



Organisation for Economic Co-operation and Development

DAF/COMP/WP2/A(2022)2/REV3

For Official Use

English - Or. English

25 November 2022

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

Cancels & replaces the same document of 24 November 2022

## Working Party No. 2 on Competition and Regulation

### Draft Agenda: 74th meeting of Working Party 2 on Competition and Regulation

28 November 2022, 10h00  
Paris, France

*The 74<sup>th</sup> Meeting of Working Party 2 on Competition and Regulation will be held on 28 November 2022 in Room CC1 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.*

Federica MAIORANO  
[Federica.Maiorano@oecd.org](mailto:Federica.Maiorano@oecd.org); +(33-1) 45 241012.

JT03508682

**Monday 28 November 2022**

10:00-10:05

**Item 1. Adoption of the Draft Agenda**

DAF/COMP/WP2/A(2022)2/REV3

10:05-10:10

**Item 2. Approval of the draft summary record of the last meeting (20 June 2022)**

**For approval:**

Summary record of the 73<sup>rd</sup> meeting (20 June 2022) – DAF/COMP/WP2/M(2022)1

**For information:**

List of Participants – DAF/COMP/WP2/PL(2022)1

Summary of discussion of the Hearing on Competition Issues in Books and eBooks –  
DAF/COMP/WP2/M(2021)2/ANN1/FINAL

10:10-13:00

**Item 3. Roundtable on Competition in Energy Markets**

This Roundtable will discuss the factors that have contributed to high energy prices recently, with a focus on competition and regulatory issues, as well as the policy responses to the high prices and the competition authorities' possible actions.

High energy prices affect all aspects of the economy. They increase directly and indirectly the cost of goods and services and are currently a significant driver of inflation in many OECD countries. Large energy price increases are often followed by calls for increased scrutiny, including by competition authorities, of the energy markets and measures to support consumers.

While the main reasons for the large increases are often beyond competition authorities' scope of influence, the session will provide an opportunity to consider competition problems emerging in energy markets, such as supply problems and the risk of anticompetitive behaviour by companies in a situation of increasing prices.

Delegates will discuss their views and share experiences on the role of competition authorities in relation to planned policy measures to limit price increases (or their impact), such as price caps or direct support to households, and to deal with possible scarcity of energy sources, such as increased investment in renewables. Given the relevance of the broader regulatory framework for the sector, the discussion will also explore the involvement of competition authorities in shaping energy market regulation through their advocacy activities and co-operation with energy regulators.

This roundtable will benefit from a Background Note, written contributions by jurisdictions, and a panel of expert speakers comprising Mary Starks (Flint Global), Frank Wolak (Stanford University) and Georg Zachmann (Bruegel).

**For discussion:**

Background Note by the Secretariat – DAF/COMP/WP2(2022)4/FINAL

**Notes by delegations:**

Australia – DAF/COMP/WP2/WD(2022)13

Austria - DAF/COMP/WP2/WD(2022)14

Colombia - DAF/COMP/WP2/WD(2022)15

France - [DAF/COMP/WP2/WD\(2022\)16](#)  
 Greece - [DAF/COMP/WP2/WD\(2022\)17](#)  
 Israel - [DAF/COMP/WP2/WD\(2022\)10](#)  
 Italy - [DAF/COMP/WP2/WD\(2022\)37](#)  
 Lithuania - [DAF/COMP/WP2/WD\(2022\)19](#)  
 Mexico - [DAF/COMP/WP2/WD\(2022\)20](#)  
 New Zealand - [DAF/COMP/WP2/WD\(2022\)21](#)  
 Norway - [DAF/COMP/WP2/WD\(2022\)22](#)  
 Poland - [DAF/COMP/WP2/WD\(2022\)23](#)  
 Portugal - [DAF/COMP/WP2/WD\(2022\)24](#)  
 Spain - [DAF/COMP/WP2/WD\(2022\)25](#)  
 Türkiye - [DAF/COMP/WP2/WD\(2022\)26](#)  
 US - [DAF/COMP/WP2/WD\(2022\)27](#)  
 EU - [DAF/COMP/WP2/WD\(2022\)28](#)  
 BIAC - [DAF/COMP/WP2/WD\(2022\)29](#)  
 Brazil - [DAF/COMP/WP2/WD\(2022\)30](#)  
 Peru - [DAF/COMP/WP2/WD\(2022\)31](#)  
 Romania - [DAF/COMP/WP2/WD\(2022\)32](#)  
 Chinese Taipei - [DAF/COMP/WP2/WD\(2022\)33](#)  
 Ukraine - [DAF/COMP/WP2/WD\(2022\)34](#)  
 Summaries of contributions - [DAF/COMP/WP2/WD\(2022\)35](#)

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13:00-13:20

**Item 4. Competitive Neutrality Toolkit**

Building on the discussion of a detailed outline of the Competitive Neutrality Toolkit on 20 June 2022, the Secretariat will provide an update on the work to draft the Toolkit. In particular, two of the sections will be written up for comments by delegates.

**For discussion:**

Note by the Secretariat: [DAF/COMP/WP2\(2022\)5](#)

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13:20-13:30

**Item 5. Future work and other business**

Delegates will be called to decide topics for the substantive discussion to be held in June 2023. By way of reminder, delegates agreed a list of topics for 2023 at the 138<sup>th</sup> meeting of the Competition Committee on 24 June 2022, circulated in the letter by the Chair of the Competition Committee dated 22 July 2022.

In addition, 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)2/REV3

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28 November 2022

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

Cancels & replaces the same document of 10 November 2022

## Working Party No. 3 on Co-operation and Enforcement

### Draft Agenda: 136th meeting of Working Party 3 on Co-operation and Enforcement

28 November 2022 14h30  
Paris, France

The 136th Meeting of Working Party 3 on Co-operation and Enforcement will be held on 28 November 2022 (14:30 to 18:00) in CC1 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

Sabine ZIGELSKI  
Sabine.Zigelski@oecd.org, +(33-1) 45 24 74 39.

JT03508795

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**Monday 28 November 2022**

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14:30-14:35

**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\(2022\)2/REV3](#)

Summary record of the 135<sup>th</sup> meeting (June 2022) - [DAF/COMP/WP3/M\(2022\)1](#)

**For information:**

List of participants - [DAF/COMP/WP3/PL\(2022\)1](#)

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14:35-15:15

**Item 2. Next Steps in International Enforcement Co-operation**

At the meeting of WP3 in June 2022, WP3 discussed enforcement co-operation in other policy areas and agreed to advance work on international co-operation to address remaining and persistent challenges as identified in the Report on the Implementation of the Recommendation concerning International Co-operation on Competition Investigations and Proceedings [[DAF/COMP/WP3\(2021\)3](#)], with a focus on the exchange of confidential information and on investigative assistance.

To this purpose, delegates expressed an interest to learn more about appropriate legal instruments that can be developed to enable such co-operation, and their advantages and disadvantages. A Secretariat Note will identify a possible instrument and discuss its main advantages and disadvantages and compare it with alternative instruments. The Note will also outline a work plan. Delegates will be asked to decide on next steps in developing an appropriate legal instrument.

**For discussion:**

Note by the Secretariat – [DAF/COMP/WP3\(2022\)4](#)

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15:15-17:20

**Item 3. Roundtable on Data Screening Tools in Competition Investigations**

Data screening tools are empirical methods that competition authorities can use to detect illegal activity. Such methods are often applied before opening an investigation, to check for suspicious behaviour that is ‘flagged’ if certain criteria are met, or following a complaint or whistle-blower report, to confirm or validate allegations. Most commonly, screening aims to uncover anticompetitive horizontal agreements, particularly in procurement markets. These are usually behavioural screens that measure variation in bids or prices and have recently been combined with machine learning techniques.

This Roundtable will explore developments in digital screening tools in academic literature and competition authority practice. It will consider data quality, access and collection issues, and resources that competition authorities may need.

The roundtable will be supported by a Secretariat background paper and written contributions by delegations.

**For discussion:**

Background paper by the Secretariat – [DAF/COMP/WP3\(2022\)5](#)

**Notes by delegations:**

Australia - [DAF/COMP/WP3/WD\(2022\)26](#)

Canada - [DAF/COMP/WP3/WD\(2022\)27](#)  
Colombia - [DAF/COMP/WP3/WD\(2022\)28](#)  
Denmark - [DAF/COMP/WP3/WD\(2022\)29](#)  
France - [DAF/COMP/WP3/WD\(2022\)30](#)  
Italy – [DAF/COMP/WP3/WD\(2022\)41](#)  
Korea - [DAF/COMP/WP3/WD\(2022\)31](#)  
Mexico - [DAF/COMP/WP3/WD\(2022\)32](#)  
Spain - [DAF/COMP/WP3/WD\(2022\)33](#)  
Switzerland - [DAF/COMP/WP3/WD\(2022\)34](#)  
United States - [DAF/COMP/WP3/WD\(2022\)35](#)  
Brazil - [DAF/COMP/WP3/WD\(2022\)36](#)  
Ecuador – [DAF/COMP/WP3/WD\(2022\)42](#)  
Kazakhstan – [DAF/COMP/WP3/WD\(2022\)44](#)  
Romania - [DAF/COMP/WP3/WD\(2022\)37](#)  
Singapore - [DAF/COMP/WP3/WD\(2022\)38](#)  
BIAC - [DAF/COMP/WP3/WD\(2022\)39](#)  
Summaries of contributions - [DAF/COMP/WP3/WD\(2022\)40](#)

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17:20-18:00

**Item 4. Other Business**

The Secretariat will update the delegates on the status of the revision of the Recommendation on Fighting Bid Rigging in Public Procurement. Canada’s Competition Bureau will give a brief description of its “plain language” initiative. This is an effort to present the agency’s work in a manner more readily understandable to the general public.

In addition, delegates will be asked to discuss and suggest substantive topics for future WP3 agendas [[DAF/COMP/WD\(2022\)4](#)]. WP3 at its last meeting had decided to discuss the future of leniency programs in June 2023.

Before concluding, the Chair also invites delegations to highlight any horizon-scanning projects they have undertaken and share views on sectors or conduct that may raise competition concerns in the future.

**For information:**

Note by the Secretariat – [DAF/COMP/WP3/WD\(2022\)43](#)

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**25 November 2022**

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

**Cancels & replaces the same document of 24 November 2022**

**Draft Agenda: 139th meeting of the Competition Committee**

29-30 November 2022  
Paris, France

The 139th Meeting of the Competition Committee will be held on 29-30 November 2022 in Room CC1 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

Antonio CAPOBIANCO  
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

**JT03508610**

**Tuesday 29 November 2022**

10:00-10:05

**Item 1. Adoption of the draft agenda**

DAF/COMP/A(2022)3/REV4

10:05-10:10

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

**For approval:**

Summary record of the 138<sup>th</sup> Competition Committee meeting - DAF/COMP/M(2022)2

**For information:**

List of participants of the 138<sup>th</sup> Competition Committee meeting - DAF/COMP/PL(2022)2

Summary of Discussion of the Hearing on Sustainability and Competition –  
DAF/COMP/M(2020)2/ANN1/FINAL

Executive Summary of the Hearing on Sustainability and Competition –  
DAF/COMP/M(2020)2/ANN2/FINAL

Summary of Discussion of the Hearing on Methodologies to measure market competition –  
DAF/COMP/M(2021)1/ANN5/FINAL

Executive Summary of the Hearing on Methodologies to measure market competition –  
DAF/COMP/M(2021)1/ANN6/FINAL

Summary of Discussion of the Hearing on Ex Ante Regulation and Competition in Digital Markets –  
DAF/COMP/M(2021)2/ANN3/FINAL

Executive Summary of the Hearing on Ex Ante Regulation and Competition in Digital Markets -  
DAF/COMP/M(2021)2/ANN4/FINAL

Summary of Discussion of the roundtable on Competition Issues in News Media and Digital Platforms –  
DAF/COMP/M(2021)2/ANN5/FINAL

Executive Summary of the roundtable on Competition Issues in News Media and Digital Platforms -  
DAF/COMP/M(2021)2/ANN6/FINAL

Summary of Discussion of the roundtable on Disentangling Consummated Mergers: Experiences and  
Challenges – DAF/COMP/M(2022)2/ANN5/FINAL

Executive Summary of the roundtable on Disentangling Consummated Mergers: Experiences and  
Challenges - DAF/COMP/M(2022)2/ANN6/FINAL

10:10-10:20

**Item 3. Opening remarks by DSG Yoshiki Takeuchi**

10:20-13:00

**Item 4. Roundtable on Director Disqualification and Bidder Exclusion**

Director disqualification and bidder exclusion, in the context of competition law and enforcement, are different types of debarment sanctions that may be imposed by contracting authorities, judicial bodies, or competition agencies against competition law infringers. These sanctions may be imposed on companies found guilty of bid rigging, for instance, or on the involved individuals, who may be banned from the exercise of their corporate functions. They are aimed at preserving the integrity of the tender and ensuring that the



violating company or involved directors do not carry out such practices in the future. As such, they may also function as a powerful deterrence mechanism, adding to the financial and social cost of monetary fines the opportunity cost of the exclusion from future tenders, and affecting the individual reputation of the firm or the individual.

This roundtable will focus on the role of director disqualification and bidder exclusion in competition enforcement and on providing practical insights on their effectiveness and interaction with other existing competition enforcement mechanisms. Delegates will discuss a number of questions including: 1) what are the objectives, criteria, and scope of application of director disqualification and bidder exclusion in different jurisdictions; 2) what are the factors determining their effectiveness, also in relation to other types of competition sanctions; 3) what are the ways in which they can be best coordinated with other existing detection, evidence-gathering and enforcement tools to ensure their fairness and effectiveness. Insights in these three areas may be also drawn from other policy areas where debarment sanctions are applied.

The roundtable discussion will benefit from a Background Note by the Secretariat, country contributions and interventions by expert panellists, including Amanda Athayde (Professor, University of Brasilia), Emmanuelle Auriol (Professor of Economics, Toulouse 1 Capitole University) and Peter Whelan (Professor, University of Leeds).

**For discussion:**

Background Note by the Secretariat - [DAF/COMP\(2022\)14](#)

Note by Amanda Athayde and Renan Cruvinel - [DAF/COMP/WD\(2022\)109](#)

**Notes by delegations:**

- Canada - [DAF/COMP/WD\(2022\)68](#)
- Colombia - [DAF/COMP/WD\(2022\)69](#)
- Germany - [DAF/COMP/WD\(2022\)70](#)
- Greece - [DAF/COMP/WD\(2022\)114](#)
- Hungary - [DAF/COMP/WD\(2022\)71](#)
- Ireland - [DAF/COMP/WD\(2022\)72](#)
- Israel - [DAF/COMP/WD\(2022\)73](#)
- Italy - [DAF/COMP/WD\(2022\)107](#)
- Japan - [DAF/COMP/WD\(2022\)74](#)
- Latvia - [DAF/COMP/WD\(2022\)75](#)
- Lithuania - [DAF/COMP/WD\(2022\)76](#)
- Mexico - [DAF/COMP/WD\(2022\)77](#)
- Slovak Republic - [DAF/COMP/WD\(2022\)78](#)
- Spain - [DAF/COMP/WD\(2022\)79](#)
- United Kingdom - [DAF/COMP/WD\(2022\)108](#)
- EU - [DAF/COMP/WD\(2022\)80](#)
- Brazil - [DAF/COMP/WD\(2022\)81](#)
- Egypt - [DAF/COMP/WD\(2022\)82](#)
- Indonesia - [DAF/COMP/WD\(2022\)83](#)
- Ukraine - [DAF/COMP/WD\(2022\)84](#)

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*Lunch break 13:00-14:30*

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14:30-14:45

**Item 5. 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 28 November on any issue that would require a decision by the Committee (e.g. decisions related to instruments or best practices) or any suggestions that a Working Party may have for the Committee and which requires the Committee consideration, as could be for example the case of suggestions on the allocation of future work.

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

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

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14:45-15:30

**Item 6. Presentations on US Merger Guidelines and Merger Analysis in Germany**

Under this agenda item, competition delegates will hear presentations on recent development in the US and Germany in the area of merger control. Both delegations have been exploring how best to adjust their merger enforcement policies to new challenges. The US, in particular, is in the process of considering revisions to modernise its Merger Guidelines and will present the results of the Joint Public Inquiry launched early this year by the U.S. Federal Trade Commission (FTC) and the U.S. Justice Department's Antitrust Division.

Other delegations are welcome to contact the Secretariat if they also wish to make an oral presentation at this session. 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.

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15:30-16:30

**Item 7. Principles for Competition Enforcement and Policy in the Digital Sector and Database of ex Ante Regulatory Initiatives**

The Competition Committee has been active for many years in identifying emerging competition issues related to the digital economy, providing evidence to better understand the issues raised by digitalisation, developing potential policy responses and outlining actions that competition authorities can take to address the practical, theoretical and evidentiary challenges from digitalisation. To capitalise on this extensive work, the Bureau asked the Secretariat prepare a Scoping Note for discussion by the Membership considering the usefulness of working on broad principles for competition enforcement and policy in light of digitalisation, which could then potentially be endorsed at the OECD Council level in the form of an OECD Recommendation.

Such principles, while non-binding, could highlight common views and further advance international policy discussions in venues including the OECD. The principles could inter alia address the adaptation of enforcement tools and enforcement practices to digital markets, and they could guide any revision to competition enforcement frameworks in response to digitalisation. These digital enforcement principles could build on ongoing discussions to date at the OECD Competition Committee.

The Secretariat will also present to the Membership a database of regulatory initiatives in a selected number of OECD jurisdictions. A first version of the database, limited to G7 jurisdictions, was submitted in October for the summit of the G7 on digitalisation, under the German G7 Presidency. Such a tool may

result useful for other OECD jurisdictions and delegates might consider the opportunity to expand it to other jurisdictions, regularly update it and then make it publicly available on the OECD website.

**For discussion:**

Note by the Secretariat – DAF/COMP(2022)17

16:30-17:00

**Item 8. Presentation of the Gender Inclusive Competition Policy Toolkit**

Looking at competition enforcement and policy through a gender lens is part of a long-standing effort by the OECD and its Competition Committee to explore the links between competition and the many aspects of inclusiveness, such as poverty and sustainability. The research on gender began in 2018, when the OECD first considered if a gender lens might help deliver a more effective competition policy. Since then, several events and discussions boosted interest in the topic. This led to further research and the developments funded by a voluntary contributions by the Government of Canada. As part of this project the Secretariat was asked to prepare for Canada a Gender Inclusive Competition Policy Toolkit. The Toolkit is designed to help the Competition Bureau of Canada to apply gender-inclusive considerations to their work.

Under this agenda item, the Secretariat will present the Toolkit to the Committee to seek views and comments on its scope and content, with the aim of having the final version of the Toolkit endorsed by the Competition Committee, hoping that it will become another OECD reference document for authorities around the world. The Toolkit builds on discussions and research carried out in the context of the OECD Gender Inclusive Competition Policy project (more information is available [here](#)). It provides a practical approach that competition officials can apply in their everyday work. The Toolkit builds on, and benefits from, gender mainstreaming efforts in related policy areas, like corporate governance and anticorruption. The approaches in this Toolkit help authorities to better understand market dynamics and whether they affect men and women differently.

**For discussion:**

Note by the Secretariat – DAF/COMP(2022)18

17:00-18:00

**Item 9. Annual Reports**

All delegations have been 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.

**Wednesday 30 November**

9:30-9:40

**Item 10. Election of the Chairman and Vice Chairmen for 2023**

The Competition Committee will be called to elect the Chairman of the Competition Committee and the Bureau members who will serve as Vice-Chairmen for 2023.

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9:40-9:50

**Item 11. Accession Work Plan [CONFIDENTIAL]**

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

**For discussion:**

Agenda - [DAF/COMP/ACS\(2022\)7](#)

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9:50-10:00

**Item 12. Global Relations Strategic Direction [CONFIDENTIAL]**

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

**For discussion:**

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

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10:00-13:00

**Item 13. Roundtable on Competition and Inflation**

The relationship between prices and competition is uncontroversial, with low levels of competition contributing to higher price levels. However, the link between competition and price increases (inflation) appears less clear cut. The current inflationary trends have seen these debates resurface, including the extent to which inflation has its roots in competition problems and whether competition authorities should respond to these pressures. Traditionally, inflation has been the near exclusive concern of central banks and not competition authorities. However, in periods of high inflation, it is natural to consider the extent to which competition is to blame. Such questions are the subject of much debate, including whether any such a link would be short-term or purely long-term in nature. There is an increasing literature suggesting that levels of concentration and firm margins have increased over time, at least in some countries, yet how much this can explain of current inflationary pressures is debateable.

Under this agenda item, delegates will discuss the links between competition and inflation, both in the short-term and long-term. The discussion will also touch on the risks to competition that authorities should be aware of in the current inflationary environment. Finally, and perhaps most importantly, the roundtable will explore how competition authorities should react, if at all, to the current challenges, including how to navigate pressures faced from the public and governments. More specifically, the OECD Competition Committee will address a number policy questions, including: 1) How strong are the links between competition and inflation? Does this differ over the short-term and long-term? 2) To what extent should competition policy be considered an anti-inflationary tool? 3) What does a high-inflationary period mean for competition authorities? Should competition authorities focus on sectors featuring high inflation? and 4) Do high-inflationary periods present particular risks to competition that authorities should be aware of?

The roundtable discussion will benefit from a Background Note by the Secretariat, country contributions and interventions by expert panellists, including Hal Singer (Professor, Georgetown University and Managing Director, Econ One Research), Natalie Chen (Professor of Economics, University of Warwick) and Professor Jan De Loecker (Professor, KU Leuven).

**For discussion:**

Background Note by the Secretariat - [DAF/COMP\(2022\)15](#)

Note by Natalie Chen - [DAF/COMP/WD\(2022\)116](#)

Note by Hal Singer - [DAF/COMP/WD\(2022\)117](#)

**Notes by delegations:**

Austria - [DAF/COMP/WD\(2022\)87](#)  
 France - [DAF/COMP/WD\(2022\)89](#)  
 Germany - [DAF/COMP/WD\(2022\)90](#)  
 Hungary - [DAF/COMP/WD\(2022\)91](#)  
 Kazakhstan – [DAF/COMP/WD\(2022\)119](#)  
 Lithuania - [DAF/COMP/WD\(2022\)92](#)  
 Portugal - [DAF/COMP/WD\(2022\)94](#)  
 Spain - [DAF/COMP/WD\(2022\)95](#)  
 Türkiye- [DAF/COMP/WD\(2022\)96](#)  
 EU - [DAF/COMP/WD\(2022\)97](#)  
 Argentina – [DAF/COMP/WD\(2022\)110](#)  
 BIAC - [DAF/COMP/WD\(2022\)88](#)  
 Brazil - [DAF/COMP/WD\(2022\)98](#)  
 Indonesia - [DAF/COMP/WD\(2022\)99](#)  
 Romania - [DAF/COMP/WD\(2022\)100](#)  
 South Africa – [DAF/COMP/WD\(2022\)111](#)  
 Chinese Taipei - [DAF/COMP/WD\(2022\)101](#)  
 Consumers International – [DAF/COMP/WD\(2022\)93](#)  
 Summaries of contributions - [DAF/COMP/WD\(2022\)102](#)

*Lunch break 13:00-14:30*

14:30-17:00

**Item 14. Hearing on the Relationship between Foreign Investment Screening Reviews and Merger Control Reviews**

This session will be organised in the form of a Hearing together with the OECD Investment Committee and it will offer an opportunity to exchange views with the investment delegates on the relationships between merger control reviews and Foreign Direct Investment (FDI) screening mechanisms to which the same transaction may be subject for national security purposes. The purpose of the Hearing is to explore similarities and differences between these two procedures, identify potential trade-offs and discuss whether and how co-ordination shall be ensured.

The Hearing will offer an opportunity to delegates from different policy communities to review (i) how competition law affects inward FDI and vice versa: (ii) how competition and investment policies contribute to the same long-term goals (i.e. economic growth, efficiency, providing incentives for firms to be more productive) but can also be in conflict. Delegates will discuss the goals and scope of each review, what transactions are subject to both reviews, who conducts the review and how transactions are brought before the relevant authorities. The Hearing will also consider overlaps and common concerns in merger reviews and national security reviews. It will consider institutional aspects as well as explore how transactions are assessed, what circumstances raise concerns across the two reviews, judicial review, principles that are applicable across the two mechanisms as well as issues related to the design and implementation of remedies and their impact on businesses.

The roundtable discussion will benefit from a Background Note by the Secretariat and interventions by expert panellists, including Felipe Irrarázabal (Adolfo Ibáñez University), Ashley Lenihan (Georgetown University), Ignacio Mezquita Pérez-Andújar (MINCOTUR Secretary of State for Commerce), Edouard Sarrazin (DLA Piper) and Ethan Thornton (NSI Review & Analysis, UK's Department for Business, Energy & Industrial Strategy).

**For discussion:**

Background Note by the Secretariat - [DAF/COMP\(2022\)16](#)

Note by Felipe Irrarázabal - [DAF/COMP/WD\(2022\)118](#)

**Notes by delegations:**

Australia - [DAF/COMP/WD\(2022\)103](#)

Hungary - [DAF/COMP/WD\(2022\)104](#)

Poland - [DAF/COMP/WD\(2022\)112](#)

BIAC - [DAF/COMP/WD\(2022\)115](#)

Romania - [DAF/COMP/WD\(2022\)105](#)

Consumers International - [DAF/COMP/WD\(2022\)113](#)

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17:00-17:30

**Item 15. OECD Recommendation on Competition and Intellectual Property Rights**

Following the discussion under Item 7 of the agenda of the 138<sup>th</sup> meeting of the Competition Committee and the consultation by written procedure that followed, the Secretariat will present a revised version of the draft Recommendation on Competition and Intellectual Property Rights. Delegates will discuss the revised draft of the Recommendation.

**For discussion:**

Note by the Secretariat - [DAF/COMP/WD\(2022\)106](#)

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17:30-18:00

**Item 16. Other Business**

Competition Delegates will be called to decide on future work. Delegates should feel free to send to the Secretariat as soon as possible any suggestion that they would like to submit to the Committee's consideration.

**For information:**

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



Organisation for Economic Co-operation and Development

DAF/COMP/GF/A(2022)1

Unclassified

English - Or. English

26 November 2022

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

Cancels & replaces the same document of 15 November 2022

## Global Forum on Competition

### Draft Agenda: Global Forum on Competition

1-2 December 2022 9h30  
Paris, France

The 21st meeting of the Global Forum on Competition will be held on 1-2 December 2022 in Room 1 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

Ms. Lynn Robertson, Manager GFC, Competition Expert, OECD Competition Division.  
E-mail address: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org), Tel.: +(33-1) 45 24 18 77.

JT03508770

## **DRAFT Agenda for the 21st OECD Global Forum for Competition**

**Chair: Frédéric Jenny, Chairman of the OECD Competition Committee**

### **Thursday 1 December 2022 OPENING SESSION**

9:30 – 10:10 CET

- **Introductory Remarks by Carmine Di Noia**, Director, Directorate for Financial and Enterprise Affairs, OECD
- **Opening Remarks by Mathias Cormann**, OECD Secretary-General
- **Keynote Address by Margrethe Vestager**, Executive Vice President for A Europe Fit for the Digital Age and Commissioner for Competition, European Commission
- **Special Remarks by Rebeca Grynspan**, Secretary-General, UNCTAD
- **Introductory Comments by Frédéric Jenny**, Chair, OECD Competition Committee

### **SESSION I: THE GOALS OF COMPETITION POLICY**

10:10 - 13:00 CET

Most jurisdictions have embraced some form of the consumer welfare standard to achieve the basic goals of competition: to maintain and encourage the process of competition in order to promote efficient use of resources while protecting the freedom of economic action of various market participants. Some also consider competition policy as a tool to contribute to a number of other objectives: pluralism, decentralisation of economic decision-making, preventing abuses of economic power, promoting small business, fairness and equity and other socio-political values. These “supplementary” objectives tend to vary across jurisdictions and over time. The latter reflects the changing nature and adaptability of competition policy so as to address current concerns of society while remaining steadfast to the basic objectives.

The OECD Global Forum on Competition will include a pragmatic session that will question whether competition law and policy needs to adapt as a policy instrument to better accommodate socio-economic trends such as the rising importance of sustainability. Is the current consumer welfare focus sufficient? Is the instrument of competition law enforcement still effective or does it need to be complemented by other instruments, or new legislation?

**Chair: Frédéric Jenny**, Chair, OECD Competition Committee

#### **Speakers:**

- **Spencer Weber Waller**, Justice John Paul Stevens Chair in Competition Law and Professor, Loyola University Chicago School of Law
- **Esteban Greco**, Director, Gamesecon and former President, CNDC

#### **Agency Representatives:**

- **Johannes B. R. Bernabe**, OIC Chairperson and Commissioner, Philippine Competition Commission, Philippines
- **Tembinkosi Bonakele**, Former Commissioner, Competition Commission South Africa
- **Mick Keogh**, Deputy Chair, Australian Competition and Consumer Commission
- **Lina Khan**, Chair, Federal Trade Commission, United States



Contributions from:

Consumers International – DAF/COMP/GF/WD(2022)1

Pakistan - DAF/COMP/GF/WD(2022)3

Uzbekistan - DAF/COMP/GF/WD(2022)2

Documentation is also available at: [oe.cd/gcp](http://oe.cd/gcp).

**13.00 - 15:00: Official photo & Lunch break**

**SESSION II: SUBSIDIES, COMPETITION AND TRADE**

15:00 - 17:30 CET

The role of subsidies in distorting trade and in un-levelling the playing field in antitrust markets has been well analysed over the years. However, less attention has been given to the role that subsidies may have in antitrust analysis and how competition authorities integrate (or not) the fact that a market player involved in a competition investigation benefits from domestic or foreign subsidies that grants it a competitive advantage over its competitors. While this question seems to be less relevant in cartel enforcement, recent policy discussion has focussed on the role of subsidies in monopolisation/abuse of dominance cases as well as in merger control. It is still an open question whether competition authorities should have any role in assessing the impact of subsidies when applying competition law or whether the issues should be left to international law.

Against this background, the session will explore the role that competition authorities can play in the interplay between subsidies, competition and trade. More specifically, the Roundtable will investigate the extent to which, and how, subsidies should be part of the competition analysis of competition authorities. Questions include:

- To what extent are subsidies currently incorporated by competition authorities in competition analysis?
- Should subsidies be incorporated (more or differently) into the competition analysis, and if so, why and how?
- What theories of harm may apply to subsidies, and what is the economic basis for these theories?
- What analytical techniques can be used to assess these theories, and what types of evidence are needed to use them?

**Chair: Frédéric Jenny, Chair, OECD Competition Committee**

**Speakers:**

- **Alicia García-Herrero**, Senior Fellow, European think-tank BRUEGEL and Chief Economist for Asia Pacific, Natixis
- **Anabel González**, Deputy Director-General, World Trade Organisation
- **Miguel de la Mano**, Partner, RBB Economics

**Documentation:**

Call for contributions: DAF/COMP/GF(2022)3

Note by the Secretariat – DAF/COMP/GF(2022)6

Contributions from:

Bangladesh - DAF/COMP/GF/WD(2022)39  
Dominican Republic - DAF/COMP/GF/WD(2022)55  
European Commission - DAF/COMP/GF/WD(2022)40  
Kazakhstan - DAF/COMP/GF/WD(2022)41  
UNCTAD - DAF/COMP/GF/WD(2022)44  
Summaries of contributions - DAF/COMP/GF/WD(2022)43

Documentation is also available at: [oe.cd/sctr](http://oe.cd/sctr).

*17.45 - 20:00: Cocktail hosted by Ecuador, G. Marshall & R. Ockrent, Château de la Muette*

**Friday 2 December 2022**  
**SESSION III: INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND  
SECTOR REGULATORS**

10:00 – 13:00 CET

Effective co-operation with sector regulators is an important element to promote competition in regulated sectors. While the objectives pursued by competition authorities and sector regulators are often aligned, differences in the substantive rules they apply and different perspective on the same matters may lead to diverging outcomes. In addition, even when competition authorities and sector regulators pursue the same objective of promoting competition in a sector, there are situations when the respective mandates are not clear and the institutional set-up does not foster co-operation between different authorities. In order to address challenges and improve co-operation on enforcement cases, the session will provide a platform for sharing good practices and learning from the experience of other jurisdictions.

This roundtable discussion will seek to provide practical insights into the co-operation between competition authorities and sector regulators, in particular:

- What are the key points covered by formal agreements between competition authorities and sector regulators or in legal provisions about co-operation?
- How do competition authorities and sector regulators co-operate in practice? What are the most effective tools?
- Is co-operation more fruitful with certain sector regulators and more complex with others? What are the factors affecting the quality of co-operation?

**Chair: Alexandre Cordeiro Macedo, President, Administrative Council for Economic Defense (CADE), Brazil**

**Speakers:**

- **Martin Cave**, Chair, UK Gas & Electricity Markets Authority (GEMA), United Kingdom
- **Pablo Márquez**, Partner, ECIJA and former Chairman, Colombia's Commission for Communications Regulation (CRC) and former Superintendent, Superintendence for Protection of Competition (SIC), Colombia
- **Nomfundo Maseti**, Full-Time Regulator Member, National Energy Regulator of South Africa (NERSA), South Africa

**Documentation:**

Call for contributions: DAF/COMP/GF(2022)2  
Note by the Secretariat – DAF/COMP/GF(2022)4

**Contributions from:**

Albania - DAF/COMP/GF/WD(2022)4  
Argentina - DAF/COMP/GF/WD(2022)5  
Armenia - DAF/COMP/GF/WD(2022)45  
Belgium - DAF/COMP/GF/WD(2022)57  
BIAC - DAF/COMP/GF/WD(2022)64  
Brazil - DAF/COMP/GF/WD(2022)6  
Bulgaria - DAF/COMP/GF/WD(2022)7  
Colombia – DAF/COMP/GF/WD(2022)53  
Consumers International - DAF/COMP/GF/WD(2022)8  
Costa Rica - DAF/COMP/GF/WD(2022)9  
CUTS - DAF/COMP/GF/WD(2022)46  
Ecuador - DAF/COMP/GF/WD(2022)61  
Egypt - DAF/COMP/GF/WD(2022)10  
El Salvador - DAF/COMP/GF/WD(2022)11  
Estonia - DAF/COMP/GF/WD(2022)12  
European Commission - DAF/COMP/GF/WD(2022)13  
Fiji - DAF/COMP/GF/WD(2022)50  
Georgia - DAF/COMP/GF/WD(2022)14  
Greece - DAF/COMP/GF/WD(2022)15  
Hungary - DAF/COMP/GF/WD(2022)60  
India - DAF/COMP/GF/WD(2022)16  
Kenya - DAF/COMP/GF/WD(2022)17  
Latvia - DAF/COMP/GF/WD(2022)18  
Malaysia - DAF/COMP/GF/WD(2022)19  
Mexico - DAF/COMP/GF/WD(2022)20  
Moldova - DAF/COMP/GF/WD(2022)21  
Paraguay - DAF/COMP/GF/WD(2022)23  
Serbia – DAF/COMP/GF/WD(2022)51  
Chinese Taipei - DAF/COMP/GF/WD(2022)56  
Türkiye – DAF/COMP/GF/WD(2022)52  
Ukraine - DAF/COMP/GF/WD(2022)24

United Kingdom - DAF/COMP/GF/WD(2022)25

United States - DAF/COMP/GF/WD(2022)26

Uzbekistan - DAF/COMP/GF/WD(2022)27

Summaries of contributions - DAF/COMP/GF/WD(2022)28

Documentation is also available at: [oe.cd/icar](http://oe.cd/icar).

**13.00 - 14:45: Lunch break**

## **SESSION IV: REMEDIES AND COMMITMENTS IN ABUSE CASES**

14:45 - 17:45 CET

When an abusive conduct of dominant undertakings is found, this will often require competition authorities, in addition to sanctions and/or cease and desist orders, or as an alternative way of case resolution, to impose remedies or accept commitments by the dominant undertakings. The aim is to effectively stop the abusive conduct, and to create conditions that allow to restore or enable competition. To avoid further damage to the markets in question, such remedies and commitments need to be timely, effective, and proportionate.

In December 2022, the Global Forum on Competition will hold a roundtable to revisit the options available to competition authorities in designing such remedies and commitments, and to discuss practical insights and experiences, in particular:

- What criteria guide competition authorities when using remedies and commitments in addition or as an alternative to sanctions?
- Which cases are suitable for structural remedies, and in which cases are behavioural remedies more adequate?
- Which lessons can be drawn from the monitoring of the compliance with remedies and commitments that were imposed or accepted? Can sector regulators assist competition authorities in this task?
- What are insights gained from an ex-post evaluation of previously applied remedies and commitments?

**Chair: Frédéric Jenny, Chair, OECD Competition Committee**

**Speakers:**

- **Lucía Ojeda Cárdenas**, Partner, SAI Law & Economics
- **Gwen Grecia-De Vera**, Director, Competition Law and Policy Program, University of the Philippines Law Centre
- **Frank Maier-Rigaud**, Managing Director, ABC Economics
- **Anna Pisarkiewicz**, Research Fellow, EUI Centre for a Digital Society (CDS)

**Documentation:**

Call for contributions: DAF/COMP/GF(2022)1

Note by the Secretariat – DAF/COMP/GF(2022)5

Contributions from:

Argentina - DAF/COMP/GF/WD(2022)48  
BEUC - DAF/COMP/GF/WD(2022)29  
BIAC - DAF/COMP/GF/WD(2022)63  
Brazil - DAF/COMP/GF/WD(2022)67  
Bulgaria - DAF/COMP/GF/WD(2022)30  
Colombia - DAF/COMP/GF/WD(2022)62  
Costa Rica - DAF/COMP/GF/WD(2022)31  
Croatia - DAF/COMP/GF/WD(2022)32  
Ecuador - DAF/COMP/GF/WD(2022)61  
European Commission - DAF/COMP/GF/WD(2022)33  
Hungary - DAF/COMP/GF/WD(2022)58  
Japan - DAF/COMP/GF/WD(2022)34  
Korea - DAF/COMP/GF/WD(2022)35  
Latvia - DAF/COMP/GF/WD(2022)36  
Mexico - DAF/COMP/GF/WD(2022)59  
Slovenia - DAF/COMP/GF/WD(2022)47  
Chinese Taipei – DAF/COMP/GF/WD(2022)54  
Türkiye - DAF/COMP/GF/WD(2022)49  
United States - DAF/COMP/GF/WD(2022)37  
Summaries of contributions - DAF/COMP/GF/WD(2022)38

Documentation is also available at: [oe.cd/rcac](http://oe.cd/rcac).

**FINAL SESSION: OTHER BUSINESS AND PROPOSALS FOR FUTURE WORK**

17:45-18:00 CET

Chair: Frédéric Jenny, Chair, OECD Competition Committee

Unclassified

English - Or. English

3 November 2022

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

## **Working Party No. 2 on Competition and Regulation**

### **Competition in Energy Markets – Note by Chinese Taipei**

28 November 2022

This document reproduces a written contribution from Chinese Taipei submitted for Item 3 of the 74th OECD Working Party 2 meeting on 28 November 2022.

More documents related to this discussion can be found at  
[www.oecd.org/competition/competition-in-energy-markets.htm](http://www.oecd.org/competition/competition-in-energy-markets.htm)

Ms Federica MAIORANO  
[Email: [Federica.MAIORANO@oecd.org](mailto:Federica.MAIORANO@oecd.org)]

**JT03506556**

## *Chinese Taipei*

1. This paper provides an overview of the electricity and the natural gas markets in Chinese Taipei. It also illustrates perspectives of the Fair Trade Commission (hereinafter referred to as the “CTFTC”) from its enforcement actions in these markets.

### **1. Electricity sector in Chinese Taipei**

2. A staged approach was adopted to privatize the electricity sector in Chinese Taipei. From January 1995, private sector companies were first allowed to build their own power plants. Between 1995 and 2006, the power generation market gradually opened up to private sector companies. By synergizing advantages of private businesses including funding, management and efficiency, nine independent power producers (“IPPs”) were established with lower costs and in shorter timeframes than those expected if they were established by the state-owned monopoly, i.e. Taipower. As a result, the problem of inadequate reserves was effectively resolved. Under the then-current Electricity Act, electricity generated by IPPs could be sold only to Taipower to enable it to transmit, distribute and run electricity retailing.

3. After the 2017 amendments of the Electricity Act were passed, a two-stage process of liberalizing the electricity sector was officially initiated in Chinese Taipei. The first stage focuses on ‘promotion of green energy’ and ‘separation of power plants from the grids’. ‘Promotion of green energy’ means that green energy markets including offshore wind and solar power are selected as the priority to open up to private operators. These private operators will be able to sell electricity to downstream users directly. In terms of ‘separation of power plants from the grids’, the 2017 amendments require that power transmission and distribution businesses cannot be also power generators or retailers. Cross shareholding between such businesses is also prohibited. The 2017 amendments explicitly state that stated-owned Taipower has to complete divestiture of its generation and transmission/distribution business units in 6-9 years after the amendments passed, which should be no later than 2025. Establishment of a power trading platform in 2021 can be viewed as a new era with an aim of developing a contestable electricity supply chain to achieve goals of reforms in the electricity sector. The second stage will build on the outcome of the first stage of the reform. Grey energy markets, where fossil fuels are used as a power source, will not be liberalized until regulatory frameworks and relevant markets are fully fledged.

### **2. Natural gas sector in Chinese Taipei**

4. Due to its limited deposits of natural gas, Chinese Taipei has been historically reliant on imports to meet its domestic energy demand for household use, power generation, industries and commerce. Chinese Taipei has diversified its sources of natural gas to 13 countries. Considering escalated tensions around the Taiwan Strait and the potential for natural disasters, such as typhoons, Chinese Taipei set forth regulations on the security stockpile of natural gas and continues to find additional sources to diversify risks.

5. The natural gas industry is broken down into three segments in Chinese Taipei. There is only one state-owned company, CPC Corporation (“CPC”) in the upstream and the midstream to receive, store and transmit liquefied natural gas (LNG). The downstream

segment is made up of 25 natural gas utility enterprises, including CPC. Each of the enterprises is permitted only to supply natural gas in its designated area. These designated supply areas do not overlap with each other.

### 3. Enforcement priorities of the CTFTC and its interaction with regulatory agencies

6. Electricity and natural gas are considered as essential necessities of daily life, which are highly regulated by sector regulatory agencies and under different laws, i.e. the Electricity Act and the Natural Gas Enterprise Act. Sector regulatory agencies have regulated most business activities ex ante, for example reviews and grants of business permissions, determination of prices and billable products/services. The CTFTC respects these regulatory rules and functions of sector regulatory agencies and will not directly intervene in price determinations in such highly regulated sectors. Nonetheless, as a competition enforcement agency, under the Fair Trade Act (“FTA”), the CTFTC has the power to review specific business conduct in individual cases to see if they may hinder market competition in order to embody the spirit of promoting competition.

7. In the electricity sector, Article 49 of the Electricity Act provides that Taipower should submit a proposal on determination and adjustment of electricity pricing to the Electricity Tariff Examination Council in the Ministry of Economic Affairs (“MOEA”) for approval. The Council comprises members from relevant government agencies, academics/experts and NGOs, and will review electricity pricing every six months. Among other things, fuel costs generally play a key role in deciding whether electricity prices need to be adjusted. Taking the second half of 2018 as an example – Taipower faced increasing cost pressures as global energy prices rose significantly. The MOEA, however, decided to freeze electricity prices to avoid overall prices increases and the occurrence of cost-push inflation. On July 1<sup>st</sup> 2022, prices of high and ultra-high voltages for large business customers and prices for households whose electricity usages exceed 100kWh, were initially approved to increase.

8. Given the wholesale electricity market has opened up to private power firms, the CTFTC’s enforcement focuses on anticompetitive business behavior (cartel conduct for example) among these private power producers. The CTFTC will use its investigative findings to analyze facts in individual cases and then at the Commissioners’ meeting, based on relevant evidence, including direct or circumstantial evidence, will determine if such behaviors violate the FTA. In the future, new anticompetitive issues may arise across power companies in different segments of the supply chain after the electricity sector is fully liberalized. These will be regularly monitored by the CTFTC and considered as its enforcement priorities.

9. With regard to the natural gas markets, Paragraph 1 of Article 45 of the Natural Gas Enterprise Act provides that “In the event of a natural gas shortage or great fluctuation in prices that might affect the steady supply of domestic natural gas or national security, the central competent authorities may carry out regulatory measures that are mandatory regarding natural gas supply and sale price.” The MOEA has the regulatory power to intervene in and monitor pricing of natural gas. Based on the formula of natural gas pricing approved by the MOEA, the price of natural gas in Chinese Taipei should rise in response to an increase in natural gas import costs when global market prices remain high. As a state-owned company, to follow the public policies of protecting households and industrial customers and stabilizing overall prices, CPC (the sole business in the upstream and midstream segments of the natural gas industry in Chinese Taipei) does not adjust the prices charged to its customers, except for a 5 per cent increase for those in the electricity sector.



10. The CTFTC's enforcement activities have focused on abuse of monopoly power since the upstream, midstream and downstream segments are monopolistic markets. In recent years, the CTFTC has received some complaints alleging that these dominant firms in the downstream markets abused their monopoly power to exclude or eliminate certain contestable businesses.

11. The CTFTC continues to make an effort to maintain transparent communications with sector regulatory agencies. To ensure trading order and consumers' interests, the CTFTC will actively share information obtained from its enforcement activities with these agencies if the information relates to a potential violation of regulatory rules, and request the regulatory agencies to exercise their discretions under respective regulations. In the cases where there seems to be an overlapping role between sector regulators and the CTFTC, the CTFTC will first ascertain the content of regulatory rules and the regulated under the rules to further clarify whether the goals of regulations and competition laws are overlapping or conflicting with each other. The CTFTC will also consult sector regulatory agencies where appropriate. Finally, the CTFTC will determine on a case-by-case basis whether the FTA is applicable to certain situations, or alternatively the CTFTC may choose to communicate with sector regulators through competition advocacy.

#### 4. Cases

##### 4.1. Infringement decision - nine independent power producers engaging in concerted actions

12. A Power Purchase Agreement ("PPA") signed between an independent power producers ("IPP") and Taipower sets out a purchase price formula, in which fuel costs and market interest rates are fixed, not varying with market fluctuations. In other words, an increase in fuel costs would be at the IPP's own risk while they would also benefit from lower interest rates. Since 2007, due to global fuel price hikes, the nine IPPs requested that their PPAs needed to be amended. The IPPs proposed a mechanism that fuel costs would be subject to regular adjustments. Furthermore, given market interest rates considerably have decreased at that time, Taipower also expressed that varied market interest rates should replace fixed rates in the formula. Between the second half of 2007 and the first half of 2008, both parties reached a consensus on adjustments of fuel costs and mutually agreed that their renegotiation concerning interest rates should continue. Following the IPPs' successful efforts in adjustments of fuel costs, prior to the rates renegotiations, the IPPs formed a common understanding at meetings that they would jointly refuse to participate in renegotiations with Taipower since the adjustments of market rates would put the IPPs at a disadvantage.

13. The CTFTC's investigation showed that in more than 20 meetings, the nine IPPs had reached an agreement on concerted refusal to adjust market interest rates and later acted on this refusal. The CTFTC was of a view that each of the IPPs could make its own decision on whether it would like to amend the contract terms and conditions subject to the 25-year long PPAs since the terms became adjustable and changeable following an agreed renegotiation process. Each IPP would have had an opportunity to enter into a contract with more favorable contract terms and a price-volume formula during the renegotiation process with Taipower. Based on its findings and analysis, the CTFTC concluded that the IPPs came to an understanding related to market competition, i.e. concerted refusal to adjust interest rates, which constituted concerted actions under the FTA. Significant fines were imposed on the IPPs in 2013.

14. The nine IPPs brought an action against the CTFTC's decision to the Taipei High Administrative Court ("THAC"). A salient argument in this case was: A concerted action under the FTA is required to be conducted among "competitors". The THAC, a court of first instance, revoked the CTFTC's decision as the court did not consider the IPPs as enterprises engaging in competition. This judgement was grounded on the following factual observations: 1) each of the IPPs had entered into a contract with Taipower on its own and supplied electricity under respective contracts; 2) the market interest rates that IPPs refused to renegotiate with Taipower were only applicable to the guaranteed periods. The impact was mitigated as the prices and volumes during such periods were fixed and Taipower was obligated to pay for the IPP's output under this "take or pay" contract; 3) Facilities owned and operated by each of the IPPs were located in distinct areas and electricity generated from individual facilities was only transported to Taipower's substations in each respective area.

15. The judgment was appealed to the Supreme Administrative Court ("SAC"), the court of second instance and last resort. The SAC sided with the CTFTC and remanded the case back to the THAC. However, the judgement first rendered by the THAC remained, revoking the CTFTC's decision. The CTFTC then appealed to the SAC. To be clear, the THAC determined to revoke the CTFTC's decision on this case respectively in 2014, 2017 and 2020 despite the SAC remanding its first two judgements back to the THAC. The SAC ultimately made its own judgement, affirming that the IPPs engaged in concerted actions. Based on the following reasons, the SAC concluded that the nine IPPs were considered as competitors in the relevant market:

- A relevant market defined by the CTFTC with the use of the reasonable interchangeability test was not inaccurate. Each of the IPPs generated electricity and sold it to Taipower. Given that there was only one energy network in the main island of Taiwan, the network operator, Taipower was able to transmit and distribute energy generated by any individual IPPs at times when transporting to Taipower's substations, regardless of the fact that the IPPs' facilities were operated in distinct areas. As a consequence, through its energy network, Taipower could easily transmit and distribute electricity supplied by the IPPs to any and every area in the island. The geographic market in this case was thus defined as the main island of Taiwan. The transmission area clause agreed in the PPA was not relevant to market definition. But considered as a delineation of contractual obligations. The purpose of the clause aimed to clarify the ownership of power facilities around Taipower's substations and who should be responsible for maintenance. Electricity meters installed in substations were also used to calculate the total amount of electricity transmitted.
- Purchase rates that Taipower was required to pay under the contract varied, depending on guaranteed periods and non-guaranteed periods. The rates for both periods were indeed an integral part of the contract terms and conditions. The former related to market interest rates and the latter subject to fuel costs. The average price per unit of electricity paid by Taipower to an IPP, amounting to the total payment amount of the two periods divided by the total volume of power purchased. That is to say, the final price would be determined by the combined supplies and demands of the two different periods. The price rates and trade volumes of both periods were inseparable from the calculation of the final price. The two periods should not be considered as two distinct markets.
- In the case where individual IPPs supplied energy in compliance with environmental protections and safety requirements, the total volume that Taipower could utilize and transmit was contingent on each IPP's energy rate. Since the

energy rate was a determinant of the price rates during non-guaranteed periods, each IPP could compete with each other for trading opportunities to sell electricity it generated by offering a more favorable energy rate.

- Notwithstanding the 25-year long PPA, the nine IPPs and Taipower successfully amended the contract terms with regard to the fuel cost adjustment mechanism in 2007. This evidently suggested that both parties to the PPA were able to renegotiate the terms and conditions. Before the volumes of actual purchases and the average prices were going to be set, individual IPPs still had abilities to independently decide or exercise influence over their volumes and prices. Furthermore, the proportions of individual IPPs' sunk costs to fixed costs and their potential return were diffident from each other. Given that an IPP might not be necessarily align with the interests of the other IPPs, each IPP would act autonomously and decide whether it would amend the contract term regarding the purchase/sale rate during the term of the PPA or wait until it expired.

#### **4.2. Non-infringement decision - three natural gas utility enterprises attempted to reduce competition in the market for the downstream pipelines of gas meters**

16. The CTFTC received a complaint alleging that three natural gas utility enterprises ("NGUs") postponed reviewing gas piping layouts and quoting processes regarding the downstream pipelines of gas meters without justification when they delegated the installation of the downstream pipelines of gas meters to certain public natural gas conduits installation enterprises ("NGCLs"), which might prevent them from competing in the market for the downstream pipelines of gas meters.

17. Gas transmission and distribution pipelines between NGUs and end users include transmission pipelines, the upstream pipelines of gas meters and the downstream pipelines of gas meters. The transmission pipelines refer to those built for natural gas transportation through roads, bridges, rivers, parks, utility tunnels, culverts, embankments or other lands. The upstream pipelines of gas meters refer to those running between the point of connection to the transmission pipelines and the inlets to gas meters installed at properties. The downstream pipelines of gas meters refers to those connecting the outlets of the gas meters with the end of branches, for example water heaters or gas stove connectors in homes. Under the Natural Gas Enterprise Act, installing the upstream pipelines of gas meters should be exclusively undertaken by NGUs while either NGUs or NGCLs are allowed to install the downstream pipelines of gas meters. The market for the downstream pipelines of gas meters is therefore considered a contestable market. However, NGCLs are required to obtain NGUs' approvals for their gas piping layouts prior to installation and NGUs have the right to inspect and accept the work when completed.

18. The CTFTC found that each NGU supplying services with regard to the downstream pipelines of gas meters in its designated geographic area met the requirement of a monopoly in terms of market shares and turnovers and thus had a dominant position to exclude competition. Given that NGUs were obligated to review NGCLs gas piping layouts prior to installation and to inspect and accept the work when completed for the purpose of fulfilling gas safety goals under the Natural Gas Enterprise Act, the CTFTC took these regulatory requirements into consideration when assessing the alleged behaviors. When competing with others in the relevant market, NGUs' behaviors would constitute a violation of the FTA only if evidence clearly shows that the behaviors were highly reprehensible.

19. The CTFTC inquired with all key stakeholders, including companies associated with the market and end users, and consulted the MOEA, the competent authority in charge

of the Natural Gas Enterprise Act. It found that the complaint related to different practices: where the NGUs were assessing actual situations and contemplating whether it was safe to deliver gas; and where NGUs actively engaged property owners and provided quotations to compete for business opportunities after their rivals (the NGCLs) had submitted their applications for installation of the downstream pipelines of gas meters. The investigations showed that a general intent of excluding competitors could not be proven in this case. Property owners were able to choose between NGUs and NGCLs based on quotations. In terms of delays in review processes, the investigation findings revealed that they could be related to incomplete applications, or installations occurring without permission. Local governmental agencies had launched their own investigations and would explore the possibility of shortening the period of the review process to prevent similar conflicts.

20. The CTFTC concluded that end users had rights to choose services for the downstream pipelines of gas meters among three NGUs and NGCLs on the basis of their quotations. The alleged behaviors where the three NGUs attempted to attract trading opportunities were not exclusionary and as a result was not treated as a contravention of the FTA.

#### **4.3. Merger notifications concerning offshore wind power**

21. The Government has taken the following proactive approaches to achieve its policy goal of a “nuclear-free homeland” in Chinese Taipei. On July 27, 2015, the Government set specific targets for renewable energy generation growth. In 2017, the amendments of the Electricity Act signified the start of liberalizing the green energy generation sectors. The Government announced that it plans to generate 20 per cent of its energy from renewable energy by 2025. Offshore wind power is the generation of electricity through wind farms installed at sea. In comparison to onshore wind power, offshore wind turbines can generate more electricity due to faster wind speeds. Considering its geographic characteristics as an island, one of the targets is to reach 5.5 GW of offshore wind energy capacity by 2025, which has attracted companies to enter into this sector. In this context, the CTFTC has received nearly 10 merger notification filed by offshore wind energy operators since 2017.

22. To enter into the offshore wind market, these mergers generally occurred in the form of joint ventures with the aim of establishing new business entities. The parties to the mergers included state-owned enterprises, private companies and foreign companies, involving transfers of practical experiences in operation and management, funding and skills. The parties to the mergers were existing incumbents across different sectors, for example, electricity operators, electric cable companies, port operating companies, shipbuilding companies, steel producers and financial businesses. Accordingly, the merger notifications covered various types of mergers, i.e. horizontal, vertical and conglomerate mergers.

23. When reviewing the above mergers, the CTFTC followed its merger guidelines to assess competitive effects of different merger types. A general or simplified procedure would be adopted, which was subject to the market shares of the merging parties and the impact of the mergers on the green energy sectors. A few of these mergers were viewed as extraterritorial mergers without direct, substantial and reasonably foreseeable effects on the domestic markets. The CTFTC had no jurisdiction over such mergers. Considering the green energy markets in Chinese Taipei were at early stages of liberalization, and promotion of eco-friendly green power aligned with the above-mentioned policy goal of a “nuclear-free homeland”, the CTFTC would take into account how much more green power generation capacity could be created as a result of the proposed mergers. The CTFTC did

not find that any of the mergers had effects or likely effects of substantially lessening competition and none of these mergers were challenged by the CTFTC.

## 5. Conclusion

24. Regulated industries are not equivalent to the absence of competition. Certain levels of competition can be observed in the regulated energy markets. In such dynamic environments, the development and structures of the markets will inevitably be influenced by the market players' behaviors. In this regard, by means of competition law enforcement and competition advocacy, the CTFTC continues to identify unnecessary regulatory restraints or competition-distorting rules so as to seek the right balance between competition and regulation. The FTA is also applicable to business behaviors in the regulated markets to safeguard and promote competition.

25. There have been few cases where the CTFTC found anti-competitive practices in violation of the FTA as the electricity sector is moving toward further liberalization, and limited competition in the natural gas markets due to regulatory rules and market structures. The CTFTC acknowledges the importance of industrial polices and envisions itself as a collaborator in partnership with regulators. While doing so, the CTFTC will not only work with regulators to monitor and assess the markets, but also seek procompetitive remedies to minimize the impact of business practices that are harmful to industrial transformation and development.

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4 November 2022

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

**Cancels & replaces the same document of 3 November 2022**

### **Competition and Inflation – Note by Chinese Taipei**

30 November 2022

This document reproduces a written contribution from Chinese Taipei submitted for Item 12 of the 139th OECD Competition Committee meeting on 29-30 November 2022.

More documents related to this discussion can be found at  
[www.oecd.org/competition/competition-and-inflation.htm](http://www.oecd.org/competition/competition-and-inflation.htm)

Mr Antonio CAPOBIANCO  
[Email: Antonio.CAPOBIANCO@oecd.org]

**JT03506707**

## *Chinese Taipei*

1. This report introduces the role of the Fair Trade Commission of Chinese Taipei (CTFTC) in competition policy in the fight against inflation, and shares related cases and law enforcement experience.

### **1. The Position of the CTFTC Regarding Price Stabilization**

2. The Fair Trade Commission (CTFTC) is in charge of the enforcement of the Fair Trade Act. The word “price” appears eight times in the 51 articles of the Fair Trade Act. Therefore, price is an important element in the process of competition law enforcement. In Chinese Taipei, the Fair Trade Act empowers the Fair Trade Commission to investigate price fluctuations in daily necessities, including: (1) the abuse of market power by monopoly enterprises, where monopoly enterprises improperly set, maintain or change the prices of goods or the remuneration for services; (2) horizontal price agreements, where an enterprise jointly determines the prices of goods or services with another horizontal competing enterprise by means of a contract, agreement or any other form of mutual understanding; (3) resale price restrictions, where an enterprise restricts the object of its transaction with respect to the price at which the supplied goods are resold to a third party or resold by a third party; (4) other actions that restrict competition, including the use of coercion, inducement with interest or other improper means that would cause another enterprise to refrain from competing in price, take part in a concerted action, or impose vertical restrictions on competition. An administrative investigation by the CTFTC is intended to ensure the maintenance of market competition order.

3. The rise and fall, or fluctuation, of prices is a general expression of overall economic activities and the change in economic prosperity. The causes that affect the rise in prices include factors on the demand side (prosperity) as well as on the supply side (cost). If the rise or fall in commodity prices is determined by individual enterprises taking into account market supply and demand and their own marketing strategies, the price fluctuations may be the result of the market functioning. If it is found that the price of a particular commodity continues to rise, especially if the structure of this industry is a monopoly/oligopoly market and there is no objective influence of supply and demand factors, the CTFTC will pay special attention to it and observe whether there is any evidence of manipulation. If necessary, the CTFTC will take the initiative to launch an investigation.

4. As for a long and sustained rise in prices (inflation), this will depend on the monetary policy of the central bank and the fiscal policy of the competent authorities for various industries as they attempt to bring prices down. It is not the CTFTC’s statutory responsibility to regulate prices. In addition, after conducting an investigation, the CTFTC may penalize enterprises that are jointly raising prices in violation of the law. The CTFTC may order them to stop implementing a joint price increase and correct their illegal acts. It will be necessary for such enterprises to abandon any concerted action agreements to restore competition, but they will not be required to return to prices deemed reasonable by the CTFTC. The legislative purpose of the Fair Trade Act places emphasis on free and fair competition. If it were also to give the CTFTC the power to determine reasonable prices, there would be a conflict in terms of its role.

## 2. The Setting Up by the CTFTC of the “Price Manipulation Prevention Task Force”

5. As the prices of daily necessities continue to rise, in order to prevent enterprises from jointly raising prices, limiting resale prices, and determining prices improperly in the case of monopoly enterprises, the CTFTC set up the “Price Manipulation Prevention Task Force” to cope with the price fluctuations of daily necessities as early as May 2007. The purpose of this task force is to actively monitor prices. If there are consistent price adjustments, they are likely to be the result of concerted actions by enterprises. At such times, the CTFTC will commence an administrative investigation. Moreover, in the course of the investigation, it will remind relevant enterprises to comply with the related provisions of the Fair Trade Act and not to take the opportunity to raise prices jointly. The items to be monitored include the prices of important agricultural and livestock products, bulk materials and their products, energy, festival commodities and other products. In addition, since September 2016, the CTFTC has also performed a Consumer Price Index (CPI) analysis to understand the changes in the CPI in Chinese Taipei and major countries/regions. The CPI analysis meetings are held before important festivals (including the Chinese New Year, Dragon Boat Festival and Mid-Autumn Festival). Its data sources include the public databases of the competent authorities of various industries, paid databases set up by private research institutes, outsourced market research data and other channels. If it is found that there are increases or abnormal fluctuations in the prices of important daily necessities, the CTFTC will actively intervene. In addition, it will send timely warnings to enterprises or associations and groups, and release news and information in real time to lower people’s expectations of price increases.

## 3. The Role of “the Commodity Price Stabilization Task Force of the Executive Yuan” and the CTFTC in Fighting Inflation

6. In 2008, the Executive Yuan established the inter-ministerial “Commodity Price Stabilization Task Force.” Its convener is the Vice Premier of the Executive Yuan, and its members come from more than 10 competent authorities of various industries, including the Central Bank of Chinese Taipei, the CTFTC and other government agencies. According to the division of labor by “the Commodity Price Stabilization Task Force of the Executive Yuan,” the CTFTC shall actively commence investigations into abnormal prices of goods and services, so as to investigate whether there is any manipulation or joint monopoly behavior. If it finds that there are enterprises engaging in illegal acts, it could impose adjudication and penalties on them according to the Fair Trade Act. During the course of investigating concerted actions, if it is found that individual enterprises or natural persons intend to increase transaction prices or hoard daily necessities, since these acts involve criminal liabilities (Article 251 of the Criminal Code of the Republic of China), the CTFTC may turn the investigation over to the judicial authorities for legal prosecution.

7. In addition, the CTFTC only has the power of administrative investigation, but does not have any judicial investigative tools (e.g., search and seizure). Therefore, the CTFTC implemented a leniency policy and increased fines in January 2012. In October 2015, it set up a whistle-blowing reward system against concerted actions. On November 17, 2021, it passed an amendment to the rewards, and significantly increased the amount of the whistle-blowing rewards. Through these measures, it hopes to find illegal acts through multiple channels, such as the surrender of the involved enterprises and whistle-blowing by insiders.

8. As discussed above, in the fight against inflation, the CTFTC is mainly responsible for investigating concerted actions according to the law, and it does not exceed the scope of the powers and responsibilities granted to it by the Fair Trade Act. In terms of market



price monitoring, at the 77th meeting of “the Commodity Price Stabilization Task Force of the Executive Yuan” held on January 18, 2022, “measures to strengthen price stability” were discussed. The National Development Council has cooperated with the Council of Agriculture, Ministry of Economic Affairs and other competent authorities of relevant industries to plan the early warning mechanism for daily necessities. Regular monitoring and analysis of quantity and price shall be carried out, and signals based on early warning lights (a red light, yellow light, or a green light) shall be determined according to the extent of the price increase. If the competent authorities of various industries find that there are abnormal market price changes or that enterprises are involved in raising prices jointly, they can provide evidence and forward it to the CTFTC for investigation. Through the above measures, a division of labor and cooperation between various government departments could be realized, so as to achieve the goal of price stability.

#### 4. Recent Price Changes and the Government’s Measures to Stabilize Prices

9. In recent years, due to COVID-19 and the Russia-Ukraine war, there has been an increase in the prices of international raw materials, and this has led to the lingering shadow of inflation. Chinese Taipei relies on imports for most of the bulk materials and raw materials it needs, and its dependence on imported energy increased to 97.4% in 2021. Compared with other countries and regions, the increase in raw material, energy and other costs has affected Chinese Taipei more seriously. Since April 2021, Chinese Taipei has felt the pressure of rising consumer prices. In the five months from March to July 2022, the CPI increased by more than 3 percent (between 3.27% and 3.59%) compared to the same period last year. It is estimated that the annual CPI growth rate in Chinese Taipei will be between 2.3% and 3.16% in 2022. Currently, the Producer Price Index (PPI) and the Wholesale Price Index (WPI) remain at elevated levels. Both indexes rose more than 10 percent in August 2022 compared to the same period last year. This shows that manufacturers and wholesalers are still facing pressure from increasing raw material and purchase costs. Therefore, Chinese Taipei continues to implement measures to stabilize prices. Recent measures to stabilize prices are shown in the following table:

Policy (Competent Authority)	Description
Strictly investigate and penalize monopolies, hoarding, and bidding up prices (CTFTC, Ministry of Justice)	CTFTC: actively investigate and penalize the joint raising of prices. Ministry of Justice: investigate and penalize illegal acts related to people's livelihood and prevent the bidding up of prices.
Maintain the stability of oil, gas and electricity prices (State-owned enterprises under the Ministry of Economic Affairs)	In September 2022, the price of gas in tanks and natural gas continued to stop rising (except for users in the electricity industry). From October 2022 to March 2023, the electricity price will not increase. The price of oil has also activated the dual smoothing mechanism.
Reduce the tax burden on key raw materials (Ministry of Finance)	Flexibly waive business taxes on imported soybeans, wheat and corn, and flexibly reduce tariffs and cargo tax rates on wheat, beef, cement, gasoline, diesel and other products until the end of December 2022.
Stabilize the prices of agricultural products and industrial raw materials (Council of Agriculture, Ministry of Economic Affairs)	Council of Agriculture: Monitor the supply of agricultural products and make timely adjustments to stabilize prices, and stabilize the supply of feed and fertilizer to reduce production costs. Ministry of Economic Affairs: Coordinate steel enterprises to provide priority to Taiwan demand; Sand and gravel are to be sold at a fixed price to ensure the stability of the price of construction materials.

## 5. Cases of Penalties by the CTFTC Against the Joint Price Increases by Dried Scallop Enterprises and Fishery Ice-making Enterprises

10. Chinese Taipei relies on imports for most of its bulk materials and energy. In recent years, the imbalance in the global supply chain caused by COVID-19, the further increases in the prices of natural gas, oil, coal and other imported energy due to the Russia-Ukraine War, as well as the depreciation of the New Taiwan Dollar and other factors, have resulted in increases in sea freight and electricity prices in Taiwan. Some enterprises in different industries have gradually raised their prices due to the increase in costs.

11. The port congestion of sea transportation in 2021 caused freight rates to rise, and importers adjusted their prices to reflect higher sea freight and import costs. However, the CTFTC found that the price of dried scallops (a festival commodity) increased by more than 20 percent during the Chinese New Year holiday in February 2022. In July 2022, it was reported by media that three fishery ice-making enterprises in Magong City of Penghu County had raised their prices of ice simultaneously in response to higher electricity prices. All the above enterprises had announced that they were raising prices due to increased costs. However, the CTFTC conducted investigations to see whether there were joint price increases by competing enterprises during the process of raising prices.

12. During the investigation, it was found that for a long time there have been mostly two groups engaging in the import of dried scallops in Taiwan. Together, the two groups account for 70% of the imports of dried scallops, and they claimed that the import cost of dried scallops had increased by almost 30%. Moreover, the fishery ice market in Penghu County is highly dependent on the supply of three ice-making enterprises. On June 28, 2022, the media reported that electricity prices would be raised in the summer. Claiming that the Taiwan Power Company would raise electricity charges, these 3 fishery ice-making enterprises jointly raised their prices of fishery ice on July 1, 2022 and made an announcement. In its investigation, the CTFTC found that both the dried scallop enterprises and the fishery ice-making enterprises used LINE, a messaging software, to communicate

market information and other sensitive price-related information with horizontal competitors before jointly raising their prices. Finally, the CTFTC imposed a total fine of NTD 5,000,000 (about USD 0.17 million) on the dried scallop enterprises and a total fine of NTD 300,000 (about USD 10,000) on the fishery ice-making enterprises. The penalty from the CTFTC will have an effective deterrent effect on enterprises with unlawful intent and will warn enterprises not to jointly raise their prices even if there is a cost factor involved.

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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Global Forum on Competition**

**REMEDIES AND COMMITMENTS IN ABUSE CASES – Contribution from Chinese Taipei**

**- Session IV -**

1-2 December 2022

This contribution is submitted by Chinese Taipei under Session IV of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/sctr](http://oe.cd/sctr).

Please contact Ms. Lynn Robertson [E-mail: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org)], if you have any questions regarding this document.

**JT03506743**

## *Remedies and Commitments in Abuse Cases*

### *- Contribution from Chinese Taipei -*

#### **1. Regulations against the Abuse of Market Position by Monopolistic Enterprises**

1. In the Fair Trade Act (“CTFTA”), there are administrative sanction regulations that give the CTFTC the authority to fine enterprises in violation of the CTFTA or order them to stop or rectify their conduct or take necessary corrective measures. In other words, such enterprises have to bear their administrative responsibility after violating the CTFTA. To “rectify” means that such enterprises are required to remove the illegal or inappropriate condition resulting from their unlawful acts and make the condition become a legal one. In other words, the offender is ordered to “do” something appropriate. As for the term “correct,” it may be similar to “rectify” in meaning, but it means more than just removing the illegal or inappropriate condition resulting from an unlawful act. The offender needs to clearly express in writing and clarify the facts or take necessary and legal or appropriate measures. Therefore, the effect is greater than that of “rectify.” This paper discusses the corrective measures that the CTFTC expects offenders to adopt when making administrative decisions to attach conditions or undertakings and the CTFTC’s acceptance of commitments by enterprises to eliminate concerns regarding further illegal conduct. The objective is to make enterprises rectify their conduct or adopt necessary corrective measures.

2. The regulations governing the abuse of market position by monopolistic enterprises set forth in the CTFTA are as follows: As specified in Article 9, “Monopolistic enterprises shall not engage in any of the following conduct: 1) directly or indirectly preventing any other enterprises from competing by using unfair means; 2) improperly setting, maintaining or changing prices of goods or remuneration for services; 3) making a trading counterpart give preferential treatment without justification; or 4) engaging in other abusive conduct by using its market power.” Meanwhile, it is prescribed in Article 40, “The competent authority may order any enterprise that violates Article 9, Article 15, Article 19 and Article 20 to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars. Shall such enterprise fail to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such an enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than two hundred thousand nor more than one hundred million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.”

#### **2. Administrative Decisions Regarding Attaching Conditions or Undertakings**

3. The administrative decisions regarding attaching conditions or undertakings made by the CTFTC usually occur in merger cases. The purpose is to remove concerns about the creation of competition restraints as a result of mergers in order to ensure that the overall economic benefit is greater than the disadvantages resulted from competition restraints. The types of conditions or undertakings attached include 1) structural measures requesting

that merging parties dispose of shares or assets in their possession, assign part of the business or step down from certain positions; and 2) behavioral measures requesting that merging parties continue to supply key equipment to or invest important elements in non-merging parties, license non-merging parties to use their intellectual property rights as well as not to make exclusive dealings and engage in differential treatment or tie-in sales.

4. Take the PX Mart-RT-Mart merger for example. PX Mart intended to acquire the shares of RT-Mart to gain control of the management and personnel appointment and dismissal of the latter, and the merger had to be filed with the CTFTC according to the CTFTA. The top three businesses in the hypermarket market together accounted for over 76% of the total share, whereas the two merging parties claimed more than 20% of the market. As described in Point 10 of the Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings, the case could be considered likely to lead to concerns about competition restraints and the overall economic benefit had to be evaluated. The results of scrutiny conducted according to the gross upward pricing pressure index, compensating marginal reduction analysis and merger simulation analysis showed that the merging parties had the incentive to raise product prices arbitrarily or reduce promotional special offers after the merger. Meanwhile, as a consequence of the increase in the market share of the merging parties and concentration of retail businesses after the merger, the countervailing power of suppliers would be eliminated.

5. To remove concerns about the unilateral effects of the merger, the applicant took the initiative and made the commitment that arbitrary price increases would not take place and also promised to maintain the pricing strategies of the outlets of each of the two brand names by taking into consideration the management differences between supermarkets and hypermarkets. At the same time, the prices of all outlets throughout the relevant market would be consistent. However, since the intensities of competition in different areas varied, the company agreed to lower the prices of specific products after taking into account the prices of competitors. The promise could thus reduce the concerns about the unilateral effects. In addition, the applicant also made the commitment that the additional fees imposed on suppliers would be arbitrarily increased after the merger went through. Furthermore, the applicant made the commitment that, during the first three years following the merger, within the range of existing business and services, annual supply-marketing system changes and transaction condition revisions would not be any more disadvantageous to suppliers. As for new charges derived from new services, suppliers would be given the liberty to choose whether they would use such services, whereas the agreement of suppliers to pay such new charges would be obtained in advance. The company would not arbitrarily deduct such charges from amounts payable. The commitment was considered sufficient to ensure that the countervailing power of suppliers would not be eliminated. Therefore, the CTFTC concluded that the commitment could help ensure that the overall economic benefit would be greater than the disadvantages from competition restraints.

6. In the case regarding the Taiwan Stock Exchange Corporation being in violation of the CTFTA by adopting inappropriate charging standards for the use of trading information, the CTFTC attached corrective measures to be taken by the offender in the disposition. The Taiwan Stock Exchange Corporation was a monopolistic business providing securities trading information. The company concealed cost information and improperly increased the cost burden of information vendors without reaching a consensus with them in advance. Besides requesting that information vendors transmit "fixed fees" on a monthly basis, the company also charged each of them an additional "variable fee" of NT\$100,000. The practice was deemed to be exploitation of the achievements of the efforts of information vendors in order to obtain an exorbitant profit. The conduct also had an effect on the

information vendors' pursuit of effective competition. It was in violation of Subparagraph 2 of Article 10 of the CTFTA before the act was amended.

7. In relation to the above-mentioned unlawful act, the CTFTC requested that the Taiwan Stock Exchange Corporation 1) fully disclose to the securities authority and information vendors the details of its departmental costs and benefits that complied with accounting principles and were certified by CPAs before deciding, maintaining or changing the charging standards for the use of information; 2) fully consult with information vendors before deciding, maintaining or changing the charging standards for the use of information; and 3) cancel the currently adopted approach of separating the fees for the use of information into "fixed fees" and "variable fees" and charge each information vendor a fixed amount instead.

8. As indicated in the report of the Taiwan Stock Exchange Corporation on the execution of the aforesaid corrective measures, the company commissioned CPAs after receiving the disposition from the CTFTC to certify the cost benefit details associated with different departments and also held meetings to consult with information vendors. However, the Petitions and Appeals Committee of the Executive Yuan decided that the "fixed fees" did not necessarily have to be evenly apportioned by information vendors. The Taiwan Stock Exchange Corporation could charge each information vendor a lower fixed amount to attract information vendors to enter and compete in the market or it could be flexible and charge a higher fixed amount. In other words, the CTFTC's request that the Taiwan Stock Exchange Corporation was to collect fixed amounts had no basis; therefore, the original sanction was revoked.

9. How the CTFTC has handled other cases, such as those associated with computer software, game credit cards and mobile communications chips, involving enterprises abusing their market position and making commitments to stopping and rectifying their unlawful acts, will be explained in the sections below.

### 3. The Computer Software Case

#### 3.1. Settlement according to administrative procedures

10. As set forth in Article 136 of the Administrative Procedure Act, "Where an administrative authority is unable to determine the facts or the legal relationship as the basis for an administrative disposition notwithstanding an investigation process having been conducted ex officio, it may enter into a settlement or an administrative contract with a citizen in lieu of administrative disposition in order to settle the dispute and to effectively achieve the purpose of administration."

11. Before beginning the consultation process to establish a settlement agreement, the CTFTC should assess the following elements: 1) the legitimacy and appropriateness of the mutual concession between the CTFTC and the enterprise involved, 2) the protection of the public interest, and 3) the potential harm to stakeholders as a result of the settlement agreement.

12. The CTFTC usually agrees to settle according to administrative procedures in cases involving more significant public interest in order to solve the case quickly by establishing an administrative settlement agreement. Take Intel Corporation as an example. When accused of adopting patent-licensing practices that were in violation of the CTFTA, the company realized that the practices had had a considerable impact on competition order and, therefore, proposed an improvement plan to the CTFTC. Taking into consideration of the development of domestic motherboard and personal computer industries and the public

interest, the CTFTC accepted the Intel plan with regard to licensing principles and temporarily suspended the investigation of the case. Later, when the French company Matra Transport Corporation was accused of refusing to provide maintenance services and restricting its subcontractors from providing maintenance services in violation of the CTFTA; Sanyang Motor Co. Ltd. was accused of forcing its motorcycle parts suppliers not to supply its competitors and spreading false information in violation of the CTFTA; and American company RCA Thomson Licensing Corporation was accused of inappropriately collecting licensing fees in violation of the CTFTA, all three cases were closed through the signing of administrative settlement agreements.

### 3.2. Case background

13. Between April and May 2002, there were quite a few complaints about Microsoft Taiwan using its monopolistic position in the domestic software market to set unreasonable prices and engage in tie-in sales to market the Microsoft Office software. Therefore, the CTFTC created the Software Market Monopolization Investigation Task Force according to Article 26 of the CTFTA on May 2, 2002 and launched an investigation. After six months of investigation, Microsoft Taiwan asked for administrative settlement by presenting letter of administrative settlement offer. On Feb. 23, 2003, the CTFTC decided during the Commissioners' Meeting that the offer letter complied with the public interest and agreed to sign an administrative settlement agreement with Microsoft Taiwan and its affiliates.

### 3.3. Commitments made as part of the settlement and follow-up supervision

14. Besides Point 7 regarding the mechanism for administrative settlement agreement consultation and Point 8 concerning the agreement duration and validity, the agreement stipulated that Microsoft Taiwan and its affiliates had to fulfill the following six obligations: 1) to set the prices of software products for consumers and educational users, 2) to promote consumer benefits, 3) to stimulate intra-brand competition, 4) to improve after-sales service, 5) to reasonably share software codes, and 6) to act appropriately according to the content of the settlement agreement.

15. After the agreement took effect, the CTFTC created the Task Force for Follow-up Supervision of the Microsoft Administrative Settlement to monitor the execution of the agreement and ensure that it was effectively implemented. The CTFTC checked the fulfillment of the agreement item by item and requested that Microsoft Taiwan present over 50 written reports. The representatives of the company visited the CTFTC on four occasions to report the results of the implementation. The company also promised to present an achievement report to the CTFTC before the end of the year starting from 2005 as well as provide an end-of-year report to explain the fulfillment of the administrative settlement agreement and implementation results before the end of 2007.

16. The administrative settlement agreement expired on Feb 27, 2008, but Microsoft Taiwan promised to continue to promote and carry out measures helpful to the improvement of domestic industries and the protection of consumer interests. The company also made a commitment to apply all of its international compliance practices in Chinese Taipei to make concrete contributions to domestic hi-tech industries. In response, the CTFTC requested that Microsoft Taiwan observe the regulations set forth in the CTFTA to maintain trading order and protect consumer interests.



## 4. The Game Credit Card Case

### 4.1. The investigation suspension system

17. This system allows the competent authority to decide to suspend an investigation into the violation of an obligation or obligations specified in administrative regulations after the enterprise being investigated makes a commitment to taking concrete measures to undo the violation within the period given by the competent authority. After making the investigation suspension decision, the competent authority is required to monitor whether the enterprise actually fulfills the commitment. If the commitment is fulfilled or the enterprise has taken concrete measures to stop and rectify the unlawful conduct, the competent authority can terminate the investigation and close the case.

18. According to Paragraphs 1 and 2 of Article 28 of the CTFTA, “In conducting investigations into an enterprise’s conduct that may violate the provisions of the Act, if such enterprise makes commitments to take specific measures to cease and rectify its alleged illegal conduct within the time prescribed by the competent authority, the competent authority may suspend the investigation. In the situation referred to in the preceding paragraph, the competent authority shall monitor whether such enterprise fulfills its commitments.” Meanwhile, it is also prescribed in the first section of Paragraph 3 of the same article, “If the enterprise has fulfilled its commitments by taking specific measures to cease and rectify its alleged illegal conduct, the competent authority may decide to terminate the investigation.”

### 4.2. Case background

19. Y Game Credits Company (X, Y and Z are not real company or product names) was a developer of prepaid products in association with gifts, wireless services, games and music and reloadable debit cards. The company had signed contracts with physical retail stores, including the four major convenience stores in Chinese Taipei, to sell its “Z Game Credit Cards” there. However, the contract included an exclusive dealing clause which restricted the retail stores from selling any game credit cards from other companies using the same technology. The informant X Game Credits Company had made investments to develop technologies and systems similar to those of Y Game Credits Company, but as a result of the exclusive dealing provision between the four major convenience stores and Y Game Credits Company (the game credit cards sold through the four major convenience stores accounted for over 80% of the total number of cards sold through brick and mortar retail stores, according to X Game Credits Company), unless X Game Credits Company used the systems of Y Game Credits Company, it could not sell game credit cards using the same technology through convenience stores. For this reason, X Game Credits Company thought the conduct of Y Game Credits Company was in violation of the CTFTA.

20. The CTFTC immediately launched an investigation after receiving the complaint from X Game Credits Company. Besides requesting that both parties come to the CTFTC to present evidence on several occasions, the CTFTC also interviewed a number of convenience stores as well as several game and digital content businesses. While the investigation was in progress and the CTFTC was yet to make the final decision, Y Game Credits Company acted according to Article 28 of the CTFTA and the Fair Trade Commission Disposal Directions (Guidelines) on Cases of Suspended Investigation and presented a written commitment to adopt concrete corrective measures. The CTFTC asked X Game Credits Company and brick and mortar retailers for their opinions regarding the concrete measures presented by Y Game Credits Company. After Y Game Credits Company made revisions, the final concrete measures included shortening the effective

period of exclusive dealing clause in the contracts. After the expiration of the exclusive dealing period, the company would not prohibit, restrict or impede brick and mortar retail stores from cooperating with other businesses to sell game credit cards using the same technology applied to produce the Z Game Credit Cards. In addition, when the company renewed contracts or signed new contracts with existing brick and mortar retail stores, there would be no exclusive dealing requirement to restrain the stores from cooperating with competitors of Y Game Credits Company.

#### **4.3. The commitment made in exchange for investigation suspension and follow-up supervision**

21. From the time that the CTFTC received the complaint from X Game Credits Company to the time when Y Game Credits Company made the commitment, before the CTFTC decided whether or not to impose a sanction, while the investigation was still in progress, issues associated with market definition and the impact of the exclusive dealing clause on market competition made it difficult to determine whether Y Game Credits Company had violated the law based on existing evidence. Therefore, the CTFTC decided to apply the investigation suspension regulation in Article 28 of the CTFTA in this case.

22. Y Game Credits Company promised to shorten the exclusive dealing period. The commitment would allow X Game Credits Company to cooperate with convenience stores or other retail stores to sell its game credit cards produced by using the same technology applied to make the Z Game credit cards. If the negotiations with the convenience stores proceeded smoothly, X Game Credits Company (or any potential competitor) would soon be able to compete with Y Game Credits Company. At the same time, it could also enable X Game Credits Company and other new competitors to obtain stable marketing channels to facilitate their deployment. The measures that Y Game Credits Company promised to adopt could create competition opportunities and stimulate competition.

23. After evaluation, the CTFTC considered that the concrete measures proposed by Y Game Credits Company could eliminate the unlawful act and the case complied with the investigation suspension regulation in Article 28 of the CTFTA. Hence, the CTFTC decided during the Commissioners' Meeting to accept the concrete measures that Y Game Credits Company promised to take and suspended the investigation.

24. Within the period specified by the CTFTC, Y Game Credits Company presented evidence of its fulfillment of the commitment. The company sent written notices to inform the brick and mortar retail stores under contract that the exclusive dealing period was shortened and that they could discuss with other businesses about the opportunity to cooperate and sell their game credit cards that had been produced by using the same technology used to make the Z Game Credit Cards. Although there were currently no significant changes in the domestic market for prepaid or reloadable products for gamers, Y Game Credits Company was requested to present photocopies to the CTFTC each time it renewed or signed new contracts with existing contract stores, so that the CTFTC could keep track of the execution of the measures that the company had promised to take. The CTFTC would continue to keep an eye on the market situation and on how Y Game Credits Company fulfilled the promises. When discovering that Y Game Credit Company breached the commitment or engaged in the same conduct again, the CTFTC would increase the sanction once the violation was confirmed after investigation.

## 5. The Mobile Communications Chip Case

### 5.1. Settlement according to the Administrative Litigation Act

25. As specified in Paragraph 1 of Article 219 of the Administrative Litigation Act, “Where a party has the authority in disposing of the right of the claim and a settlement causes no harm to the public interest, the administrative court may seek settlement at any time irrespective of the phase of the proceeding reached. A commissioned judge or an assigned judge is also authorized to do so.”

26. Settlement during an administrative litigation requires the following elements: 1) The party of concern has the right of disposition. 2) The public interest may not be jeopardized. 3) The concession is mutual, not unilateral. 4) The settlement statement is in writing. 5) The settlement must be conducted at the court of litigation according to statutory procedures. 6) The parties to the settlement has to be the parties of the litigation.

### 5.2. Case background

27. On Oct. 11, 2017, the CTFTC concluded that Qualcomm Semiconductor Corporation had violated Subparagraph 1 of Article 9 of the CTFTA. The company had monopolistic position in the CDMA, WCDMA and LTE standard baseband processor market but refused to license its patented technologies and supplyships to competitors unless they signed licensing agreements that included restriction clauses, and required certain enterprises to sign exclusive dealing clauses. Overall, the conduct jeopardized competition in the baseband processor market. It was an unfair practice that directly or indirectly impeded other businesses from participating in competition. The CTFTC imposed an administrative fine of NT\$23.4 billion on the company. Later, when the case entered into the administrative litigation procedure, Qualcomm Semiconductor Corporation acted according to Paragraph 2 of Article 219 of the Administrative Litigation Act and petitioned the Intellectual Property Court for settlement. After taking into account the protection of the free and fair competition mechanism in Chinese Taipei, the interests of domestic cell phone manufacturers, chip suppliers and trading counterparts, and the development of mobile communications and the 5G industry, the CTFTC agreed to settle the matter with Qualcomm Semiconductor Corporation at the Intellectual Property Court on Aug. 10, 2018 in order to safeguard the public interest.

### 5.3 The commitment made as part of the settlement and follow-up supervision

28. As stated in the settlement statement, Qualcomm agreed to license standard essential patents (SEP) to Taiwan cell phone manufacturers and chip suppliers. The commitment was sufficient eliminate the concerns in the original sanction about the anticompetitive licensing practices of Qualcomm Semiconductor Corporation. The content of the settlement statement is as follows:

- Renegotiation of licensing clauses out of good intentions: If licensed Taiwan smartphone manufacturers consider that patent licensing agreements signed with Qualcomm include unreasonable licensing clauses with which they are forced to agree, Qualcomm Semiconductor Corporation promises to renegotiate the disputable clauses with the best of intentions. The smartphone manufacturers and Qualcomm Semiconductor Corporation can negotiate to determine if the dispute settlement procedure of a judicial court or a neutral third party is to be adopted.

- No chip supply refusal during the negotiation: During the renegotiation period of the dispute settlement procedure, if Taiwan smartphone manufacturers continue to fulfill obligations as specified in the licensing agreement and renegotiate out of good intentions, Qualcomm Semiconductor Corporation agrees not to terminate or threaten to terminate the supply of mobile modem chips.
- No Discriminatory treatment in SEP licensing: Qualcomm Semiconductor Corporation promises not to engage in any discriminatory treatment when licensing Taiwan and non-Taiwan smartphone manufacturers.
- Relationships with Taiwan smartphone manufacturers: Qualcomm Semiconductor Corporation agrees to offer a contract at the request of any Taiwan smartphone manufacturer. If Qualcomm does not propose to chip suppliers any fair, reasonable and non-discriminatory (FRAND) licensing clauses with regard to SEP claims in advance, the company may not file any lawsuit against chip suppliers in accordance with any SEP claims.
- No signing of exclusive dealing discount agreements: Qualcomm promises not to include any licensing fee discount agreement in chip supply contracts to force chip clients to accept the condition of using mobile modem chips from Qualcomm Semiconductor Corporation. Neither will the company adopt the condition that chip clients have to purchase a certain percentage of the chips they use from Qualcomm Semiconductor Corporation to receive licensing fee discounts.
- Provision of regular execution reports to the CTFTC: Qualcomm Semiconductor Corporation promises to report its fulfillment of the commitment to the CTFTC every six months within the five following years. Qualcomm Semiconductor Corporation will also report to the CTFTC within 30 days each time after the company revises or signs a new contract with any Taiwan chip supplier.

29. In addition, Qualcomm agreed not to seek refund of the fine of NT\$2.73 billion already paid in installments. The company also promised to execute a five-year industrial plan to invest in Taiwan and cooperate with local businesses. The investment would include 5G cooperation, new market expansion, collaboration with startups and universities, and the establishment of a Taiwan operation and manufacturing engineering center. Qualcomm Semiconductor Corporation will remain in close touch with the CTFTC, Ministry of Economic Affairs and Ministry of Science and Technology to carry out the plan and the investment. The CTFTC hopes the case can help shape a well-functioned competition environment in the mobile communications industry and have a positive influence on the development of semiconductors, mobile communications and 5G technologies.

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

**Global Forum on Competition**

**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –  
Contribution from Chinese Taipei**

**- Session III -**

1-2 December 2022

This contribution is submitted by Chinese Taipei under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/icar](http://oe.cd/icar).

Please contact Ms. Lynn Robertson [E-mail: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org)], if you have any questions regarding this document.

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## *Interactions between Competition Authorities and Sector Regulators*

### **- Contribution from Chinese Taipei -**

1. This paper introduces the role of the Fair Trade Commission, the statutory authority enforcing competition law, as well as the functions of sector regulators in Chinese Taipei. It also provides case examples to illustrate how sector regulators and the competition agency cooperate with each other and ongoing challenges in practice.

### **1. Introduction of the competition agency and sector regulators in Chinese Taipei**

#### **1.1. The role of the competition agency**

2. The mandate of the Fair Trade Commission (hereinafter referred to as the “CTFTC”) includes the universal application of competition law to all businesses. The competition law of Chinese Taipei, the Fair Trade Act (FTA), was promulgated in 1991, and the CTFTC was established the following year. The CTFTC is an independent authority that administers the competition law and investigates anticompetitive behaviors with regards to monopoly power, merger and concerted actions, and unfair business practices thereunder. The Commission comprises 7 commissioners that make its decisions collegially.

3. The FTA prescribes multiple goals for competition policy and enforcement. They include maintaining trading order and ensuring fair competition in each sector with the ultimate aim of protecting consumers’ interests. The competition rules laid down by the FTA are applicable to business behaviors in each and every industry.

#### **1.2. The functions of sector regulators**

4. Regulated industries in Chinese Taipei are subject to governance by specific government bodies. These governmental agencies normally have statutory responsibilities to implement respective industry policies and have the power to oversee and conduct inquiries into these industries. They are also equipped for the development of industry policies and supervision of industries in their capacities as sector regulators. As a result, a sector regulator will be required to have an in-depth understanding and knowledge of the current business climate, operating practices, technology advancements and trends in regulated industries that it is responsible for. To be able to access up-to-date information on regulated industries, sector regulators are empowered to gather information from businesses by requesting submissions of industrial data.

5. Taking the National Communications Commission (NCC) as an example – the NCC is the independent regulator of telecommunications and broadcasting. With substantial fixed costs including server rooms, cables and equipment, this industry has inherent characteristics of a natural monopoly, which may easily lead to a market failure. The NCC thus pays close attention to the market power of respective cable TV operators and to market competition. The number of household subscriptions in each designated area, such as a city or a county, is generally used in practice to assess market power of a cable TV operator. Under Article 24 of the Cable Radio and Television Act, cable TV operators

need to submit the number of household subscriptions they have to the NCC quarterly so that the NCC can monitor market competition and changes in market power of respective operators, aiming to prevent market failures.

6. As the FTA applies to businesses in all sectors, to keep up with industry trends, the CTFTC continuously watches and monitors business practices in either regulated or non-regulated industries, which may have an impact on market competition. The CTFTC maintains constant communications with sector regulators through its active participation in meetings, seminars related to competition matters and competition advocacy activities. In the process of investigations on competition cases, the CTFTC may also consult with sector-specific regulators where it is necessary. Their opinions can be used to inform the CTFTC of its decision on whether an enterprise's conduct may violate the FTA. This communication goes both ways. Sector-specific regulatory agencies may also seek the CTFTC's comments on competition related matters in the industry under their oversight, and invite the CTFTC to discuss the amendments to laws and regulations that may have an impact on market competition.

## 2. Limits and resolution regimes under the competition law

### 2.1. Conflict and overlap between the competition law and sectoral regulations

7. Due to the differences between the legislative purposes of economic regulations and the FTA, two sets of rules may be concurrently applicable to the same business activity, or may not be compatible without conflict. In this regard, Article 46 of the FTA provides that "The Act takes precedence over other laws with regards to the governance of any enterprise's conduct in respect of competition. However, this stipulation shall not be applied to where other laws provide relevant provisions that do not conflict with the legislative purposes of this Act." This establishes the role of the FTA as an "economic basic law". The FTA has precedence over other applicable regulatory rules when addressing competition issues arising from business behaviors. Other applicable regulatory rules would not apply unless such behaviors are otherwise stated in these rules and do not conflict with the FTA's legislative purposes.

8. To be clear, regardless of regulatory rules created by sector regulators, the application of Article 46 focuses on two aspects: whether the alleged practices or acts are relevant to market competition, and whether the regulatory rules are compatible with the legislative purposes of the FTA and thus are applicable. When determining the requirement of "do not conflict with the legislative purposes of this Act", a number of factors need to be considered, which may include strategies that businesses use to compete with others, market scope, the number of competitors and their market performance, market concentrations, barriers to market entry, economic efficiency (productive efficiency, allocative efficiency and dynamic efficiency), consumers' interests, transaction costs and other factors that may be associated with the legislative purposes of the FTA.

9. Furthermore, Paragraph 2, Article 6 of the FTA provides that "For any matter provided for in this Act that involves the authorities of any other ministries or commissions, the competent authority may consult with such other ministries or commissions to deal therewith." When questions or conflicts arising from overlapping jurisdictions between the competition agency and sector regulators, the CTFTC can initiate a consultation meeting under this provision to coordinate respective policy directions or enforcement actions. Consultation outcomes with sector regulators will be taken into account for in the CTFTC's final decisions.

10. The CTFTC also issued the “Operational Guidance on Coordination between the Fair Trade Commission and other administrative agencies”. Point 2 of the Guidance lists the following key factors for the CTFTC’s consideration while deciding the extent of its interventions, which include but are not limited to: 1) the level of scrutiny required by industrial laws and regulations; 2) whether industrial laws and regulations contain competition-related provisions; 3) the level of impacts on public interest; 4) resources and tools available for sector regulators. Point 4 of the Guidance states that the above factors listed in Point 2 will also be applied to the circumstance where other government agencies draft or amend industrial laws or regulations that relate to market competition or issues that are concurrently covered by the FTA.

11. Regarding merger cases, Article 15 of the “CTFTC’s Guidelines on Handling Merger Filings” provides that the CTFTC may consider the opinions of the competent authority of the industry, and thereby assess the overall economic benefit of a proposed merger as well as disadvantages from competition restrictions.

### **3. Cooperation between the competition agency and sector regulators**

#### **3.1. Cooperation models through formal agreements**

12. Take the interactions between the CTFTC and the NCC as an example. Prior to the 2016 amendments to the Cable Radio and Television Act and the 2016 amendments to the Satellite Broadcasting Act, the 2010 coordination agreement between the CTFTC and the NCC provided a cooperation framework for both agencies to coordinate their actions in tackling the disputes over the shelving and de-shelving of TV programs between cable TV operators and program providers. However, after the amendments on January 6, 2016, the amendments have included provisions expressly prohibiting cable TV operators and satellite broadcasting program suppliers from engaging in discrimination and refusal to deal, and prohibiting cable TV operators from requesting or facilitating satellite broadcasting program suppliers to engage in discrimination and refusing to deal. Due to similar provisions set out in Paragraphs 1 and 2, Article 20 of the FTA, the concurrent application of sector-specific regulations and the FTA led to an overlap in jurisdiction between the two agencies. The CTFTC therefore organized consultation meetings with the NCC in 2019 and both agreed on some further changes be made to the 2010 coordination agreement.

13. The illegality of unfair competition methods including boycotts and discriminations is set out in Paragraphs 1 and 2, Article 20 of the FTA. The 2016 amendments to the Cable Radio and Television Act introduced specific rules governing unfair competition methods in the cable TV related sectors. Paragraph 1, Article 37 of the Cable Radio and Television Act provides that system operators shall set up fair, reasonable, and unbiased standards for shelving/de-shelving satellite channel program providers, other types of channel program providers, foreign satellite broadcasting businesses, and wireless television businesses. Paragraph 4 of this Article prohibits system operators’ unfair means from causing satellite channel program businesses, other types of channel program businesses, foreign satellite broadcasting businesses and wireless television businesses to discriminate against other system operators. Both agencies agreed that unfair competition methods that are expressly set out in Article 37 of the Cable Radio and Television Act should be regulated by the NCC.

14. Similarly, in the case where specific business acts or practices are regulated by the 2016 amendments to the Satellite Broadcasting Act promulgated on June 1, 2016, this Act



takes precedence over the FTA. Paragraphs 1 and 2, Article 25 of the Satellite Broadcasting Act provides that:

- “Any direct satellite broadcasting business and the branch office of any foreign satellite broadcasting business that operates direct satellite broadcasting business shall not treat satellite channel and program supply businesses and the branch offices or agents of foreign satellite channel supply businesses differently without justification.
- Any satellite channel and program supply business and branch offices or agents of any foreign satellite channel supply business that provides satellite channels and program supply services shall not treat cable radio/television system operators (including the cable television program broadcasting systems), direct satellite broadcasting service businesses or other public audio and visual broadcasting platforms differently without justification.”

15. Upon a mutual agreement, any conduct subject to Article 25 of the Satellite Broadcasting Act should fall within the NCC’s regulatory jurisdiction.

16. The FTA will be applied to any act or practice, such as boycotts, discrimination, tying, concerted actions (including joint purchases and joint sales) and mergers that are not covered in regulatory rules governed by the NCC.

17. The 2016 amendments to the Cable Radio and Television Act and the Satellite Broadcasting Act serve as clear examples regarding concurrent application of different laws and overlapping jurisdictions. In addition to Article 6 and Article 46 of the FTA, consultation meetings can help both agencies to diminish overlapping issues, clarify mandates and avoid unregulated grey areas.

### 3.2. Ad hoc cooperation models

18. In 2021, the CTFTC approved a merger between Far Eastone Telecommunications Co., Ltd. and Asia Pacific Telecom Co., Ltd. to share spectrum in the 3.5GHz band and network. As the NCC was responsible for the regulation of the telecommunication sector, the two telecom companies were also required to submit an application to the NCC for its approval of spectrum sharing. When reviewing the application, the NCC needed to determine if such cooperation via spectrum sharing met regulatory requirements, of which the regulator’s policies on overall development of industrial technology and industrial plans would be taken into account. To coordinate the activities of the two agencies, during the merger review process the CTFTC consulted the NCC about this proposed merger in accordance with Paragraph 2, Article 6 of the FTA and Point 15 of the Guidelines on Handling Merger Filings.

19. The CTFTC held a workshop titled “Improving trading order of the real estate market” on October 18, 2021, calling for a joint effort among real estate businesses to fulfill corporate social responsibility so as to build robust trading order. At the workshop, the CTFTC, the Ministry of Interior, the Consumer Protection Committee under the Executive Yuan and the Ministry of Finance explained relevant laws and regulations in details and provided examples of common illegal business practices. The local governments shared their observations and insights gained from compliance inspections in the industry. The CTFTC also exchanged opinions with stakeholders including real estate associations at the workshop.

20. To build a healthy housing market, the Executive Yuan hosted two meetings respectively on November 4 and November 26, 2021 with relevant governmental agencies. The agencies invited included the Ministry of Interior, the National Development Council,

the Central Bank, the Ministry of Finance, the Financial Supervisory Commission and the CTFTC. Following the Ministry of Interior's presentation for an overview of the policy on building a healthy housing market, each invited agency added its enforcement activities or regulatory measures. Given the enforcement authority under Article 21 and 25 of the FTA, the CTFTC focuses on the investigations of false advertising and deceptive acts or practices.

21. The CTFTC also participated in a preliminary meeting on January 19, 2022, hosted by the Executive Yuan regarding partial amendments to the Equalization of Land Right Act and amendments to Article 24-1, Article 29 and Article 40. The main purpose of these amendments to the Equalization of Land Right Act is to improve transparency in the presale housing market and prevent price gouging due to misleading claims by real estate developers and agents that fabricate strong demand for the presale properties. The amendments require the real estate businesses to: 1) submit detailed information on presale properties to local governments prior to sales; 2) list true sale prices on "red slips" (i.e., pre-order slips/purchase orders), and 3) prohibit red slips of holders from reselling the slips. The ranges of fines that can be imposed on acts in violation of the above regulatory requirements vary from NT\$30,000 to 150,000 or from NT\$150,000 to 1,000,000. The aims of these punitive measures can be used to deter real estate businesses from inflating values and prevent house price soaring.

22. The housing market in Chinese Taipei has been heating up in recent years. Since 2020, the CTFTC has worked collaboratively with sector regulators, the Ministry of Interior and other government agencies, which include the Consumer Protection Committee under the Executive Yuan, local government agencies and national taxation bureaus. Every year, these agencies carry out joint on-site inspections of 7 selected cities/county during peak periods for supply of presale properties, which are the period of March 29 and the period of September 28. The selected cities/county are New Taipei City, Taoyuan City, Hsinchu County, Hsinchu City, Taichung City, Tainan City and Kaohsiung City. In each of the selected cities/county, the agencies conduct three unannounced inspections of presale cases, amounting to 21 cases in each joint effort.

#### 4. Conclusions

23. The ways in which the CTFTC interacts with other regulatory agencies can be summarized as follows:

- Choosing a cooperation model contingent on its corresponding context for the optimal effect of cooperation: A formal cooperation agreement is a binding arrangement between two governmental agencies that come to mutual conclusions through formal consultation meetings, recorded in writing. For example, the above-mentioned agreement between the CTFTC and the NCC was approved by their Commissioners' meetings and then published to the public. In terms of ad hoc cooperation models, they are normally subject to certain case scenarios and each agency's authority as well as its responsibility. They are more flexible and more quickly adaptable making them more suitable for cases required to be solved in a relatively short period of time.
- Challenges faced by the CTFTC in cooperation with other governmental agencies: Taking the 2019 coordination agreement between the CTFTC and the NCC as an example – the CTFTC started its own research on the relevant issues in as early as 2017. Through a series of consultation meetings, the agreement was finalized and approved by the Commissioners' meetings of the CTFTC and the NCC. It then took

nearly two years before it was published to the public in 2019. Another example relates to the housing market interventions, which include the meetings for a healthy housing market, the preliminary meeting for amendments to the Equalization of Land Right Act and joint on-site inspections of presale cases. Coordinating appropriate responses in this type of the cooperation model is also challenging as it involves effective communication among multiple governmental agencies.

24. Regardless of which cooperation model and which agency the CTFTC works with, the common goal is to safeguard free markets and ensure fair competition through regular cooperation and close coordination between the competition agency and sector regulators.