



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

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COMPETITION AND FINANCIAL MARKETS

**Roundtable 4: Going Forward: Adaptation of Competition Rules, Processes and Institutions to Current
Financial Sector Issues**

-- 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.

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1. Background

1. Chinese Taipei was relatively unscathed by the Asian financial crisis that broke out in 1997, with rising non-performing loan (hereinafter “NPL”) ratios and an over-banking issue increasingly becoming the major concerns of the sector regulator, the Ministry of Finance (hereinafter the “MOF”). It is for this reason that the MOF adopted the financial reform project in 2001.

2. In the first phase of the financial reforms, measures were adopted to reduce the NPL ratios, encourage merger activities to harness over-competition in the banking sector, create strong financial supervision by establishing Financial Supervisory Commission (hereafter the “FSC”), and liberalize market by drafting and promulgating new laws and their amendments.

3. As for the global financial crisis originated mainly from bank failures since the week of September 21 last year, the stock market of Chinese Taipei fell by half over a period of 2 weeks. Within less than 2 months, it dropped further by 24%. Exports also slowed down and even showed sign of negative growth because the onslaught of the financial tsunami resulted in a sharp reduction in consumer demand. The decline in orders affected both the industrial and the economic growth; nevertheless, the possibility of inflation in Chinese Taipei was still low and it is possible that it will slightly reduce inflation and thereby prevent it from eroding the economic growth. By observing various indicators, such as the foreign debt of each country, the ratio of foreign capital in the stock markets, and the short-term debts of enterprises, Chinese Taipei is still a country with a relatively healthier financial industry and its ability to adapt to financial turmoil is also superior to that of several other countries.

4. However, to cope with the more serious than expected impact brought about by the financial crisis and the economic recession thereafter, Chinese Taipei has expeditiously devised and gradually implemented several economy-stimulating measures or projects. These include, but are not limited to, the following:

- Launching direct talks with China and signing several agreements/MoUs, such as direct air links and maritime transportation MoUs, in order to normalize cross-Strait trade relations.
- Expanding public spending on infrastructure. The total budget allocated for this purpose for the following 4 years amounts to NT\$ 500 billion.
- Easing the credit crunch faced by the private sector. For example, the Central Bank has alone lowered the basic lending rate to 1.5% since January 2009 and banking and finance sector regulators have put into place several measures to pump more liquidity/credit into the money market. The Central Deposit Insurance Corporation has announced that all deposits would be fully insured for the time being. This temporary measure took effect on October 7, 2008.
- Distributing consumption vouchers, amounting to NT\$ 3,600 per resident, in order to stimulate the general public’s consumption in January 2009 before peak season of shopping for celebrating traditional lunar year holidays, and
- Devising promotion projects to boost our trade, in particular our exports to those places being targeted as new emerging markets.

5. The financial reforms in 2001 and 2005 were respectively launched by sector regulators for maintaining financial stability, preventing systemic risks, and combating financial crime and money laundering through various supervision. The following cases are provided in order to explain how the Fair

Trade Commission (hereinafter the “Commission”) has been dealing with the recent development of financial markets.

2. Examples of Fair Trade Commission Practices:

2.1 Case I

6. In 2006, the Commission established the “Research Team for Countermeasures on Adjustments to Competition Issues Arising from the Second Financial Reform” to discuss problems related to the harmonization of competition policies and financial policies.

7. When Chinese Taipei underwent the second financial reform, the following four major policy goals were proposed:

- Pushing the market share of the top three financial institutions to 10% or above;
- Consolidating 12 state-owned banks into 6 banks;
- Consolidating 14 financial holding companies into 7 companies; and
- That at least one financial institution would be operated by foreign investors or have its stocks listed in a foreign country.

8. The purpose of these policy goals was to encourage financial institutions, by means of consolidation, to expand their scales of operations, improve operation efficiency and the competitiveness in the global financial market, and drive forward the nation as a regional financial service center. Of the said policy goals, the Commission considered that the items concerning a financial institution’s ability to control risk, the release of government shares, and the restrictions on reinvestment in non-financial institutions all came within the domain of financial supervision.

9. The purpose of the Commission’s merger reviews, including those involving financial holding companies, have always been to maintain trading order and ensure fair competition. They may be quite different from financial sector regulators’ supervision in terms of purposes, issues concerned, and regulatory means. However, they are consistent with the purposes of adequately developing the efficiency of resource utilization, and facilitating economic stability and prosperity.

10. At that stage, the objectives of the domestic financial policies are to drive forward the consolidation of the financial sector, expand the scale of the economy, and enhance the regional competitiveness of financial institutions. Furthermore, in the development process as the financial sector is gradually being oriented towards centralization and size enlargement, the competent authority over competition law should also cautiously evaluate the impact of such centralization and size enlargement on the market structure, competition order and the benefits of consumers. The above authority is to give consideration to the overall development of the domestic financial sector under the premise of respecting the market mechanism.

11. Therefore, in light of the consolidation of financial institutions, which was most relevant to the responsibilities of the Commission in the process of the second financial reform, the “Research Team for Countermeasures on Adjustment to Competition Issues Arising from the Second Financial Reform” of the Commission discussed two major issues, namely, “Financial Market Definition,” and a “Substantial Review of Factors for the Merger Control of Financial Markets.”

2.1.1 Issue 1: Financial Market Definition

12. As restrictions on banking businesses are gradually being relaxed and new financial products are continuously being created, deposits and loans have no longer been the only sources of revenue for banks. Although the Commission occasionally touches upon the market for by-products in practice, discussions are mainly based on giving special consideration to certain cases, and the Commission does not provide a general and overall examination of the details of competition among products other than deposits and loans. The research team has thus suggested that, under the premise that the relevant industry information could be obtained, the scope of competition of the banking products market could be defined even more meticulously, for instance by taking into consideration the deposits and loans together with the credit card market (the number of credit cards issued domestically) and the consumer credit market. In this way, the status of banking competition could be more effectively evaluated.

13. Furthermore, the organization of financial holding companies has been established in Chinese Taipei under the current regulatory framework for governing physical business segregation within the same legal entity. Financial holding companies may reinvest in banking and regulated foreign financial entities, bills finance, credit cards, money trust business, insurance, securities, futures and venture capital, as well as other types of business related to financial market that are approved by sector regulators. Therefore, in order to proceed with an integrated competitive analysis, it is necessary for analysts to obtain information concerning consumer preferences on and price elasticity of various financial products and services, in which financial institutions including financial holding companies operate in different business areas.

2.1.2 Issue 2: Substantial Review of Factors for the Control of Mergers in Financial Markets

14. With respect to mergers among financial institutions, the Commission shall take into consideration their unilateral effects, coordinating effects, the degree of entry barriers and impairment of market competition. If the restraining effects on competition are conspicuous, the Commission will counter-balance their impact with their likely overall economic benefits.

15. Furthermore, as for the Commission's position with respect to the activities of financial institutions engaging in post-merger anticompetitive activities, the following reviewing principle applies. Once financial institutions strengthen their operations, they may provide their trading counterparts with financial products or services at even more favorable prices, or that are higher in quality or more diversified, and the Commission welcomes this development. Nevertheless, after financial institutions are enlarged and become more centralized as financial groups, the integrated resources owned by these financial groups are much greater than those owned by regular financial institutions. The market power of financial groups thus not only tends to be centralized, but financial groups are also in a position that is more advantageous than that of consumers in terms of the provision of required information. Anticompetitive activities may thus result from centralization and the enlargement of financial institutions. For example, two financial institutions that are competitively related to a so-called financial group may restrain business activities mutually, such as by jointly determining interest rates, or service charge rates, or by restraining adjustments in the above-mentioned prices. In such situations, the above-mentioned parties may agree that they will not poach clients from each other or may jointly refuse to trade with specific parties. If strategic alliance cooperation agreements involve conditions having the effects of price restraints, exclusive dealing, or market division, and are sufficient to affect the market function of the supply and demand for services, this will result in a violation of the provisions concerning concerted actions as set forth in the Fair Trade Law (hereinafter the "Law").

16. Furthermore, when financial holding companies or their subsidiaries engage in an act of co-marketing and compel trading counterparts, as a transaction condition, to purchase the products or services

of other subsidiaries, it is likely that the companies or their subsidiaries will be treated as violating the relevant provisions set forth in the Law.

2.2 *Case II*

17. In addition, prior to the emergence of the recent financial crisis, the Commission and the competent authority, the FSC, negotiated on the issue of the “Applicability of Laws and Regulations Related to Cases where the Financial Sector is Involved in Improperly Marketing Structured Financial Products” in August 2008, following the public’s complaining that financial institutions were improperly marketing structured notes (they were structured financial products).

18. The laws and regulations pertaining to the responsibilities of the FSC and to the self-regulation of bankers associations have clearly regulated the sales practices concerning the sale of structured financial products. Couple of examples could be made. Enterprises shall evaluate in advance whether the products are suited to their customers. In the sales process, the salesmen shall explain the risks associated with each product, and enterprises shall verify with their customers that they are aware of the risks involved.

19. At present, the disputes that arise in practice involve mostly that investors argue that salesmen did not explain beforehand the risks associated with “structured notes”. However, after the enterprises actually handled the matters and compiled statistics, the enterprises found that the majority of disputes still arose due to the problem of investors’ perceptions of anticipated market quotations. For instance, the stock price quotations of linked products were not what investors had expected, and did not necessarily have to do with risks which the salesmen fail to inform them of.

20. The FSC believes that the number of disputes can be reduced if the salesmen of financial institutions indeed comply with regulations, and enterprises should educate their salesmen relevant laws and regulations so as to improve the discipline. At present, requiring financial institutions to take sound recordings in the process of marketing is one approach being taken to provide evidence as to whether proper notification of the risks involved had been provided and whether acts of making people believe in something by mistake took place following the restoration of the marketing process.

21. The Commission and the FSC held a coordination meeting and proceeded to discuss the necessary coordination of responsibilities and duties. The conclusions reached in the meeting were as follows:

- **Cases on False Advertisements:** With respect to cases where financial institutions’ acts of selling structured financial products involved the dissemination of false, untrue or misleading advertisements, the FSC is to deal with these cases pursuant to relevant financial laws and regulations (such as the Trust Enterprise Act, Banking Act, Securities and Exchange Act, and Insurance Act) first. If the circumstances of these cases involve a violation of the Law, these cases will then be referred to and handled by the Commission.
- **Cases on Acts of Improper Marketing:** With respect to cases involving financial institutions’ acts of improperly selling structured financial products, the FSC is to deal with these cases pursuant to relevant financial laws and regulations (such as the Trust Enterprise Act, Banking Act, Securities and Exchange Act, and Insurance Act) first. If the circumstances of these cases involve violations of the Law, these cases will then be referred to and handled by the Commission.