在於:(1)產品市場競爭會提高生產力，降低產品加成價格，而因為產品價格降低，產量增加，對勞力需求自然增加；(2)因為對勞力需求增加，薪資也會提升，競爭對於實質薪資成長亦有正面效果。

(3) 在討論競爭與就業之關係上亦不可忽略勞動市場制度，如失業救濟制度、薪

資決定制度、就業保護立法及勞工稅賦等對勞動市場的影響。產品市場與勞動市場是互相影響，而市場力及生產力的增減並不保證會影響失業的變動。產品市場力會影響失業率的增加只有在勞動市場制度是僵硬不易變動才有可能。

(4) 競爭法主管機關應關注如何在政治壓力下對競爭執法提升及倡議才是要務。

(5) 競爭會使經濟體對於外在衝擊更有反應，這不一定有利於就業，端視外在衝擊而定，但可以確定的是外在衝擊會有利於資源之重新分配。而競爭會達成國際經濟學中更完全的專業化及比較性利益，這對於就業都是有利的。因此，競爭不一定能創造就業，但一定會創造更多就業之基礎，因為競爭會導致更有效率的資源分配，會使經濟體對於外在衝擊更有反應，更對衝擊更有彈性，會使經濟體在國際競爭中更堅強。

5、世界銀行貿易與全球行為競爭力組長(Trade and Competitiveness Global Practice) Klaus Tilmes先生就「加強競爭以創造更好的工作」(Boosting Competition to Create Better Jobs) 為題提出報告。他認為更強烈的競爭才是創造有生產力工作的關鍵，雖然短期內可能有不同的效果，但長期而言競爭會創造更好的工作，提高實質薪資。政府改革以強化市場競爭是與創造就業機會有強烈的關聯性，但產業不同，所感受到之效果可能也不相同，需要更多的證據來支持此一理論。

6、OECD經濟組副組長Jean-Luc Schneider先生認為，依照2000年－2014年OECD國家資料分析，競爭程度愈高的國家就業率愈高。OECD網路型產業(如能源、交通及電信)解除管制提升了廠商參進及退出產業的機會，也降低了這些產業的薪資補貼，總體經濟在改革3年後對就業呈現正向影響，且競爭改革提升了整個經濟體工作轉換的機率，但對於技術型勞工有較大的影響。整體而言，長期上競爭改革對於創造工作機會有正向的效果。

7、法國競爭局首席經濟學家Etienne Pfister先生認為，人們關切競爭與就業的點在於，競爭創造就業機會是長期的，民眾不易感覺或看到成果，但失業是立即效果，民眾馬上感受得到失業的痛苦。競爭法主管機關在競爭倡議時，應強調就業之效果。

8、歐盟認為在經濟衰退時，不僅需要強化競爭政策對經濟成長的效果，而且在分

配不均及就業問題，也需要競爭政策。競爭政策及競爭法制度可強化對卡特爾及結合之執法，在個體上其直接效果是價格下跌，反映到總體經濟上可見其對就業、GDP及薪資分配效果。依歐盟以一般均衡模型分析(General equilibrium analysis)結果，競爭政策對低技術勞工或低收入家庭在可支配所得及消費上是較有利的，高所得家庭或高技術勞工較易承受因價格下跌所引起之利潤損失。而在勞動市場上，競爭對於勞動需求及供給都有正面的影響，技術勞工或低技術勞工就業皆會增加，失業補助自下降。此一影響包括短期及長期效果，但在「非常短期」可能會有勞工資遣現象發生，勞動市場在此「非常短期」的自行調整減緩此一損失效果。

9、印尼代表以該國航空業解除管制為例，航空業在解除管制後就業人數增加165%，顯見競爭策之效果。蒙古報告該國在1996年電信業解除管制後，在過去10年電信廠商由1家增加為4家，產業就業人口增加5倍。惟主席認為此一就業人口增加數應考量產業技術提升及人民對產業之需求增加因素。

三、第二場次為對哈薩克競爭法與政策同儕檢視(Peer Review of Kazakhstan's Competition Law and Policy)：會議由CC主席主持，由英國、芬蘭、羅馬尼亞及哥倫比亞代表分別就限制競爭、結合、濫用市場地位、競爭法制度設計與國際合作等問題提問。哈薩克國家經濟部自然獨占管制及競爭保護委員會主任委員(Chairman, Committee on Regulation of Natural Monopolies and Protection of Competition, Ministry of National Economy) Zhumangarin Serik Makashevich先生率團答覆問題。

四、第三場次為「破壞性創新對競爭法執法之影響」(The Impact of Disruptive Innovations on Competition Law Enforcement): 由比利時那慕爾大學教授(University of Namur) Alexandre de Streel先生及新加坡競爭委員會執行長杜漢立先生(Mr. Toh Han Li, Chief Executive, Competition Commission of Singapore)參與座談，歐盟、印尼、日本、新加坡、美國及BIAC提出書面報告。

1、Streel教授認為，破壞性創新主要發生於網際網路，且要有「經常性、快速性及全球性」(Frequent, rapid, Global)之特性。小事業開始破壞性創新而變成產業要角，大事業洞悉創新事業的商機後，立即併購這些創新事業而加速創新之速度。競爭政策的角色在於如何保護破壞性創新的過程，從靜態效率轉為動態率效。競爭法主管機關尤其在結合審核時，應注意大企業結合或併購形式，實質消

滅創新的行為，以保護創新的延續。

2、歐盟競爭總署結合及案件支援與政策組長Sebastian Müller報告歐盟結合管制與創新效果，略以:歐盟法制架構對競爭之保護不僅在確保較低價格或較高之產量，而且在確保產品品質、樣式及創新。對於創新也會明確針對結合對創新之正負效果詳加衡量。因為結合可能會去除創新產品而導致創新損失，如歐盟曾關切藥廠結合而可能導致在最後試用階段之新藥品無法上市而附加救濟措施。非水平結合亦有可能損及對手創新之能力，如Intel/McAfee結合案，歐盟確保結合之利益(晶片加安全軟體)，但同時也要求Intel不得阻礙其他安全軟體廠商取得其晶片及相互操作性之資訊，使第三方創新可進入Intel平台。

3、澳洲競爭及消費者委員會(ACCC)報告該會擬對該國計程車ihail公司計畫與其他計程車業者合資開創叫車平台及支付平台的申請案予以駁回決定案。ACCC承認此一平台對消費者的確有提升叫車效率及支付便利性，但對競爭之損害可能超越此一利益，故ACCC擬不予許可。但此一決定案亦受到批評，認為ACCC忽略計程車業者因應與UBER競爭的創新能力。

4、新加坡競爭委員會(CCS)執行長杜漢立(Han Li Toh)報告該國處理破壞性創新之案例，並報告該國在2016年主辦ICN年會，將會以「破壞性創新及政府倡議」(Disruptive Innovations and Government Advocacy)為特別計畫主題，主要問題在於:ICN會員如何就有關破壞性創新對政府及立法單位進行競爭倡議?CCS已將問卷送發各國，請各國踴躍回復。

五、10月30日「全球競爭論壇」第2日會議，「連續違法者:為何在某些產業似乎較易發生地區性勾結之討論」圓桌會議(Seria1 Offenders: a Discussion on Why Some Industries Seem Prone to Endemic Collusion):本節由肯亞競爭局局長(Director General, Competition Authority of Kenya) Francis Kariuki先生主持，邀請美國賓州大學華頓商學院教授(The Wharton School, University of Pennsylvania) Joseph Harrington先生、賓州州立大學傑出經濟學教授(Distinguished Professor of Economics, Penn State University) Robert Marshall先生、約翰霍普金斯大學開瑞商學院教授(Johns Hopkins Carey Business School) Valerie Suslow女士及南非Webber Wentzel律師事務所合夥人Robert Wilson先生參與座談。本議題共有包括我國在內的16個國家提出書面報告，並有澳大利亞等7國提出口頭報告。

1、歐盟首席經濟學者Luca Aguzzoni以歐盟案例報告較易勾結之產業及累犯廠商，略以:

(1) 依歐盟1998-2015年資料，最常發生卡特爾案件的產業是化學業，在105件卡特爾案件有超過1/4的案件涉及化學產業。

(2) 歐盟2006年罰鍰指導原則中對累犯事業可加重其罰金至100%(2006年前通常為50%)，並有清楚之考量因素:必須是同一事業類似行為(前次行為惡質卡特爾)，且其新犯行為前次決議採行以後再犯，兩項行為時間差距在10年內，歐盟及各會員國競爭法主管機關皆應適用。至目前為止，加重處分之案例有:1件加重50%，2件加重60%，3件加重90%，4件加重100%，但因該4件皆為寬恕政策申請人,故迄今尚無加重100%之案例(按2007年以後12件累犯案件中有5件申請寬恕政策)。

(3) 在許多產業中雖有卡特爾案件重複發生，但尚無累犯廠商之案例。而過去5年中曾有高度廠商再犯紀錄的化學產業也無新的案件出現，此一現象可能的解釋是:寬恕政策產生「清倉」效果、公司內部有較好的遵法政策、2006年以後較高額的罰鍰產生嚇阻效果。

2、約翰霍普金斯大學開瑞商學院教授(Johns Hopkins Carey Business School) Valerie Suslow女士以其研究「連續勾結內幕:累犯者是產業或廠商?」(Serial Collusion in Context: Repeat Offenses by Firm or by Industry)提出報告，略以:

(1) 我們必須瞭解卡特爾的累犯究竟是產業普遍現象還是廠商累犯行為。如果是產業層級，是否因為產品特性或科技特性，參進障礙等造成，如水泥業的高固定成本，或銷售機制設計問題(如拍賣)?如果是廠商累犯，是否因為組織文化(如鑽石)或是因利用寬恕政策策略?如果是兩者混合，則是否為廠商跨多個市場散播了這種行為?

(2) 反累犯政策可視為是一種後卡特爾政策，僅依賴反卡特爾政策是不夠的。如果卡特爾累犯發生在產業層面,競爭法主管機關應對結合審查有更多的警覺，在考量結構救濟時應鼓勵參進，並加強監督過濾。反之，如果是源於廠商，則競爭法主管機關應考慮對廠商經理層級加以處分，提供認罪協商機會並強化公司內部遵法機制。

3、美國賓州大學華頓商學院Joseph Harrington教授對連續違法行為提出其分析報

告，他認為:

(1) 理論上勾結行為會穩定存在是因其有可達成的條件:內在有懲罰效果大於勾結利潤，外在則因卡特爾為全員勾結，沒有參進機會，還有相對因素如同質性商品、超額生產力、需求變動大、有條件參進等。而經濟條件上在於勾結所增加的利潤比目前競爭所得利潤高，再加上嚴格執行的懲罰等條件。

(2) 實務上勾結發生於買方交易決定全基於價格變動，或因為交易標的為同質商品，或因為基於市場設計，如政府招標或拍賣、中間產品市場如水泥、化學品、工業瓦斯、水管及管線、玻璃、船運、紙類製品等。

(3) 我們可以用以下3個步驟以歸納法來偵測卡特爾:找出卡特爾發生機率高的市場、描繪出這些市場之主要特徵，再以這些特徵去比對其他市場，此方法之假設正如「水泥市場有這些特徵，而水泥市場常發生卡特爾，所以有這些特徵的市場也容易發生卡特爾」。

(4) 賓州州立大學傑出經濟學教授Robert Marshall歸納歐盟自1966年以來在歐盟被處分參與卡特爾超過4次的公司13家，其中除了1家Fides/AC Treuhand公司以外，全為化學公司，而此一Fides/AC Treuhand公司係為「同業公會管理公司」(Association management company, AMC)。該公司主要業務在提供同業公司定期聚會服務，如安排代訂旅館及會議行政事務安排。但該公司亦提供其他服務，如各公司及產業產能/產量之資訊等給會員參考。歐盟發現該公司至少涉及6次的化學卡特爾案件。他建議，如果有AMC公司曾有發動及操作卡特爾紀錄，則執法者應直接針對AMC之行為，以嚇阻限制競爭之發生。

(5) 南非Webber Wentzel律師事務所合夥人Robert Wilson先生分析南非建築業一再發生卡特爾案件之原因。他建議競爭法主管機關在執法面應提高處分之標準、加強偵測並提供寬恕政策，對免責透明化。在倡議方面應與其他相關機關建立良好溝通、管制機關及政府採購機關之適時介入，並對廠商加強宣導。

(6) Joseph Harrington教授提出對競爭法執法機關針對累犯之政策建議。他認為應利用歸納機制強化偵測卡特爾，對卡特爾高發生率之市場研究其個別行為偵測方法，建立全球性勾結行為及價格品質型態資料庫，並對提供卡特爾消息之檢舉人予以獎勵，且對累犯廠商處分應以最高罰鍰為主，不應再加重罰鍰，以避免「首犯」者有僥倖之心理。

(7) 連續違法者分組討論:下午進行分組討論，共分3組：

(i) 第1組「水泥與混凝土」(cement & concrete)，由印度競爭委員會主任委員Achok Chawla先生主持，共有包括我國在內的35個國家及美洲發展銀行與南非洲發展組織金融資源發展中心等2個國際組織代表參加。由我國及澳洲、巴西、南非、德國及土耳其分別提出報告。

(ii) 第2組為「建築」(construction)，由印尼KPPU委員Kamser Lumbanradja先生主持，共有33個國家代表及2個國際組織代表參加。

(iii) 第3組「食物與化學」(food and chemical)，由巴西CADE委員Paula Burnier先生主持，計有比利時等32個國家代表及BIAC與UNCTAD代表參加。

(iv) 分組討論後由各分組主持人提出討論綜合報告。主席再請各國代表就未來題目提出建議後，結束本次會議。

伍、心得與建議

一、OECD 全球競爭論壇所討論之議題常涉及其他政策範疇，如今年的「競爭與就業」議題為競爭政策與勞工政策問題之競合，本會對此議題雖未提出報告，但就未來執法時，如涉及勞工就業問題時競爭政策應如何考量及考量要素等可提供本會執法方向參考。

二、本次 WP2 會議所討論完成之「競爭法主管機關執法決定事後評估參考指南」為 OECD 提供各國競爭法主管機關對自我執法成效評估之參考，本會可將其列為未來成效評估參考。

三、本次會議各項主題秘書處皆提供詳盡之參考文件，如 WP2「金融產業中之破壞性創新」，WP3「涉及中間商品卡特爾」、GFC「競爭與就業」及「連續性違法」等議題，皆可做為本會在執法時參考。為利同仁瞭解參考，會議相關文獻將建置於本會 BBS 網站供同仁參閱。

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

22 October 2015
English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WP2/A(2015)2/REV3
For Official Use

Working Party No. 2 on Competition and Regulation

Draft Agenda: 60th meeting of Working Party No. 2

26 October 2015
Paris, France

To be held on 26 October 2015 in Room CC12 of the Conference Centre, 2 rue André Pascal, 75116 Paris, France. The meeting is starting at 10.00 a.m.

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Draft Agenda: 60th meeting of Working Party No. 2

26 October 2015

Paris, France

The 60th Meeting of Working Party No. 2 will be held on 26 October 2015 in Room 12 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris, France (starting at 10.00 a.m.)

Monday 26 October 2015	
10:00-10:05	**1. Adoption of the draft agenda** DAF/COMP/WP2/A(2015)2/REV3
10:05-10:15	**2. Adoption of the Summary record of the last meeting (19 June 2015)** For approval: • Summary record of the last meeting (19 June 2015) DAF/COMP/WP2/M(2015)1 Approved by written procedure: • Summary of Discussion of the Hearing on the use of Auctions and Tenders DAF/COMP/WP2/M(2015)1/ANN6 For information: • Executive Summary the two Hearings on the use of Auctions and Tenders DAF/COMP/WP2/M(2015)1/ANN7 • List of participants at the meeting of 19 June 2015 DAF/COMP/WP2/M(2015)1/ANN1
10:15-11:00	**3. Structural Separation: Review of the Recommendation** For discussion: • Draft Report on the Implementation of the Structural Separation Recommendation DAF/COMP/WP2(2015)4/REV1 • Suggested changes to the OECD Recommendation on Structural Separation in Regulated Industries DAF/COMP/WP2/WD(2015)8/REV1
11:00-13:00	**4. Final version of the Reference Guide on Ex-post evaluation of Competition Agencies' Enforcement Decisions** For discussion: • Note by the Secretariat DAF/COMP/WP2(2015)7 • Note by Tomaso Duso and Peter Ormosi DAF/COMP/WP2(2015)8

For information:

- Paper by Lilla Csorgo and Harshal Chitale, New Zealand Commerce Commission DAF/COMP/WP2(2015)10

Documentation is also available at: http://www.oecd.org/daf/competition/evaluationofcompetitioninterventions.htm

13:00-15:00	**Lunch**
15:00-15:15	**5. Update on the Trans-Pacific Partnership** By the US delegation
15:15-17:15	**6. Hearing on Disruptive Innovation in the Financial Sector** For discussion: • Issues note by the Secretariat DAF/COMP/WP2(2015)9 • Note by BIAC DAF/COMP/WP2/WD(2015)15
17:15-18:00	**7. Future topics and Other business**

Annex 1. Annotations

Item III.

In June 2015, WP2 discussed the first draft of the Secretariat's report on the review of the Structural Separation Recommendation. The delegates will now be asked to approve the draft version of this report that incorporates all the comments received on the first draft. They will also be asked to discuss whether the recommendation should be amended.

The draft report and suggested changes to the text of Recommendation will be circulated in advance of the meeting.

Item IV.

This discussion will conclude the 3-year work stream on evaluation, as the Secretariat will present the last output of this project: the final draft of the Reference Guide on the Ex-post Evaluation of Competition Authorities' Enforcement Decisions. This Guide will be a useful reference document for economists in competition agencies that are tasked with performing ex post assessments and offer them a wealth of detailed examples and references (both academic papers and studies conducted by CAs). The key takeaways from the capacity building workshop held in April 2015 on this same topic will be discussed. Delegates will also be invited to reflect on how the overall work of competition agencies can benefit from undertaking ex-post evaluations and a number of delegations will share their experience. The two experts who led the April workshop will participate in the discussion, Prof. Tomaso Duso (DIW Berlin and DICE) and Dr. Peter Ormosi (UEA, Norwich).

The draft Guide and a paper by the experts will be circulated in advance of the meeting. A paper by the New Zealand Commerce Commission describing the methodology they have developed for the ex-post assessment of merger decisions is also circulated for information.

Item V.

The US delegation will provide a brief update on the Trans-Pacific Partnership, a trade agreement recently signed by several Pacific Rim countries, and on the implication its introduction could have on regulation and competition.

Item VI.

The financial sector has been the object of many innovations in recent years. This hearing will assess the impact of selected major innovations on consumers, discuss how existing regulation should be changed in order to allow the introduction of new business models and technologies, and examine how different jurisdictions have addressed these topics in recent years.

The discussion will focus especially on the following developments:

• Peer-to-peer lending

• Crowd-funding equity

• Digital currencies

• Payment mechanisms (e.g., mobile phone, wallets), including payment from one individual to another (thus including peer-to-peer currency exchange.)

The discussion will benefit from the participation of outside experts and selected delegations. The experts will be: Adrian Blundell-Wignall (DAF Directorate, OECD), Anne Chone (European Securities Market Authority, France), Christine Farnish (Peer-to-Peer Finance Association, UK), Nicola Northway (Barclays Legal, UK) and Mary Starks (Financial Conduct Authority, UK).

An issues note prepared by the Secretariat will be circulated in advance.

Item VII.

The Working Party will have an extensive discussion on possible topics for future meetings, chiefly those to be held in June 2016 and in October 2016. In particular, delegates could consider having further hearings on the role of regulation in the development of innovative ways of doing business in specific sectors. Further, delegates could consider how to build on the findings emerged during the two Hearing on auctions and tenders held in December 2014 and June 2015 and whether there could be scope for some cooperation with the procurement unit in the Directorate for Public Governance and Territorial Development.

The next meeting of Working Party No. 2 is scheduled for 13 June 2016.

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

22 October 2015
English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WP3/A(2015)2/REV1
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Working Party No. 3 on Co-operation and Enforcement

Draft Agenda: 122nd meeting of Working Party No. 3

27 October 2015
Paris, France

To be held on 27 October 2015 in Room CC13 of the Conference Centre, 2 rue André Pascal, 75116 Paris, France. The meeting starts at 10.00 a.m.

Contact(s):
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JT03384777

English - Or. English

Draft Agenda: 122nd meeting of Working Party No. 3

27 October 2015

Paris, France

The 122nd Meeting of Working Party No. 3 will be held on 27 October 2015 in Room 13 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris, France (starting at 10.00 am.)

Tuesday 27 October 2015	
10:00-10:05	**1. Adoption of the draft agenda** DAF/COMP/WP3/A(2015)2/REV1
10:00-10:05	**2. Adoption of the Summary record of the last meeting (15 June 2015)** For approval: • Summary record of the last meeting (15 June 2015) DAF/COMP/WP3/M(2015)1 For information: • List of participants at the meeting of 15 June 2015 DAF/COMP/WP3/M(2015)1/ANN1
10:05-13:00	**3. Roundtable on Cartels Involving Intermediate Goods** For discussion: • Background paper by the Secretariat DAF/COMP/WP3(2015)18 Submissions by delegations: • Australia – DAF/COMP/WP3/WD(2015)31 • Chile (FNE) – DAF/COMP/WP3/WD(2015)33 • Chile (TDLC) – DAF/COMP/WP3/WD(2015)35 • Japan – DAF/COMP/WP3/WD(2015)30 • Korea – DAF/COMP/WP3/WD(2015)27 • Mexico – DAF/COMP/WP3/WD(2015)28 • Turkey – DAF/COMP/WP3/WD(2015)26 • United Kingdom – DAF/COMP/WP3/WD(2015)25 • United States – DAF/COMP/WP3/WD(2015)37 • European Union – DAF/COMP/WP3/WD(2015)40 and • Costa Rica – DAF/COMP/WP3/WD(2015)36 • Chinese Taipei – DAF/COMP/WP3/WD(2015)29 • Indonesia – DAF/COMP/WP3/WD(2015)39 • Lithuania – DAF/COMP/WP3/WD(2015)34

- Russian Federation – DAF/COMP/WP3/WD(2015)41
- BIAC – DAF/COMP/WP3/WD(2015)38

Documentation is also available at: http://www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm.

15:00-15:30	**4.**	**Inventory of Provisions in International Co-operation Agreements**

Documentation is also available at: http://www.oecd.org/daf/competition/provisionsincooperationagreementsoncompetition.htm.

15:30-15:45	**5.**	**Other Business and Future Topics**

Annex 1. Annotations

Item 3.

Under this agenda item, WP3 will hold a Roundtable on "*Cartels Involving Intermediate Goods*". Cartels involving intermediate goods (i.e., goods used as inputs in the production of manufactured goods for final consumers) can be found in all countries and across a broad range of sectors, and have certain differences compared to cartels involving final consumer goods, which the Roundtable will explore. The delegates will discuss approaches to hypothetical questions circulated by the Chair (see letter of the Chair COMP/2015.116, dated 22 July 2015) to frame the dialogue, on the challenges that cartels involving intermediate goods pose with respect to their prevention, detection, legal and jurisdictional requirements for enforcement, and sanctions.

The discussion will benefit from a Background Paper by the Secretariat and country submissions.

Coffee break: there will be a fifteen-minute coffee break from 11.30 to 11.45.

Item 4.

Under this agenda item, the Secretariat will present a draft outline of the webpage on the main provisions in international co-operation agreements and will report on progress in building an inventory of provisions in MoUs, as part of the ongoing work on international co-operation.

Item 5.

The next meeting of WP3 will be on 14 June 2016. Delegates will be asked to confirm their interest in holding a roundtable on "*Public interest considerations in merger assessment*" and a session on "*Jurisdictional nexus in merger control regimes*". Delegates will discuss the proposal by the OECD's Working Group on Bribery (WGB) to hold a half-day joint meeting with WP3 in the morning of 15 June 2016. Delegations are welcome to send to the Secretariat other suggestions for consideration for the June and November 2016 meetings of WP3.

Coffee break: there will be a fifteen-minute coffee break from 15.45 to 16.00.

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

23 October 2015

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/A(2015)2
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Cancels & replaces the same document of 15 September 2015

Draft Agenda: 124th meeting of the Competition Committee

27-28 October 2015
OECD Conference Centre, Room CC13

Contact(s):
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JT03384919

Complete document available on OLIS in its original format.

English - Or. English

Draft Agenda: 124th meeting of the Competition Committee

27-28 October 2015

OECD Conference Centre, Room CC13

The 124th Meeting of the Competition Committee will be held on 27-28 October 2015 in Room 13 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris (starting on Tuesday 27 June at 4.00 pm.)

	Tuesday 27 October
16:00-16:10	**1. Election of Chairman and Vice Chairmen for 2016**
16:10-16:15	**2. Adoption of the draft agenda** DAF/COMP/A(2015)2
16:15-16:25	**3. Approval of the draft Summary record of the last meeting** For approval: • Summary Record of 123rd Competition Committee meeting: DAF/COMP/M(2015)1 For information: • List of Participants: DAF/COMP/M(2015)1/ANN1
16:25-18:00	**4. Annual Reports on Competition Policy** Reports to be presented by the Delegates at this meeting: • Australia – DAF/COMP/AR(2015)28 • Austria – DAF/COMP/AR(2015)29 • Canada – DAF/COMP/AR(2015)31 • Chile – DAF/COMP/AR(2015)32 • France – DAF/COMP/AR(2015)36 • Hungary – DAF/COMP/AR(2015)38 • Iceland – DAF/COMP/AR(2015)39 • Japan – DAF/COMP/AR(2015)42 • Korea – DAF/COMP/AR(2015)43 • Netherlands – DAF/COMP/AR(2015)45 • New Zealand – DAF/COMP/AR(2015)46 • Portugal – DAF/COMP/AR(2015)49 • Slovenia – DAF/COMP/AR(2015)50 • Switzerland – DAF/COMP/AR(2015)52 • United Kingdom – DAF/COMP/AR(2015)54 • European Union – DAF/COMP/AR(2015)55

- Egypt – DAF/COMP/AR(2015)35
- India – DAF/COMP/AR(2015)40
- Indonesia – DAF/COMP/AR(2015)41
- Malta – DAF/COMP/AR(2015)44
- Chinese Taipei – DAF/COMP/AR(2015)33
- Ukraine – DAF/COMP/AR(2015)53

Additional reports for this meeting:

- Germany – DAF/COMP/AR(2015)37
- Italy – DAF/COMP/AR(2015)56
- Norway – DAF/COMP/AR(2015)47
- Bulgaria – DAF/COMP/AR(2015)30
- Costa Rica – DAF/COMP/AR(2015)34
- Peru – DAF/COMP/AR(2015)48
- South Africa – DAF/COMP/AR(2015)51

Also available at www.oecd.org/daf/competition/annualreportsbycompetitionagencies.htm

	Wednesday 28 October
9:30-10:00	**5. Information on status of NAEC project** For reference: • Final Naec Synthesis Paper: C/MIN(2015)2 For information: • Note by the Secretariat: DAF/COMP(2015)9
10:00-10:30	**6. Reports by Working Party Chairmen and by Co-ordinators**
10:30-13:00	**7. Hearing on Across Platform Parity Agreements** For discussion: • Paper by Prof. Morten Hviid: DAF/COMP(2015)6 For information: • Paper by Prof. Ariel Ezrachi: DAF/COMP(2015)11 • Notes by delegations: France – DAF/COMP/WD(2015)64 Germany – DAF/COMP/WD(2015)56 Hungary – DAF/COMP/WD(2015)69 Italy – DAF/COMP/WD(2015)58 Netherlands – DAF/COMP/WD(2015)67 Sweden – DAF/COMP/WD(2015)57 United Kingdom – DAF/COMP/WD(2015)66 United States – DAF/COMP/WD(2015)72

Bulgaria – DAF/COMP/WD(2015)61
Latvia – DAF/COMP/WD(2015)65
Romania – DAF/COMP/WD(2015)71
Chinese Taipei – DAF/COMP/WD(2015)60
Turkey – DAF/COMP/WD(2015)70
BIAC – DAF/COMP/WD(2015)62

Documentation available at www.oecd.org/daf/competition/competition-cross-platform-parity.htm

13:00-15:00	Lunch
15:00-16:00	**8. Discussion on Market Studies** For discussion: • Note by the Secretariat: DAF/COMP(2015)7 • Notes by Delegations: Israel – DAF/COMP/WD(2015)63 Indonesia – DAF/COMP/WD(2015)68
16:00-17:00	**9. Discussion on Competitive Neutrality** For discussion: • Paper by the Secretariat: DAF/COMP(2015)8 • Note by the Secretariat: DAF/COMP(2015)13
17:00-17:30	**10. Committee Report to Council on 2012 Recommendation on Bid Rigging** For approval/discussion: • Secretariat report: DAF/COMP(2015)12
17:30-18:00	**11. Other Business** Future topics For reference: • Note by the Secretariat: DAF/COMP/WD(2014)17/REV1 Inclusive Growth For information: • Note by the Secretariat: DAF/COMP(2015)10

Annex 1. Annotations

Item 1.

The Competition Committee is called upon to elect its Chairman and Vice chairmen for the year 2016 at its October session as provided by the OECD Rules of procedure of the Organisation (Rule 15 d). To prepare this election a consultation with delegates will be carried out as usual.

Item 5.

The OECD Council has emphasised the importance of mainstreaming NAEC in the OECD every-day work and flagship publications and the need to have Committees' delegates better informed on NAEC outcomes. To achieve this, the Office of the Secretary General will to present the NAEC Synthesis Report (presented at the 2015 Ministerial Council Meeting – Reference: C/MIN(2015)2) to the Competition Committee in order to have a strategic discussion on how to mainstream NAEC in the context of the PWB discussions that will start this fall.

Item 6.

The Chairmen of Working Party No. 2 and of Working Party No. 3 will report on the meetings of the Working Parties held on 26 and 27 October 2015.

The UNCTAD co-ordinator may report on UNCTAD related developments.

The ICN co-ordinator will report on recent work and projects by the ICN.

Item 7.

This session will focus on Across Platform Parity Agreements (APPAs), which are agreements between suppliers and retailers that specify a relative relationship between prices of competing products or charged by competing retailers. Buyers are not parties to these agreements and are often not even informed of its existence, even though the agreements concern the prices they are paying.

The session will examine APPAs to: (i) identify the key competition concerns these can raise, as well as the benefits these may bring to consumers; (ii) understand to what extent these concerns actually materialise and these benefits effectively accrue to consumers; (iii) ascertain how these anti- and pro-competitive effects can vary depending on the specificities of the agreements, and (iv) discuss how these agreements are being dealt with by different competition authorities.

The discussion will benefit from the participation of 4 experts Morten Hviid (University of East Anglia, UK), Matthew Bennett (Charles River Associates, UK), Ariel Ezrachi (Oxford University) and Antoine Winckler (Cleary Gottlieb Steen Hamilton, Brussels). A paper from Prof. Hviid and written submissions from delegations will provide the background for the discussion.

Item 8.

This session will discuss the result of the Secretariat survey on Market Studies whose aim was to collect information on best practices with the use of market studies in different jurisdictions. The responses to the survey will be summarised by the Secretariat in a Note that will be circulated in advance of the meeting. The Note will provide the basis for the discussion.

Delegations which are interested in taking a leading role in the discussion should contact the Secretariat before Friday, 25 September. Areas for discussion were identified by Chairman Jenny in his letter on 5 August 2015 (COMP/2015.145).

Item 9.

This session will discuss a first draft of the Secretariat Note summarising past discussions on competitive neutrality, focussing in particular on (i) the types of restrictions to competitive neutrality that we know of; (ii) the measures that different jurisdictions can take to address each of these distortions; and (iii) the domestic dimension of competitive neutrality and its importance in competition policy.

The session will offer delegates the opportunity to reflect on how the Competition Committee could contribute more broadly to the horizontal work that is taking place at the OECD on competitive neutrality, and explain how the competition enforcement community looks at competitive neutrality issues and what are the similarities or differences of approaches with other policy areas.

Item 10.

Competition delegates will be asked to discuss and eventually agree to transmit to Council the Report on the Implementation of the OECD 2012 Recommendation on Fighting Bid Rigging in Public Procurement. The report was prepared by WP3; a first draft was discussed at the June meeting of WP3 and it was subsequently approved by the Working Party by written procedure.

Item 11.

Competition delegates are called to decide on future topics for substantive discussions to be held in June 2016 and November 2016. Delegates should feel free to send to the Secretariat as soon as possible any suggestion for the Committee's consideration.

The OECD Secretariat will update competition delegates on the work of the Competition Division on Inclusive Growth (IG). The OECD IG initiative was launched in 2012 in the midst of the crisis, in a context of persistently high joblessness and growing inequalities. The initial two-year effort produced a multidimensional approach to IG and provided a Policy Framework to assess, promote and monitor inclusive growth. This presentation is currently scheduled on Wednesday 28 October at 17:00, but this timing may be subject to last minute changes depending on the other items' flow of discussion.

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

6 October 2015
English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/GF/A(2015)1
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Cancels & replaces the same document of 15 July 2015

Global Forum on Competition

Draft Agenda: Global Forum on Competition

29-30 October 2015
Paris, France

Contact(s):
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JT03383296

English - Or. English

Draft Agenda: Global Forum on Competition

29-30 October 2015

Paris, France

Chair: Frédéric Jenny, Chairman, OECD Competition Committee (France)

	Thursday 29 October
09:00 am – 10:00 am	**1. Opening Remarks** *Angel Gurría*, Secretary-General, OECD **Keynote Speakers** *Guy Ryder*, Director General, International Labour Organisation *Mario Monti*, Senator, Italian Senate, former Prime Minister of Italy **Introductory Comments** *Frédéric Jenny*, Chair, OECD Competition Committee
10:00 am – 1:15 pm	**2. Session I – Does Competition Kill or Create Jobs?** A discussion on the links and drivers between competition and employment **Chair:** *Frédéric Jenny* This session will explore ways in which pro-competitive policies may support the creation of jobs or alternatively, if it is the case that competition destroys jobs. In many economies, emerging as well as developed, it is often the case that opening economic sectors hitherto protected to competition is perceived as threatening existing jobs. In times of an economic downturn, a typical policy response may be retrenchment and the erection of regulatory or political barriers to competition in an effort to preserve jobs. This may be the case in merger reviews where job preserving remedies may be imposed by the enforcer. However, such barriers may in the long term prevent the creation of new jobs. This session thus aims to explore the nature of this relationship. **Panellists:** • *Mario Monti,* Senator, Italian Senate, former Prime Minister of Italy • *Victor Norman,* Professor of Economics, NHH, Norges Handelshøyskole, former Minister of Labour, Norway • *Guy Ryder,* Director General, International Labour Organisation • *Jean-Luc Schneider*, Deputy Director, Economics Department, OECD **Documentation** Background note by the Secretariat: to come Call for contributions DAF/COMP/GF(2015)1

Written contributions:

- Bulgaria DAF/COMP/GF/WD(2015)16
- Costa Rica DAF/COMP/GF/WD(2015)12
- Czech Republic
- European Commission
- Georgia DAF/COMP/GF/WD(2015)11
- Hungary
- India
- Indonesia
- Kenya DAF/COMP/GF/WD(2015)18
- Mexico DAF/COMP/GF/WD(2015)10
- Moldova DAF/COMP/GF/WD(2015)4
- Mongolia DAF/COMP/GF/WD(2015)7
- Morocco DAF/COMP/GF/WD(2015)9
- Papua New Guinea
- Russian Federation DAF/COMP/GF/WD(2015)26
- Singapore DAF/COMP/GF/WD(2015)3
- South Africa DAF/COMP/GF/WD(2015)22
- Swaziland DAF/COMP/GF/WD(2015)8
- United Kingdom DAF/COMP/GF/WD(2015)13
- United States
- Zambia DAF/COMP/GF/WD(2015)17
- BIAC
- CUTS DAF/COMP/GF/WD(2015)19

Oral contributions:

European Commission

France

1:15 pm – 1:20 pm	**3. GFC official photo for all participants**
1:20 pm – 2:30 pm	**Buffet lunch hosted by the OECD, Expresso Café, OECD Conference Centre.**
2:30 pm – 4:30 pm	**4. Session II – Peer Review of Kazakhstan's Competition Law and Policy**

Open to country representatives and intergovernmental organisations only – Report under restricted circulation on Olis

Chair: *Frédéric Jenny*

Lead examiners: Colombia, Finland, Romania, United Kingdom

Introduction: *Alexey Ivanov*, Director, Skolkovo-HSE Institute for Law and Development, Moscow

"Peer review" is a core element of OECD work. The mechanisms of peer review vary, but it is founded upon the willingness of a country to submit its laws and policies to substantive questioning by other peers. The process provides valuable insights into the country under study, getting to the heart of ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions. In 2015 Kazakhstan's competition law and policy will be subject to such a review.

4:30 pm – 6:30 pm	**5. Session III – The Impact of Disruptive Innovations on Competition Law Enforcement**

Chair: Frédéric Jenny

Panellists:

- *Alexandre de Streel*, Professor and Director of the Research Center Information, Law and Society, University of Namur and CRIDS, Belgium
- *Toh Han Li*, Chief Executive, Competition Commission of Singapore

Disruptive innovations raise questions for competition law enforcement, for instance when considering mergers between disruptive innovators and incumbents, or exclusionary conduct by incumbents against innovators. Incumbents not only have an incentive to destroy an innovation by merger or exclusion, but might also inadvertently kill it through acquisition. This session will explore the competition law enforcers' dilemma in merger review, for instance whether to impose behavioural remedies, but the session may also explore issues related to exclusionary conduct.

Documentation:

Background note by the Secretariat: to come

Written contributions:

- European Commission
- Indonesia
- BIAC

6:30 pm – 8:00 pm	**Cocktail sponsored by Kazakhstan, Ockrent and Marshall Rooms, Château de la Muette, OECD**

Friday 30 October

09:30 am – 12:30 pm	**6. Session IV – Serial Offenders: a Discussion on Why Some Industries Seem Prone to Endemic Collusion**

(Roundtable in plenary)

Chair: *Francis Kariuki*, Director-General, Competition Authority of Kenya

This full-day session will look at some sectors where endemic collusion is found and at the extent to which recidivism varies across sectors. We will focus on the following sectors: chemicals; construction services, including public tenders; cement and concrete; and food products. Economic theory has developed well-established guidelines on the factors that are considered conducive to collusion and could therefore help explain endemic collusion. These factors include market

concentration, high entry barriers, a high ratio of fixed costs to variable costs, market transparency and frequent interaction among competitors that facilitate information sharing. Repeated collusion by the same companies could also have other explanations, such as the interplay between firm-specific factors and sector-specific factors. For instance there could be hysteresis effects: once cartels do form (perhaps because of sectoral characteristics), collusion becomes more accepted in the sector, so that cartels become more likely to form again, even after antitrust action.

Building on these factors, the session will cover the (structural) characteristics of the four sectors and the reasons why (and if) serial collusion appears in these industries.

The session will provide an opportunity to share experiences and discuss implications in terms of enforcement tools and priorities for competition authorities.

Panellists:

- *Joseph Harrington,* Professor of Business Economics and Public Policy, The Wharton School, University of Pennsylvania
- *Robert Marshall,* Distinguished Professor of Economics, Penn State University; Bates White
- *Valerie Suslow,* Professor, Vice Dean for Faculty and Research, Johns Hopkins Carey Business School
- *Robert Wilson,* Partner, Webber Wentzel, South Africa

Documentation:

Call for contributions DAF/COMP/GF(2015)2

Background note by the Secretariat: to come

Written contributions:

- Brazil
- Canada DAF/COMP/GF/WD(2015)15
- Chinese Taipei
- Egypt
- Indonesia
- Japan
- Mongolia DAF/COMP/GF/WD(2015)5
- Philippines DAF/COMP/GF/WD(2015)14
- Russian Federation
- Singapore DAF/COMP/GF/WD(2015)6
- South Africa DAF/COMP/GF/WD(2015)23
- Switzerland DAF/COMP/GF/WD(2015)21
- Turkey DAF/COMP/GF/WD(2015)20
- Ukraine
- United States
- BIAC

Oral contributions:

- Australia
- European Commission
- Germany
- Greece
- Hungary
- Italy
- United Kingdom

12:30 pm -2:00 pm	**Break**
2:00 pm - 3:30 pm	**5. Session IV (continued) – Breakout Sessions: Serial Offenders – A Discussion on why some Industries seem prone to Endemic Collusion** [Participants will be allocated to breakout rooms for this session by the Secretariat]
3:30 pm - 5:00 pm	**6. Session IV (continued) – Serial Offenders: a Discussion on why some Industries seem prone to Endemic Collusion – wrap up plenary session** **Chair:** *Francis Kariuki*, Director-General, Competition Authority of Kenya 1. Report by Moderators, General Discussion 2. General Discussion 3. Summary and final remarks by session chair
5:00 pm – 6:00 pm	**7. Session V – Other Business and Proposals for Future Work** **Chair:** *Frédéric Jenny*

Annex 1. Practical Information

1. **Registration**
   Forum participation is **by invitation only**. It is restricted to government representatives, intergovernmental organisations and regional banks as well as selected invitees. No financial support is available for participants' travel to and stay in Paris. Registration is mandatory. For OECD non-members, registration should be done as soon as possible. Members should register as usual through their Permanent Delegations in Paris.
   When you arrive at the OECD Centre in Paris, you will need to present an identity card or passport to obtain your Forum badge. Badges will be delivered at the Welcome Desk upon arrival. **The desk will open at 8.00 am on Thursday 29 October 2015. Given the high number of participants, you should allow a minimum of 30-45 minutes for registration**. The GFC will start at 9 am sharp and you should plan to be seated in the room behind your plate at least 5 minutes before the start.
2. **Documentation**
   The Global Forum on Competition website (http://www.oecd.org/competition/globalforum) is our vehicle for conveying general information and documentation. Unless explicitly requested not to do so, we will reproduce written contributions on the site. GFC participants will find the background documentation and the agenda on their table upon their arrival in Room 13 where the Forum will take place. **In a bid to be environmentally friendly, we will not circulate paper copies of the numerous country contributions. Please bring your own copies with you.** Participants will also be able to access Forum documentation on their personal computers through the OECD's free WiFi access in the room.
3. **Seating arrangements**
   Participants will be seated behind their country/economy plate in French alphabetical order, followed by international organisations and selected invitees from business and civil society. Given the large number of delegations represented at the Forum, access to seats equipped with a microphone is limited. In principle, each delegation will have a minimum of one seat with a microphone. For countries with large delegations, the allocation of more seats equipped with a microphone will be considered. Such allocation will be made according to registrations on a first come, first served basis. A number of seats without a microphone will also be available in the rear of the room.
4. **Breakout Sessions**
   For the discussion on "Serial Offenders: A Discussion on Why Some Industries Seem Prone to Endemic Collusion" on Friday 30 October, three breakout sessions are organised in addition to the plenary session to allow a more informal and lively dialogue among fewer participants. Participants will be allocated to the three sessions by the Secretariat. Information on allocation to the three sessions will be provided during the plenary session prior to the breakout sessions. Participants are kindly invited to attend the session they have been allocated to, to observe the timing and to return to the plenary session immediately after. During the final plenary session they will hear reports from the breakout session moderators and from the experts. A number of participants will be called to describe in four minutes experiences of particular interest to all participants.
5. **Working Methods**
   Discussions will be held in the two OECD official languages (English and French), with simultaneous interpretation. **Kazakhstan has arranged for Russian simultaneous interpretation for all of the sessions on 29 October 2015.** The Chairman (and Session Chairs where relevant) will use traffic lights to regulate the timing of interventions. The high number of participants means that participants will need to be disciplined in their interventions in order to allow as many delegates as possible to have the opportunity to speak. Interventions should be as concise as possible, and each intervention will be limited to a maximum of three minutes. Time constraints may not permit the presentation of the numerous written contributions. Countries who have contributed in writing (in response to the two calls prepared by the OECD Secretariat) will be notified in advance if the session's Chair intends to call upon them to make brief comments on specific points from their written contributions. We will do our best to warn those concerned as soon as feasible, but the late receipt of some country contributions often delays this process. Consequently, countries may not be notified until a few days before, or even on the eve or on the first day of the Forum. Please carefully check your emails

on those days since this will be the only way to communicate efficiently with you. The Secretariat will inform the speakers scheduled on the agenda of the time allocated to them. They are kindly invited to keep their presentations strictly within the indicated limits. This should allow for periods of general discussion long enough to encourage lively exchanges among participants.

6. **Accommodation, Visas, About the Conference Centre**
   A list of hotels is provided on the OECD website and bookings may also be made through our booking website. Hotel information and booking facilities are provided for convenience only and do not constitute an endorsement or recommendation by the OECD of the services of a particular hotel, nor a guarantee of quality. We suggest that you verify the nature of the services, the applicable rates and any other relevant information directly with the hotel
   European Union citizens do not require a visa for entry into France. For others, depending on your nationality, the length and purpose of your stay in France, a visa may be required before departure. For further information, please consult the French Ministry of Foreign Affairs website.
   Please note that the **OECD cannot organise a visa on your behalf** and that there are long deadlines to get visas in some countries. A personalised invitation letter can be provided by the OECD for the purpose of getting a visa if necessary.
   The OECD Conference Centre provides all necessary facilities including phone booths, free WiFi access, computers with free Internet access, a bookshop, coffee and snack bars, and a restaurant. Please consult the Conference Centre website for more information.

7. **General information**
   Currency: Euro (EUR, EUR)
   Electricity: 220 V, 50 Hz
   Time Zone: GMT/UTC + 1 (Central European Time)
   Telephone Area Code: The international code to call France is "+ 33". When calling from abroad, the number should be dialled without the first "0".

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

02-Oct-2015

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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WP3/WD(2015)29
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Working Party No. 3 on Co-operation and Enforcement

ROUNDTABLE ON CARTELS INVOLVING INTERMEDIATE GOODS

-- Chinese Taipei --

27 October 2015

This document reproduces a written contribution from Chinese Taipei submitted for Item 3 of the 122nd meeting of the Working Party No. 3 on Co-operation and Enforcement on 27 October 2015.

More documents related to this discussion can be found at:
www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm

Please contact Ms. Despina Pachnou if you have any questions regarding this document [phone number: +33 1 45 24 95 25 -- E-mail address: despina.pachnou@oecd.org].

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Complete document available on OLIS in its original format

English - Or. English

-- Chinese Taipei --

1. Along with international trade liberalization, the economic activities of businesses usually extend beyond a country's territory. Corporations concerned with the optimization of their production factor portfolios often spread their production and sales activities across different countries to maximize their profits. Hence, their production and sales activities are not limited to any single country. Competing corporations sometimes collude with each other and form an international cartel, a trend more often observed in oligopolistic industries. The principles, which countries adopt to determine jurisdictions over international cartel cases, are generally applied by nationality and territory. In addition, the effect doctrine is now popularly adopted by most competition authorities. In other words, whether or not a country enjoys jurisdiction over an international cartel is based on the impact of the international cartel on the designated geographical market associated with the market structure and trading relationships. In practice, the location or territories where production and sales activities take place is rarely the only consideration when determining jurisdiction.

2. With regard to hypothetical issues of the roundtable conference, the Fair Trade Commission's (FTC) position based on stipulations of the Fair Trade Act (FTA) and practices are as follows:

1. In the case of Country A (the place where component X is manufactured)

1.1 Considerations to determine jurisdiction and taking action:

3. The FTC first considers whether the component can be sold independently or whether it must only be assembled (or a high proportion must be assembled) to be sold in Country A, i.e., whether or not the cartel has a direct and significant impact on the market of Country A. Next, the FTC considers whether or not the members of the cartel are national entities of Country A and whether the corporations located in Country are negatively affected by the collusion of Alpha and Beta. In the case where there are no competitors of Alpha and Beta in the market of Country A, and component X is not sold or only a very low proportion of component X is sold in Country A and does not have a substantial direct effect on Country A, and the conspiracy between Alpha and Beta only expands in the international market and only has an impact on other countries, then the FTC will not take any enforcement action, even though Country A is where the act takes place and the FTC has jurisdiction. In practice, territorial jurisdiction is retained depending on whether or not the cartel has a considerable impact on the domestic market.

1.2 Considerations to determine the FTC's disposition and penalty:

4. When a considerable ratio of component X manufactured by Alpha and Beta is sold in Country A, or if the component cannot be sold independently, if Product X can only be sold after being assembled, jurisdiction will be determined based on the direct impact of the final product on manufacturing in Country A. In some cases, the FTC used a 5% market share of products as the threshold when deciding whether or not to take enforcement action, and when determining whether or not the concerted action of Alpha and Beta was a violation of the law such that it should be penalized. Penalties include ceasing or correcting the illegal actions and imposing a fine. The amount of the fine is based on the scale of business operations, sales revenue in Country A, duration of a violation, market position, motive, attitude of cooperation in the investigation, and whether or not cartel members apply for leniency. The maximum fine is 1/10 of cartel members' sales revenues in Country A in the previous accounting year.

1.3 Whether or not the disposition of other countries regarding the case is considered:

5. In principle, the FTC deliberates on cases independently, but will sometimes consider the disposition of other countries when deciding on the penalty. This is to prevent conflicts with the judgments of a case by different countries, thereby keeping law enforcement in harmony. The FTC also focuses on international cooperation and notification procedures to learn about the differences in the opinions of other competent competition authorities that reviewed the case. However, neither of these will have a binding impact on the FTC's decision.

2. In the case of Country B (the place where component X is assembled)

2.1 Considerations to determine jurisdiction and taking action:

6. The FTC usually first examines trade patterns between the domestic assembly companies and Alpha and Beta with respect to component X. If assembly companies only collect an assembly fee for assembling products that contain component X when the final product is ordered by a company, and do not purchase components on their own, then the FTC will not take enforcement action against the possible conspiracy. However, if an assembly company purchases component X and can set the price of the final product, in which the price of components represents a portion of the assembly company's cost, then the trading pattern will impact the assembly market of Country B, and the FTC will determine whether it has jurisdiction over the case and, if so, will take enforcement action.

2.2 Whether or not the place where the act takes place is considered:

7. Even though the act takes place in Country B, if the act in contention does not have a substantial direct effect on Country B, then the FTC will usually not take any enforcement action. However, territorial jurisdiction is retained depending on whether or not the cartel has a considerable impact on the market.

2.3 Considerations to determine the FTC's disposition and penalty:

8. The FTC will order the corporations to cease or correct their action pursuant to Article 40 of the Fair Trade Act, and will impose an administrative fine. The amount of the fine according to Article 36 of the Enforcement Rules of the Fair Trade Act is based on the scale of business operations, sales revenue in Country B, duration of a violation, market position, motive, attitude of cooperation in the investigation, and whether or not cartel members apply for leniency. The maximum fine is 1/10 of cartel members' sales revenues in County B in the previous accounting year.

2.4 Whether or not the disposition of other countries regarding the case is considered:

9. In principle, the FTC deliberates on cases independently, but will sometimes consider the disposition of other countries when deciding on the penalty. This is to prevent conflicts with the judgments of a case by different countries, thereby keeping law enforcement in harmony. The FTC also focuses on international cooperation and notification procedures to learn about the differences in opinions of other competent authorities of competition that reviewed the case. However, neither of these will have a binding impact on the FTC's decision.

3. In the case of Country C (the place where the final product containing component X is sold)

3.1 Considerations to determine jurisdiction and taking action:

10. Since Country C is where the final product is sold after being assembled, the FTC will first examine the sales of component X, whether or not the component can be sold independently or must only be assembled (or a high proportion must be assembled) to be sold in the market. Next, the FTC will consider the sales of the final product that contain component X in Country C. If Country C is the country where the final product of Alpha and Beta is sold, component X is a key component in the final product, and sales revenue of component X in Country C is the main source of revenue or contributes considerably to the revenue of Alpha and Beta, then the FTC will determine whether it has jurisdiction over the case and may take enforcement action. In addition, whether or not there are domestic competitors that were negatively impacted by the collusion of Alpha and Beta will be considered when determining the FTC's jurisdiction.

3.2 Whether or not the place where the act takes place is considered:

11. Even though the act takes place in Country C, if the act in contention does not have a substantial direct effect on Country C, then the FTC will usually not take any enforcement action. However, territorial jurisdiction is retained depending on whether or not the cartel has a considerable impact on the market.

3.3 Where corporations in Country C are involved in price negotiations with cartel members:

12. Since parties involved in a price negotiation represent demand and supply in a market, and thus the price of the final product in Country C is highly related to negotiations on the price of component X, the FTC will examine trade patterns, the trade structure and trade relations to determine if it has jurisdiction over the case. If Alpha and Beta are not concerned about the market of Country C and do not know whether the final product will be sold in Country C, then the FTC will usually proceed with further investigations to decide whether to take enforcement action.

3.4 If the assembly company is a wholly-owned subsidiary of the final product's buyer in Country C:

13. As described in the second item, the assembly company is usually not involved in setting the price of component X, and price negotiations for component X are mainly carried out by the buyer of the final product. The party involved in the price negotiations is the final recipient of the price, and the price of the component affects the price of the final product, which is sold in Country C. As described above, the FTC will examine trade patterns, the trade structure and trade relations to determine if it has jurisdiction over the case. If Alpha and Beta are not concerned about the market of Country C and do not know if the final product will be sold in Country C, then the FTC will usually proceed with further investigations to decide whether to take enforcement action.

3.5 Considerations when determining the FTC's disposition and penalty:

14. The FTC will order the corporations to cease or correct their action and will impose an administrative fine pursuant to Article 40 of the FTA. The amount of the fine according to Article 36 of the Enforcement Rules of the FTA is based on the scale of business operations, sales revenue in Country C, duration of a violation, market position, motive, attitude of cooperation in the investigation, and whether or not the cartel members apply for leniency. The maximum fine is 1/10 of the cartel members' sales revenue in County C in the previous accounting year.

3.6 Whether or not the disposition of other countries regarding the case is considered:

10. In principle, the FTC deliberates on cases independently, but will sometimes consider the disposition of other countries when deciding on the penalty. This is to prevent conflicts with the judgments of a case by different countries, thereby keeping law enforcement in harmony. The FTC also focuses on international cooperation and notification procedures to learn about the differences in opinions of other competent authorities of competition that reviewed the case. However, neither of these will have a binding impact on the FTC's decision.

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

22-Oct-2015

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COMPETITION COMMITTEE

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHINESE TAIPEI

-- 2014 --

27-28 October 2015

This report is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

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English - Or. English

TABLE OF CONTENTS

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1. Until the end of 2014, the latest amendment to the Fair Trade Act (FTA) was on November 25, 2011. However, the FTA has been amended twice in 2015.

2. The Multi-level Marketing Supervision Act came into effect on January 29, 2014. The legislation of the Supervisory Regulations Governing Multilevel Sales was the guidelines for multi-level marketing supervision, which was originally set in accordance with the provisions specified in the FTA. However, considering that the FTA is a competition law designed to fight competition restrictions and unfair competition, and not to regulate multi-level practices, as well as the fact that multi-level marketing has become a popular sales approach in recent years and some of the unlawful multilevel marketing practices have created serious social problems, establishing a complete and independent Multi-level Marketing Supervision Act has been an important administrative objective of the Fair Trade Commission. A number of significant changes to the Multi-level Marketing Supervision Act compared to the related regulations set forth in the FTA and the Supervisory Regulations Governing Multilevel Sales are as follows: (1) the redefinition of "multi-level marketing" and deletion of the regulation regarding the "payment of certain fees"; (2) the addition of the regulation requiring multilevel marketing businesses suspending their operations to make public announcements; (3) the addition of the provision regarding the giving of written contracts to participants; (4) the revision of the participant withdrawal and the product return regulations; (5) the addition of the regulations regarding withdrawal and product return with a third party involved; (6) detailed penalty provisions and increased penalties for unlawful multi-level marketing operations; and (7) creating a multi-level marketing business protection agency to handle disputes between multi-level marketing businesses and participants.

1.2 Other relevant measures including amended guidelines

3. The Fair Trade Commission (FTC) amended the following guidelines in 2014:

- "Enforcement Rules of the Multi-level Marketing Supervision Act";
- "Regulations for Multi-level Marketing Enterprises Filing Reports for Record and Amendments";
- "Regulations for the Establishment and Administration of the Multi-level Marketing Protection Institution";
- "Regulations Governing the Turnover Amount Which Multi-level Marketing Enterprises Shall Have its Financial Statements Audited and Certified by a Certified Public Accountant";
- "Disposal Directions (Guidelines) on Investigations in Multi-level Sales Cases";
- "Regulations for the Examination of Financial Holding Company Merger Cases";
- "Enforcement Rules of the Fair Trade Act";
- "Guidelines on Handling Merger Filings";
- "Guidelines on the Procedure of Public Hearings";

- "Disposal Directions (Guidelines) on Cases Concerning Promotion by Means of Gifts and Prizes";
- "Disposal Directions on Handling Traveling Expenses for the Cases Related Person";
- "Regulations on Multi-level Marketing Operations' Establishment of Personal Information Protection Plans and Personal Information Handling Procedures upon Participant Contract Termination";
- "Disposal Directions (Guidelines) on Unlawful Commissioning of Household OEM Cases";
- http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=748&docid=10281"Disposal Directions (Policy Statements) on Selling Presale Houses"; and
- "Disposal Directions (Policy Statements) on the Business Practices of Franchisers."

1.3 Government proposals for new legislation

4. The FTC's proposed amendment was approved by the Cabinet on December 13, 2012, and it was pending in the Congress until the end of 2014. On January 22, 2015, the Congress approved the amendments to the FTA and the amendments to the FTA were promulgated on February 4, 2015. In addition, there was another amendment which was promulgated on June 24, 2015 by adding Article 47-1 of the FTA. The key points of these amendments include:

- Revising the pre-merger notification threshold and extending review period of merger cases;
- Recognition of circumstantial evidence for concerted actions;
- Increasing the expiration length of power to impose administrative penalties;
- Empowering the FTC to suspend investigation when accepting commitments offered by parties under investigation;
- Differentiating administrative penalties for various violations; and
- Softening applicable standard to RPM.
- Appealing directly to the Court rather than to the Executive Yuan (Cabinet).
- Authorizing the FTC to set up an anti-trust fund and plan to provide rewards for the reporting of illegal concerted actions.

2. Enforcement of competition laws and policies

2.1 Action against anti-competitive practices, including agreements and abuses of dominant market positions

2.1.1 Summary of Activities

5. The Act permits the existence of monopolies as long as they do not abuse their market power. Concerted actions are strictly forbidden by the Act. However, while some exceptions are allowed for, these

do require the FTC's prior approval and its decision is based on the public interest. The Act bans resale price maintenance in principle but requires the FTC to apply the rule-of-reason standard to other types of vertical restraints.

6. In 2014, the FTC processed 2,225 cases, including 2,001 cases received in 2014 and 224 cases carried over from the preceding year. By the end of 2014, 2,100 cases had been closed, and 125 cases were pending. A total of 278 complaint cases applicable to the Act were concluded in 2014 and, of these, 66 concerned anti-competitive practices.

7. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 150 cases in 2014, and only 27 of these fell into the category of anti-competitive practices. The FTC also initiated investigations into 12 anti-competitive cases.

Decision Rulings by the FTC in 2014 (Unit: Number of cases)

Year	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2014	27	5	2	6	8	6

Note: The number of illegal actions may exceed the number of cases involving decision rulings because a case may involve more than one illegal action.

2.1.2 Description of significant Anti-competitive cases (including those with international implications)

- Case 1: Cartel of 16 Tainan Asphalt Businesses

The FTC decided on April 9, 2014 that 16 asphalt businesses in Tainan City had violated Paragraph 1, Article 14 of the FTA for establishing a mutual understanding and collecting stabilization funds from their downstream customers as the conduct had resulted in pushing up the prices of asphalt and was able to affect the supply-demand function of the asphalt market in the Tainan area. The FTC therefore imposed administrative fines ranging between half a million and 5 million New Taiwan dollars on the 16 businesses. The fines totaled NT$39.5 million (approximately equivalent to US$1.2 million).

The "Graft Crackdown Special Task Force" of the Tainan District Prosecutor's Office in 2010 implemented the "Fighting Injustice Project" to investigate collusion between government officials and businesses as well as jerrybuilding. In the procedure for investigation, the Tainan District Prosecutor's Office discovered that local asphalt businesses seemed to have jointly raised the prices of asphalt. The FTC immediately set up a task force and launched an investigation in cooperation with the Graft Crackdown Special Task Force to stop the asphalt businesses' illegal collusion and acquisition of unlawful profit from public engineering procurement projects. The conduct had jeopardized the public interest.

Besides the involved businesses, the FTC also questioned 40 interested parties and concluded that from August 2010 to October 2011, the asphalt businesses had collaborated with other parties to manipulate transactions in the asphalt market by achieving a mutual understanding and collecting NT$200 for each tonne of asphalt from project bid winners and related builders to push up the prices of asphalt indirectly in the Tainan area.

A cartel has always been considered to involve a serious violation in every country. Once concrete evidence of violation is established, the FTC will impose heavy punishments without any mercy. After taking into consideration that the illegal activity had lasted for more than one year, the degree of involvement in decision-making, the level of cooperation throughout the investigation, scale of business, size of capital and other factors specified in Article 36 of the Enforcement Rules to the Fair Trade Act, the FTC ordered the 16 businesses to immediately cease the unlawful act and also imposed administrative fines on them.

- Case 2: KAREA restricted Members' Bid Prices

The FTC decided on November 12, 2014 that the Kaohsiung Association of Real Estate Appraisers (KAREA) had violated the regulation set forth in the Fair Trade Act against concerted actions for restricting its members from determining their own bid prices. The FTC ordered KAREA to immediately cease the unlawful act and also imposed on it an administrative fine of NT$400,000 (approximately equivalent to US$12,171).

The FTC received a complaint accusing KAREA of violating the FTA by restricting its members from deciding their bid prices. The FTC's investigation showed that KAREA in 2004 established its Member Self-discipline Agreement in which there was a regulation against members' "reduction of appraisal fees by a large margin." However, the meaning of "reduction of appraisal fees by a large margin" was not defined in the agreement. As a result, price undercutting competition between members remained an unresolved issue. KAREA therefore made the decision during its 7th Directors & Supervisors Joint Meeting of the 4th Term on January 15, 2014 to define "reduction of appraisal fees or other illegitimate measures" as "when there are three or more bidders and the winning bid is significantly lower than the offers that the other bidders and other members have reported, such incidents shall be regarded as being in violation of Article 7 of the Member Self-Discipline Agreement. The aforementioned 'the winning bid is significantly lower than the offers of the other bidders' is defined as when the difference in between reached 20% or higher." Subsequently, the decision was sent to each member. In reality, KAREA also notified five bid-winning members, whose winning bids were 20% lower than the average of the offers from the other bidders in eight tenders, to provide written statements and explain their bids in person.

The bid price restriction imposed by KAREA meant that when its members decided their bid prices, besides considering "making too high an offer and not winning the bid" and "offering too low a bid price and not making enough profit," they also had to take into account that there was the risk of violating the Member Self-discipline Agreement by "offering a bid price lower than the average of the offers from the other bidders by 20% or more." To avoid this risk, KAREA members had to adopt a more conservative bidding strategy and make higher offers or consult with the other bidders before bidding or even make joint bid price decisions. The FTC concluded that by imposing the restriction, KAREA had not only infringed the freedom and independence of its members in the bid price decision but also suppressed price competition. The practice violated the regulation against cartels set forth in Paragraph 1 of Article 14 of the FTA and the FTC therefore decided the sanction according to the first section of Paragraph 1, Article 41 of the same Act.

2.2 Mergers and acquisitions

2.2.1 Statistics on the number, size and type of mergers notified and/or controlled under competition laws

8. Mergers involving parties reaching a certain sales volume or a particular level of market share require the giving of notification to and obtaining no objection from the FTC. The FTC makes its decision

based on whether the benefits to the economy as a whole will exceed the anti-competitive effects of the proposal.

Notifications for Mergers (Unit: Number of cases)

Year	Cases under Processing		Total	Results of Processing				Cases Pending at Year-end
	Carried Over from 2013	Received in 2014		Mergers not Prohibited	Mergers Prohibited	Termination of Review	Combined into other Cases	
2014	8	68	66	33	-	33	-	10

Statistics on Enterprise Mergers (Unit: Number of cases)

Year	Cases not Prohibited	Type of Merger (Article 6, Paragraph 1 of the Fair Trade Act)				
		Subparagraph 1	Subparagraph 2	Subparagraph 3	Subparagraph 4	Subparagraph 5
2014	33	3	25	3	7	19

Note: More than one type of merger may be applicable to some cases. Therefore, the total number of cases under different types of mergers exceeds the total number of approved cases.

2.2.2 Summary of significant cases

- Case 1: Two Major KTV Singing Service Companies Failed to File Merger Notification

The FTC decided on April 23, 2014 that Cashbox Partyworld Co., Ltd. (hereinafter referred to as Cashbox) and Holiday KTV Co., Ltd. (hereinafter referred to as Holiday) had violated Paragraph 1, Article 11 of the Fair Trade Act for failing to file with the FTC a merger notification regarding their frequent joint management operations. Acting according to Paragraph 1 of Article 13 and Paragraph 1 of Article 40 of the FTA, the FTC ordered both companies to cease and correct the unlawful act and also imposed administrative fines of NT$5 million on Cashbox and NT$4 million of Holiday. The fines totaled NT$9 million (approximately equivalent to US$273,848).

The FTC's investigation revealed that between 2012 and 2013 Cashbox and Holiday rented a venue to be their headquarters where important business decisions were jointly made and the two companies were thus integrated as one business entity. All core operations in relation to their KTV singing services, including sales, planning and management, were consolidated. The staff members of both companies' procurement sections were seated in Holiday's office and the same employee was responsible for procuring the business equipment and products of the same category or item for both companies. The operations and personnel of each department of both companies were no longer independent but consolidated. The intranets and telephone lines of both companies were connected and business instructions and operations were thus conducted and resources were shared. The overall business operation pattern met the merger type described in Subparagraph 4 of Paragraph 1, Article 6 of the FTA and both companies had also reached the merger filing threshold. According to law, they were required to file with the FTC before merging but failed to do so. Therefore, it was a violation of Paragraph 1, Article 11 of the FTA. Since the two companies had been sanctioned previously for failing to file a merger notification regarding their jointly run customer service center and computer audio-video operations, the FTC therefore acted according to Paragraph 1, Article 13 of the FTA,

ordered the two companies to make necessary corrections within three months, and also imposed administrative fines on the two companies.

- Case 2: Merger Between 2 Cable Broadcasting and Television System Service Companies

The FTC decided at the 1192nd Commissioners' Meeting on Sept. 10, 2014 not to prohibit Dafeng TV Ltd. from acquiring 100% of the shares of DigiTai TV Ltd. in accordance with Paragraph 2, Article 12 of the Fair Trade Law, and attached conditions for non-prohibition.

The FTC pointed out that although the merging businesses owned 100% of the cable broadcasting and television system service market in Banqiao District (including Tucheng District), New Taipei City, there was potential competition as the National Communications Commission has permitted new operators to enter the market, as well as existing operators to expand their business across districts. Hence, this merger does not restrict competition, but rather promotes the development of the video media industry, fosters the development of digital convergence, and provides consumers with more options.

After comprehensively considering the possibility and timeliness of new operators entering the market, the current legal framework, market structure and competition, and the development of digital convergence, the FTC attached 7 conditions to the non-prohibition decision in accordance with Paragraph 2, Article 12 of the FTA, so as to eliminate any possible competition restrictions and ensure overall economic benefits:

(1) The merging enterprises, their subsidiaries and the companies they control may not use improper means to restrict or hinder consumers from freely changing trading counterparts.

(2) The merging enterprises, their subsidiaries and the companies they control shall ensure that the prices of cable TV services, broadband network service, and digital channel value-added service are not higher than before the merger within 3 years after receiving the merger decision.

(3) The merging enterprises, their subsidiaries and the companies they control may not establish any contract or agreement of any form with other cable TV services, their subsidiaries or companies under their control to make consolidated purchases from cable TV program suppliers, engage in joint pricing or boycotting activities, or undertake any conduct described in the Fair Trade Law as a concerted action.

(4) The merging enterprises, their subsidiaries and the companies they control may not demand that their upstream program suppliers exclusively license programs in their operating area, or use improper means to obstruct transactions between their upstream program suppliers and other cable TV services, their subsidiaries or companies under their control.

(5) The merging enterprises, their subsidiaries and the companies they control may not hinder transactions between upstream program suppliers and other cable TV services, their subsidiaries or the companies under their control by adjusting the channel of a program, taking down a program, lowering the program licensing fee, or using other improper means.

(6) The merging enterprises, their subsidiaries and the companies they control shall carry out the following to ensure that the overall economic benefits apply beginning on the day after receiving the merger decision:

a. Complete the cable TV digitalization and two-way cable TV system network construction to increase program options for consumers.

b. Achieve the digital cable TV prevalence target stated in the Digital Convergence Development Project approved by the Executive Yuan on July 8, 2010 for the expedition of digital convergence.

c. Support HD digital content and programs to drive the development of the cultural and creative industry.

(7) Dafeng TV Ltd. shall submit the following documents to the FTC before July 1 each year within 3 years after receiving the merger decision.

a. The price, quantity, discounts, and termination conditions of cable TV services, broadband network services, and digital channel value-added services provided by the merged enterprises, their subsidiaries and the companies they control.

b. A report on the achievements in the improvement of the overall economic benefits.

3. The role of competition authorities in the formulation and implementation of other policies, e.g., regulatory reform, trade and industrial policies

9. In its first amendment in 1999, the new provision of the Act required that the Act not be applied to acts performed in accordance with other laws only if such other laws do not conflict with the legislative purpose of the Act. This amendment thereby affirms that the spirit and contents of the Act be the core of economic policy.

10. The FTC has completed a comprehensive review of all relevant laws and regulations since 2001 to minimize potential conflicts among laws, to advocate free and fair competition, and to ensure the presence of a healthy operating environment in which all businesses are able to compete fairly. As a result, the FTC will continue to be aware of developments in various markets, perform reviews of other laws to determine whether they are in compliance with the Act and consult with relevant industry competent authorities to prevent related laws and regulations from impeding competition.

11. In 2014, the FTC organized and participated in various consultation meetings with other government authorities related to competition issues, as summarized in the following:

- Participated in the meeting organized by the Executive Yuan and Bureau of Energy, Ministry of Economic Affairs (MOEA) for the amendment of the "Electricity Act" (draft). After discussion, the participants drafted a conclusion for the Bureau of Energy, MOEA to analyze the pros and cons as well as the supporting measures in relation to the disputes, and provide the information to the Executive Yuan in order to make a presentation to the Premier. The FTC will track the progress of the amendment of the "Electricity Act" and provide opinions regarding competition law.

- Participated in the meeting organized by the Yilan County Government for the "Collective Procurement Working Group of Elementary Schools' Approved Textbooks in the 2014 School Year" and exchanged opinions with the competent authority regarding the current situation in the textbook market.

- Participated in the meeting organized by the Bureau of Mines, MOEA to discuss the "Response Strategies for the Impact on the Demand and Supply of the Domestic Gravel Market due to the Remediation of the Jiulong River in Mainland China". The representative of the FTC paraphrased the suggestions proposed by the gravel businesses toward stabilizing the gravel market and

reminded the competent authority to keep an eye on the rising price of domestic gravel which might be a result of the shortages in the supply of gravel.

- Hosted a meeting for advocating the "Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks" and invited representatives of the competent authority to attend and provide their opinions on the disposal directions, textbook screening system, and evaluation standards.

- Organized a meeting inviting the Financial Supervisory Commission to discuss the "Upper Age Limit Which is Set by the Life Insurance Companies for the Life Insurance and Health Insurance" and came to the conclusion that the Financial Supervisory Commission will appeal to insurance companies to sufficiently raise the age upper limit and provide insurance products which satisfy senior citizens' demands in order to protect the senior insured's rights and benefits.

- Organized a meeting inviting the Agriculture and Food Agency, Council of Agriculture, Taichung City, Changhua County, Chiayi County, Nantou County, Pingtung County, Taitung County, and Hualien County Government to discuss the "Availability of the Competent Authority Reporting Market Quotations of Betel Nuts After Betel Nut Suppliers were Repeatedly Punished by the FTC". The conclusion of the meeting was to encourage the betel nut suppliers to use the "Agricultural Price Inquiring System", a website established by the Council of Agriculture, to inquire into the prices of betel nuts at each place of production for transaction reference. The local competent authorities were advised to adopt the price information regarding betel nuts from the "Agricultural Price Inquiring System". In addition, the Taitung County Government was required to provide the prices of betel nuts according to its authority.

- Participated in the first meeting organized by the Food and Drug Administration, Ministry of Health and Welfare for the "Intellectual Property Working Group on Drugs" and provided some competition law enforcement experiences on a drug patent system, which will be established by the Food and Drug Administration.

- Participated in the meeting organized by the Industrial Development Bureau, MOEA for the "Disaster Reduction Plan for Industrial Pipelines" meeting and elaborated on the purpose of the enactment of the FTA as well as the FTC's authority for maintaining market trading order.

- Organized a forum inviting the Consumer Protection Committee, Executive Yuan, Ministry of Transportation and Communications, Industrial Development Bureau, MOEA, representatives of businesses, scholars, and experts to attend the "Forum on the Current Status and Competition Issues of Automobile After-sales Services in Taiwan" and discussed the practical situation of auto parts dealing restraints. The FTC will prescribe relevant disposal directions according to the opinions from the meeting participants.

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget

- NT$344.597 million in 2014 (approximately equivalent to US$10.87 million in Dec. 2014).

4.1.2 Number of employees (person-years)

12. There were 209 employees at the end of the year 2014, including all staff in the operations and administrative departments and 7 full-time Commissioners. The operations departments include the Department of Service Industry Competition, Department of Manufacturing Industry Competition, Department of Fair Competition, Department of Planning and the Department of Legal Affairs. Over 91% of employees have bachelor degrees with majors in different subjects at the university level.

13. In terms of the educational background percentages, 24%, 25%, 7%, 6% and 38% of the employees majored in law, economics, business administration, accounting and other related fields (including information management, statistics, and public administration), respectively.

14. As a result, the structure of the human resources of the FTC is as follows:

Category	No. of employees
Lawyers	51
Economists	52
Other professionals & support staff	107
All staff combined	209

4.2 Human resources (person-years) applied to:

4.2.1 Enforcement against anti-competitive practices and merger review

15. Apart from the Department of Fair Competition, which has 31 staff and is responsible for unfair competition practices, such as false and misleading advertisements, counterfeiting and multi-level sales cases, the Departments of Service Industry Competition and Manufacturing Industry Competition of the FTC handle all kinds of anti-competitive cases, including the abuse of dominant market positions, merger reviews, cartels and various vertical restraints.

16. The Department of Service Industry Competition is responsible for cases related to the services and agricultural sectors, and the Department of Manufacturing Industry Competition is responsible for cases related to the manufacturing sectors. There are 31 staff members in the Department of Service Industry Competition and 27 in the Department of Manufacturing Industry Competition.

4.2.2 Advocacy efforts

17. In 2014, 10 of the 25 staff members in the Department of Planning of the FTC were primarily in charge of public outreach programs. However, since most of the outreach programs for competition advocacy were case-oriented, almost every department staff member played an active role in outreach activities. The FTC organized 88 seminars in 2014 for the public, students, and local governments to introduce the regulations of the FTA.

18. Furthermore, in 2014, the FTC held 3 seminars for the various business sectors to introduce the leniency program and administrative fines to ensure acquaintance with the new provisions of the FTA. The FTC also held 1 seminar for business sectors to introduce the "Code of Conduct for the Antitrust Compliance of Enterprises."

4.3 Period covered by the above information

- January through December 2014

5. Summaries of or references to new reports and studies on competition policy issues

19. The FTC studied and published reports on competition policy issues in 2014 with the following titles. All of them are only available in Chinese.

- A Study on Advocating Competition Policy with NPOs.
- A Study on the Strategic Alliance of Aviation Businesses Regarding the FTA.
- A Study on the Cases applicable to the FTA Concerning the Domestic Drug Market.
- A Study on the Competition Regulations and Cases of Internet Advertisement.
- A Study on Adding Search and Seize Powers to the FTC.
- Economic Analysis of Competition Law: Reviews on Monopoly, Merger, and Cartel Cases.

20. The FTC also engaged in outsourced research, and published the following research reports in 2014. A short English abstract is available for both reports.

- Regulation on Mergers between Business Groups in the Fair Trade Act.
- Research on the Domestic Electricity Market and Related Issues.

Organisation de Coopération et de Développement Économiques
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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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HEARING ON ACROSS PLATFORM PARITY AGREEMENTS

-- Note by Chinese Taipei --

27-28 October 2015

This document reproduces a written contribution from Chinese Taipei submitted for Item 7 of the 124th OECD Competition Committee on 27-28 October 2015.

More documents related to this discussion can be found at www.oecd.org/daf/competition/competition-crossplatform-parity.htm

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

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-- Chinese Taipei --

1. Vertical Restrictions in Across Platform Parity Agreements in e-Commerce

1. The e-commerce market is growing increasingly prosperous. As the market entry threshold is lower than that for brick-and-mortar retailers, online businesses are numerous and price competition is fierce. Meanwhile, as access to the Internet and smartphones become more and more prevalent, product information is readily available and transparent, making it easy for consumers to search for products and compare prices on online platforms at the lowest cost. However, price competition between online stores also has an effect on the profitability of horizontal competitors. For this reason, vertical restrictions imposed through so-called across platform agreements have appeared, such as upstream suppliers (including manufacturers and agents) imposing restrictions on the prices of online retailers or price competition between horizontal competitors online.

2. The cases involving across platform parity agreements that the Fair Trade Commission (FTC) has processed can be categorized into three types of practices: 1) restricting retailers' resale prices on online platforms, 2) informing online platform operators of competitors' infringement of intellectual property rights and then sending suggested retail prices to coerce such competitors into adopting suggested prices to prevent price-undercutting competition, and 3) using contract stipulations to restrict retailers' online sales activities to achieve the purpose of price monitoring.

2. Use of Contract Stipulations to Restrict Retailers' Resale Prices on Online Platforms

3. 3. As set forth in Paragraph 1 of Article 19[1] of the Fair Trade Act (FTA) of Chinese Taipei, "An enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale. However, those with justifiable reasons are not subject to this limitation." If enterprises set the resale prices of goods they supply and at the same time adopt certain measures to ensure that their trading counterparts adhere to such prices, it will be impossible for sellers to determine their prices in accordance with the competition they face and their cost structures. As a consequence, intra-brand price competition between different sales channels or retailers will be weakened. Therefore, in principle, resale price maintenance (RPM) is prohibited in the FTA.

4. Although RPM may reduce "intra-brand competition," it can also make it easier for upstream suppliers to achieve the purpose of ensuring the results of horizontal agreements and hamper "inter-brand competition." However, under certain exceptional circumstances, RPM may be more likely to promote competition than by letting sellers decide their prices at will. This is why the proviso in Paragraph 1 of Article 19 of the FTA specifies that "those with justifiable reasons are not subject to this limitation."

5. As for the recognition of "justifiable reasons," this is set forth in Article 25 of the Enforcement Rules of the Fair Trade Act:

> *"The just cause stated in the proviso clause of Paragraph 1 of Article 19 of the Act shall be determined by the competent authority on the basis of the evidence presented by participating enterprises taking into account the following factors:*

[1] Before the amendment on February 4, 2015, it was Article 18: "Where an enterprise supplies goods to its trading counterpart for resale to a third party or such a third party to make further resale, the trading counterpart and the third party shall be allowed to decide their resale prices freely; any agreement contrary to this provision shall be void."

1. *Encouragement of downstream enterprises to enhance efficiency or quality of pre-sale service;*
2. *Prevention of free-riding effects;*
3. *Promotion of entries of new businesses or brands;*
4. *Stimulation of competition between brands; and*
5. *Other reasonable economic grounds concerning competition."*

6. Hence, it is for participating parties to contest whether the net effect of an RPM case is restraining or promoting market competition or whether the RPM exceeds the period or range necessary for achieving efficiency since participating parties have the responsibility to provide evidence to prove the legitimacy of the RPM they impose. Then, the competent authority will assess the validity of such evidence to determine whether the RPM in question really has the effect of promoting competition and whether the proviso in Paragraph 1 of Article 19 of the FTA is applicable.

7. In recent years, the FTC has processed ten cases[2] involving RPM on online platforms. These violations have mainly involved restrictions stipulated in sales contracts signed between product suppliers and online retailers to demand that retailers adhere to the suggested prices provided by the suppliers. The contracts have also included penalties for breaching the contract. If online retailers offered prices that were deemed to be too low, suppliers would cut supply immediately as well as request that the online platform operators concerned remove the web pages in question on the grounds of an intellectual property rights infringement or terminate the distribution contracts.

8. The FTC believes that retailers have to adopt different sales tactics because of cost differences between different brands. In addition, the marketing approaches, operating costs, prices and profitability of various retailers also differ, whereas the product prices of different brands are transparent in online sales. In the meantime, when a retailer purchases products to sell, the ownership of the products is transferred to the retailer so that the retailer has the freedom to decide its marketing channels and prices in accordance with the operating costs or supply and demand in the market. Since the distribution contract signed between a supplier and a retailer carries certain binding force, the retailer could face penalties such as having supply disconnected, web pages removed or dealership terminated when failing to comply with the contract. This can definitely create pressure for the retailers. In other words, the retailer's freedom to determine prices is bound by the disadvantageous penalizing measures. Therefore, the conduct of suppliers to restrict online resale prices of retailers not only deprives them of their freedom to decide product prices but also weakens intra-brand price competition among different sales channels, while the FTC imposes sanctions in accordance with the FTA.

[2] The ten cases all relate to events that took place before the amendment on February 14, 2015. Therefore, sanctions were imposed according to Article 18 of the FTA at the time.

3. Suppliers Informing Online Platform Operators of Competitors' Infringement of Intellectual Property Rights and then Sending Suggested Prices to Coerce Competitors into Adopting Suggested Prices to Prevent Price-undercutting Competition

9. As set forth in Subparagraph 4 of Article 20[3] of the current FTA, "No enterprise shall engage in any of the following acts that is likely to restrain competition: … 4) causing another enterprise to refrain from competing in price, or to take part in a merger, concerted action, or vertical restriction by coercion, inducement with interest, or other improper means." The provision of "causing another enterprise to refrain from competing in price" refers to coercing by warning about disadvantages or harm in the future to make another enterprise afraid, or enticing by offering economic benefits able to affect the decision of another enterprise or any other "inappropriate means" of coercion or enticement to influence the decision of another. The types of conduct subject to the said provision are culpable in competition law because the approaches to competition adopted are inconsistent with business ethics and the efficacy of competition, and can therefore create negative effects on competition order. An enterprise does not need to possess considerable market power to engage in such conduct. For this reason, the provision is not limited to apply to enterprises with considerable market power.

10. As the e-commerce market is developing rapidly, the C2C type of auction websites are cheaper to manage than brick-and-mortar stores and are therefore adopted by many businesses as marketing channels. To prevent disputes over intellectual property rights, most auction websites provide an infringement reporting mechanism to allow intellectual property rights holders to have web pages of products involving intellectual property rights infringement removed at the earliest time. If an enterprise follows such a procedure and files an infringement notice to request that an auction website remove the web page involving a controversial product, this is a dispute over intellectual property rights or a civil dispute. However, the exercise of such rights may not be abused. When the abuse of intellectual property rights causes anti-competition or unfair competition, it is the duty of the FTC to investigate and impose sanctions in accordance with the FTA. According to the FTC's experience, such situations have normally involved disputes between intellectual property rights holders and parallel import businesses.

3.1 Case example: Liyi Shop International Co., Ltd. in Violation of the FTA

11. An online retailer filed a complaint to the FTC alleging that Liyi Shop International Co. (Liyi Shop) was in violation of the FTA by forcing him not to compete with lower prices. The retailer was selling parallel-imported Nillkin cell phone cases on Yahoo! Kimo and Ruten auction websites but Liyi Shop issued intellectual property rights infringement notices to the two websites and his web pages were removed. Subsequently, he received an email from Liyi Shop identifying itself as the agent for Nillkin and requesting him to set his prices according to the suggested rates attached; otherwise, his authorization to use the trademark and official images would be cancelled. To prevent Liyi Shop from sending further infringement notices to have his seller member account on the two websites suspended, the complainant had no choice but to cooperate and raise the prices. However, he believed the measure taken by Liyi Shop had been in violation of the FTA.

12. The FTC's investigation showed that, after the complainant's Nillkin product web pages were removed from the Yahoo! Kimo and Ruten auction websites, the complainant deleted the product description text of Nillkin and reposted the ads to sell them at the original prices. Later, the complainant adopted the suggested prices from Liyi Shop on Ruten and the operator of Ruten never received any further

[3] Before the amendment on February 4, 2015, this was Subparagraph 4 of Article 19: "No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition:…4) causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means."

infringement notices. However, he did not raise the prices on the Yahoo! Kimo auction website and his web page was removed a second time. Then the complainant acquiesced and raised the prices, and Liyi Shop never issued any more infringement notices.

13. The FTC found that Liyi Shop issued 24 intellectual property rights infringement notices to Yahoo! Kimo regarding 405 product web pages and 26 to Ruten concerning the contents of 971 web pages, with a total of 1,376 web pages being reported. After inspecting Liyi Shop's company registration and intellectual property rights documents, the operators of both websites complied with the company's requests and removed all the web pages in question. Besides regularly issuing to auction websites infringement notices regarding controversial web pages marketing Nillkin products, Liyi Shop also emailed suggested price lists to certain sellers after their web pages were removed and issued warnings that their authorization would be cancelled.

14. According to the infringement reporting mechanisms adopted by auction websites, online sellers' member accounts will be suspended after they are accused of infringement of intellectual property rights more than two or three times. Sellers with member accounts suspended cannot continue to do business and their reputations accumulated over time may be completely ruined. Therefore, having member accounts suspended has a huge impact on the interests of business operators marketing on auction websites. In this case, Liyi Shop not only issued infringement notices to auction websites, but also identified itself as the agent for the products and emailed suggested prices to online sellers after their web pages were removed. The FTC believed that the purpose of Liyi Shop's conduct was obviously more than just the protection of intellectual property rights. In fact, the protection of intellectual property rights was merely an excuse for sending suggested prices after issuing infringement notices in order to achieve the anti-competition effect of forcing competitors to give up price competition or maintain price rigidity. The company's conduct met the description of "causing another enterprise to refrain from competing in price" set for in Subparagraph 4 of Article 19 of the FTA at the time. In addition to ordering the company to cease the unlawful act, the FTC also imposed an administrative fine of NT$ 100 000.

4. Use of Contract Stipulations to Restrict Distributors' Online Business Activities to Achieve the Purpose of Price Monitoring

15. It is set forth in Subparagraph 5 of Article 20 of the FTA[4]: "No enterprise shall engage in any of the following acts that is likely to restrain competition: … 5) imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement." The term restrictions in this provision refers to tie-in sales, exclusive dealing, restrictions on operating regions, customers or use of products and other restraints imposed on business activities. Whether the restrictions imposed are illegitimate is assessed according to the intention, objective and market status of the restriction imposer, the structure of the relevant market, the characteristics of products and the impact of the enforcement of such restrictions on market competition. In other words, if an enterprise takes advantage of its market dominance and imposes unfair trading conditions to restrict the business activities of trading counterparts and the conduct results in restrictive competition in the relevant market, such conduct is considered to be in violation of the aforesaid regulation.

16. In order to maintain price rigidity, suppliers are likely to include stipulations in contracts to restrict retailers from displaying and selling their products online. However, the FTC believes that transparency of transaction information is an important factor in the assurance of the efficacy of competition. All kinds of information circulate rapidly on the Internet and enable consumers to make product quality and price comparisons between brick-and-mortar outlets and online stores before finalizing purchase decisions. If suppliers restrict retailers from engaging in online sales, transparency of price

[4] Subparagraph 6 of Article 19 before the February 4, 2015 amendment.

information will be suppressed whereas the freedom of retailers to compete and win customers is also restrained. At the same time, retailers are also deprived of their freedom in deciding how they will market products of different brands. Such restrictions imposed on the business activities of trading counterparts as conditions for transactions can lead to anti-competition or impediments to fair competition and are thus in violation of the aforementioned regulation.

17. In 2012, the FTC sanctioned a bicycle manufacturer for restricting retailers from engaging in online sales. The FTC's investigation showed that the bicycle manufacturer had significant market power and the restriction made it impossible for retailers to market or disclose actual prices online. The FTC believed that such a practice had limited retailers' freedom to compete and fight for transaction opportunities as well as the freedom to decide which marketing approaches to adopt. Consequently, the transparency of trading information that could promote the efficacy of competition was suppressed and market competition could have been weakened. Therefore, the FTC concluded that the inappropriate restriction imposed on the business activities of trading counterparts as a condition for transactions was in violation of Subparagraph 6 of Article 19 of the FTA at the time. In addition to ordering the company to cease the unlawful act, the FTC also imposed an administrative fine of NT$2 million[5] on the bicycle manufacturer.

5. Conclusion

18. As online business makes rapid progress, the transparency of online trading information is increasing. However, it is also becoming easier for suppliers to keep track of the online prices of their products and establish across platform parity agreements. In recent years, the FTC has investigated and processed 13 cases involving sales on online platforms. Among them, restrictions on the resale prices of online distributors or retailers have constituted the majority of such cases (10 cases). The FTC will continue to maintain a close watch on the further development of this issue and strictly enforce penalties on such anticompetitive conduct that may affect price competition.

[5] See DAF/COMP/WD(2013)16**,** pp. 5-7**.**

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Global Forum on Competition

SERIAL OFFENDERS: WHY SOME INDUSTRIES SEEM PRONE TO ENDEMIC COLLUSION

Contribution from Chinese Taipei

-- Session IV --

This contribution is submitted by Chinese Taipei under Session IV of the Global Forum on Competition to be held on 29-30 October 2015.

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SERIAL OFFENDERS: WHY SOME INDUSTRIES SEEM PRONE TO ENDEMIC COLLUSION

-- Chinese Taipei --

1. Introduction

1. Chinese Taipei's competition law, the Fair Trade Act (FTA), has been amended several times on the penalties imposed on enterprises that restrict competition and commit repeat offenses since it took effect in 1992. The changes can be roughly divided into three stages as described below.

1.1 1992-1999

2. The FTA was promulgated on February 4th, 1991 and took effect on February 4th, 1992. Administrative penalties for enterprises that violated the FTA included ceasing or rectifying the conduct within a specified period of time. In the event that the enterprise did not cease or rectify its conduct after the time period had passed, the Fair Trade Commission (FTC) could continue to order the enterprise to cease or rectify the illegal conduct, and could impose a maximum fine of NT$1 million for each period of time the enterprise failed to cease or rectify the illegal conduct. Enterprises that violated articles on monopoly or concerted actions could face criminal penalties on their first offense, and prison sentences of up to three years and/or fines of up to NT$1 million could be imposed[1].

1.2 1999-2015

3. The first amendment to the FTA was promulgated on February 3rd, 1999, and the principle of "precedence of administrative action over judicial adjudication" was adopted, giving the FTC the power to directly impose administrative fines on violators. Criminal penalties for violators of articles on monopoly or concerted actions were removed for the first offense. For enterprises that violated the FTA for the first time, the FTC would order the enterprise to cease or rectify the illegal conduct or take necessary corrective action within a specified time period, and would impose an administrative fine of between NT$50 thousand and NT$25 million. In the event that the enterprise did not cease or rectify its conduct after the time period had passed, the FTC would continue to order the enterprise to cease or rectify the illegal

[1] Article 41 of the FTA (1991): "The FTC may order enterprises that violate articles of the Act to cease or rectify their conduct within a specified time period. In the event the enterprise does not cease or rectify its conduct after the time period has passed, the FTC may continue to order the enterprise to cease or rectify the illegal conduct, and may impose a maximum fine of NT$1 million for each period of time the enterprise fails to cease or rectify the illegal conduct."

Article 35 of the same Act: "Violators of Article 10, Article 14, Article 20, or Paragraph 1 of Article 23 will be punished by imprisonment not more than three years, detention, and/or a fine of up to NT$1 million."

conduct, and could impose an administrative fine of between NT$100 thousand and NT$50 million for each period of time that the enterprise failed to cease or rectify the illegal conduct[2].

1.3 November 2011-

4. The FTA was amended on November 23rd, 2011 to add a leniency program applicable to concerted action cases, and the amounts of the fines for violations were raised in conjunction with the amendments. When the FTC determines that an enterprise has severely violated articles on monopoly or concerted action, the FTC will impose an administrative fine of up to 10% of the enterprise's sales revenue in the previous accounting year. The FTA was amended again on February 4th, 2015 to set different fine amounts for different violations, and also raise the fine amount for anticompetitive conducts; the FTC may impose an administrative fine of NT$100 thousand to NT$50 million on enterprises that violate articles on monopoly, concerted action, restrictions on resale prices, or other conduct that restricts competition[3].

2. Industries prone to endemic collusion

5. Even though the FTA has been amended to impose more severe penalties for illegal conduct, and has doubled the penalty for repeat offenses as criminal penalties are also imposed, it is not uncommon to find repeat offenses due to the same conduct or similar conduct within an industry, or a repeat offense due to the same conduct by the same enterprise. Based on the FTC's enforcement experiences, industries prone

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2 Article 41 of the FTA (1999): "The FTC may order any enterprise that violates articles of the Act to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than NT$50 thousand nor more NT$25 million. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than NT$100 thousand nor more than NT$50 million until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action."

Article 35 of the same Act: "Any enterprise that violates Article 10, Article 14, or Paragraph 1 of Article 20 and fails to cease or rectify the conduct or take any necessary corrective action within the time prescribed by the central competent authority in accordance with Article 41, or repeats a similar violation after ceasing the conduct, will be punished by imprisonment not more than three years, detention, and/or a fine of up to NT$1 million."

3 Article 40 of the FTA (2015): "The competent authority may order any enterprise that violates Article 9, Article 15, Article 19 and Article 20 to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than NT$100 thousand nor more NT$50 million. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than NT$200 thousand nor more than NT$100 million until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action."

"The competent authority may impose an administrative penalty up to 10% of the total sales income of an enterprise in the previous fiscal year without being subject to the limit of administrative fine set forth in the preceding paragraph if the enterprise is deemed by the central competent authority as in serious violation of Articles 9 or 15."

"The competent authority shall enact the regulations with regard to the calculation of the total sales of the previous fiscal year, definition of serious violations, and calculation of administrative penalties."

to endemic collusion include the gravel industry, cement industry, ready mixed concrete industry, asphalt concrete industry, and liquid petroleum gas industry. Each industry is further described below.

2.1 Gravel Industry

6. Gravel is a material characterized by its being large and heavy in volume, and the longer it is transported Gravel is a material characterized by its being large and heavy in volume, and the longer it is transported the higher the cost, which is a disadvantage in competition. Hence, quarrying companies are densely established along river banks or places where transportation is convenient. Gravel is the main material (roughly 50~70%) used in ready mixed concrete, making it indispensable in construction. Insufficient gravel supply will not only affect the progress of construction, but will also impact a country's overall economic development. Due to the high degree of homogeneity of gravel, "transport distance" is an important factor in the companies' costs, and will result in price differences. Gravel companies often use trade associations to fix gravel prices, distribute volume, or jointly suspend quarrying to raise prices, thereby ensuring their profits and avoiding price competition. The FTC investigated and imposed penalties in relation to 7 cartel cases in the gravel industry between 1996 and 2012, in which 5 cases were concerted action cases carried out by trade associations. The FTC also investigated a repeat concerted action case involving the Hualien County Gravel Association within 2 years, and the final verdict found the association's chairman guilty of criminal charges.

2.2 Cement Industry

7. The cement industry is characterized by domestic demand, a capital-intensive, continuous production process, seasonal demand influenced by the construction industry, high power consumption, and high pollution. The cement market is a regional oligopoly market as cement is heavy and can easily become solidified because of dampness, and transport costs account for a significant proportion of the overall price. Hence, it is difficult to transport cement long distances to sell it. The FTC investigated an international cartel in 2002, when international cement groups in Chinese Taipei and the Philippines agreed to not sell cement to the other party's market. The case involved 11 cement companies and 10 cement storage companies and distributors, which engaged in a number of concerted actions, including raising cement prices, limiting cement shipments, reselling cement, exiting markets or not importing cement. The FTC imposed a total fine of NT$210 million on these 21 cement suppliers and retailers in 2005. Of the cement companies involved in the case, Taiwan Cement Corporation, the largest cement company in Chinese Taipei, was also penalized by the FTC for its involvement in a ready mixed concrete price fixing case in Chiayi in 2006.

2.3 Ready Mixed Concrete Industry

8. Ready mixed concrete is mixed from gravel, cement and water. Because factories are easy to establish, its technology is simple, products are homogeneous, and products cannot be stored (it is necessary for there to be only a brief amount of time from mixing, initial setting to pouring, and ready mixed concrete cannot be used after it solidifies), the market where ready mixed concrete is sold is within a 1 hour driving distance of the factory. Hence, the ready mixed concrete market is a regional oligopoly with homogeneous products, in which market participants have extremely similar cost structures (the transport cost accounts for a high percentage of the product price), market demand or product specifications, and market participants can only compete on the basis of price. However, ready mixed concrete companies are often involved in their upstream industries (cement, gravel), making it easy for them to collude with each other. The companies often engage in cartel activity, such as through reaching agreements to share the market, engaging in base-point pricing, taking turns to suspend production or carrying out production to control supply, distributing shipment quantities, and limiting shipments. the higher the cost, which is a disadvantage in competition. Hence, quarrying companies are densely established along river banks or

places where transportation is convenient. Gravel is the main material (roughly 50~70%) used in ready mixed concrete, making it indispensable in construction. Insufficient gravel supply will not only affect the progress of construction, but will also impact a country's overall economic development. Due to the high degree of homogeneity of gravel, "transport distance" is an important factor in the companies' costs, and will result in price differences. Gravel companies often use trade associations to fix gravel prices, distribute volume, or jointly suspend quarrying to raise prices, thereby ensuring their profits and avoiding price competition. The FTC investigated and imposed penalties in relation to 7 cartel cases in the gravel industry between 1996 and 2012, in which 5 cases were concerted action cases carried out by trade associations. The FTC also investigated a repeat concerted action case involving the Hualien County Gravel Association within 2 years, and the final verdict found the association's chairman guilty of criminal charges.

9. The FTC has investigated a total of 9 cartel cases in the ready mixed concrete industry since 1997, investigating up to 120 companies involved in the cases. Goldsun Co., Ltd., the largest ready mixed concrete company in Chinese Taipei, was involved in numerous concerted action cases in different areas, and was penalized by the FTC in all of the cases.

2.4 Asphalt Concrete Industry

10. Asphalt concrete mainly consists of asphalt and gravel, and products are highly homogeneous. Asphalt must be kept at temperatures of at least 120°C to maintain its viscosity, and must be kept at temperatures of at least 150°C before shipment. Hence, storage of asphalt concrete is extremely costly and it cannot be produced too far in advance. Moreover, at least 95% of construction using asphalt concrete is government-funded, so producers mainly focus on meeting the requirements of construction outsourcing departments or clients. Therefore, the asphalt concrete industry is a highly customized demand-oriented industry. Other characteristics of the industry include the need for economies of scale and low transparency of product information. Consequently, asphalt concrete companies can easily gain extravagant profits through collusion, which usually takes the form of bid rigging.

11. The FTC investigated 2 concerted action cases in the asphalt concrete industry in 2014. In one of the cases, 16 asphalt concrete companies in Tainan City area reached a mutual understanding to collect a "stability fund" from downstream clients, causing the price of asphalt concrete to rise; the FTC imposed a total fine of NT$39.5 million on the asphalt concrete companies. In the other case, 7 asphalt concrete companies in the Chiayi County area jointly raised the price of asphalt concrete, and the FTC imposed a total fine of NT$20.5 million on the asphalt concrete companies. Of the asphalt concrete companies involved in these two cases, Chien Chung Construction Co., Ltd., which is the largest asphalt concrete supplier in Chinese Taipei, was involved in different concerted actions in different areas, and was penalized by the FTC in all of the cases.

2.5 Liquid Petroleum Gas (LPG) Industry

12. Liquid Petroleum Gas (LPG) is commonly referred to as "bottled gas" and is regarded as a daily essential in Chinese Taipei. The LPG market is divided into 4 levels including production or import, distribution, gas filling, and retail. At present, there are 2 upstream suppliers, 10 distributors, 119 gas filling companies, and some 3,400 retailers (commonly known as "gas shops"). In the industry, most distributors also operate gas filling companies, or gas filling companies are also gas shops. In Chinese Taipei, bottled gas is classified as a hazardous object and must be stored in a storage room compliant with relevant regulations. The location of storage rooms and sales venues are also regulated. Due to the heavy loads involved in transporting bottled gas, the industry implemented a "manual delivery center" system that takes into consideration both the transportation cost and the regulations on safe storage. However, the FTC determined that the operations of the "manual delivery center" can easily result in concerted actions such as price-fixing or market division. The FTC thus established the "Disposal Directions for the

Operations of the Bottled Gas Manual Delivery Center" for the industry to follow and avoid violating the FTA.

13. Gas filling companies are resellers between wholesalers and retailers. After transporting LPG from the upstream distributors, gas filling companies transfer the LPG into gas cylinders and then deliver the gas cylinders to gas shops. Hence, gas filling companies are in an extremely advantageous position in the market. Of the cases handled by the FTC over the years, gas filling companies have severely damaged market order by forming organizations to jointly raise prices, restrict trading counterparts, distribute trading volume, and even introduce outsiders to disrupt the market. The FTC has imposed heavy fines in each case. For example, in 2001, the FTC imposed a total fine of NT$130 million on 27 gas filling companies in the southern part of the island for jointly raising transport and gas filling fees, refraining from competition, and restricting trading counterparts of gas shops. In 2003, the FTC again imposed a total fine of NT$343.75 million on 30 gas filling companies in the northern area to form an organization for similar conduct. In sum, the FTC imposed penalties in six cases of violations by gas filling companies between 1999 and 2014, and investigated a total of 13 similar cases up to 2014.

14. In addition, cases at the retail level include regional gas shop associations setting a reference price through the board of directors' meeting or general assembly; gas shops agreeing to jointly raise prices; and introducing new outsiders so that gas companies may refrain from price competition.

3. Conclusion

15. The industries described above, including the gravel industry, cement industry, ready mixed concrete industry, asphalt concrete industry, and LPG industry, have become regional industries due to heavy products that lead to high transport costs, limited transport distance due to product characteristics, or legal regulations. Based on the FTC's experience, such industries are prone to endemic collusion, which may be in the form of different companies within the same industry engaging in anticompetitive actions in different areas over numerous years, e.g., the gravel industry and LPG industry; the same company engaging in the same or different concerted actions in different areas, e.g., the ready mixed concrete industry and asphalt concrete industry; or the same company engaging in the same concerted action in different product markets, e.g., the cement industry and ready mixed concrete industry.

16. Why are these industries prone to collusion? Based on the FTC's enforcement experiences, repeat offenses due to collusion are caused by certain characteristics of the above-mentioned industries, including homogeneous products, similar cost structures among competitors, high transport cost ratios (high marginal cost ratios), and low-tech products. From the perspective of market structure, cartels often arise in oligopolistic industries or regional oligopolistic industries, e.g., the cement industry and ready mixed concrete industry. From a long-term perspective, collusion sometimes becomes a common behavior in the industry to ensure profits, e.g., the gravel industry or LPG industry, but the situation has significantly improved under close monitoring by the FTC. In addition, in industries such as the ready mixed concrete industry and LPG industry, companies are often involved in upstream and downstream industries, making it easier for them to collude with each other. The same companies may be members of cartels in different product markets or at different levels.

17. How does the FTC respond to these regional industries that repeatedly collude with each other? The FTC has always placed equal emphasis on promoting competition and imposing penalties to ensure market competition and maintain market order. The FTC continuously promotes competition in these industries and has established directions for specific industries to follow. The FTC closely and continuously monitors those companies that have been involved in previous cases, and will impose even more severe penalties on serial offenders in accordance with the FTA. In practice, in light of regional industries being prone to form cartels, the competition law of Chinese Taipei has clear stipulations and

penalties for repeat offenses, only that hefty fines alone cannot effectively prevent anticompetitive actions. Even though the leniency policy was introduced into the Act in 2011, it has not yet been implemented in any cases in the industries mentioned in this paper.