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COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

Contribution from Chinese Taipei

-- Session I --

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COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

--Chinese Taipei--

1. This submission briefly explains the development of Chinese Taipei industrial policy and its relationship with competition policy.

1. Industrial Policy of Chinese Taipei

2. Small and medium size enterprises (hereinafter "SMEs") averagely accounted for above 98% of 1.2 million enterprises in Chinese Taipei in past years. The effective industrial policy implemented by the Ministry of Economic Affair, which is the competition agency of national economic development and industrial policy, is the key to ensuring economic growth and welfare of a nation. In 1980s, the business environment in Chinese Taipei changed as wages rose and the New Taiwan dollar appreciated against the US dollar. Labour and land costs increased dramatically for industrial use. At the same time, people became more aware of environmental protection issues resulted from the high-degree pollution industries. These economic challenges made the government started to promote the development of strategic industries that were characterised by a high level of technology, high value added and low energy consumption. With the establishment of the Hsinchu Science-based Industrial Park to facilitate the development of hi-tech industries, enterprises were encouraged to step up their R&D activities, improve productivity and quality, and enhance their international competitiveness.

3. When global and regional organisations became increasingly important, Chinese Taipei gradually lost its competitive advantage in labour-intensive products with low added value. The government implemented new industrial policies, including stimulating R&D by tax incentives, encouraging automation of production as well as pollution prevention, providing labour training programs so as to improve the upgrading of domestic industry in 1990s.

4. Since Chinese Taipei joined the WTO in 2002, the economic environment has become more liberalised, making it a part of the global industrialised system. The government has disclosed its intention to build Chinese Taipei into a Green Silicon Island, thus revealing its vision for national development in the new century. The project was expected to deliver economic benefits by promoting Chinese Taipei as global logistic centre, developing knowledge-based economic, stimulating conventional industries, creating R&D centres in Chinese Taipei by foreign corporations, and setting up in Chinese Taipei of local innovation and incubation centres for SMEs. The core value of the industrial policy in 2000s is to lead businesses towards a high value-added industrial era featured by innovation, invention, and R&D on the foundation of the past achievements in semi-conductor industry.

2. Policy of National Champions of Chinese Taipei

5. Apart from industrial policy of promoting the development of SMEs, Chinese Taipei has supported the policy for national champions in financial industry since 2001 financial reforms. Although Chinese Taipei was relatively unscathed during Asian financial crisis broke out in 1997, rising non-performing loans (hereinafter "NPL") ratios and an over-banking issue increasingly became the major concerns of sector regulator, the Ministry of Finance (hereinafter the "MIF'), thus the MIF adopted financial reform project from 2001.

6. The first phase of financial reforms adopted measures to reduce NPL ratios, encouraged merger activities to prevent from over-competition in banking sector, created strong financial supervision by establishing Financial Supervision Commission (hereinafter the "FSC"), deregulated market restraints by drafting and promulgating new laws and their amendments.

7. As a result, there were 14 financial holding companies established, 58 banks engaging in trust business, and 26 merger cases involving 61 financial institutions completed to build up a favorable banking environment. Concerning the banking industry has been too fragmented, too homogenous, and overly competitive, the FSC stepped in the second phase of the reform in 2005 to further consolidate banking companies. The FSC hoped to create one or two leading domestic player in the financial service industry, or what the FSC calls "national champion" banks to play a role in the international financial market after the reform.

3. Competition Policy and Advocacy

8. At the time of the industrial policy focusing on changing industrial structure in 1990s, the government promulgated the Fair Trade Law (hereinafter the "Law") in 1991, began to bring more attention on the merit of competition culture in industries.

9. The Fair Trade Commission (hereinafter the "Commission") initiated a task force to review over two hundred already existing relevant laws and regulations, which might have conflicted with the competition policy in 1993 and 1996. The performance of the project in 1996 was reported to the Cabinet for further consultation with sector regulators. However, owing to a lack of sufficient support from the Council for Economic and Planning and Development under the Cabinet which is in charge of deregulation policies, the Commission then proposed an amendment to Article 46 of the Law so as to affirm the status of the Law as the fundamental economic law and as the basis for harmonising competition and industrial policies.

10. To resolve the conflicts arising between different policy measures, Article 46 of the Law was amended to state: "Where there is any other law governing the conduct of enterprises in respect of competition, such other law shall govern, provided that it does not conflict with the legislative purposes of this Law." The purpose of this amendment is to ensure that any business conduct related to competition will adhere to the spirit of the competition law.

11. In addition to the mandate, Article 9 of the Law is the statutory foundation that calls on the Commission to cooperate with and advise other agencies regarding the impact of other policies.

12. Meanwhile, with the 1999 amendment to Article 46 of the Law, the Commission participated in the project of "Green Silicon Island Vision and Promotion Strategy" under the Cabinet and then the Commission established a task force which was referred to as the "Project for the Review of the Enforcement of the 'Green Silicon Island Vision and Promotion Strategy' Regulations" in July 2001.

13. The Commission providing guidance and consulting with the relevant government agencies by comprehensively reviewing laws and regulations that were impeding competition, the results were reported to the Cabinet in August 2003. At that time, more than ten different sector regulators governing more than thirty-one laws and regulations had not yet committed themselves to adopting the alternative pro-competitive laws and policies. Following further negotiations with the sector regulators in charge of such policies, 8 rules with anti-competitive effects were still pending, with half of them being related to the mandates of some professional associations to stipulate remuneration standards in charters.

14. The Commission has organised a task force to evaluate and promote the application of the OECD competition toolkit beginning with the first season of 2008. Two Commissioners of the Commission co-chair the "Competition Assessment Task Force." The team followed the analysis process of the toolkit to evaluate the competitive effects on two selected government policies and planned to publish the cases with the major content of the toolkit in traditional Chinese for future competition advocacy purposes.

Hopefully, through the practice, the Commission based on its past experiences of regulatory reform will find out the most appropriate methodology for competition advocacy.

4. Questions for Consideration

4.1. History and Evaluation

Q5. Have merger review laws ever been suspended in your country? If so, why? Were concerns expressed either explicitly or implicitly about the way in which merger efficiencies are typically examined or in the way in which failing firms are analysed?

15. In an effort to minimise the number of exclusions at least to the extent that is still in line with the legislative purposes of the Law, the Commission adopts the most appropriate strategy to deal with each kind of "exemptions".

16. Turning to explicit exemptions, although the Law applies to all sectors with no exception in Chinese Taipei, there are statutory exemptions applicable to mergers in the banking and insurance industries under certain circumstances:

- Article 62 of the Banking Act stipulates that if a bank is insolvent or has the risk of injuring depositors' interests as a result of obvious adverse changes in its business or financial status, the central competent authority may order it to suspend business and take resolution measures, may suspend part of its business, may send officials to supervise or take over operations or may take other necessary actions. Article 62-4.4 further provides that if the competent authority determines that it is necessary to proceed with a transfer immediately and that there will be no serious and adverse effect on market competition, approval by the Commission under Paragraph 1, Article 11 of the Law shall not be required.

- Article 19 of the Financial Holding Company Act stipulates that if a financial holding company, a bank subsidiary, an insurance subsidiary or a securities subsidiary of a financial holding company is insolvent, or after adjustments, has a negative net worth on account of adverse changes in its financial or business conditions, and if the Ministry of Finance determines that immediate measures are necessary and that such measures will not result in unfair competition in the financial market, Article 11 of the Law shall not apply, and an application to the Commission will not be required for that financial holding company to: 1. merge with any company referred to in Paragraph 1, Subparagraph 1 or Subparagraph 2 of the preceding Article or transfer all of its rights and obligations to any said company or assume all the rights and obligations of any said company; 2. permit the same person or same concerned person to hold shares representing more than one-third (1/3) of its voting rights; or 3. be established as a result of a transfer from a financial institution.

- Article 13 of the Financial Institutions Merger Act stipulates that in the event that the business or financial status of its credit department obviously deteriorates, a farmers or fishers association cannot meet its liabilities or its net value after adjustment becomes negative, the competent authority may, if deemed necessary, and after consultation with the central competent authority in charge of farmers or fishers associations, order that association to assign its credit department and the property required for its operations to a bank. Where the competent authority deems it necessary to take emergent measures and where such measures would not have any material adverse effect on competition in the financial market, the bank is exempted from applying to the Commission for approval in accordance with Paragraph 1 of Article 11 of the Law.

- Article 149-7 of the Insurance Act stipulates that when an insurance enterprise organised in the form of a limited liability company by shares assumes the operations, assets or liabilities of another insurance enterprise, where the competent authority deems that there is a need for urgent measures and there will be no material adverse impact on market competition, the requirement to report a business combination to with the Commission under Paragraph 1, Article 11 of the Law shall be waived.

Q6. Have any of your decisions ever been overridden on grounds of industrial policy? Are there any recent examples? What reasons were given? To what extent had the competition agency already considered the market characteristics or considerations that were the basis for the override? What have been the consequences of the override for consumers and competition policy?

17. There is one case illustrating that decisions of the Commission could be overridden on grounds of industrial policy.

18. The Commission had long been aware that some laws regulating professionals required that the charters of the individual trade associations set fee standards for certain practices--for example, fees professionals may charge and fee schedules applicable by type of service. In some cases, the trade associations had to submit their fee standard proposals for the regulators' approval. Since professionals cannot practice without membership in their own trade associations, the fee standards stipulated in the trade associations' charters in effect would decrease significantly or even eliminate the possibility of price competition in their respective markets.

19. Since these charters are authorised by relevant laws and have existed for quite a long time, to avoid the potential problems of conflict in jurisdictions and uncertainty over laws, the Commission decided to consult with the relevant regulators before taking any formal actions against those trade associations. In 1999, the Commission met with the Ministry of the Interior, the Ministry of Finance, the Ministry of Justice and the Public Construction Commission to discuss whether the price standards in the trade association charters for architects, accountants, lawyers and technicians were in violation of the Law. Soon thereafter, the Commission concluded that the trade associations had undoubtedly been engaging in concerted actions, and, as a result, it forwarded its formal opinions to the relevant regulators as well as the trade associations to clarify its position in its implementation of the Law. The Commission advised those government agencies to revise the relevant laws and required that the relevant trade associations eliminate all provisions for setting fee standards within a year.

20. In 2001, the Commission found that none of the responsible government agencies had proposed a draft to revise the relevant laws. Of the trade associations for whom the agencies were responsible, some had urged their members not to adhere to follow the fee standards stipulated in their charters, but most architects' trade associations strongly refused to comply with the Commission's requirements. Further communications with the architects' trade associations were undertaken but simply to no avail. Finally, in 2003, the Commission issued the three largest architects' trade associations orders requesting that they not only stop using fee standards but also repeal the relevant provisions in their charters at their next general meeting.

21. In the same year, the three architects' trade associations appealed the Commission's decision to the Cabinet, the highest administrative body, and the end result was that the Cabinet turned down the Commission's decision. This was based on the fact that: 1) it was not clear whether the fee standards were actually affecting the market's function; 2) the fee standards could not be effective without the regulator's permission; in other words, the trade associations did not make the final decision; and 3) Article 9 of the Fair Trade Act stipulated that for matters provided for in the Act that concerned other authorities, the

Commission could consult with those other authorities to deal with the issue. The Commission is still considering whether there is a need to raise the issue with the Ministry of the Interior in the future.

22. This was the first time since the amendments to the Law that the Commission had tried to deploy its power against anti-competitive behaviour granted by another authority. The fact that its enforcement effort was not well received by the highest administrative body has caused the Commission to slow down its pace in trying to repeal existing laws which go against the legislative purpose of the Law.

23. The amendment to the Architects Law drafted by the Ministry of the Interior has recently been proposed to the Cabinet. The Commission has been invited to provide comments on the provisions designed to retain the power of architects' associations to set minimum fee standards. The architects' trade association has stated that setting a fair fee standard would possibly balance the asymmetric market position between architects and consumers, and would further ensure the quality of the resulting construction. On the other hand, since considering setting a standard service charge is not the only way of guaranteeing security, and inferior quality does not necessarily result from price competition, the Commission has proposed a draft amendment to the Architects Law that will delete the power of the association to set the fee. By so doing, the Commission asserted again that such conduct is in breach of the Law under any circumstances.

24. After the consultation held by the Cabinet, it has been decided that the new amendment will directly require the Ministry of the Interior, the sector regulator, to set the fee standard on the basis of the recommendations of consumers and stakeholders. The amendment has yet to be proposed to the legislators.

4.2. Means and Goals

Q1. Please specify any of the following are instruments of industrial policy in your country:

- *Government procurement*
- *Exemptions from antitrust laws*
- *Regulatory barriers to competition*
- *Access to credit*
- *Arranged mergers and acquisitions*
- *Control of acquisitions of national companies by foreign investors*
- *Other*

25. Any instruments from the above could reach the industrial policy goals in Chinese Taipei.

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