



Organisation for Economic Co-operation and Development

DAF/COMP/WP2/A(2022)1/FINAL

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16 June 2022

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 2 on Competition and Regulation

Draft Agenda: 73rd meeting of Working Party 2 on Competition and Regulation

20 June 2022 10h00
Paris, France and on Zoom

The 73rd Meeting of Working Party 2 on Competition and Regulation will be held on 20 June 2022 in Room CC12 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

This meeting will have a hybrid format. Information on how to connect to the virtual session has been sent by the Secretariat prior to the meeting.

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JT03497911

Monday 20 June 2022

10:00-10:05

Item 1. Adoption of the Draft Agenda

DAF/COMP/WP2/A(2022)1/FINAL

10:05-10:10

Item 2. Approval of the draft summary record of the last meeting (29 November 2021)

For approval:

Summary record of the 72nd meeting (29 November 2021) – DAF/COMP/WP2/M(2021)2

For information:

List of Participants – DAF/COMP/WP2/PL(2021)2

Summary of discussion of the hearing on Line of Business Restrictions –
DAF/COMP/WP2/M(2020)1/ANN1

Summary of discussion of the roundtable on Competition Enforcement and Regulatory Alternatives –
DAF/COMP/WP2/M(2021)1/ANN1

Executive summary of the roundtable on Competition Enforcement and Regulatory Alternatives –
DAF/COMP/WP2/M(2021)1/ANN2

10:10-12:30

Item 3. Roundtable on Competition and Regulation in the Provision of Local Transportation Services

This Roundtable will discuss issues and best practices in the provision of urban transport services.

The session will be an opportunity to consider governance and institutional issues, including legal models for the provision of local transport services and instruments for co-operation between public and private entities in the design and provision of public transport services.

Taking into account the possibilities for substitution and complementarity offered by other means of transportation, such as micromobility services, the discussion will consider the extent of competition *in* the market. The discussion will also explore the challenges arising from competitive tendering, in particular experiences gained after the 2013 Roundtable on contract allocation. Delegates will discuss the factors that affect the intensity of competition at the tender stage and the mechanisms that jurisdictions have developed to reduce barriers to entry and ensure bidders' wide participation, as well as the effectiveness of bidding processes to improve the quality of services and minimise the cost of service provision. They will have the opportunity to share their experiences, including on asset ownership, length of concessions or the definition of the area subject to competitive tendering.

This roundtable will benefit from a Secretariat Background Note, written contributions by jurisdictions, and a panel of expert speakers, including Orla McCarthy (International Transport Forum), Graham Currie (Monash University) and Sauro Mocetti (Bank of Italy).

For discussion:

Background Note by the Secretariat – DAF/COMP/WP2(2022)1

Notes by delegations:

Colombia - DAF/COMP/WP2/WD(2022)1

- Czech Republic - [DAF/COMP/WP2/WD\(2022\)2](#)
 Latvia - [DAF/COMP/WP2/WD\(2022\)4](#)
 Mexico - [DAF/COMP/WP2/WD\(2022\)5](#)
 Spain - [DAF/COMP/WP2/WD\(2022\)6](#)
 Sweden - [DAF/COMP/WP2/WD\(2022\)7](#)
 United Kingdom - [DAF/COMP/WP2/WD\(2022\)8](#)
 Romania - [DAF/COMP/WP2/WD\(2022\)11](#)
 South Africa - [DAF/COMP/WP2/WD\(2022\)18](#)
 Ukraine - [DAF/COMP/WP2/WD\(2022\)3](#)

Lunch break 12.30-14.15

14:15-15:30

Item 4. Presentations on Environmental Regulations and Policies Supporting Electric Vehicles

Governments have put in place a variety of measures to promote the development and uptake of electric vehicles, including purchase subsidies and tax rebates. Environmental regulations setting emissions standards and bans on internal combustion engine vehicles are also becoming more common. These new policy and regulatory measures raise the question about whether government intervention is restricting competition in any way, for instance by favouring one technology over another in the attempt to achieve emissions targets.

One of the main areas to attract the attention of competition authorities is electric vehicle charging, including the price and location of charging stations in public spaces. With demand for electric vehicles increasing, the limited availability of charging infrastructure and potential interoperability issues could become a bottleneck slowing down the adoption of electric vehicles and endangering the achievement of emissions targets. In addition, competition authorities have flagged competition concerns related to the access to public areas and the allocation of funds to deploy networks on a non-discriminatory basis.

The session will cover presentations by speakers and delegations, such as the UK and Germany, to share their enforcement and advocacy experience in this area and to discuss the impact of regulations and support measures on competition.

15:30-16:45

Item 5. Discussion on the Competitive Neutrality Toolkit

Following the discussion of a scoping note on 29 November 2021 and the delegates' support to develop a Competitive Neutrality Toolkit, the Working Party will discuss a detailed outline of the Toolkit prepared by the Secretariat. Other relevant OECD Divisions will be invited to the session to comment on how the Toolkit fits with their instruments and to provide inputs from their policy areas.

The session will also include a Secretariat presentation on the methodology followed in the *OECD Competition Neutrality Reviews: Small-Parcel Delivery Services in ASEAN* project.

Note by the Secretariat – [DAF/COMP/WP2\(2022\)2](#)

16:45-17:00

Item 6. Future Work and Other Business

Competition Delegates will be called to decide topics for the substantive discussion to be held in December 2022.

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Delegates should feel free to send the Secretariat their views and propose topics for future work that they would like to submit to the consideration of the Working Party.



Organisation for Economic Co-operation and Development

DAF/COMP/WP3/A(2022)1/FINAL

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16 June 2022

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

Draft Agenda: 135th meeting of Working Party 3 on Co-operation and Enforcement

21 June 2022 9h30
Paris, France and on Zoom

The 135th Meeting of Working Party 3 on Co-operation and Enforcement will be held on 21 June 2022 (9:30 to 17:30) in CC12 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

This meeting will have a hybrid format. Information on how to connect to the virtual session has been sent by the Secretariat prior to the meeting.

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JT03497914

Tuesday 21 June 2021

9:30-9:35

Item 1. Adoption of the draft agenda for this meeting and of the summary record of the last meeting

For approval:

Agenda - [DAF/COMP/WP3/A\(2022\)1/FINAL](#)

Summary record of the 134th meeting (December 2021) - [DAF/COMP/WP3/M\(2021\)2](#)

For information:

List of participants - [DAF/COMP/WP3/PL\(2021\)2](#)

9:35-12:00

Item 2. Roundtable on Interim Measures in Antitrust Investigations

Interim measures are protective and corrective tools that may be adopted while investigating possible antitrust infringements. The debate concerning the effectiveness of antitrust enforcement in fast-moving digital markets turned the spotlight on interim measures also in jurisdictions where their use has been rather limited in the past.

This Roundtable will explore legal standards and procedural requirements for imposing interim measures as well as the role of courts, and their impact on the use of these tools. It will consider cases in which interim measures can be most effective and market characteristics that may contribute to meet the prescribed conditions. It will examine key considerations when assessing whether to adopt interim measures and how competition authorities can make the most of this tool by reinforcing the effectiveness of antitrust enforcement. It will consider the impact of interim measures on both costs and efficiencies for competition authorities, and it will explore the interplay between interim measures, commitments, remedies and *ex ante* regulation.

Finally, the session will review recent developments aimed at facilitating the adoption of interim measures, in particular in those jurisdictions where legal and procedural standards have been identified as potential obstacles.

A Secretariat background paper, written contributions by jurisdictions, and a panel of experts will back the roundtable.

For discussion:

Background paper by the Secretariat – [DAF/COMP/WP3\(2022\)1](#)

For information:

Expert paper by Juliette Caminade - [DAF/COMP/WP3/WD\(2022\)22](#)

Notes by delegations:

Belgium - [DAF/COMP/WP3/WD\(2022\)2](#)

Colombia - [DAF/COMP/WP3/WD\(2022\)3](#)

Costa Rica - [DAF/COMP/WP3/WD\(2022\)4](#)

France - [DAF/COMP/WP3/WD\(2022\)5](#)

Israel - [DAF/COMP/WP3/WD\(2022\)6](#)

Japan - [DAF/COMP/WP3/WD\(2022\)7](#)

- Latvia - [DAF/COMP/WP3/WD\(2022\)8](#)
Portugal - [DAF/COMP/WP3/WD\(2022\)9](#)
Slovak Republic - [DAF/COMP/WP3/WD\(2022\)21](#)
Sweden - [DAF/COMP/WP3/WD\(2022\)10](#)
Switzerland - [DAF/COMP/WP3/WD\(2022\)11](#)
United States - [DAF/COMP/WP3/WD\(2022\)12](#)
EU - [DAF/COMP/WP3/WD\(2022\)13](#)
Brazil - [DAF/COMP/WP3/WD\(2022\)15](#)
Argentina - [DAF/COMP/WP3/WD\(2022\)14](#)
Croatia - [DAF/COMP/WP3/WD\(2022\)16](#)
Peru - [DAF/COMP/WP3/WD\(2022\)20](#)
South Africa - [DAF/COMP/WP3/WD\(2022\)18](#)
Ukraine - [DAF/COMP/WP3/WD\(2022\)24](#)
BIAC - [DAF/COMP/WP3/WD\(2022\)17](#)

Lunch break 12:00-14:00

14:00-16:00

Item 3. Hearing on Thinking out of the Competition Box: Enforcement Co-operation in Other Policy Areas

At the meeting of WP3 in December 2021, WP3 agreed to continue work on international co-operation to address the remaining and persistent challenges as identified in the draft Report on the Implementation of the Recommendation concerning International Co-operation on Competition Investigations and Proceedings [[DAF/COMP/WP3\(2021\)3](#)].

To this purpose, delegates expressed an interest to learn more about legal instruments and models that are used in other areas of law enforcement to allow for international enforcement co-operation, in particular those that address some of the identified competition enforcement co-operation challenges, such as the exchange of confidential information, investigative assistance or enhanced co-operation models.

Presentations by experts familiar with international enforcement co-operation in areas such as, for example, taxes, financial markets, criminal enforcement or patent law will explain the mechanisms of international enforcement co-operation as they apply to their enforcement areas, and delegates can ask questions and discuss how these experiences could be applied to competition enforcement co-operation.

A Secretariat Note and a panel of experts will support the Hearing.

For discussion:

Note by the Secretariat – [DAF/COMP/WP3\(2022\)2](#)

Coffee Break 16:00-16:15

16:15-17:15

Item 4. Revising the Recommendation on Fighting Bid Rigging in Public Procurement

In December 2021, WP3 discussed the draft revised Recommendation on Fighting Bid Rigging in Public Procurement [[DAF/COMP/WP3/WD\(2021\)32](#)] and agreed on a tentative timeline. Delegates agreed that the Secretariat would adjust the draft to address comments of WP3 delegates as well as delegates of the

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Public Governance Committee's Working Party of the Leading Practitioners on Public Procurement. The new draft may be sufficiently mature to be approved by WP3 and the Competition Committee and be submitted to Council for adoption in the second part of 2022.

For discussion:

Draft revised Recommendation on Fighting Bid Rigging in Public Procurement –
DAF/COMP/WP3/WD(2022)19

17:15-17:30

Item 5. Other Business

Next steps and topics to advance the work on international enforcement co-operation should be discussed, as well as substantive topics for future WP3 agendas [DAF/COMP(2022)4]. For December 2022, delegates already agreed to hold a Roundtable on Data IT Screening Tools for Digital Investigations.



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DAF/COMP/A(2022)2/FINAL

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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Draft Agenda: 138th meeting of the Competition Committee

22-24 June 2022
Paris, France and via Zoom

The 138th Meeting of the Competition Committee will be held on 22-24 June 2022 in Room CC6 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

This meeting will have a hybrid format. Information on how to connect to the virtual session has been sent by the Secretariat prior to the meeting.

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JT03497909

Wednesday 22 June 2022

10:00-10:05

Item 1. Adoption of the draft agenda

DAF/COMP/A(2022)2/FINAL

10:05-10:15

Item 2. Approval of the draft summary record of the last meeting

For approval:

Summary record of the 136th Competition Committee meeting - DAF/COMP/M(2021)2

Summary record of the 137th Competition Committee meeting - DAF/COMP/M(2022)1

For information:

List of participants of the 136th Competition Committee meeting - DAF/COMP/PL(2021)2

List of participants of the 137th Competition Committee meeting - DAF/COMP/PL(2022)1

The OECD Global Forum on Competition: report on the 2021 meeting - DAF/COMP(2022)10

Summary Record of summary record of the eighteenth meeting of the OECD-IDB LACCF -
DAF/COMP/LACF/M(2021)1

10:15-10:30

Item 3. Report by Working Party Chairmen and Co-ordinators

The Chairmen of Working Party No. 2 and of Working Party No. 3 will report on the meetings of the Working Parties held on 20 June (WP2) and 21 June (WP3). The UNCTAD co-ordinator may report on UNCTAD related developments. The ICN co-ordinator will report on recent work and projects by the ICN.

10:30-13:00

Item 4. Purchasing Power and Buyers' Cartels

Competition law and enforcement often focus on sellers and the conditions upon which they sell their products or services to buyers. However, competition also impacts how buyers interact with markets when purchasing goods and services. These matters can range from co-ordinated conduct by buyers, such as cartels that conspire to lower purchase prices, to unilateral conduct by buyers that hold substantial market power, i.e. monopsony or oligopsony power, rather than the more common assessment of monopoly or oligopoly. Buyer side competition issues were last discussed in detail at the OECD Competition Committee in 2008 in a session on Monopsony and Buyer Power, although many sessions have touched on related issues in the meantime, not least in 2019 with the discussion of Competition Issues in Labour Markets.

This roundtable will touch on a range of issues relating to purchasing power, splitting the discussion between co-ordinated and unilateral issues. On multilateral conduct, the roundtable will have a particular focus on buyer's cartels. As well as touching on recent trends and enforcement strategies, it will discuss the validity of recent suggestions that buyers' cartels have historically been viewed too leniently resulting in too low levels of enforcement. The discussion will also cover buying groups and how authorities can, and indeed when they should, distinguish these from cartels, including different approaches to managing information flow and the ability to organise joint boycotts. Regarding unilateral issues, the roundtable will explore how different jurisdictions approach these issues and the trade-offs between different types of enforcement, most notably around the extent to which authorities must establish the effect of conduct.

A Secretariat Background Note, written contributions by jurisdictions, and a panel of experts will support the roundtable discussion. The confirmed expert panellists for this session are Nancy L. Rose (Professor, Massachusetts Institute of Technology), Peter Carstensen (Professor, University of Wisconsin-Madison) and Kazuhiko Fuchikawa (Associate Professor, Osaka Metropolitan University).

For discussion:

Background Note by the Secretariat - [DAF/COMP\(2022\)4](#)

Notes by delegations:

Australia - [DAF/COMP/WD\(2022\)5](#)
 Chile - [DAF/COMP/WD\(2022\)6](#)
 Colombia - [DAF/COMP/WD\(2022\)7](#)
 Finland - [DAF/COMP/WD\(2022\)59](#)
 France - [DAF/COMP/WD\(2022\)8](#)
 Hungary - [DAF/COMP/WD\(2022\)9](#)
 Italy - [DAF/COMP/WD\(2022\)10](#)
 Korea - [DAF/COMP/WD\(2022\)11](#)
 Lithuania - [DAF/COMP/WD\(2022\)12](#)
 Switzerland - [DAF/COMP/WD\(2022\)14](#)
 United States - [DAF/COMP/WD\(2022\)15](#)
 EU - [DAF/COMP/WD\(2022\)16](#)
 Brazil - [DAF/COMP/WD\(2022\)17](#)
 India - [DAF/COMP/WD\(2022\)18](#)
 Chinese Taipei - [DAF/COMP/WD\(2022\)19](#)
 BIAC - [DAF/COMP/WD\(2022\)20](#)
 Summaries of contributions - [DAF/COMP/WD\(2022\)62](#)

Lunch break 13:00-14:30

14:30-18:00

Item 5. The Evolving Concept of Market Power in the Digital Economy

The concept of market power is central to competition law and policy. In digital markets, a range of questions have arisen about how this concept is applied and assessed. This roundtable will explore these questions, and the new analytical approaches and concepts related to market power that have been applied, or proposed, in response to digitalisation.

First, the discussion will explore the factors and evidence that agencies have used to assess market power in digital sector enforcement cases, market studies and academic research in recent years. The underlying economic concepts, evidence, and analysis applied will all be discussed. Proposals to adapt the assessment of market power in digital markets to incorporate concepts such as network effects, multi-homing, non-price competition and conglomerate effects more extensively, can also be reviewed.

Second, the discussion will consider more fundamental adaptations to the concept of market power, made in the context of recent regulatory initiatives and competition law reforms. One area of particular focus has been the role of digital platforms as intermediaries, gatekeepers, or unavoidable trading partners,

among other terms used. Beyond reviewing these concepts, the session will allow delegates to reflect on the impact that these new regulatory definitions may have on antitrust cases in the future, and the relationship between enforcement and regulatory market power concepts.

A Secretariat Background Note, written contributions by jurisdictions, and a panel of experts will support the roundtable discussion. The expert panellists for this session will be: Alexandre de Stree (Academic Director, Centre on Regulation in Europe and Professor, University of Namur), Herbert Hovenkamp (Professor, University of Pennsylvania Carey Law School), Orla Lynskey (Associate Professor, London School of Economics), John Newman (Deputy Director of the US FTC Bureau of Competition and Professor (on leave), University of Miami), and Masako Wakui (Professor, Kyoto University).

For discussion:

Background Note by the Secretariat - [DAF/COMP\(2022\)5](#)

Note by Masako Wakui - [DAF/COMP/WD\(2022\)61](#)

Notes by delegations:

Australia - [DAF/COMP/WD\(2022\)21](#)

Austria - [DAF/COMP/WD\(2022\)22](#)

Germany - [DAF/COMP/WD\(2022\)56](#)

Greece - [DAF/COMP/WD\(2022\)23](#)

Israel - [DAF/COMP/WD\(2022\)24](#)

Japan - [DAF/COMP/WD\(2022\)25](#)

Korea - [DAF/COMP/WD\(2022\)26](#)

Mexico - [DAF/COMP/WD\(2022\)27](#)

Spain - [DAF/COMP/WD\(2022\)28](#)

United Kingdom - [DAF/COMP/WD\(2022\)29](#)

EU - [DAF/COMP/WD\(2022\)30](#)

Brazil - [DAF/COMP/WD\(2022\)31](#)

Romania - [DAF/COMP/WD\(2022\)60](#)

India - [DAF/COMP/WD\(2022\)32](#)

Chinese Taipei - [DAF/COMP/WD\(2022\)33](#)

BIAC - [DAF/COMP/WD\(2022\)34](#)

Summaries of contributions - [DAF/COMP/WD\(2022\)63](#)

Thursday 23 June 2022

10:00-13:00

Item 6. Disentangling Consummated Mergers – Experiences and Challenges

One of the areas of divergence in merger control regimes around the world is the ability of competition authorities to review and remedy the anticompetitive effects of consummated mergers. In cases where consummated mergers can be reviewed, the selection and evaluation criteria used by agencies to prioritise and perform their investigations, as well as an analysis of the implications for business of the competition authorities' powers to investigate consummated mergers are fundamental. Important questions arise in relation to designing effective remedies for consummated mergers with an anti-competitive effect. The

Roundtable will focus on the remedial actions available to competition authorities when they have the power to review mergers which they have already reviewed and approved ex ante, but later resulted in anti-competitive effects, and mergers which fell below notification thresholds (i.e. they were not notified) and that also resulted in anti-competitive effects once consummated.

Delegates will focus on the challenges that competition authorities face with the design and the enforcement of appropriate remedies following the review of anti-competitive consummated mergers. The question of the appropriate remedies in the context of consummated mergers raises an interesting parallel with the types of remedies on which competition authorities usually rely for non-consummated mergers. This session will allow us to compare the constraints that agencies face when imposing remedies after the completion of the merger as opposed to prior to its closing. Delegates will also discuss the effectiveness and workability of structural remedies in ex post merger reviews of consummated mergers as opposed to conduct/behavioural remedies.

A Secretariat Background Note, written contributions by jurisdictions, and a panel of experts will support the roundtable discussion. It will have a keynote presentation by Jonathan Kanter, Assistant Attorney General for Antitrust at the US Department of Justice. The confirmed experts for this panel are John Kwoka (Professor of Economics, Northeastern University), Aviv Nevo (Professor, George A. Weiss and Lydia Bravo Weiss, University of Pennsylvania) and Fiona Carlin (Partner, Baker McKenzie)

For discussion:

Background Note by the Secretariat - [DAF/COMP\(2022\)6](#)

Notes by delegations:

Australia - [DAF/COMP/WD\(2022\)35](#)

Hungary - [DAF/COMP/WD\(2022\)36](#)

Lithuania - [DAF/COMP/WD\(2022\)37](#)

Mexico - [DAF/COMP/WD\(2022\)38](#)

Slovak Republic - [DAF/COMP/WD\(2022\)39](#)

Sweden - [DAF/COMP/WD\(2022\)40](#)

United Kingdom - [DAF/COMP/WD\(2022\)41](#)

United States - [DAF/COMP/WD\(2022\)42](#)

Brazil - [DAF/COMP/WD\(2022\)66](#)

Argentina - [DAF/COMP/WD\(2022\)43](#)

Singapore - [DAF/COMP/WD\(2022\)44](#)

BIAC - [DAF/COMP/WD\(2022\)45](#)

Summaries of contributions - [DAF/COMP/WD\(2022\)64](#)

Lunch break 13:00-15:00

15:00-16:00

Item 7. OECD Intellectual Property Rights (IPR) Recommendations

As part of the OECD-wide Standard-Setting Review launched by the OECD Secretary-General in 2016, the Competition Committee approved its Standard-Setting Action Plan on 3 March 2017 [[DAF/COMP\(2017\)1/FINAL](#)]. The Action Plan noted the need to revisit the continued relevance of two Recommendations developed under the responsibility of the Competition Committee; namely the Recommendation concerning Action against Restrictive Business Practices relating to the Use of

Trademarks and Trademark Licences [OECD/LEGAL/0162], which was adopted by the Council in 1978, and the Recommendation concerning the Application of Competition Laws and Policy to Patent and Know-How Licensing Agreements [OECD/LEGAL/0248], which was adopted by the Council in 1989.

The Action Plan also noted the possibility of extracting and incorporating key principles from the report underpinning the 1989 Recommendation as part of any consolidation, of adding new types of anticompetitive practices with respect to trademarks and patents, and of providing additional details and levers to address these practices. Delegates will discuss an initial draft of a possible Recommendation on Competition and Intellectual Property Rights.

For discussion:

Note by the Secretariat - [DAF/COMP\(2022\)7](#)

16:00-18:00

Item 8. Country developments on regulatory initiatives in the digital sector

This session will provide an opportunity for delegates to present to the Competition Committee new legislative or regulatory initiatives in their jurisdictions with respect to digital competition issues. This can include both new regulatory frameworks (particularly developments since the December Roundtable on Ex Ante Regulation and Competition in Digital Markets), as well as reforms to existing competition laws. Country presentations could serve as inputs to the Secretariat scoping note being prepared in advance of the forthcoming December 2022 discussion on a potential Committee output on competition enforcement and policy in light of digitalisation.

Interested delegations should feel free to contact the Secretariat in case they wish to make a presentation.

Friday 24 June 2022

10:00-12:30

Item 9. Roundtable on Integrating Behavioural Insights in Competition Enforcement

Competition authorities are increasingly aware that the actual behaviour of consumers, rather than the expected behaviour, can be a crucial factor in their analysis. In traditional economics, it is assumed that consumers know their preferences, the latter are stable and consumers use available information to make rational decisions. Behavioural economics goes beyond these assumptions and describes how people behave in reality. For example, when consumers are confronted with information overload, they may rely on "heuristic" decision-making rather than on careful scrutiny of all possible options. While this is often necessary to allow quick decisions, it may expose consumers to behavioural biases that can be exploited by companies.

The Roundtable will be an opportunity to share existing experiences on the use of behavioural economics in competition cases, drawing not only from the experience in competition cases but also from the extensive expertise that consumer protection agencies have developed in their enforcement practice. This session will allow delegates to identify how and in what steps of the proceedings (from market definition to the design of optimal remedies) competition authorities can integrate behavioural insights in their enforcement actions and take an evidence-based approach towards consumer behaviour. The aim of the session will be to identify instances where behavioural insights are important and behavioural analysis can complement traditional economics. Challenges with the use of behavioural economics will also be discussed in order to provide delegates with a practical and operational perspective on the use of behavioural economics in competition law enforcement.

A Secretariat Background Note, written contributions by jurisdictions, and a panel of experts will support the roundtable discussion. The expert panellists for this session will be: Matthew Bennett (Vice President, Charles River Associates), Chiara Criscuolo (Head of Division Productivity Innovation and

Entrepreneurship Division, Science Technology and Innovation Directorate, OECD), Charlotte Duke (Partner, London Economics), David Laibson (Professor, Harvard University), Lauren E. Willis (Professor, LMU Loyola Law School).

For discussion:

Background Note by the Secretariat - [DAF/COMP\(2022\)8](#)

Notes by delegations:

Australia - [DAF/COMP/WD\(2022\)46](#)
 Canada - [DAF/COMP/WD\(2022\)47](#)
 Chile - [DAF/COMP/WD\(2022\)48](#)
 Costa Rica - [DAF/COMP/WD\(2022\)49](#)
 Hungary - [DAF/COMP/WD\(2022\)50](#)
 New Zealand - [DAF/COMP/WD\(2022\)51](#)
 United Kingdom - [DAF/COMP/WD\(2022\)52](#)
 Brazil - [DAF/COMP/WD\(2022\)53](#)
 South Africa - [DAF/COMP/WD\(2022\)58](#)
 Ukraine - [DAF/COMP/WD\(2022\)13](#)
 BIAC - [DAF/COMP/WD\(2022\)54](#)
 BEUC - [DAF/COMP/WD\(2022\)55](#)
 Summaries of contributions - [DAF/COMP/WD\(2022\)65](#)

Lunch break 12:30-14:00

14:00-15:00

Item 10. Post-Accession Monitoring Review of Costa Rica [CONFIDENTIAL]

For discussion:

Draft Agenda - [DAF/COMP/ACS\(2022\)5](#)
 Note by the Secretariat - [DAF/COMP/ACS\(2022\)3](#)
 Reports by Costa Rica - [DAF/COMP/ACS\(2022\)6](#)

This agenda item will be discussed in a confidential session. Only Members and the European Union are invited to attend.

15:00-16:00

Item 11. Report of the Division Activities and Global Relations

A Secretariat Note will present to the Committee an overview of the Competition Division's activities in 2021 as well as global relations activities undertaken by the Division. It will include: (i) Overview of the work accomplished by the Division; (ii) an update on OECD global relations (June 2021); (iii) the activities in the three Regional Competition Centres (Hungary, Peru and Korea) (2021); and (iv) the results of the evaluation by participants of the 2021 Global Forum on Competition (GFC) and the 2021 OECD/IDB Latin American and Caribbean Forum (LACCF) as well as the topics for the 2022 GFC and LACCF.

For discussion:

Note by the Secretariat - [DAF/COMP\(2022\)9](#)

For information:

Evaluation of the Competition Division's Work in 2021 – [DAF/COMP/WD\(2022\)2](#)

Use of the Competition Committee's Work Product 2021 - [DAF/COMP/WD\(2022\)3](#)

16:00-17:00

Item 12. Annual Reports on Competition Policy

All delegations are invited to submit their annual report for 2021. Following a recommendation by the Bureau, only some Delegations will be allocated time to make presentations on a key development that has taken place during the relevant period (e.g. a legal reform, a new policy approach, an important decision, etc.). Delegations are welcome to contact the Secretariat to suggest a topic for an oral presentation at this session if they wish to do so. The Secretariat will collect these expressions of interest and co-ordinate with the Chair of the Competition Committee. It will subsequently contact Delegations to ensure a consistent approach to such presentations.

17:00-17:30

Item 13. Other business

Competition Delegates will be called to decide topics for substantive discussions to be held in December 2022. Delegates should feel free to send to the Secretariat as soon as possible any other suggestion that they would like to submit to the Committee's consideration.

For information:

Future Roundtable Topics - [DAF/COMP/WD\(2022\)4](#)

Future Competition Meeting Dates - [DAF/COMP/WD\(2022\)1](#)



Organisation for Economic Co-operation and Development

DAF/COMP/WD(2022)19

Unclassified

English - Or. English

24 May 2022

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Purchasing Power and Buyers' Cartels – Note by Chinese Taipei

22 June 2022

This document reproduces a written contribution from Chinese Taipei submitted for Item 4 of the 138th OECD Competition Committee meeting on 22-24 June 2022.

More documents related to this discussion can be found at
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1. This paper outlines relevant statutory provisions in Chinese Taipei's competition law, and then provides some case examples as well as enforcement experience on joint procurement and substantial purchasing power.

1. Provisions that regulate joint procurement and substantial purchasing power under the Fair Trade Act

2. From a competition perspective, regardless of being a buyer or a supplier, any firm with a dominant position will be able to exercise its market power to hamper and impede competition in a relevant market. The same provisions under the Fair Trade Act (hereinafter referred to as the FTA) will be applied to buyers and suppliers, which include 'prohibited conduct by a monopolistic enterprise', 'prohibition of cartels and exemptions', 'improper restrictions imposed by a firm on its trading counterpart's business activity' and 'any obviously unfair conduct'.

3. Abuse of dominance can occur in a monopolistic market where a supplier misuses its market position, and in a monopsonistic market where a buyer abuses its monopsony power. Article 9 of the FTA should be applicable to both scenarios. Furthermore, subparagraph 3 of the same provision provides that 'Monopolistic enterprises shall not make a trading counterpart give preferential treatment without justification'. It suggests that the rule of reason still applies when the Chinese Taipei Fair Trade Commission (CTFTC) determines if a buyer misuses its monopsony power to influence upstream firms. In terms of subparagraph 4, it is a general provision prohibiting any type of abuse of market dominance, which ought to be determined on a case-by-case basis.

4. Under the FTA, a 'concerted action' is prohibited unless the CTFTC grants a specific exemption. For example, as supply of bulk grain in Chinese Taipei relies on international trade imports, it leads to a common practice in the industry, i.e. a joint purchasing agreement among a number of smaller buyers. Such practice is treated as a concerted action under the FTA and thus requires an application for exemption to the CTFTC prior to its implementation. Subparagraph 5, Article 15 of the FTA provides that 'No enterprise shall engage in any concerted action; unless the concerted action that meets one of the following requirements is beneficial to the economy as a whole and is in the public interest, and the application with the competent authority for such concerted action has been approved: ... 5. joint acts in regards to the importation of foreign goods, or services for the purpose of strengthening trade.' Article 16 further articulates as follows:

- 'The competent authority may impose conditions or undertakings in the approval it grants pursuant to the provisions of the preceding article. The approval shall specify a time limit not exceeding five years. The enterprises involved may, with justification, file a written application for an extension thereof with the competent authority within three to six months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed five years.'
- Under this Article, the CTFTC is empowered to impose obligations on businesses engaging in joint purchasing agreements for the purpose of ensuring joint purchases beneficial to the overall economy and being in the public interest, and preventing the businesses from misusing superior power associated with joint purchases and thereby undertaking anti-competitive behaviour.

5. The majority of businesses in Chinese Taipei are small-and-medium sized enterprises (SMEs). A particularly important focus for competition enforcement is placed on unfair restrictions on SMEs' business activities imposed by large retailers with substantial bargaining power, or their other obviously unfair conduct. Two statutory provisions that may apply to such anti-competitive or unfair competition issues are as follows:

- Subparagraph 5, Article 20 of the FTA states that 'No enterprise shall engage in imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement, which is likely to restrict competition.' Article 25 of the FTA also provides that 'In addition to what is provided for in this Act, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.'
- Given that large retailers, commonly referred to as 'distribution enterprises' in Chinese Taipei, have a superior position in marketing/sales channels, they are able to exercise direct or indirect influence over their upstream suppliers, rivals and downstream consumers. The 'Policy Statements on Distribution Industry' issued by the CTFTC collates and analyzes various types of conduct in violation of the FTA to increase the industry's awareness and enhance competition compliance.

2. Joint purchasing agreements - the CTFTC's approval of jointly purchasing and importing wheat

6. The ratio of the volume of locally supplied wheat to overall wheat supply in Chinese Taipei is only 0.36%, suggesting that domestic markets highly rely on imported wheat for grain processing and consumption. Under Subparagraph 5, Article 15 and Article 16 of the FTA, 42 local wheat processors, including 21 flour mills, 12 soy sauce producers and 9 trading companies, submitted an application to the CTFTC for an exemption to jointly purchase and import wheat. The CTFTC has granted this specific exemption for the following reasons. First, subject to the domestic market size, the yearly volume of imported wheat in Chinese Taipei totalling around 1 million tonnes accounts for less than 1 percent of global wheat trade. Furthermore, as wheat processors in Chinese Taipei, of which most are flour mills, are typically SMEs, their individual purchasing volumes are limited. Through joint purchase and import agreements, the local wheat processors are more likely to be able to bargain with international grain suppliers in terms of import volumes, to secure stable supply and negotiate better deals with preferred purchasing terms and conditions. In addition, costs incurred in dry bulk shipping can be shared among the applicants. The parties involved in the agreements are required to periodically apply for an extension of the cartel exemption.

7. In accordance with Paragraph 1, Article 16 of the FTA, the CTFTC imposed three obligations on the applicants to ensure the fulfillment of the following purposes: (1) jointly purchasing wheat is beneficial for the overall economy and is in the interest of the public; (2) associated economic benefits can be passed on to downstream businesses or consumers, and (3) the CTFTC can effectively monitor whether the implementation of the concerted action contravenes the original purposes specified in its application.

- The obligations are summarized as follows: (1) any applicant(s) cannot engage in any other concerted action despite this approval or other regulations, or reject a request to join the concerted action made by any other business provided that there is no justification; (2) any applicant(s) cannot impose restrictions on any other applicants' discretion in deciding the volume of its wheat procurement and import,

and nor can the applicant(s) prohibit any other applicant from solely procuring and importing wheat; (3) applicants shall submit a quarterly report on the implementation of the concerted action to the CTFTC, including registered volumes and actual volumes per vessel of wheat procurement for individual importers; duration of procurement and the latest shipment dates; dates of shipping and arrival as well as volumes of individual applicants' imports, processing, sales and inventory.

8. Joint wheat procurement and import is mainly used for flour production, representing more than 90 per cent of its total volumes. The flour milling businesses are indeed the applicants who initially applied for the exemption of joint procurement and import. Such concerted actions have been implemented for 30 years. In 2013, several trading companies filed complaints to the CTFTC, stating that the flour milling businesses rejected their request to enter into the joint procurement agreement and claimed that such conduct failed to meet one of the obligations attached to the CTFTC's approval, that is, no justification for a refusal to allow other businesses to join the approved concerted action.

- The flour milling businesses justified their decisions by stressing that purchasing volumes of the trading companies could be volatile due to the nature of its resale purpose, which would further affect the allocation of cargo hold and shipments. Moreover, these trading companies' financial abilities could vary to a considerable degree. If they cannot issue letters of credit on time, this could delay the process of joint wheat procurement and ultimately affect the stable supply of grain. The CTFTC found that the trading companies purchased and imported wheat to resell it to Kinmen Kaoliang Liquor Inc. and Taiwan Tobacco and Liquor Corporation for brewing Kaoliang liquor. This amounted to approximately 15,000 tonnes per year. The investigation showed that some of the flour milling businesses leveraged their cost advantages resulting from joint wheat procurement to win the tenders for wheat supply to these two liquor companies. This gave them disproportionate advantages to compete with the trading companies in such a small market for wheat-for-resale.
- To ensure free competition and efficiency in the wheat-for-resale market, the CTFTC facilitated communications between the flour milling business and the trading companies. Both parties reached an agreement where the respective businesses engaged in the approved concerted action were required to pay different amounts of deposits depending on their purchasing volumes to ensure timely issuance of a letter of credit. The trading companies would also cooperate with the flour milling businesses to register their purchasing volumes based on shipping schedules and cargo hold. After the flour milling businesses' concerns were addressed, the trading companies successfully entered into the joint procurement agreement.

3. Substantial purchasing power - Carrefour's business practices in violation of Article 25 of the FTA

9. 'Distribution enterprises' provide vital marketing/sales channels for suppliers to sell their products. As both parties normally maintain long lasting relationships, most suppliers become heavily dependent on these retail outlets. Charging additional fees by distribution enterprises is a common practice that is not considered per se illegal. However, the CTFTC is of the opinion that the additional fees levied by distribution enterprises on suppliers may constitute an abuse of market power/superior bargaining positions in any of the following circumstances where: (1) Prior to charging additional fees, a distribution

enterprise fails to consult with its suppliers and enter into a written agreement specifying items, purposes and amounts (or calculation methods) applied to additional fees, sales promotion plans, and default remedies; (2) In spite of a written agreement, additional fees charged by a distribution enterprise are deemed ‘not directly related’ or ‘disproportionate’ to sales, or not compliant with reasonable commercial terms of trade.

- For individual suppliers, inappropriately charging additional fees may lead to an increase in operating costs and a profit squeeze, which is likely to violate the spirit of fair trade. Overall, improper additional fees imposed by distribution enterprises may have an even greater impact on their suppliers’ business operations as most are SMEs, which in turn can bring adverse effects on overall economic development.

10. A business’s market power and its scale will not be the sole determinant of assessing whether the business holds a ‘superior bargaining position’. In a case where a distribution enterprise does not have a significant market share, it can still be considered as having a superior bargaining position and significant market power if the distribution enterprise is indispensable to its upstream supplier’s business operation, or the upstream supplier is excessively dependent on the marketing/sales channel provided by the distribution enterprise. Such business dependency will be contingent upon whether there are ‘sufficient and reasonable alternatives’ for the upstream supplier. The CTFTC’s assessment needs to be grounded on the impact of business dependency on specific goods or services, or specific transactions between the distribution enterprise and its supplier in question.

- The aspects to be considered in determining ‘sufficient and reasonable alternatives’ are as follows: (1) alternative options - that is, there are other sales channels in the relevant market where the upstream supplier does not necessarily need to engage in a transaction with the distribution enterprise. If demand or supply of any specific product or service can only be satisfied by the particular business, it suggests that there is no alternative for the business’ trading counterparts; (2) sufficient alternatives - for the distribution enterprise’s trading counterparts and consumers, alternative sales channels in the relevant market can be functionally substituted for the distribution enterprise; (3) reasonable alternatives - the CTFTC also takes into account individual costs and risks arising from switching to another sales channel and the impact of using an alternative channel on the upstream supplier’s ability to compete with its rivals.

11. The CTFTC received complaints from consumers and 13 industry associations, including the Confectionery, Biscuit and Floury Food Industry Association, for Carrefour’s alleged violation of Article 25 of the FTA. Complainants pointed out that Carrefour rebranded ‘Wellcome’ as ‘Carrefour Market Easygo’ (Transliterated) after completing its acquisition of Wellcome Taiwan Co. in December 2020, and then charged a fee for opening promotions to those suppliers who had provided products to Wellcome prior to the acquisition.

12. Carrefour operates a chain of two separate distribution channels, i.e. hypermarkets and supermarkets across most metropolitan areas. The CTFTC’s investigation found that after its acquisition of Wellcome in 2020, the total number of Carrefour’s hypermarkets and supermarkets amounted to more than 300 stores, representing the third largest hypermarket and supermarket operator in Chinese Taipei. The CTFTC identified Carrefour as a business with superior bargaining position and substantial purchasing power on account of the findings below. The majority of suppliers who were charged additional fees for opening promotions were SMEs. Carrefour was their main or even sole trading

counterpart and had maintained a long-term business relationship with them. If Carrefour suspended or terminated supply agreements, it would be extremely difficult for the suppliers to switch to other buyers or create new partnerships in a short-term time frame and recoup the losses incurred after losing their major trading counterpart.

13. The CTFTC was of the opinion that the additional fees levied in 2021 by Carrefour on its suppliers in accordance with their supply agreements signed in 2020 constituted 'obviously unfair conduct'. First, for those suppliers who had entered into supply agreements with both Carrefour and Wellcome, the number of distribution channels remained unchanged after the merger between the two distribution enterprises. Carrefour defended itself noting that charging additional fees for opening promotions was an agreed obligation specified in the supply agreements with the suppliers. The CTFTC found that the number of store openings, types of stores, and expected gains were essential to be considered when the suppliers negotiated with Carrefour for additional fees. When the suppliers signed the contract with Carrefour in 2020, they were unlikely to foresee that Carrefour would acquire Wellcome in a few months. The amount for opening promotions fees under the 2020 supply agreements was agreed due to the information with regard to the numbers and types of hypermarkets and supermarkets owned by Carrefour at the time, and historical records of store openings as well as suppliers' practical experiences. As a result of fundamental changes in circumstances in 2021, Carrefour's behavior in charging improper additional fees was determined as 'obviously unfair conduct' under Article 25 of the FTA.

14. Furthermore, the additional fees for opening promotions imposed by Carrefour not only placed the suppliers in an inferior position, but also created additional cost burden on them that would eventually be passed down to the retail prices of the products, leading in turn to an adverse impact on consumer welfare. Carrefour's behavior had a significant influence over Carrefour's upstream suppliers, either for those who were charged or who could be charged such additional fees. The CTFTC concluded that additional fees for rebranding 'Wellcome' as 'Carrefour Market Easygo' (Transliterated) charged by Carrefour to its suppliers who had been Wellcome's suppliers prior to the merger, constituted 'obviously unfair conduct that could affect trading order'. The CTFTC ordered Carrefour to cease its illegal conduct immediately and imposed a fine of NTD \$1.5 million for its violation of Article 25 of the FTA.

4. Legality of 'no-poach' clause in a confidentiality agreement between 'C Bank' and a potential buyer who intended to acquire C Bank's consumer banking business

15. In terms of application of the FTA to concerted actions in labor markets, the CTFTC had affirmed that labor is one of the inputs for production of goods or services, which should be subject to scrutiny under the FTA. If businesses agree not to hire or recruit one another's employees, or to jointly decide their employees' wage levels, either in the form of contracts, agreements or any other form of mutual understanding, they are agreeing not to compete in labor markets. Such no-poach or wage-fixing agreements not only cause direct impacts on the benefits stemming from competition employees are entitled to, but also result in an adverse effect on volumes, quality and innovation for the supply of goods and services, which will ultimately cause harm to consumer welfare and overall economic efficiency.

16. However, 'no-poach' clauses are not the so-called hard core cartels that are normally classified as per se illegal. The CTFTC determines the legality of such concerted actions on a case-by-case basis by taking into consideration various factors, for example,

the context of a particular situation and the reason why businesses engage in no-poach conduct. Prior to its final decision, the CTFTC shall review if such a no-poach clause is incorporated in a valid commercial arrangement and assess the following factors: whether the clause can facilitate fulfillment of the master arrangement; whether it is reasonably necessary to the above purpose; whether there are less restrictive alternatives available for the parties involved, and the impact of no-poaching on market competition.

17. The Commissioners' meeting discussed the case at the end of 2021, which involved an agreement between C Bank and a potential buyer who intended to acquire C Bank's consumer banking business. The CTFTC's findings indicated that C Bank signed a confidential agreement with this potential buyer, ensuring information disclosed to the potential buyer that would only be used for the purpose of due diligence. The no-poach clause in the confidential agreement was designed to serve the same purpose. It aimed to prevent the buyer from making use of confidential information obtained during the due diligence process on C Bank's employees, i.e. employees' positions, wages, responsibilities, team members and performances to solicit or recruit key employees prior to the proposed acquisition. Before the proposed acquisition closed, poaching C Bank's employees would contravene the goals of due diligence, hinder C Bank's ordinary course of consumer banking business, and impair the value of the proposed transaction as well as the acquirer's interests.

18. The no-poach clause was part of the agreement for the proposed acquisition of C Bank's consumer banking business by the potential buyer. The clause was only applied to those employees who acted on behalf of the potential buyer and were able to access confidential information on C Bank's employees. These employees were thus not allowed to recruit C Bank's employees in consumer banking business sectors within a certain period of time due to the proposed acquisition. Considering the actual impact on market competition for the limited-duration clause that was restricted to specific staff, and the potential buyer had alternative recruitment channels to hire C Bank's employees in consumer banking business sectors (such as job advertisements or head-hunting companies), the Commissioners' meeting concluded that the no-poach clause agreed between C Bank and the potential buyer did not violate the provisions on concerted actions under the FTA.

5. Conclusion

19. Businesses need to purchase production inputs including labor to produce or provide goods and services. When a business holds a superior bargaining position, it may exercise its market power to impact its upstream suppliers and influence the employment decisions in the labor markets. In some situations, the superior bargaining power may occur in the form of buyers' cartel, substantial purchasing power or joint procurement that will directly bring out anti-competitive effects on the relevant upstream market. However, for downstream businesses and end consumers, these effects are not as noticeable as those resulting from abuse of monopoly (or cartels among sellers/suppliers), which can pose challenges to the CTFTC's law enforcement activities.

20. As explained above, there are provisions as to joint procurement and substantial purchasing power contained in the FTA. To improve industry compliance and enhance clarity and consistency of competition law enforcement, the CTFTC has published Policy Statements on Distribution Industry, the Guidelines on Trade Practices between Department Stores and Counters, and Guidelines on Concerted Petroleum Purchasing by Individual Petrol Stations and other relevant disposal directions. Theories of harm apply to both monopoly and monopsony, as well as 'buyers' cartels' and 'sellers' cartels'. There are

no significant discrepancies in analyzing anti-competitive effects for both, for example, vertical foreclosure/exclusionary effects where particular upstream suppliers are denied access to a downstream buyer with market power; or anti-competitive effects of horizontal agreements and the impact of misusing market power on trading order in markets.

- The FTA lists several cartel exceptions that can be permitted by the CTFTC - joint procurement and import of foreign goods is one of them. Given that Chinese Taipei lacks natural resources, relies heavily on imports, and the majority of local businesses are SMEs, it is necessary for local businesses to take collective actions to negotiate better terms and conditions for international trade and reduce costs of importing raw materials. The CTFTC can grant a conditional approval to minimize the accompanying anti-competitive effect of a proposed concerted action and ensure that it is beneficial to the overall economy and in the interests of the public.
- With regard to competition issues in labor markets, the CTFTC will first see if an alleged anti-competitive clause is part of a valid master agreement, and then apply the rule of reason to determine whether the clause is beyond the reasonable and necessary extent for fulfillment of the master agreement, and its impact on market competition. The CTFTC will also consult the Ministry of Labor or other related government agencies during its decision-making process

21. The adverse impact of misusing buying power on market competition and consumers is not as noticeable as the abuse of market power by the seller on the provisions of products and services. Competition enforcement requires a more flexible and refined approach to carefully examine the underlying reasons and context of a particular case and its pro- and anti-competitive effects on market competition and consumer welfare. This suggests that the CTFTC may need to be more cautious and sophisticated in its investigation processes.

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

The Evolving Concept of Market Power in the Digital Economy – Note by Chinese Taipei

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This document reproduces a written contribution from Chinese Taipei submitted for Item 5 of the 138th OECD Competition Committee meeting on 22-24 June 2022.

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1. This paper presents the key aspects that the Chinese Taipei Fair Trade Commission (CTFTC) takes into consideration when it assesses market power in the digital economy and illustrates this with an example of how the CTFTC determines market power of a digital platform.

1. Introduction: challenges of enforcement in digital markets

2. Market definition and market power assessment play an essential role in competition enforcement. It enables competition authorities to assess if a business holds a dominant market position in the relevant market, thereby being incentivized or being able to engage in conduct that may hinder market competition. Of those applicable measures, a business' market share has been identified as an important indicator for the existence of a dominant market position. However, in the era of the digital economy, a business' current market position is less likely to reflect its market power in the foreseeable future due to the nature of a rapidly changing industrial environment. Business scales along with market shares are no longer treated as reliable indicators of market power, which further increases the difficulties for competition authorities to determine whether business conduct is likely to substantially lessen competition. As a result, dynamic considerations in competition assessment need to be taken into greater account than ever in such fast-evolving markets.

3. There are two factors that may also affect market power assessment in the digital economy: (1) users are often offered multi-homing options to access multiple platforms in parallel for products or services; (2) existing digital platform operators are at greater risk of being replaced by their rivals on account of innovation competition. Competition authorities face an unprecedented challenge of identifying effective indicators of market power and corresponding measures to conduct competition assessments.

2. Assessment of market power

2.1. Evolving concept

4. Under the Fair Trade Act (hereinafter referred to as the FTA), a monopolistic enterprise refers to a business facing no competition or having a dominant position to enable it to exclude competition in the relevant market. When the CTFTC determines if it constitutes a monopoly, the following factors can be considered: (1) the market share of the enterprise in a relevant market; (2) the possibility of substitution of the goods or services following changes in the relevant market, on different aspects including time and geographic areas; (3) the ability of the enterprise to influence prices in the relevant market; (4) whether formidable barriers exist for other enterprises to enter the relevant market; (5) import and export statuses of the goods or services. Data on production, sales, inventory, and import/export value (volume) for the enterprise in the relevant market are applied for the purpose of calculating its market share.

5. In most case decisions previously made by the CTFTC, market shares and market structures served as a reliable indicator of market power. As many digital platforms provide zero-price services, price-based metrics including profits, sales and revenues, which are conventionally used to calculate market shares, may not be applicable in the digital

economy. The CTFTC therefore considers non-price-based metrics and methods, for example, the number of active users, website traffic, the number of downloads and transactions, to calculate market shares and assess market power in an adapted approach for digital markets.

6. Under a traditional analytic framework, market share is often used as a proxy of a business' ability to influence prices and exclude market competition, yet barriers to market entry also play a key role in determining a business' market position. In digital markets, barriers to entry arising from network effects and characteristics of two-sided markets are a prerequisite for businesses to acquire and maintain their dominant positions. Namely, in a contestable market with low barriers to market entry, potential competitors are able to compete with incumbents by using 'hit and run' tactics, which may lead to a situation similar to perfect competition despite the fact that the market structure is currently monopolistic or oligopolistic. In other words, as long as entry is sufficient, potential competitors will be able to pressure existing firms and to a certain extent weaken incumbents' abilities to control the relevant market. On the contrary, higher barriers to entry are more likely to further reinforce and strengthen market positions held by existing businesses.

2.2. Considerations of market power

7. In practice, each side of an online platform and its overall business model should be considered when assessing its market power. Considerations that may affect market power assessment are as follows:

- Estimating market power of two-sided markets in a finely judged manner
While market shares are commonly used as a proxy for market concentration and market power, traditional approaches of defining a one-sided market need to be adjusted to reflect market power of a two-sided market. Market shares on each side of a platform should be modified with a careful consideration of competition restraints on each side and interrelationships among respective groups of platform users. In a case where a platform operator does not charge any fee for users on one side of the platform, price-based metrics, for example the value of sales can be replaced by non-price data including the numbers of active users, downloads and transactions, as well as website traffic to calculate its market share.
- Observing changes in profitability and revenues on each side of a platform
Changes in profitability on each side of a platform can be also used as an indicator of market power. In terms of digital platforms, profitability refers to a business' ability to set separate prices for users on each side and generate profit above the level that would otherwise prevail under competition. Generally, the more highly concentrated a market is, the less competitive it is. There is a likelihood of a misuse of market power if a digital platform market becomes more concentrated with an overall increase in prices, yet quality of products or services have not been improved accordingly.
- Evaluating dynamic indicators of competition
Since digital market players exist in an ever-changing business landscape that is continually disrupted by innovation, the level of market power obtained by a digital platform can vary at any time. Static indicators commonly used for competition assessment will not be as reliable in digital markets as they are in other traditional markets. To conduct a comprehensive assessment of market power in a digital market, competition indicators designed for evaluating market dynamics are

required, for example, barriers to entry (the number of users and switching costs), diversity of connections to end users and innovation levels.

3. Case example – Restraints imposed by foodpanda in contravention of the Fair Trade Act

3.1. Investigation initiated by the CTFTC

8. Food delivery platforms, either globally or domestically, have experienced major growth in recent years. To gain a better understanding of whether any business practice engaged by domestic food delivery platform operators is subject to the provisions of anti-competitive and unfair competitive conduct under the FTA, the CTFTC launched a probe into the major businesses in online food delivery with the aim of protecting their partner restaurants and consumers.

9. Based on shareholding structures, food delivery platform operators can be classified into the following three types: (1) platforms owned by global food delivery platform businesses, for example, foodpanda under Delivery Hero Germany and Uber Eats under Uber Technologies, Inc.; (2) local startups including Foodomo, Cutaway and Yo-Woo; (3) ShopeeFood run by Shopee, a leading online shopping platform with diversified businesses.

3.2. Analysis on the market position and market power of foodpanda

3.2.1. Market Share

10. The CTFTC used data concerning a business' revenue, the number of orders and number/amount of credit card transactions to measure market share and market power of individual food delivery platform operators. In addition, for a more comprehensive assessment, the CTFTC considered the number of individual businesses' members and partner restaurants in calculation of their penetration rates.

3.2.2. Network effects

11. Food delivery platforms act as an intermediary role between restaurants and consumers, which is deemed as a typical two-sided platform (or a multi-sided platform on account of its relationships with food delivery riders and other participants). In terms of food delivery platforms, the more partner restaurants that join a food delivery platform, the more consumers are likely to download the platform's APP, visit its website and order food from its partners. With a growing number of consumers using the platform, a positive feedback loop occurs, which leads to a further increase in the number of partner restaurants. This can even lead to market tipping, suggesting that such market structure is therefore prone to monopolistic or oligopolistic characteristics.

12. Upon the CTFTC's investigation, it was found that the respective penetration rates of foodpanda and Uber Eats on each group of users (members and restaurants) were much higher than other competitors. Through indirect network effects, the two largest platform businesses were able to foster a competition advantage arising from economies of scale.

3.2.3. Barriers to entry

13. During the investigation (between 2019 and 2021), several food delivery platform operators exited from the domestic market while a few new ones entered. The CTFTC

enquired the new entrants' opinions on barriers to entry faced by them, and if such barriers are associated with foodpanda's competition strategies. The new entrants unequivocally pointed out that the biggest challenge for them is to attract both consumers and restaurants to join their platforms. In particular, many well-known/reputable restaurants had signed exclusive dealing agreements with existing platforms, which posed challenges for new entrants to solicit restaurants and expand delivery zones. Consequently, the scales of the entrants were not yet viable to effectively compete in terms of delivery zones, the number of orders and partner restaurants.

14. Challenges confronted by potential competitors who attempted to enter the market of food delivery platforms include development of platform systems, recruitment of delivery riders, building delivery capacity and increasing brand awareness. Moreover, there was a problem specific to two-sided markets, i.e. the chicken and egg paradox, which refers to a situation where consumers are not inclined to join those platforms with very few partner restaurants, while at the same time restaurants are also not willing to partner with those platforms with only limited number of members.

15. As noted above, in case where new entrants or smaller food delivery platform businesses are capable of attracting consumers and restaurants to join their platforms together with other platforms (i.e. multi-homing), the impact of barriers to entry and competitive disadvantages stemming from network effects can be moderated. For example, the impact of barriers to entry will be lower as the services offered by new entrants will successfully attract partner restaurants of foodpanda or Uber Eats to join their delivery platforms.

16. However, to enhance their dominant market positions, existing businesses are more likely to have an incentive to prevent their users from using other platforms. The aforementioned exclusive dealing agreement is one such practice that can impede interoperability between products or services or multihoming and thereby stop potential competitors or new entrants from being viable in the food-delivery-platform market, and even threatening incumbents' market positions. Responses from the new entrants to the CTFTC stressed that it has been difficult to build partnership with those restaurants who are subject to exclusive dealing agreements with other platforms and thus not able to join new platforms, although the new entrants offered lower commissions and more marketing resources in return.

3.2.4. Market power

17. In this case, the CTFTC concluded that foodpanda held substantial market power. The CTFTC found that among food delivery platforms foodpanda had a significant market share, though this was not a sole determinant of market power. The following factors were also considered by the CTFTC in its market power assessment:

- foodpanda had first-mover advantages resulting from its entering the market earlier than other competitors.
- foodpanda was able to charge commissions higher than other new platform operators.
- In comparison to new entrants, foodpanda's market coverage, brand awareness, marketing and operating resources, and the number of partner restaurants gave itself noticeable advantages.
- foodpanda benefited from indirect network effects due to the large number of users on each side of its platform it had.

- Except for Uber Eats, potential competitors and new entrants were in a disadvantageous position for competition, reducing their incentives to establish a business scale viable for growth to the point that they could impose a competitive threat on foodpanda.

18. The CTFTC found that foodpanda had exercised its market power to require partner restaurants to offer the same prices for customers ordering on the platform and those ordering in the restaurants, which prevented restaurants from reflecting costs of different sales channels. The platform also restricts restaurants from refusing customer's pick-up orders. Such practices with restaurants constituted vertical restraints that were likely to impede competition. The CTFTC therefore imposed a NT\$2 million fine on foodpanda and demanded that foodpanda ceased its illegal practices.

4. Future direction of competition enforcement

19. The platform economy brings new challenges to competition enforcement associated with innovative sources and types of market power. While fundamental principles and analytical frameworks under competition laws remain, challenges to methodologies and tools for market definition and market power assessment will inevitably call for adjustments in response to the industrial features of digital markets to enable the CTFTC to conduct more appropriate competition assessments.

20. The CTFTC also acknowledges that there is no single factor of determining market power because most factors in digital markets are interrelated, such as network effects, economies of scale and scope, or competitive advantages arising from possession of data or intellectual property. With the growth of business scales, businesses may also acquire further competitive advantages by offering diversified product portfolios or cross-service applications of data, which may gradually lead to a competition model among various ecosystems. In the future, this will require the CTFTC's continuous attention to how platforms' business practices and their ecosystems evolve and develop to inform the CTFTC of how to incorporate new insights into its current framework of competition enforcement.

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Directorate for Financial and Enterprise Affairs
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Annual Report on Competition Policy Developments in Chinese Taipei

-- 2021 --

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Chinese Taipei

1. Executive Summary

1. This report covers the activities of the Fair Trade Commission (FTC) of Chinese Taipei from January 1 to December 31, 2021.
2. The latest amendment to the Fair Trade Act (FTA) came into effect on June 14, 2017. There has been no change in the FTA since then.
3. Regarding competition enforcement, the FTC processed 2,497 cases, including 2,295 cases received in 2021 and 202 cases carried over from 2020. By the end of 2021, 2,355 cases had been closed and 142 cases were pending. In particular, the FTC handed down 4 concerted actions.
4. The FTC reviewed 79 merger cases in 2021, which included 17 carried over from 2020 and 62 received in 2021. By the end of 2021, the FTC had completed the reviewing of 69 cases, none of which was prohibited, and 10 were pending.
5. In 2021, the FTC participated in various consultation meetings with other government agencies related to competition issues and organized 45 seminars for students, customers, business communities, and local governments in order to explain the FTA, particularly the leniency program and the prohibition against concerted actions.

2. Introduction

6. This report describes key competition law and policy developments in Chinese Taipei during 2021.

2.1. Competition law of Chinese Taipei

7. The Fair Trade Act (FTA) is the competition law of Chinese Taipei. The purpose of the FTA is to maintain trading order, protect consumers' interests, ensure free and fair competition, and promote economic stability and prosperity¹. The FTA covers regulations not only on restrictive business practices, including monopolies, mergers, concerted actions, and vertical restraints (RPM, boycotting, tie-ins and other restrictive business practices), but also on unfair trade practices, including false, untrue or misleading advertisements, the counterfeiting of commodities or trademarks, the improper offering of gifts or prizes, as well as damage to business reputation and other deceptive or obviously unfair conduct capable of affecting trading order.²

¹ Article 1 of the Fair Trade Act: "This Act is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity."

² In 2021, 51 cases of complaints fell into the category of unfair trade practices. The FTC also launched self-initiated investigations into 28 cases of unfair trade practices.

8. The FTA has been amended 8 times since it took effect in 1992. The 6th amendment enacted on February 4, 2015 was considered to be the widest in range, the largest in scale and the most influential in terms of legal reforms³.

2.2. Institutional design

9. The Fair Trade Commission (FTC)⁴ is Chinese Taipei's primary competition authority⁵. The FTC was established in 1992 and reformed in 2011 under the newly-enacted "Organic Act of the Fair Trade Commission." The FTC is an independent government entity at the ministerial level and is responsible for the enforcement of the FTA and the Multi-Level Marketing Supervision Act.

10. The FTC consists of seven full-time commissioners who are appointed by nomination by the premier and approved by the Legislative Yuan (the Congress) for a 4-year term and may be reappointed. When making the appointment, the premier shall designate one of the commissioners as the chairperson and another as the vice chairperson. The commissioner appointees must have knowledge and experience with regard to law, economics, finance, taxation, accounting, or management. All commissioners must be politically impartial, are not allowed to participate in political party activities during their terms of service, and must also perform their duties independently according to related laws. In particular, the terms of the seven commissioners are staggered, and three of them took office in February 2019.

11. The Commissioners' Meeting is the highest policy-making organ of the FTC and is charged with drafting fair trading policy, laws and regulations, and with investigating and handling various activities impeding competition, such as monopolies, mergers, concerted actions, and other restraints on competition or unfair trade practices by enterprises. Moreover, it is also responsible for developing policy, completing regulations as well as investigating cases concerned with multi-level marketing.

12. Provisions on exemption from following the petitioning procedure have been added to the FTA, which allows concerned parties to file with judicial agencies for remedies by adopting the administrative litigation procedures directly to respond to sanctions imposed by the FTC according to the FTA. Those provisions also highlight the status of the FTC as an independent agency.

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

3.1. Summary of revised legal provisions of competition law and related legislation

13. The FTC stipulated 3 and amended 27 guidelines as well as abolished 22 guidelines providing more transparent and standardized regulations in order to guide market trading order and efficiently cope with complicated economic affairs. The significant revisions and amendments are as follows:

³ Please refer to "Annual Report (2015) on Competition Policy Developments in Chinese Taipei" DAF/COMP/AR(2016)50).

⁴ Please refer to the FTC's website at <http://www.ftc.gov.tw/internet/english/index.aspx>.

⁵ The FTC is also the competent authority of the Multi-Level Marketing Supervision Act. Please refer to <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1297&docid=13426>.

1. Formulation of the “Fair Trade Commission Directions on Consultation Services before Enterprises Filing Merger Notification.”
2. Amendments to:
 - “Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions ”;
 - “Directions for Enterprises Filing for Merger”;
 - “Fair Trade Commission Disposal Directions (Policy Statements) on Cable Television Related Enterprises”;
 - “Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 21 of the Fair Trade Act”;
 - “Fair Trade Commission Disposal Directions (Guidelines) on Cases Relating to Multi-level Marketing.”
3. Abolition of “Fair Trade Commission Disposal Directions (Policy Statements) on the Vertical Integration or Joint Operation between Liquefied Petroleum Gas Packing Enterprises and Retailers” and “Fair Trade Commission Disposal Directions (Guidelines) on Big Enterprises’ Payment to Small and Medium-sized Enterprises.”

4. Enforcement of competition laws and policies

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

4.1.1. Summary of Activities

14. The FTA permits the existence of monopolies as long as they do not abuse their market power. Concerted actions are strictly forbidden by the FTA. 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 FTA bans resale price maintenance in principle, but allows exceptions with justifiable reasons. For other types of vertical restraints, the FTA requires the FTC to apply the rule-of-reason standard.

15. In 2021, the FTC processed 2,497 cases, including 2,295 cases received in 2021 and 202 cases carried over from the preceding year. By the end of 2021, 2,355 cases had been closed, and 142 cases were pending. A total of 104 complaint cases applicable to the FTA were concluded in 2021 and, of these, 49 concerned anti-competitive practices.

16. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 84 cases in 2021, and only 10 of these fell into the category of anti-competitive practices.

Table 1. Decision Rulings by the FTC in 2021

Year	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2021	10	-	-	8	1	1

Note: Unit = Number of cases.

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

4.1.2. Description of significant cases, including those with international implications

Case 1: Domestic Airlines Met Together to Fix Prices

17. The FTC launched an ex officio investigation into the joint decision made by UNI Air, Mandarin Airlines and Far Eastern Air with regard to prices of plane tickets for domestic air routes during their meetings in 2019. At the 1,548th Commissioners' Meeting on June 16, 2021, the FTC concluded that the practice of UNI Air, Mandarin Airlines and Far Eastern Air to negotiate prices of plane tickets for domestic air routes was in violation of Article 15 (1) of the FTA and therefore imposed administrative fines of NT\$1.6 million, NT\$0.95 million and NT\$0.85 million on UNI Air, Mandarin Airlines and Far Eastern Air, respectively.

18. Traveling by air is more expensive than taking other means of transportation, but it is faster and therefore often the top choice of people coming and going between Taiwan and offshore islands like Penghu and Kinmen and between Taipei and Taitung. In 2019, UNI Air, Mandarin Airlines and Far Eastern Air held meetings during which they discussed and achieved the consensus to “maintain ticket prices starting in April 2019” and “keep group ticket prices in the third quarter of 2019 at least at the same level as in the previous year.” Although the three companies claimed the decisions had been promises made without serious thinking or answers given to go along with the others and the actual prices had to be determined in accordance with market supply and demand, the investigation of the FTC indicated that the representatives of all three companies were all personnel with the responsibility to plan ticket prices or make price decisions. Even if they had only given oral agreements or expressed support to go along with the others during price discussions, it was enough to cause the companies to head in the direction of “preventing the lowering of prices” of domestic plane tickets or “maintaining” price levels in their price decision in 2019. As a consequence, the domestic airline companies all ended up maintaining ticket prices or not lowering ticket prices.

19. In 2019, the seven air routes involved in this case, namely, Taipei, Taichung and Kaohsiung to Penghu, Taipei, Taichung and Kaohsiung to Kinmen, and Taipei to Taitung, were either operated by UNI Air, Mandarin Airlines and Far Eastern Air or by two of them. In other words, the aggregate market share of the three airline companies was 100%. That means that when the three companies discussed ticket prices as mentioned above and achieved a consensus, consumers became unable to benefit from competition between the three enterprises and obtain more preferential prices. For this reason, the mutual understanding established by the three airline companies was already able to affect the supply-demand function in the market associated with these air routes. It was in violation of the regulation against concerted actions set forth in the FTA.

20. The FTC would like to point out that although companies in the profession may have to meet or get together because of business needs, making price plans through discussions during such gatherings or jointly deciding the future management direction of the industry is likely to touch upon the concerted action regulations in the FTA. Therefore, even if people are under the influence of alcohol during such gatherings, they should exercise control in order not to break the law.

Case 2: Drug Companies Implemented Anticompetitive Agreement

21. The FTC received complaints that TTY Biopharm, Otsuka Pharmaceutical and Lotus Pharmaceutical had engaged in a concerted action when marketing colon cancer drugs. At the 1,542nd Commissioners' Meeting on May 11, 2021, the FTC decided that

TTY Biopharm and Lotus Pharmaceutical had violated the regulation against concerted actions set forth in Article 15 (1) of the FTA.

22. The Ufur capsules of TTY Biopharm, the UFT capsules of Otsuka Pharmaceutical and the Furil capsules of Lotus Pharmaceutical were all prescription drugs covered by the National Health Insurance. They were made with the same ingredients in the same dosage form and in the same dose. Besides selling its own Ufur capsules, TTY Biopharm had also signed exclusive distributor agreements with Otsuka Pharmaceutical and Lotus Pharmaceutical to sell their UFT capsules and Furil capsules. The agreements with Otsuka Pharmaceutical made TTY Biopharm a normal vertical distributor and agent and the relationship was not in violation of the regulation against concerted actions set forth in the FTA. However, the agreements signed with Lotus Pharmaceutical appeared to be for delegation of distributorship on the surface; in reality, the investigation of the FTC indicated that it was the result of a mutual understanding between the two companies to prevent Furil capsules from being sold in the market.

23. The drugs produced by TTY Biopharm and Lotus Pharmaceutical were both generic drugs with substitutability for each other. Both companies were competitors at the same production and marketing stage. They signed agreements respectively in 2009, 2013 and 2018 and it was stipulated that TTY Biopharm was required to pay Lotus Pharmaceutical a certain amount of licensing fee on a regular basis in order to obtain the exclusive distributorship to sell the Furil capsules of Lotus Pharmaceutical. At the same time, the agreements also prohibited Lotus Pharmaceutical from selling the drug on its own or through others. Acting according to the agreements, TTY Biopharm paid Lotus Pharmaceutical a licensing fee each year but never placed any orders to purchase Furil capsules or sold the drug to hospitals. As a result, the Furil capsules of Lotus Pharmaceutical were never sold for a number of years. In other words, TTY Biopharm and Lotus Pharmaceutical established the exclusive distributor agreements to restrict each other's business activities. Both companies achieved the mutual understanding to prevent Furil capsules from being sold in the market. It was a concerted action and the FTC therefore imposed administrative fines on the two companies.

Case 3: Food Delivery Platform Imposed Restrictions on Restaurants

24. After holding three Commissioners' meetings on September 1, 8 and 15, 2021 to review the case, the FTC finally decided that Foodpanda Taiwan Co., Ltd. (foodpanda) had violated Subparagraph 5 of Article 20 of the FTA by imposing on collaborating restaurants restrictions that the prices posted on the foodpanda platform had to be the same as the dine-in prices and that the restaurants could not refuse orders for food or beverages to be picked up by customers themselves. In addition to ordering the company to cease the unlawful act, the FTC imposed on it an administrative fine of NT\$2 million.

25. Food and beverage delivery platforms in the country have developed rapidly in recent years and the market scale has grown significantly. In particular, due to the impact of the COVID-19 pandemic, restaurants stopped providing dine-in services and delivery platforms have become one of their principal sales channels. At present, foodpanda and Uber Eats are the two major competitors in the domestic food and beverage delivery platform market. Apart from the characteristics of the delivery platform market, the two companies also have huge groups of consumers and collaborating restaurants; therefore, they have considerable market power.

26. Besides selling food and drinks to dine-in and takeout customers, restaurants and beverage stores also accept orders through delivery platforms. The costs of products sold through different channels vary. Restaurants and beverage stores are supposed to reflect such costs in the prices, whereas consumers also have the right to choose the most

appropriate purchasing channel according to their needs. However, foodpanda demanded that the prices that collaborating restaurants posted on the delivery platform had to be the same as the dine-in prices, making it impossible for the restaurants to reflect the cost difference between dissimilar sales channels in the prices. As a consequence, dine-in customers had to split the commissions for the delivery platform with customers ordering through the delivery platform. Foodpanda had no need to worry that raising the commission percentage would cause customers to choose to dine in, since the company had the incentive and the capacity to increase the percentage. At the same time, by demanding that the prices collaborating restaurants posted on the delivery platform had to be the same as the dine-in prices, foodpanda could indirectly ensure that the prices the restaurants posted on other delivery platforms would not be lower than the prices posted on the foodpanda delivery platform. Even if other delivery platforms charged lower commissions, the restaurants could not decrease the prices posted on such platforms. Consumers would not be able to enjoy lower prices after the restaurants reflected other delivery platforms' smaller commissions on the food and beverage prices.

27. As the aforementioned measure weakened the effect of price competition from other delivery platforms, the network effect would end up making rational consumers continue to use a delivery platform with more collaborating restaurants. In other words, foodpanda's demand that dine-in prices and prices of delivered food and beverages had to be the same would indirectly reduce the ability of other delivery platforms to compete with foodpanda.

28. The FTC also found out that foodpanda insisted on activating the function of "customers picking up their orders" to allow customers to get their takeout orders and restaurants could not refuse orders for items to be "picked up by customers." Since the ones ordering food and beverages to be picked up by themselves were originally customers of the restaurants, if restaurants had to unconditionally accept orders to be picked up by customers placed through the platform, they not only would be unable to expand the market or get new customers, but would also have to cope with competition from themselves through the platform. The original dine-in and takeout customers were lost to the delivery platform, yet the restaurants still had to pay commissions to foodpanda to subsidize consumers (such as giving a 21% discount to customers picking up their orders). The policy encouraged customers to pick up their orders and foodpanda could acquire more commissions as a consequence. Other than that, the company could also collect more commissions and obtain a stronger pricing capacity to create competition restraints.

29. The FTC thought that restaurants could have adopted different pricing policies in accordance with the costs of various services. They should have had the liberty to decide whether to allow customers to pick up their orders. In other words, foodpanda abused its market power and forced collaborating restaurants to make the prices posted on delivery platforms the same as the dine-in prices, as well as not to refuse orders from customers intending to pick up the food and beverages themselves. The conduct was in violation of the regulation against "imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement" set forth in Subparagraph 5 of Article 20 of the FTA. Besides, it could also lead to competition restraints. Therefore, in addition to ordering foodpanda to immediately cease the unlawful act, the FTC imposed an administrative fine of NT\$2 million on the company.

30. Meanwhile, the FTC also found out that both foodpanda and Uber Eats offered commission discounts to restaurants that had signed exclusive deal contracts with them and successfully attracted some restaurants to sign such contracts. At present, the practice could not be considered to be in violation of the FTA. However, delivery platforms have the economic characteristics of network effects with the big ones getting bigger. New

competitors or smaller delivery platforms have to count on consumers who use “multi-homing (consumers and restaurants using multiple platforms at the same time)” to alleviate the network effect in order to enter the delivery service market. For this reason, when platforms with dominating power in the market restrict restaurants from engaging in “multi-homing” with other delivery platforms, this could easily lead to competition restraints. The FTC is particularly concerned about this and has told foodpanda and Uber Eats, the two major food and beverage delivery platforms, that the domestic delivery platform market has become more and more concentrated. If they continue to sign exclusive deal contracts with more and more restaurants or impose substantially enforceable restrictions through signing exclusive deal contracts, they could be in violation of the FTA. The FTC will continue to keep a close watch on market developments and will intervene and investigate if any anti-competition effect is discovered.

Case 4: Supermarket Abused its Market Power to Collect Inappropriate Sponsorships

31. The FTC at the 1,566th Commissioners’ Meeting on October 20, 2021 reviewed the case regarding 13 domestic trade associations complaining about Carrefour Taiwan inappropriately collecting new store opening sponsorships and decided that the company had violated Article 25 of the FTA by asking for new store opening sponsorships from vendors that had been suppliers of Wellcome Supermarket before Carrefour merged with Wellcome and changed the name of Wellcome Supermarket to Carrefour Market. Therefore, the FTC imposed an administrative fine of NT\$1.5 million on Carrefour Taiwan.

32. For suppliers, supermarkets are an indispensable sales channel. Both sides normally cooperate on a long-term basis and most suppliers depend on logistics supermarkets. In reality, a supermarket usually charges suppliers a slotting allowance. The practice is not illegal, but this does not mean it can be done without any limitation. If a supermarket abuses its market power and asks suppliers for inappropriate surcharges, it will increase the operating cost of suppliers and deprive the suppliers of the reasonable profit they deserve. This is in violation of the spirit of fair trade. Generally speaking, most supermarket suppliers are small and medium enterprises. If a supermarket collects inappropriate surcharges, it can jeopardize the business management of a lot of suppliers and create a disadvantageous influence on overall economic development. For this reason, the collection of inappropriate surcharges is obviously unfair and able to affect trading order. It is in violation of Article 25 of the FTA.

33. Carrefour Taiwan has many outlets all over the country. The company’s sales channels include hypermarkets and supermarkets. Since it merged with Wellcome Supermarket in 2020, the number of such outlets has exceeded 300. The suppliers from which Carrefour Taiwan collected sponsorships were mostly small and medium enterprises and the quantity of products that each supplier sold through Carrefour accounted for a rather high percentage of the supplier’s annual sales. As Carrefour was the principal or even the largest trading counterpart of each supplier, any supplier having its trading relationship cut off by Carrefour would find it difficult to find a new collaborator or another way of cooperating within a short time to cover the damages resulting from losing the business partnership with Carrefour Taiwan. Apparently, Carrefour had the upper hand in its relationships with the suppliers.

34. Those originally supplying both Carrefour and Wellcome at the same time did not acquire new sales channels after Carrefour merged with Wellcome. Moreover, Carrefour asked for new store opening sponsorships based on the provisions set forth in the contract signed with suppliers in 2020, yet the operating gain and number of stores in 2021 were not the same as in 2020 when the contract was signed. However, Carrefour still asked for

new store sponsorships according to the standard specified in the 2020 contract. It was obviously unfair.

35. In addition, besides the fact that the suppliers would be likely to reflect the charges collected by Carrefour in their product prices and that the interests of consumers would be affected, it was also possible that Carrefour illegitimately transferred part of its outlet management cost to the suppliers. As a consequence, the business relations between the company and the suppliers lost their balance. For suppliers who had already paid or were expected to pay the new store opening sponsorships, the impact was rather huge. In this case, the complaint was filed with the FTC by the Taiwan Confectionery Biscuit and Floury Food Industry Association and 12 other trade associations. The members of these associations totaled over one thousand enterprises. Apparently, the fact that Carrefour Taiwan collected new store opening sponsorships at this time had a profound impact on trading order.

36. The FTC would like to remind supermarkets that the collection of surcharges from suppliers has to be reasonable and based on the results of sincere negotiations between both sides. If a large supermarket abuses its market power to collect surcharges inappropriately, it will be in violation of the FTA.

4.2. Mergers and acquisitions

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

37. Mergers involving parties reaching a certain turnover 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.

Table 2. Notifications for Mergers

Year	Cases under Processing			Results of Processing				Cases Pending at Year-end
	Carried Over from 2020	Received in 2021		Mergers not Prohibited	Mergers Prohibited	Termination of Review	Combined into other Cases	
2021	17	62	79	32	-	37	-	10

Note: Unit = Number of cases.

Table 3. Statistics on Enterprise Mergers

Year	Cases not Prohibited	Type of Merger (Article 10, Paragraph 1 of the Fair Trade Act)				
		Subparagraph 1	Subparagraph 2	Subparagraph 3	Subparagraph 4	Subparagraph 5
2021	32	2	26	5	10	25

Note: Unit = Number of cases.

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

4.2.2. Summary of significant cases

Case 1: Conglomerate Merger between Convenience Store Chain and Food Delivery Platform Not Prohibited

38. The FTC decided at the 1,535th Commissioners' Meeting on April 14, 2021 to cite Article 13 (1) of the FTA and not prohibit the merger between President Chain Store Corporation (hereinafter referred to as PCSC) and Connection Labs Ltd. (hereinafter referred to as Connection Labs).

39. PCSC managed the 7-Eleven convenience store chain and Connection Labs operated the "foodomo" food and beverage delivery platform. PCSC intended to merge with Connection Labs and therefore filed a merger notification with the FTC.

40. The principal business operations of Uni-President Enterprises Corporation, PCSC and Connection Labs were respectively food production, convenience stores and food and beverage delivery platform services. They were dissimilar types of business. Since PCSC and its affiliates sold some of their food and beverages and other products through delivery platforms, the FTC decided to assess the merger from the angles of a vertical merger and conglomerate merger. Connection Labs only accounted for a rather small share of the food and beverage delivery platform market, whereas there were also many upstream food and beverage businesses. In other words, there would be powerful competitors to contend with PCSC and Connection Labs in the food and beverage delivery platform market and the convenience store market. Moreover, the food and beverages and products available through food and beverage delivery platforms were diverse and substitutability existed.

41. Consumers would have many choices. Hence, this merger would not lead to any concern about vertical foreclosure in the market. Neither could it suddenly cause changes in the structure of each relevant market and the market status of the original players. Since other chain convenience stores also collaborated with other delivery platforms, the merger could even end up making the food and beverage delivery market more competitive.

42. Based on the above-mentioned reasons, the FTC concluded that the merger would not create any concerns about significant competition restraints and the overall economic benefit would outweigh the disadvantages from the competition restraints. Therefore, the FTC approved the merger by citing Article 13 (1) of the FTA.

Case 2: Merger between Telecoms Conditionally not Prohibited

43. The FTC decided at the 1,555th Commissioners' Meeting on August 4, 2021 to approve the intended merger between Far EasTone Telecommunications Co., Ltd. (hereinafter referred to as FET) and Asia Pacific Telecom Co., Ltd. (hereinafter referred to as APT) to share the frequency and networks on the 3.5GHz band with undertakings attached in order to ensure that the overall economic benefit would be greater than the disadvantages from competition restraints.

44. APT would put in two ninths of the spectrum bid bond, capital expenditure for the 5G wireless network equipment and cost of network maintenance to be the consideration to obtain the right to use the corresponding network capacity of the band of FET. The condition complied with the merger pattern of "where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise" described in Subparagraph 3 of Article 10 (1) of the FTA. At the same time, the merging parties also achieved the merger filing threshold; therefore, a merger notification was filed with the FTC.

45. The merger was the first-ever frequency and network sharing cooperation case in the country. It was a horizontal merger. Through the merger, APT would share the 3.5GHz band (3340MHz to 3420MHz) and networks with FET to compete in the provision of 5G services. As domestic spectrum resources were scarce at that time, the merger could have led to the economic benefits of promoting sharing of spectrum resources, cutting down management costs, reducing repeated waste of infrastructure resources, increasing efficiency in the use of limited frequency resources, and improving service quality and the development of related industries.

46. Besides sharing the aforementioned frequency and networks, the agreement between FET and APT also included FET investing NT\$5 billion to acquire 11.58% of the shares as well as one seat on the board of directors of APT. After evaluating various factors associated with horizontal merger cases and obtaining the opinions of the competent authority of the industry and consumer protection agency, scholars, specialists and competitors, the FTC thought concerted actions involving exchanges of 5G service operation information or joint management could be a concern. If FET participated in the management of APT through the sharing of frequency and networks or its possession of the shares or a seat on the board of directors of APT, the competition pressure that each faced could be reduced. The frequency or intensity of APT's promotional activities might go down. Market competition would decrease. As a consequence, coordinated effects could be created and price competition in the domestic mobile broadband service market would be weakened. Furthermore, potential competitors could find it hard to enter the market in time due to related regulations in the Telecommunications Management Act and would not be able to increase the pressure to compete among existing telecommunications businesses.

47. In order to eliminate the above-mentioned concerns and ensure that the overall economic benefit could outweigh the disadvantages from competition restraints, the FTC attached the following undertakings:

- The merging parties can not engage in joint or entrusted management, cooperation or exchange of information with regard to mobile broadband service charges, terminal equipment funding, marketing activities, or management of customer and billing information by using their agreement on the shared frequency and networks on the 3.5GHz band, their shareholding or their acquisition of a seat on the board of directors.
- In the five years after the merger, the merging parties are required to provide the FTC with the following information before July 1 each year:
 1. The organizational chart, duties and actual work items of the supervisory team, a list of the team members and the company departments to which they have belonged, and the records of all the meetings (including members attending and matters discussed)
 2. The records of all the shareholders' meetings and all the board of directors' meetings

48. The FTC did not prohibit the merger but would like to remind the merging parties that the range of cooperation must be limited to the content of the merger notification and they may not engage in joint management or any concerted action in order not to violate the FTA.

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

49. In its first amendment in 1999, the new provision of the FTA required that the FTA not be applied to acts performed in accordance with other laws only if such other laws did not conflict with the legislative purpose of the FTA. This amendment thereby affirmed that the spirit and content of the FTA was the core of economic policy.

50. The FTC has completed a comprehensive review of all relevant laws and regulations since 2001 to minimize potential conflicts among laws, advocate free and fair competition, and 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 FTA and consult with relevant industry competent authorities to prevent related laws and regulations from impeding competition.

51. In 2020, the FTC organized and participated in various consultation meetings with other government authorities related to competition issues, as summarized in the following:

- Exchanged views and discussed related issues with the National Communications Commission (NCC) concerning the spectrum and network sharing mechanism of the telecoms industry.
- Participated in the meeting on “Solutions to the Lack of Workforce Caused by COVID-19 in the Construction Industry” held by the Public Construction Commission of the Executive Yuan. During the meeting, the FTC explained the issues related to the FTA and coordinated with the related agencies in order to jointly maintain trading order in the construction industry.
- Participated in the meeting on “Joint Inspection of Presold-House Sales and Review of Standard Form Contract” held by the Ministry of the Interior and shared related experience in practice.
- Participated in the meeting on “Foreign Legislative Examples on the Repair Clause” held by the Intellectual Property Office of the Ministry of Economic Affairs. During the meeting, the FTC explained the issues related to the FTA and listened to the opinions on the repair clauses of the amendments to the Patent Act.
- Participated in the several joint inspection of pre-sold-house sales handled by the Ministry of the Interior and the Consumer Protection Department of the Executive Yuan, and took the initiative to immediately deter possible violations.
- Participated in the working meeting on the “Price Stabilization Team” held by the National Development Council to discuss the feasibility of integrating price inspection activities among government agencies. During the meeting, the agencies reached a consensus that each agency would conduct price-investigating operations according to its responsibilities. In addition, the agencies also discussed related topics, such as “The Responses and Impact of International Grain Products Prices on Domestic Prices of Related Products” and “The Effects of the Early Warning System on the Production and Marketing of Agricultural Products as well as the Effectiveness of the Real-Time Adjustment Mechanism (including Price Monitoring).”

- Hosted a meeting with the NCC on “Amendments to the Fair Trade Commission Disposal Directions (Policy Statements) on Cable Television Related Enterprises.”
- Participated in the investigation activities of the joint price inspection team, and worked with the Ministry of Justice, the Council of Agriculture of the Executive Yuan, the Ministry of Economic Affairs, the Ministry of Finance, and the Consumer Protection Department of the Executive Yuan to understand the links and reasons for the price increase in staple merchandise. Furthermore, for the ingredients used by catering operators and restaurants, the said agencies managed to stabilize price fluctuations through conducting intensive and rigorous on-site inspection in the supply chain.
- Participated in meetings on the “International Maritime Transportation Stabilization Working Group” held by the Maritime and Port Bureau of the Ministry of Transportation and Communications. During the meetings, the FTC explained its views to the Bureau, related Trade Associations and businesses, and reminded relevant businesses to pay attention to the related cartel regulations under the FTA.
- In response to the pandemic, participated in the meetings of the “Central Epidemic Command Center for Severe Pneumonia with Novel Pathogens,” continued accepting reports from the public on epidemic prevention materials, and investigated cases in accordance with related laws and regulations during the COVID-19 period. Individual cases involving price gouging or the hoarding of goods in violation of laws on the prevention and control of infectious diseases, the criminal law, and the special regulations on the prevention of severe and special infectious pneumonia and the special regulations for relief and revitalization shall be transferred to judicial organs and competent authorities for prosecution and sanctions according to related laws.

6. Resources of competition authorities

6.1. Resources overall (current numbers and change over previous year)

6.1.1. Annual budget:

52. NT\$371.965 million in 2021 (approximately equivalent to US\$13.308 million in December 2021).

6.1.2. Number of employees (person-years):

53. There were 205 employees at the end of the year 2021, 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 Department of Legal Affairs. Over 99% of employees have bachelor degrees with majors in different subjects at the university level.

54. In terms of the educational background percentages, 18%, 50%, 4%, and 28% of the employees had majored in law and related fields, economics and related fields, both in

law- and economics-related fields, and other related fields (including information management, statistics, and public administration), respectively.

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

Table 4. Structure of FTC Human Resources

Category	No. of employees
Lawyers	37
Economists	103
Lawyers & Economists	8
Other professionals & support staff	57
All staff combined	205

6.2. Human Resources (person-years) applied to:

6.2.1. Enforcement against anti-competitive practices and merger review

56. 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.

57. 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 sector. There are 25 staff members in the Department of Service Industry Competition and 29 in the Department of Manufacturing Industry Competition.

58. There are 20 staff members in the Department of Legal Affairs, which is responsible for completing the competition law system, and mainly includes preparing and formulating the competition law and regulations and amendments thereof, handling administrative appeal cases, carrying out the execution of fines, handling the referral of criminal offenders for prosecution, and studying and researching legal issues related to competition law.

6.2.2. Advocacy efforts

59. In 2021, 10 of the 27 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.

60. The FTC participated in various consultation meetings with other government agencies related to competition issues and organized 45 seminars for students, customers, business communities, and local governments in order to explain the FTA, the leniency program and the prohibition against concerted actions.

6.3. Period covered by the above information:

61. January through December 2021.

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

62. The FTC studied and published reports on competition policy issues in 2021 with the following titles. All of them are only available in Chinese:

- Research on Thinking and Response of a Competition Authority under Significant Economic Changes - Taking the Impact of the Coronavirus Disease (COVID-19) Pandemic as an Example
- Research on the Transactional Behavior of Distribution Businesses and Competition Law and Regulations under the Development of the Digital Economy
- Research on Digital Markets and Merger Controls
- Research on Resale Price Restriction of Retail Commodities under the Development of the Digital Economy
- Research on the Development Status of the Industrial Paper Industry and Competition Law and Regulations in the Era of Digital and Environmental Protection
- Research on the Development Status of Digitalization of the Petrochemical Industry and Competition Law and Regulations
- Research on Marketing Strategies of the Motorcycle Industry and Competition Law and Regulations
- Research on the Development Status of the Electricity Trading Platform and Competition Law and Regulations
- Research on Law Enforcement Practices of False and Misleading Advertising
- Research on Important Cases of the Fair Trade Act - Taking False and Misleading Advertising as an Example
- Research on Applications of Empirical Analysis of Vertical Mergers