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Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development **05-Feb-2009**

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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WD(2009)20
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COMPETITION AND FINANCIAL MARKETS

Roundtable 1 on Principles: Financial Sector Conditions and Competition Policy

-- Note by Chinese Taipei --

This note is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-18 February 2009.

JT03259248

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1. Background

1. The financial industry of Chinese Taipei, which now accounts for 12% of total GDP, has changed greatly in the past few decades to be of benefit to the economy in addition to becoming a flagship among its service industries. The liberalization and globalization of financial markets have been the government's key policy objectives since the early 1990s. Market liberalization, which has encompassed allowing new commercial banks to be established, granting more foreign banks access to the market, and gradually lifting restrictions on financial products, has upgraded the quality of financial services, and has given rise to intense competition in the financial markets of Chinese Taipei.

2. After the Financial Holding Company Act was passed in June 2001, the Ministry of Finance (hereinafter the "MOF") found itself faced with a growing challenge generated by the ever-increasing mergers between domestic financial services groups or alliances of financial services groups with enterprises in different industries. The emergence of financial consolidations and the increase in cross-sector business made the supervision of the financial industry more challenging and complex, thus making it necessary to have a single financial regulator responsible for the exercise of more professional regulatory discipline. The Financial Supervisory Commission (hereinafter the "FSC") was thus established in 2004 as the competent agency for maintaining financial stability, preventing systemic risk, and combating financial crime and money laundering through the exercise of differentiated supervision.

3. The Fair Trade Law of Chinese Taipei (hereinafter the "Law") was enacted in 1992 for the purposes of ensuring fair competition, maintaining trading order, and protecting consumers' interests so as to promote economic prosperity. From the perspective of the Law, the position of dealing with competition issues is supposed to be consistent across sectors. However, differences can be seen in the following cases.

2. Examples of Fair Trade Commission Practices

2.1 Case I

4. A complaint filed to the Fair Trade Commission (hereinafter the "Commission") had alleged that the deposit interest rates of each domestic financial institution had already been cut, but that prime lending rates were not being sufficiently reduced accordingly, it not only enlarged the spread of banks, but the parallel rate adjustment also implied that there had been concerted action as set forth in the Law.

5. Although the complaint referred to a concerted action which is *per se* illegal under the Law, the complainant provided no direct evidence to support the allegation. The Commission had to conduct first a market research to collect relevant market information, such as deposit interest rates and the amount of loan made by each bank, to proceed to investigate the alleged violation.

6. In the process of conducting the market survey, the Commission found that the levels of the bank interest rates affected the market significantly and it seemed that the limited circumstantial evidence could hardly substantiate the violation. Therefore, the Commission reconsidered the possibility of approaching this case from different aspects and found it necessary to consult related sector regulators.

7. As a nation haunted by prior experience with severe inflation and financial crises, stability is always its priority when it comes to policies regarding the development of financial markets. With regard to the methods adopted to handle cases in this field, the competition policies focus more on unfair-competition issues concerning consumers in the financial sector and opinions on competition issues from sector regulators will usually be respected.

8. After consulting the Central Bank, the MOF, and the Bankers' Association, it showed that the prime lending rate offered to loyal clients was the lowest short-term lending interest rate. The rate is adjustable and negotiable with regard to the term of credit extension, the details of business dealings and those of borrowers' credit following the liberalization of the regulation of fixed interest rates in 1985. Lacking circumstantial evidence to show that there are parallel adjustments being made by different banks, the Commission believes that each bank determines its prime lending rate independently.

9. Taking into consideration the prime lending rate system regulated by the Central Bank tends to rigidify rate adjustments, and is likely to impair the competition of loan rates, the Commission has suggested that the Central Bank request the Bankers' Association to reconsider the need of the system, including the justification for regulating the prime lending rate to achieve the goal of fairness in the loan market. Furthermore, the Commission has recommended that banks provide borrowers with opportunities to negotiate on rate terms.

2.2 Case II

10. Before the Financial Institutions Merger Act was passed in 1999, the Commission had been considering how it would cooperate with the sector regulator responsible for the Merger Act to formulate its merger notification procedures, as well as the manners of cross-agency coordination.

11. Subparagraph 2, Paragraph 3 of Article 13 of the Financial Institutions Merger Act is the main provision stipulating the responsibilities of the Commission which provides: "If the business or financial status of the credit department of a farmers' or fishermen's association obviously deteriorates, cannot meet the liabilities of the said association or is likely to harm the benefits of depositors, the competent authority may order the association to assign its credit department to a designated bank. Where the Competent Authority deems the act of assignment necessary to take an emergency measure, and where such a measure does not have any material adverse effect on the competition of the financial market, the bank is exempt from reporting to the Fair Trade Commission of the Executive Yuan in accordance with Paragraph 1 of Article 11 of the Fair Trade Law."

12. Prior to the passing of the Financial Institutions Merger Act, merger cases involving struggling financial institutions were reviewed scrupulously by the Commission to avoid disrupting financial order. In similar vein, as the mergers involved important and confidential matters, the handling process of these cases by the Commission as well as its decision would be in accordance with the request of sector regulators. Furthermore, if the market share of a financial enterprise being ordered to merge is less than 5%, or the assets of an enterprise being merged are less than its liabilities, such an enterprise has no plan to resume business and its business almost comes to a standstill, the impact of these enterprises on competition is limited and the Commission may authorize its commissioners to speedily review the cases prior to further submitting and reporting the findings to the Commissioner's meeting for ratification.

13. After the preliminary studies and analysis, the Commission believed that it should first clear up several uncertain concepts contained in the draft provision that were relevant to its responsibilities (Subparagraph 2, Paragraph 3 of Article 13 of the Financial Institutions Merger Act) before its responsibilities as well as the functions of the competent authority, the sector regulator, i.e., the MOF, could be marked off clearly. The main items included:

- What were the types of activities that would qualify merging enterprises to be exempted from filing merger notification to the Commission under the Financial Institutions Merger Act?

- What was the definition of the word "emergency" within the phrase "the Competent Authority deems it necessary to take an emergency measure", and what were the prerequisites for the determination of "problematic financial institutions"?

- What was the precise standard for constructing the phrase, "such a measure does not have any materially adverse effect on the competition in the financial market"?

14. Although the discussions at the commissioners' meetings concluded that the Law is in the position to sustain competition, yet when a financial crisis occurs and the government comes forward to attempt a solution, public-interest consideration is always its main concern and justification for intervention. Therefore, unless the MOF invites the Commission to express its opinions, the Commission will in most situations refrain itself from raising competition issues with the sector regulator. Moreover, the stability of financial market might in the government's view more urgent a goal than any competitive concerns. It therefore could make the Commission to review the relevant cases, the types of mergers qualified for exemption from filing pre-merger notification under the Financial Institutions Merger Act for example, by a relatively relaxing standard.