出國報告(出國類別： 其他公務有關活動)

出席 2013 年 10 月經濟合作發展組織(OECD) 「競爭委員會」會議報告

服務機關： 公平交易委員會

姓名職稱： 蔡蕙安 委員

楊佳慧 科長

杜幸峰 視察

赴派國家： 法國

出國期間： 102 年 10 月 26 日至 11 月 2 日

報告日期： 102 年 12 月 19 日

目　　錄

附錄:

壹、參與會議之緣起及目的：

我國於2002年1月1日正式成為OECD「競爭委員會」（Competition Committee）「一般觀察員」（regular observer）後，即固定派員出席該委員會每年2月、5月（或6月）及10月於法國巴黎舉行之委員會會議及下轄之第2工作小組(WP2)會議、第3工作小組(WP3)會議，以及於3次例會中擇定乙次併同辦理的「全球競爭論壇」(Global Forum on Competition)。

「競爭委員會」主要討 論競爭政策及競爭法之制定及執行技巧，以促進執法活動之國際化及促進各國各項政策及法規之透明化；並制定競爭法執 行之最佳實務，促進各國之執法合作並對開發中國家進行能力建置。本會參與「競爭委員會」相關會議活動，除可與歐美國家直接進行密切互動、交換意見，強化彼此間交流合作外，亦有助於各國對我國競爭政策/競爭法執行成效的了解以及對我國執法面向的建議，另「競爭政策」議題上，參與相關會議得使我國從遊戲規則的追隨者成為遊戲規則的制定者，此對提升我國國際地位助益頗鉅。

貳、OECD「競爭委員會」與會人員

經濟合作發展組織（OECD）是由歐、美、日等34個全球先進國家所組成，自1961年9月迄今已成立52週年，會員國包括澳大利亞、奧地利、比利時、加拿大、捷克共和國、丹麥、芬蘭、法國、德國、希臘、匈牙利、冰島、愛爾蘭、義大利、日本、韓國、盧森堡、墨西哥、荷蘭、紐西蘭、挪威、波蘭、葡萄牙、斯洛伐克共和國、西班牙、瑞典、瑞士、土耳其、英國、美國、智 利、斯洛維尼亞、以色列、愛沙尼亞，本次出席「競爭委員會」會議人員，除前開OECD 會員國代表外，尚有歐盟、工商諮詢委員會（BIAC）及「競爭委員會」參與國(Participants)，包括我國、巴西、保加利亞、埃及、立陶宛、俄羅斯、南非、羅馬尼亞、印尼、哥倫比亞、馬爾他、祕魯、埃及等13 國代表。本次會議我國出席人員為公平交易委員會蔡蕙安委員、製造業競爭處楊佳慧科長及綜合規劃處杜幸峰視察。

參、「競爭與管制第二工作小組」(WP2)會議重點

10 月 28 日「競爭與管制第二工作小組」(Working Party No. 2 on Competition and Regulation, WP2)會議，會議由 WP2 主席 Alberto Heimler 先生(義大利競爭委員會研究與

組織關係處前任處長)主持，本日討論議題包括:

一、討論「競爭法主管機關活動影響評估」(Competition Authorities' Activities):

1、本議題係延續本年 2 月由 Prof. Stephen Davis 所提出之對評估活動方法報告，及秘書處於 6 月會議中提出「年度影響評估指導原則草案」(Draft Guidelines on Annual Impact Assessment)之討論。秘書處依 6 月會員討論結果，修正該指導原則並更名為「定期影響評估指南草案」(Draft Guide on Regular Impact Assessment)，以「定期」取代「年度」並就競爭主管機關決議之影響評估，提供會員評估方法建議。

2、會員們對此一修正大都表示支持，主席表示:本草案僅為一基本指南，非提供會員對每項活動之評估，而且本版本僅為初稿，不可能涵蓋所有活動項目，且評估之項目是在對決議產生時之影響評估。秘書處將考量本次討論內容，於二月再提出修正意見，俟會員討論通過後再提報競爭委員會通過。

3、聯合國貿易暨發展會議(UNCTAD)代表報告該組織會員以同儕檢視(peer review)做為評估之方法。會員可透過同儕檢視發現其問題，並可提供會員政策建議。

二、討論「競爭與生產力」(Competition and Productivity):

1、秘書處競爭組組長 John Davis 報告競爭與生產力之關聯。D 組長指出，競爭法主管機關透過執法與倡議，並配合主管機關的解除管制，促進市場競爭，降低市場進入門檻，使勞力能達到充分僱用，提升勞動生產力，進而促進經濟成長。而卡特爾行為可能降低生產力並使工資負成長。問題是:我們要何種競爭的介入及結果?有多少實證研究可支持此一理論?。

2、德國法蘭克福金融與管理學院教授 Michael Klein 指出，成長與生產力及「經商指標」(doing business indicators)息息相關。在 185 個國家經商指標研究資料顯示，建立有效競爭的經濟基礎建設為: (1)投資誘因:如稅賦負擔；(2)市場擴大:成功的建立基本規則，如契約執行與交易便捷化；(3)進入市場的能力:如商業登記，資產取得，營建許可；(4)如何使廠商成長的能力:如信用的取得，勞力的僱用、電力取得；(5)退場機制:解散及清償制度。而就其對 5 個開發中國家之問卷調查結果，競爭與生產力之關聯高於基礎建設及政府貪污之影響。

3、OECD 經濟組專家 Giuseppe Nicoletti 表示，競爭是成長的重要因素，但仍須有其他配合要素。OECD「產品市場管制指標」(product market regulation indicators)即專注於可能阻礙競爭的措施:(1)行政負擔(如起始成本)，(2)反托

拉斯豁免(如國營企業)，(3)網路產業的競爭阻礙(如法律障礙、網路進入障礙)，(4)其他服務之競爭阻礙(如新廠進入、取得專業服務)，(5)貿易及直接投資限制。他認為，競爭可影響生產力及成長的管道是多元且複雜的，而可影響競爭的政策主要透過產品市場管制。大量的證據顯示，不當的管制(尤其是限制市場進入及競爭)阻礙了生產力及成長。

三、管制產業之發展報告:

1、由美國聯邦交易委員會(USFTC)報告華府地區計程車業者透過新的應用軟體(APP)，提升服務品質及效率案。

2、英國公平交易局報告該國 20 億英鎊投資改善寬頻網路案。

四、「廢棄物處理服務」圓桌會議(Roundtable on Waste Management Services):本圓桌會議主要討論三項主題:(1)家戶廢棄物之收集及清運(collection and transport)，(2)透過掩埋及焚化的廢棄物處理，包括市場進入障礙及廢棄物貿易，(3)生產者延伸責任制度。本議題共有 26 國提出報告。主席指出，都市固體物產業可分成收集及處理二大部分，收集就如郵遞服務，有密集經濟之利，亦即群居愈密集，所提供服務的單位成本愈低。這顯示，除單一個別客戶產生大量垃圾需要特別服務外，收集服務由單一廠商提供服務會最有效率。一般而言，地方政府的介入是必須的，不論是獨占的管制或使用競爭性招標的方法來規範服務的直接提供。在資訊透明的條件下，競爭性招標是可以產生最佳效果的方法。廢棄物的運送高成本顯示了處理設施的地理區域市場有其極限，且立法經常對地區的廢棄物處理課予嚴格之規定而阻礙了廢棄物處理的競爭發展。競爭法執法機關應該確保水平結合及協議不會限制了收集招標過程中的競爭，或處理設施的可及性，也應確保垂直結合及協議不會因為允許廠商在收集及處理過程中擁有市場支配力量而限制或妨礙其他市場之競爭。討論共分 4 大主題進行:

1、**廢棄物收集市場之競爭:**

(1)瑞典:主席請瑞典代表說明其對單戶家庭與集合住宅(公寓)垃圾收運之不同。瑞典代表表示，瑞典地方政府有義務確保所有家戶垃圾由地方政府自己清運或是經由競爭性招標由私人公司收集。另一方面，政府並無義務要收集路邊的報紙或包裝廢棄物，而是採「自己拿來」(bring)的制度。各家戶如果希望這些廢棄物可以在路邊被收集，自己則要付費委託額外的垃圾、報紙及包裝廢棄物服務。一般而言，地方政府收集單戶家庭廢棄物，包括報紙及包裝廢棄物及其他付費服務，而私人公司則收集公寓廢棄物，因為垃圾、報紙及包裝廢棄物量較大。而公寓住戶則可與收集公司協商採路邊收集清運方式。

(2) 愛爾蘭:愛爾蘭代表表示，愛爾蘭之廢棄物收集市場曾經過快速轉型:地方政府從市場中退出，由私人公司接手且進行整併。雖然市場是「高度開放」，但因侷限於執照發放，實際上並非「高度競爭」。人口稀少地區通常僅有 1 家服務，而在首都都柏林市則有 3、4 家。競爭法主管機關正與政府單位合作，蒐集市場更多資訊。

(3) 主席表示，在某些地區家戶廢棄物之收集是相當競爭的，瑞典的公寓廢棄物所產生的量相當於小型企業，相互競爭可產生良好及有效率的服務，而愛爾蘭的狀況比較難以評估。

2、招標所引起之競爭問題:

(1) 主席表示，大部分之國家或以競爭性招標或直接由地方政府提供家戶廢棄物收集服務。競爭性招標常用來作為收集廢棄物之分配，由地方政府經營之廠商則常與私人公司競爭，競爭中立的討論在此一問題上是必要的。

(2) 挪威:在挪威，家戶廢棄物的收集及處理是地方政府的責任。地方政府透過設立內部單位或公司，或內部設立之公司來實踐此項服務。私人公司則以服務企業用戶為主，但也會競標爭取一些家戶廢棄物之收集清運。公營公司或內部設立公司可獲得所得稅豁免，且這些公司可以免於達成市府所要求之法定義務要求。2013 年 2 月 27 日歐盟自由貿易協定有關國家補助之決議認為，這可能會引起交叉補貼及競爭中立問題，規定地方政府廢棄物收集公司有必要維持其獨占及競爭之分離帳戶，以確保其成本正確計算分配於所提供服務，且不得豁免所得稅。挪威政府現正著手進行修法以符合此一規定。

(3) 加拿大:加拿大代表表示，在加拿大地方政府與私人公司並無直接競爭關係。地方政府可以提供服務或安排私人廠商提供服務，但非兩者同時進行。地方政府可改變招標條件以變更競爭條件，如地理區域的劃分變更、延長時限以允許廠商擴充產能或收集到處理的垂直劃分條件變更等。

(4) 羅馬尼亞:布加勒斯特的家戶廢棄物收集於 1999 年完全開放給私人公司，整個城市劃分為 6 大區域，每一個區域都簽訂 5 年期契約。在 2004 年該契約被延長到 2007 年，而在 2007 年此一契約再度被延長，其中一區更延長為 25 年，地方政府認為這是其權限，此案目前仍在高等法院審理中。

(5) 義大利:義大利政府提供減少掩埋及鼓勵廢棄物分類收集之誘因。政府可對各地方政府掩埋課予環保稅，但如果達到垃圾分類或減量目標則可獲得折扣。

3、掩埋及焚化服務市場:

(1) 主席指出，垃圾掩埋及焚化可能產生地方成本，而焚化可能會有有害物質殘餘。這些外在的社會成本如果沒有考量，可能會有誘因製造更多的廢棄物。這個廢棄物定價問題至今尚未被提出討論，但未來可能會有政府考量此一問題，如義大利所提課予環保稅的例子。另外大家都討論的「別在我的後院」問題(not in my back yard, NIMBY)已是非常嚴肅的社會課題。廢棄物的處理在不同人口密度及地理特性的區域可能會產生不同之社會成本。

(1) 我國: 主席就本會所提報告內容有關焚化爐競爭部分提問:「貴國在焚化爐業已有競爭(全國共24座焚化爐)。該設施十分重要，因為95%未回收的垃圾都以焚化處理。請說明清運者如何在這些焚化爐業者問選擇及股本報酬率(ROE)定價是否可以解釋過去15年來人均垃圾量從1997年每人每日1.1公斤強降至2012年的每人每日0.397公斤?本會代表答復以:「我國焚化爐可分為公有公營、公有民營及民有民營三種經營型態。公營部分價格由各縣市政府依成本訂定，故無競爭問題。而民營焚化爐對民營廢棄物收集業者所欲焚化之工業廢棄物價格則可能會有競爭之效果產生，但本會至目前為止尚未發現有競爭相關案例。至於人均廢棄物減量是因我國自1998年開始推動之「垃圾零廢棄」政策，復於2005年開始推動垃圾強制分類，要求民眾將一般廢棄物分類為可回收資源、廚餘及垃圾3大類而使人均垃圾量大量降低。目前我國尚未有任何是否焚化爐之股本報酬率定價與垃圾減量有關聯之研究。

(2) 英國:英國競爭委員會審核若干個 Stericycle 的購併案，包括與 Ecowaste 的案件。Stericycle 與 Ecowaste 兩家皆為擁有收集、處理及處置有害廢棄物能力的上下游整合之廠商，並同為水平競爭者，其結合可能減損市場競爭。競爭委員會認為，「僅為收集」的公司並未提供對垂直整合公司足夠的競爭限制，而且衛生部門僅會與 1 家收集公司簽約，因此競爭委員會要求 2 家公司必須先分割 1 座焚化爐及 4 個主要與衛生部門的服務合約做為其結合補救之措施。

(3) 美國:在美國，處理廢棄物是收集服務的必要條件。收集廠商必須在某度上與「處理」相結合。對僅提供「收集」服務的公司而言，可能會面臨與整合廠商競爭時的「提升對手成本」問題，如拒絕使用或提供較差之處理設施，或提高使用價格。因此，結合案中的補救措施在確保廢棄物處理服務應可提供給市場其他公司或新進公司使用。這些措施包括結構面的分割廢棄物處理之資產，或行為面的處理服務先前已存在的合約，或其他確保處理廢棄物服務可使用的方法。

4、製造者責任及其相關問題:

(1) 主席說明許多國家對某些種類的廢棄物，如包裝廢棄物，已立法實施集體清運及回收再利用，其目的在將此類廢棄物的收集及回收利用責任從地方政府移轉到廠商及零售業者。

(2) Antonio Massarutto 教授就促進生產者的責任及其主要問題提出報告。M 教授指出，生產者延伸責任(extended producer responsibility, EPR)可能會因獨占、強制目標、提高交易障礙費率而被扭曲運用。有證據顯示，EPR 並未實質提升「綠色創新」，且可藉由其他不扭曲的非 EPR 途徑增加回收。重點在於，在效率的考量下，EPR 可能非達成回收目標的最有效的工具，但我們必須納入現有市場扭曲情況做為綜合考量。下列可能是廢棄物處理市場失靈的原因:

A. 回收價值鏈可能會因可回收數量及沈沒成本的「檸檬問題」而增加交易成本。EPR 可減少某部分的交易成本，並使經濟規模擴大而有獲利的可能。

B. EPR 減少價格波動而誘使回收之獨立收集投資增加。

C. EPR 制度可被利用，設計來創造出在 EPR 制度下收集者的市場力想要的市場，而與地方政府經營者抗衡。

D. 支付給地方政府經營者收集回收材料的價格與並非比較各國制度率的適當的基礎，因為價格可能反映全部成本，或此一價格可能為地方政府及 EPR 制度的共同成本。

E. 廢棄物焚化處理成本可能較低，但如果透過回收則需透過個別處理程序而增加處理成本。

F. 回收特定部分的廢棄物之義務可被視為一種公共服務之義務(public service obligation)，對企業而言最有效率的履行義務即是在最低成本時施行。

G. EPR 對重建公權力對廢棄物的管控已成為最有力的工具，否則這些廢棄物會不受管制而消失，如非法拋棄或出口。而 EPR 扭曲市場的風險則可透過更進一步的制度設計來降低。

M 教授建議，某些競爭障礙或法定獨占可能是有效維持公共利益的必要方法，而獨占及競爭間之替換(trade-off)會隨時間及市場狀況而改變，重要的是避免閉鎖式或不可逆的 EPR 制度。

(3) 德國:在德國，廠商必須負責回收家戶所購買之包裝材料，如塑膠、鋁罐或

紙類。生產者得與有執照之廢棄物處理商簽約以執行其義務。這些廠商分成三大項:收集、分類及再利用處理。聯邦卡特爾署於 2012 年進行產業調查發現，在 2003 年至 2011 年間，回收產業的成本幾乎減半，而引入競爭的結果，回收再利用之配額不僅沒有減少，反而增加。配額似乎成為達成回收包裝目標的最佳工具，故德國目前並不考慮在收集市場中引入競爭。

(4) 日本:日本公平交易委員會曾對某委員會所提要求超市對塑膠袋收費問題提出意見。因為無法改變消費者使用塑膠袋的習慣，使得此一收費用必須相當高才能達到效果，而如果對塑膠袋課稅將增加行政成本及零售業者之本。

肆、「合作與執法第三工作小組」會議:

10 月 29 日舉行「合作與執法第三工作小組」(Working Party No. 3 on Co-operation and Enforcement, WP3)。會議由 WP3 主席美國司法部反托拉斯署署長 William Baer 先生主持，本日討論議題包括:

一、 「跨境結合案件補救措施」圓桌會議(Roundtable on Remedies in Corss-Border Merger Cases): 本議題主要為 OECD「2005 年結合審查建議書」(2005 Recommendation on Merger Review)之後續討論。會議討論重點著眼於跨境結合補措施之監督及施行，以及因補救措施須修正時，可能引起之問題與國際合作議題。本議題共有 13 篇報告，共分三個面向討論:(1)各國在案件處理的時機差異，可能造成對補救措施國際合作的困難。(2)在處理補救措施時，執法機關間可能因是否有取得當事人「拋棄權利書明書」(waiver)，造成機密資訊無法交換而導致國際合作上之困難。(3)各國法制體系不同而引發國際合作之難題。主要討論內容略以:

1、 OECD 秘書處背景資料報告:

(1) 各國競爭法主管機關面臨跨境結合案件補救的議題，計有：審查後作出衝突性的結論、關注不同面向造成結合補救措施的矛盾，縱有相同關注面向卻有不同的競爭觀點。

(2) 各衝突點包括跨境處置資產、跨境監控的問題；補救措施在結合通過後變更修正，造成不連續性；由企業的角度則是關心結合補救措施會不會過度限縮交易活動、且利用不同競爭法主管機關的矛盾而獲利。所以跨國競爭法主管機關在結合調查上的合作漸趨重要。

(3) 信託(Trustee)跟第三團體的利害關係人（third party stakeholder）提供助力

可能在執行過程中是需要的。基本上結合補救措施分為二部分：結構面如處分資產是在境外，處分的執法機關如何去執行；行為面則是為確保結合主體持續性的遵法而必須有所監控，這也需要當地的競爭法主管機關提供協助，倘若當地競爭法主管機關並無意提供相關的協助，監督將會有所困難。

(4) 檢視條款（Review clause）的存在也是有必要的，對於未來執行的不確定性提供了修正的機會，有些機關也有設定這樣的機制，所衍生的問題是，如何證明情事變更到足以需要修正結合補救措施的程度，所以使用上仍不多見。

2、 對於跨境結合實際操作的合作，加拿大、美國、歐盟及愛爾蘭均表示：在時效問題上，2009 年修正相關規定，現所產生的問題很少。與各國合作會因在很早階段即先進行溝通分享，讓補救措施的運作能有高度的持續性及有效性。

3、 加拿大因為地域關係常與美國聯邦交易委員會(USFTC)及司法部反托拉斯署(USDOJ)進行案件諮詢。尤其美國分享在 Digital 案例中，進行跨國性的合作，並陳明這是相當重要的案例，有雙邊或多邊會談，從市場界定至補救措施的影響都在內。另外，藉由密切與歐盟接觸及對於跨國補救措施執行上的問題獲得解決。

4、 歐盟也分享此案件尋找拆解資產買家的經驗（如尋找信託人及未來執行的監督等）。歐盟亦說明在 Pfizer/Wyeth 結合案與美國有很好的合作經驗，在符合美國拆解的購買者可以適度提供歐洲的購買者相關產品予歐洲市場，以避免歐洲市場產品因本結合過渡期而產生的短缺。

5、 美國提到在合作時機密資料的分享有助於設計補救措施，縱然沒有拋棄權利聲明書，仍可以靠合作協調來達到目標，行為與結構的補救措施要有執行性。USDOJ 跟 EC 曾對於 Deutsche 案在 2011 年及 2012 年作出不同的決定，關注的競爭焦點也不一，縱然在過程中已進行合作卻未必產生有效的結果，雙方雖結果不同卻沒有產生衝突，所以緊密的合作仍是必須的。簡單來說 BASF 案，主要資產在歐洲，影響市場在美國及歐洲，但買方是加拿大業者，由此可見各國在結合的補救措施上避免潛在的衝突是必要的。

6、 愛爾蘭說明在作結合分析採 SLC 原則，並無特別區分國內或跨境結合案件，跨境結合則會按境內市場、境內與境外市場競爭影響進行評估，拆解的均是屬於境內的資產，尚未及於境外部分。Stena/P&O 案是與 UK 合作的成功案

例，RHM/Premier Foods 案中，擴及銷售至境內與 UK 及歐洲的多樣產品，後經結合事業與競爭局同意，拆解部分境內品牌的產品，合作上與 UK 關係最為密切，因為雙方有境域重疊的問題，目前尚未有跨境拆解及合作的結合經驗。

7、 工商諮詢委員會表示，對於跨國間衝突性的補救措施應該要整合，讓結果有效率，整合與合作是一個必要途徑。

8、 澳洲、加拿大、日本、韓國分享對於補救措施方式及困難相關經驗，澳洲說明結合多為通路商，僅有部分的產製商。澳洲同時也分享 Pfizer/Wyeth 結合拆解案，Pfizer 分割 Fort Dodges companion animal business 獲得美國及澳洲競爭法主管機關的同意，此外，該案在澳洲當地多分割了牲畜疫苗業務及產製設備。

9、 日本在食品結合案中採行為面補救措施，以 5 年為期，業者需每年向 JFTC 陳報相關數據資料；韓國亦在合資結合案件中有行為面的補救措施條款；補救措施是預測潛在市場狀況的變化，所以容許進行調整，加拿大亦採此觀點。至於跨國的補救措施，則對於切割國外資產、購買者、如何採取可行的補救措施及第三方持續監督市場等問題，各國競爭法主管機關均表示將提高協調與合作溝通。

10、工商諮詢委員表示，由過去 GE 跟 Honeywell 的結合案件經驗中，各國競爭法主管機關應避免歧異，尤其各國對於補救措施不可能有相同的滿意度而觸及合作議題，應正視此類問題，察覺相異點。

二、 「如何定義機密資訊」討論(Discussion on How to Define Confidential Information):本議題係沿續 WP3 就國際合作之討論，在資訊交換時如何定義機密資訊及如何加速資訊交換問題。本議題共有 17 個篇報告，各國在定義機密資訊上差異性很大，在某些國家，因反托拉斯調查所得之資訊皆列為機密資訊，除非有法律規定，而在某些國則非機密資訊，除非該資訊須列為特別保護。我國就本議題亦提出報告，秘書處原擬對本會提問問題為:「報告中所提，機密資訊在調查中不得向另一方揭露，甚至在上訴中亦不得揭露，請說明台北高等行政法院就鮮奶案訴訟對此一論點所持之立場」，惟因本議題討論時間緊迫，主席在會中並未提問。

三、 對「1995 年國際合作建議書」之可能修正:本議題亦沿續 6 月之討論，秘書處依原 6 月討論內容，提出建議修正版本。UNCTAD 代表則提出拉丁美洲執法機關非正式合作機制「國際信息網路」(International Intelligence Network)之報

告。各國代表對本次建議書之修正，如改進通知程序、刪除未曾使用過之程序等大都表示同意，但在未來合作方法上尚有歧見。主席建議下次會議中再進行討論。

伍、「競爭委員會」會議:

10 月 30 日至 10 月 31 日舉行競爭委員會(Competition Commission, CC)會議，由主席 Dr. Frédéric Jenny 主持，討論事項如下

一、10 月 30 日:

1、工作小組報告:首先由第二工作小組、第三工作小組主席報告 10 月 28 日及 29 日會議經過，工作小組報告:會議首先由 WP2 及 WP3 主席報告前 2 天會議經過及結果。接著由 UNCTAD 及 ICN 聯絡人分別報告該國際組織之工作概況。

2、希臘競爭法及管制評估計畫報告:由OECD秘書處及希臘代表團報告OECD對希臘零售業、食品加工業、建築材料業及旅遊業所進行之競爭評估進展。

3、競爭法與政策指標:由 OECD 經濟處專家 Alain de Serres 報告經濟委員會就 OECD 對 34 個會員國及 14 個非 OECD 及歐盟國家所做之問卷調查結果，建議進一步研究競爭政策與法律與經濟成果之關聯，以用於 OECD 之「前進成長」(Going for Growth)2015 年版。惟會員就此一報告內容大都不表示贊同，主席建議將與經濟委員會溝通，讓秘書處考量是否再續行修正及如何使用本項指標。

4、競爭政策年報口頭報告:本日主席除邀請匈牙利及韓國就OECD政策中心競爭計畫執行情形提出報告外，並邀請歐盟及我國就 2012 年競爭政策年報提出口頭報告。我國由代表團團長蔡委員蕙安就本會組織改造及未來修法內容提出說明，並報告 2012 年廢電子電器卡特爾案與本會第 1 件申請寬恕政策之硬碟卡特爾案執法經過。

5、「卡特爾主動調查及利用過濾機制偵測卡特爾」圓桌會議(Roundtable on Ex Officio Cartel Investigations and the Use of Screens to Detect Cartels):本議題共有 25 篇報告提交，主席分 6 大主題討論:主動與被動卡特爾偵測工具間之關係、使用行為過濾機制國家經驗、使用結構過濾機制國家經驗、使用卡特爾過濾機制之挑戰、過濾機制及圍標共謀、過濾機制以外的被動式卡特爾偵測工具。討論內容略以:

(1) 秘書處報告:

(i) 各國競爭法主管機關若僅重視或仰賴寬恕政策的工具，而忽視其它偵測工具可能失去成功打擊卡特爾的機會、以及其他偵測工具對於寬恕政策產生正面外部性的好處。主動偵測工具包括結構面的偵測（structural screening）及行為面的偵測（behavioural screening），前者是建立在經濟理論及實證研究闡述市場特性（產業面）及產生卡特爾可能性，幫助競爭法主管機關警覺(red flag)；後者是辨識特定市場軌跡，如價格變動等因素分析影響卡特爾的可能性。「嚇阻」（讓未參加卡特爾的業者不敢參加）與「背離」（讓已參加卡特爾的業者有誘因進行揭露）是反卡特爾設計的關鍵，影響二項因素主要是卡特爾被偵測到及被懲處的或然率，主動偵測工具提高偵測率，將連帶影響被動工具寬恕政策的嚇阻效果，二者應交互應用，極大化寬恕政策的效果，而不是互斥的。

(ii) 美國自 1993 年採行寬恕迄今，各國都已追隨採行，但效果不容易評估，尤其也發現寬恕政策對於一些小型經濟體或家族企業（family-owned ）普及的社會也不見得適合。此外，寬恕要依賴外部提供資訊，競爭法主管機關太過被動，主動偵測機制主動權隨時在競爭法主管機關。而偵測(screening)機制是指經由經濟與統計的分析建構出能意識到非法卡特爾的能力，是卡特爾訊號的衡量工具，代表系爭市場或行為需要進一步進行檢視。

(iii) 結構偵測（structural screens）：指標計有廠商家數、互動頻率、進入障礙、市場透明度、需求面向的因素、供給面向的因素。前四項為簡單可獲得的資訊、不容易被推翻、當有檢舉時即可進行過濾。需求因素包括買方力量、網路效應、產業需求的變動性、需求彈性等；供給因素包括創新、對稱性成本、產能、同質性產品、多市場接戰、合作契約、財務依賴等，對於形成卡特爾可能性具有不同意義。

(iv) 行為偵測(behavioural screens)：指標計有出現不尋常而除了協議無法解釋的事件、比較相同情況下的其他行為表現、以及 6 要素的判斷，包括競爭及背叛的誘因、是否存在可能背叛的特質、背叛所影響的市場結果、經過統計、實證及理論支持、適當的指標而非屬特定極端的狀況。其次、價量指標與需求變動相符性的觀察與分析有賴經濟理論作為重要的基礎。

(v) 其他偵測：採行措施降低競爭、價格水準在區域間差異頗大、急速的價格變動、附屬服務的相似性。其他與價格無關的量的分配、產能、利潤

與回收率、成本分析等。比較市場分析也是方式之一，包括時間序列分析、產品市場分析、地理市場分析，卻也各有限制。

(vi) 主動的偵測工具在處理圍標案件上獲得很好的成效，雖然亦有誤殺與誤放的風險，且必須要有競爭市場作為衡量的基準，對於卡特爾行為並不能當然認定違法，而必須再有進一步的蒐證行動，該工具確實須長期觀測市場及對市場分析亦相當費時費力，惟因有此種主動監測工具，是一種市場訊號，意謂可能卡特爾被發現的機率可能提高，將對參加卡特爾的業者提高申請寬恕政策的誘因、或嚇阻業者避免加入卡特爾。

(2) OECD 同時邀請三位學者提出報告，其內容分別如下:

(i) 美國治華盛頓大學 William E. Kovacic 教授: 寬恕政策是目前各競爭法主管機關最重要打擊卡特爾的工具，多樣性的途徑可考慮由競爭政策策略的設計來嚇阻卡特爾及鼓勵業者遵法，反卡特爾的多樣方法是有必要的，如提高嚇阻率、提高起訴機率或是提高裁罰來強化寬恕政策等面向予以檢討。建立主動偵察機制是否有足量的證據可證明違法及具有刑事責任卡特爾仍有疑問，雖然主動偵測工具在美國處理公共工程的圍標案件上有不錯的成效，但工具的成效評估涉及整體資源的配置，尤其主動偵測工具需要有前期相當的投資，倘若少有具可信度或實質的回收效果，則機關是否會遲疑投注研究資源不無可能。尤其工具的選擇涉及如何使用有限的資源，在資源有限的競爭法主管機關（poorly funded agencies），以偏重研究途徑的主動偵測工具並非最適的選擇。此外，主動偵測工具亦有本質的問題，如具有猜測性、需長期關注、事業通常變化速度快、動態高，修正行為逃避卡特爾相當容易，與寬恕政策相比較，主動偵測工具存在明顯的建構障礙。他建議，可以用較為經濟的方式來建構主動偵測指標，由過去違法案件（cartels have footprints）建構預測性的指標（focal points）、使用模型來估算市場損害、競爭法主管機關的相互援助、各區域研究中心及大學的計畫合作、以及用區域性小範圍的建構為先等。

(ii) 美國全球經濟學團體(Global Economics Group)Rose M.Abrantes-Metz 教授: 簡介 2008 年美國紐約市銀行間「倫敦同業拆放率」(LIBOR)的案例，說明用主動偵測工具彌補寬恕政策的不足及更多市場的調查，除了調查，進而還可檢討修正相關財務市場的指標。她針對本案諸多的批評一一反駁，包括更高的誤殺機率、無法辨視具體合意與暗默勾結、資源耗

費不符成本效益、缺乏穩固性、可能給卡特爾的成員脫法的機會、資料侷限將導致使用限制，不足以作為調查的基礎、寬恕政策執行具有成效，何以需要再用偵測工具、偵測工具在實務上不多見，尤其應用在反托拉斯領域更難等。其總結看法為：經濟分析與實證方法在處理共謀案件上有越來越重要的角色，screen 可以在訴訟上提供有力的證據但絕非萬靈丹，同時也可以強化寬恕政策的應用，LIBOR 就是個實例但希望不是最終一個案例，所以討論的重點應該不在於要不要用 screen，而是如何使 screen 應用更具有效性。

(iii) 荷蘭阿姆斯特丹大學經濟學系 Maarten Pieter Schinkel 教授:寬恕政策有其侷限性，所以主動偵測工具也是有潛在效益，且在日益精煉的卡特爾行為（ghost escape the rule）更需要經濟學家的協助以獲取相關的證據，各競爭法主管機關為洞察機先，資源是必須要投注的。

(3)以色列表示，在過去 5 年的 15 件卡特爾調查案件中，只有 2 件寬恕政策的申請，主要是因為小國因素、告密者怕同業及社會杯葛、罰鍰過輕等因素。其他卡特爾案件由 22 個成員辦理（有警察及調查單位）以及其他的準檢調工具（police-like tools），以色列的執法經驗與 screen 並無相關。

(4)美國表示，在過去的執法經驗中，寬恕政策有很好的效果，縱然在 1930 年代起他機關因缺乏競爭法專業移來一些無涉競爭法的採購案件造成執法的無效率，故曾針對採購人員進行合作與訓練計畫，歸納圍標案件的特質來說明具有卡特爾嫌疑的類型，但目前 DOJ 認為卡特爾偵測機制並不能有堅實的證據基礎，所以並沒有計劃建立相關主動偵測指標。加拿大則表示會透過市場價格監測發動主動調查權。BIAC 認為主動偵測機制對於寬恕政策是正面的，是向大眾揭示嚴密的關注市場，且在訴訟上，經濟證據亦有助於證明卡特爾，相對上過度仰賴寬恕是否也有讓寬恕政策操縱競爭法主管機關的疑問（leniency manipulate agency）。

(5)墨西哥目前並未有寬恕的申請案，利用經濟分析發現藥廠交換資訊的卡特爾。瑞典各有失敗與成功的經驗，在殯葬業案成功的 dawn raid，但也曾在其它案件上一無所獲。智利亦僅有 2 個寬恕申請案，承認仰賴 screen 相當耗費成本（resource-intensive）。日本表示，該會目前處於獨立研究的階段，嚴密的搜集市場資訊跟用於確認比較可疑的產業，尚未有具體的結果。

(6)我國所提之報告則被主席提問有關結構式過濾機制，本會代表除說明本就以往卡特爾案件歸納出 12 種較高風險產業之特徵外，並以工紙案為例說明本會對

該行業偵測之經過。我國寬恕政策實施至今時間非常短暫，案件數有限，而由過去的處分案例歸納出產業結構特性，對於重點產業進行監控，並在結構面的偵測再輔以行為面的偵測而數次調查工紙案件，最後予以處分其卡特爾行為。

(7)韓國及義大利分享在公共工程圍標案件利用偵測工具的處理經驗，獲得很好的成效。歐盟則與其他律師、警察、消費者組織等獲得相關偵測資訊，主動偵測的好處是並非一定要有人舉發，與寬恕的配合可引來更多的揭露；另外有些政策面的推動也會發現卡特爾，如推動小型農業市場發現煙草的卡特爾、或是進行產業監測發現卡特爾、或是在處理反傾銷行為亦發現卡特爾足跡。雖然寬恕政策在過去的執法經驗中是主軸也有不錯的成效，但主動偵測工具在卡特爾調查中也可以扮演重要的角色。

二、10 月 31 日:

1、 競爭政策年報口頭報告:主席邀請瑞士、日本、烏克蘭進行 2012 年競爭政策口頭報告。

2、 「食品鏈產業競問題」圓桌會議(Roundtable on Competition Issues in Food Chain Industry):本議題各國提交報告計有 32 篇，為競爭委員會提交報告最高量之議題。因本議題所涵蓋面向十分廣泛，包括價格監測、垂直交易限制、結合、買方力量。政府干預、價格指標等，主席爰分 5 大項主題邀請各國討論:政府干預、價格監測、結合、買方力量及自有品牌。本議題討論內容略以:

(1) OECD 背景資料:

(i) 依 OECD 會員國統計，2005-2011 年食物類的上漲率普遍高於非食物類的上漲。2007 年上游農場價格(farm price)與下游零售價格(retail price)成交叉重疊後，價格差距日漸擴大，長期市場力（賣方力量與零售力量）也在轉變。上游製造產業的集中度（CR3）在 1990 年代已有高度集中狀況但仍有產業別的差異（極高或極低），近 10 年（1997-2007）各產業 CR4 平均上漲 13%。下游零售端歐盟各國普遍集中度高(CR5)，僅保加利亞、波蘭、羅馬尼亞尚處低度集中狀況，近年廉價商店（discounter）比例亦有成長，大多數的結合案都在製造端而非零售端，跨境結合占了多數。

(ii) 市場界定上，消費習慣的差異常有地域性，不宜以全國為市場。買方力量的相關重要文獻計有 Ellickson（2007）認為超級市場多產品的特質使得它趨向自然寡占；英國競爭委員調查了 2000 至 2008 年雜貨產業(grocery sector)，提出 30 項的揭示。DOJ 曾召開研討會，近來上游製造端的倒閉、上架費、退佣制度、折讓、契約訂定的價格回溯期及晚付款

機制都是買賣方力量變化關注的議題。

(iii) 垂直交易限制早期研究都假定上游製造端寡占、下游零售端競爭的前提，惟當現存買賣方市場型態改變時，下游趨於寡占而有買方力量時，議價能力將會凌駕上游，所產生的效率及消費者福利的分析也會隨之改變。舉例而言，上架費早期研究偏重於資訊不對稱的議題，而後期研究假定修正為下游寡占、上游競爭，則討論轉變為下游的市場力如何競租於上游、零售價上漲跟消費者福利下降等。基本上實證研究評估多樣。

(iv) 「自有品牌」(white brand)是食品產業發展上的一個重要特質，平均自有品牌占歐洲銷售量 23%、北美 15%，在歐洲各國仍有比例不同，英國高達 48%、義大利 17%。部分研究認為自有品牌可弱化雙重邊際化的問題，但也有反對意見認為對於全國性品牌(national brand)將用低價專屬契約吸引邊際消費者，對於核心的忠誠消費者則可能被收取更高的費用。整體研究走向，第一、自有品牌在實務上所造成的消費者福利尚未有具體看法；第二、在垂直的效果上是有，零售業者直接與全國性品牌製造商競爭，可獲取部分在供應鏈的「租」(rent)，在零售業者的自有品牌相互競爭影響並不明顯；第三、自有品牌連帶有創新的效果，這是食品業發展上重要的意義。

(v) 其他食品業競爭未解的問題：轉嫁的實證研究（轉嫁不足或過度轉嫁、菜單成本）、大小買方所產生的水床效應、搜尋成本對於漲價的影響、多產品的超市部分產品上漲轉嫁的問題、以及垂直交易限制對於轉嫁的影響。食品業是個「內部相關市場」(inter-related market)，有跨階層或同階層的競爭議題，雖然各國尚有些微的差異性，但整體來說優勢的零售端、各階層合併趨勢，以及農業在整體價格上所占比例更低等都是共同的趨勢，食品產業的多變性及食品安全也是備受關注的面向。

(2) 主席說明：本議題涵蓋面向十分廣泛，有監測價格、垂直交易、結合、買方力量，與政府的干預、價格指標等。討論內容略以:

(i) 政府干預議題：以色列、巴西、南非政府有不同的食物補貼(Food Aid)計畫，及與產業主管機關的配合與分工，競爭面通常是對市場進行研究。

(ii) 價格監測：挪威、比利時有價格資料監測與蒐集，並適時公布大眾，讓市場透明化，以及有利消費者選擇；但也同時有資料如何處理及選擇、品項種類難以過濾的問題，有些國家並不冒然公布。

(iii) 美國、法國、日本則說明處理的食品產業結合經驗，美國近來對於市場

範圍採較狹窄的界定，有機食品市場與傳統市場的市場界定有所不同，地理市場要考慮競爭壓力範圍與消費習慣。美國表示自有品牌的競爭尚不明顯，尚未形成抗衡性，且市場集中度並非其所關切的焦點，而是在意反競爭效果的影響。

(iv) 買方力量: 零售市場力量(retailer market power)並不等同於零售方力量(retailer buyer power)，競爭法主管機關該關切的是前者所產生的競爭影響而非後者，對於上下游間的買賣方力量高低基本上是談判的優劣勢，並不一定是涉及競爭的問題。

(v) 自有品牌：消費找常無法辨視品質的良窳，屬創新、低利、差異性的產品，對既有品牌封鎖競爭程度及利潤有槓桿平衡作用（leverage）。

陸、 心得與建議

一、OECD 本次會議所討論之廢棄物競爭問題內容相當廣泛，本會亦請行政院環境保護署協助提供資料撰寫報告，尤其對於廢棄物收集清運及掩埋場與焚化爐之設立與營運及回收資利用制度等，而各國在討論收集時使用之競爭性招標亦可提供本會在未來各項管制事業在制度設計上之參考。

二、國際合作資訊交換管道，尤其是在可允許競爭法主管機關取得國外之證據資料。這些管道也提供了主管機關交換機密資訊的機會，降低執法的不確定性及提供機關間與官員間合作之法律基礎。此一議題之討論內容可提供本會在調查需要國際合作及交換資訊案件之參考。

三、本次競爭委員會所討論之2項議題:「卡特爾主動調查及利用過濾機制偵測卡特爾」及「食品鏈產業競爭問題」皆為本會目前執法重點。公平交易法雖於100年修法加入寬恕政策，但因實施時間短暫，至今仍未有太多案例，而如何利用過濾機制偵測不法之卡特爾行為仍為本會所應學習與利用之執法重點。而「食品鏈產業競爭議題」各國反應極為熱絡，顯見世界各國都面臨相同之問題。本會雖因資料不足未提出報告，但此一問題在國內仍為施政主要重點，尤其目前各項物價高漲，而食品問題又是各界首要關注之重點，如何強化食品產業之競爭以讓人民享受低價格高品質之食品，亦為本會執法之目標。本次討論內容及各國報告值得本會參考。為利同仁瞭解國外實務之做法，相關會議文獻資料，擬建置於本會BBS 網站供同仁參閱利用。

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

25-Oct-2013

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WP2/A(2013)3/REV3
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Working Party No. 2 on Competition and Regulation

DRAFT AGENDA OF THE 55th MEETING OF WORKING PARTY No. 2

28 October 2013

-- Starting at 10.00 a.m. --

To be held on 28 October 2013 in Room CC 12 of the Conference Centre, 2 rue André Pascal, 75116 Paris, France.

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

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DRAFT AGENDA OF THE 55TH MEETING OF WORKING PARTY NO. 2

28 October 2013, from 10.00 – 18.00
OECD Conference Centre, Room CC 12
2, rue André-Pascal, 75116

I.	**ADOPTION OF THE DRAFT AGENDA**	DAF/COMP/WP2/A(2013)3/REV3
II.	**ADOPTION OF DRAFT SUMMARY RECORD FROM LAST MEETING**	
	-- Draft Summary Record from the last meeting	DAF/COMP/WP2/M(2013)2
	-- Executive Summary of the Roundtable on local transportation services	DAF/COMP/WP2/M(2013)1/ANN4/FINAL
	-- Summary of Discussion of the Roundtable on recent developments in rail transportation services	DAF/COMP/WP2/M(2013)2/ANN2/FINAL
	-- List of Participants to the meeting of June 2013	DAF/COMP/WP2/M(2013)2/ANN1
III.	**ASSESSMENT OF THE IMPACT OF COMPETITION AUTHORITIES' ACTIVITIES**	
	For discussion:	
	-- Note by the Secretariat	DAF/COMP/WP2(2013)10
	-- Note by UNCTAD	DAF/COMP/WP2/WD(2013)69
IV	**HEARING ON THE LINKS BETWEEN COMPETITION AND PRODUCTIVITY**	
	For discussion:	
	-- Note by the Secretariat	DAF/COMP/WP2(2013)11
V.	**COUNTRY DEVELOPMENTS IN REGULATED SECTORS**	
VI.	**COMPETITION ASSESSMENT TOOLKIT**	

VII. ROUNDTABLE ON WASTE MANAGEMENT SERVICES

For discussion:

-- Background Paper by the Secretariat	DAF/COMP/WP2(2013)12
-- Country contributions	
Canada	DAF/COMP/WP2/WD(2013)50
Czech Republic	DAF/COMP/WP2/WD(2013)67
Estonia	DAF/COMP/WP2/WD(2013)61
Finland	DAF/COMP/WP2/WD(2013)42
France	DAF/COMP/WP2/WD(2013)53
Germany	DAF/COMP/WP2/WD(2013)47
Ireland	DAF/COMP/WP2/WD(2013)60
Italy	DAF/COMP/WP2/WD(2013)46
Japan	DAF/COMP/WP2/WD(2013)57
Norway	DAF/COMP/WP2/WD(2013)43
Poland	DAF/COMP/WP2/WD(2013)51
Slovak Republic	DAF/COMP/WP2/WD(2013)48
Sweden	DAF/COMP/WP2/WD(2013)44
Turkey	DAF/COMP/WP2/WD(2013)64
United Kingdom	DAF/COMP/WP2/WD(2013)54
United States	DAF/COMP/WP2/WD(2013)63
European Union	DAF/COMP/WP2/WD(2013)55
and	
Latvia	DAF/COMP/WP2/WD(2013)49
Lithuania	DAF/COMP/WP2/WD(2013)45
Peru	DAF/COMP/WP2/WD(2013)65
Romania	DAF/COMP/WP2/WD(2013)59
Russian Federation	DAF/COMP/WP2/WD(2013)58
South Africa	DAF/COMP/WP2/WD(2013)66
Chinese Taipei	DAF/COMP/WP2/WD(2013)52
Ukraine	DAF/COMP/WP2/WD(2013)62
BIAC	DAF/COMP/WP2/WD(2013)68

For reference:

-- Paper by Dr. Antonio Massarutto	DAF/COMP/WP2(2013)13

VIII. FUTURE TOPICS

IX. OTHER BUSINESS

ANNOTATIONS

PROPOSED TIMETABLE

10h00 – 10h20	**Items I - II**
10h20 – 11h00	**Item III** (Impact Assessment)
11h00 – 12h30	**Item IV** (Links between competition and productivity)
12h30 – 12h50	**Item V** (Country developments in regulated sectors)
12h50 – 13h00	**Item VI** (Competition Assessment Toolkit)
13h00 – 14h45	**LUNCH**
14h45 – 17h40	**Item VII** (Waste Management Services)
17h40 – 17h50	**Item VIII** (Future Topics)
17h50 – 18h00	**Item IX** (Other Business)

Item III

In June 2013 WP2 examined the first draft of a guide setting out a suggested methodology for assessing the impact of competition authorities' activities that could be used by those jurisdictions that perform this exercise. A new version of this guide, which incorporates all the comments provided to the Secretariat during the June meeting and in writing during the summer, will be discussed, and will be circulated in advance of the meeting.

This discussion will be followed by a presentation from UNCTAD of their system of voluntary reviews of competition law, policy and institutions of their members.

Item IV

This Hearing will focus on the links between competition and productivity. The Secretariat will present a draft factsheet that outlines recent evidence on these links to elicit comments and suggestions. The aim of this note is to provide competition agencies with an additional tool to use in advocating their role. Two experts will then discuss the impact that reducing regulations and barriers to entry can have on competition and, hence, on productivity and growth: Giuseppe Nicoletti (OECD Economic Division), and Michael Klein (Frankfurt School of Finance and Management).

Item V

The US delegation will provide a brief overview of how new software applications can inject more competition into the taxi industry, address the recent changes to the regulatory framework in the District of Columbia taxi marketplace, and discuss how these changes restrain competition. This will be followed by a presentation from the UK delegation that will give an overview of a recent 2bn£ investment plan to increase the provision of broadband across the UK.

Item VI

The Secretariat will provide a short update on the on-going work on the new and the existing volumes of the Competition Assessment Toolkit.

Item VII

This Roundtable will focus on competition issues in the provision of management services for household waste. Three main areas will be covered:

- Collection of waste from households;
- Waste treatment, through landfills and incinerators, including a discussion on barriers to trade in waste; and
- Producer responsibility schemes, which are developed to comply with extended producer responsibility obligations.

The discussion will benefit from the participation of Dr Antonio Massarutto (University of Udine and IEFE). A background paper from the Secretariat and written submissions from delegations will provide some background for the discussion. A paper from the expert, on extended producer responsibility, will also be circulated for reference.

Item VIII

It was agreed in June that the meeting February 2014 there would be a Hearing on the ex-post assessment of government interventions and a detailed presentation and discussion of the new volume of the Competition Assessment Toolkit. The Secretariat will also provide a brief outline of the Ex-post Evaluation Manual. Topics for the WP2 June 2014 meeting will be discussed and decided.

Item IX

The next meeting of Working Party No. 2 is scheduled for 24 February 2014.

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

25-Oct-2013

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WP3/A(2013)3/REV3
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Working Party No. 3 on Co-operation and Enforcement

DRAFT AGENDA OF THE 117TH MEETING OF THE WORKING PARTY No. 3

29 October 2013

To be held on 29 October 2013 from 10:00 to 17:30 at the OECD Conference Centre, in room CC 12, 2 rue André Pascal, 75116 Paris.

Please contact Mr. Antonio Capobianco if you have any questions regarding this document [phone number: +33 1 45 24 98 08 -- E-mail address: antonio.capobianco@oecd.org].

JT03347235

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DRAFT AGENDA OF THE 117TH MEETING OF WORKING PARTY NO. 3

29 October 2013, beginning at 10.00 a.m.

OECD Conference Centre, Room CC 12

2 rue André-Pascal, 75116 Paris

I. ADOPTION OF THE DRAFT AGENDA DAF/COMP/WP3/A(2013)3/REV3

II. ADOPTION OF THE SUMMARY RECORD OF THE LAST MEETING

-- Summary record from the last meeting of 18 June 2013 — DAF/COMP/WP3/M(2013)2

For information:

-- List of participants for the meeting of 18 June 2013 — DAF/COMP/WP3/M(2013)2/ANN1

III. ROUNDTABLE ON REMEDIES IN CROSS-BORDER MERGER CASES

For discussion:

-- Note by the Secretariat — DAF/COMP/WP3(2013)6

-- Submissions by delegations:

Australia	DAF/COMP/WP3/WD(2013)42
Canada	DAF/COMP/WP3/WD(2013)36
Ireland	DAF/COMP/WP3/WD(2013)51
Japan	DAF/COMP/WP3/WD(2013)41
Korea	DAF/COMP/WP3/WD(2013)43
Mexico	DAF/COMP/WP3/WD(2013)62
Spain	DAF/COMP/WP3/WD(2013)61
Unites States	DAF/COMP/WP3/WD(2013)54
European Union	DAF/COMP/WP3/WD(2013)38

and

Brazil	DAF/COMP/WP3/WD(2013)58
Russian Federation	DAF/COMP/WP3/WD(2013)50
Ukraine	DAF/COMP/WP3/WD(2013)39
BIAC	DAF/COMP/WP3/WD(2013)66

IV. DISCUSSION ON HOW TO DEFINE CONFIDENTIAL INFORMATION

For discussion:

-- Submissions by delegations:

Australia	DAF/COMP/WP3/WD(2013)56
Ireland	DAF/COMP/WP3/WD(2013)59
Japan	DAF/COMP/WP3/WD(2013)40
Korea	DAF/COMP/WP3/WD(2013)44
Mexico	DAF/COMP/WP3/WD(2013)63
New Zealand	DAF/COMP/WP3/WD(2013)37
Poland	DAF/COMP/WP3/WD(2013)49
Slovak Republic	DAF/COMP/WP3/WD(2013)47
Sweden	DAF/COMP/WP3/WD(2013)67
Switzerland	DAF/COMP/WP3/WD(2013)52
United Kingdom	DAF/COMP/WP3/WD(2013)48
Unites States	DAF/COMP/WP3/WD(2013)55
European Union	DAF/COMP/WP3/WD(2013)57

and

Russian Federation	DAF/COMP/WP3/WD(2013)68
Chinese Taipei	DAF/COMP/WP3/WD(2013)45
Ukraine	DAF/COMP/WP3/WD(2013)60
BIAC	DAF/COMP/WP3/WD(2013)65

V. DISCUSSION ON POSSIBLE AMENDMENTS TO THE 1995 RECOMMENDATION ON INTERNATIONAL CO-OPERATION

For discussion:

-- Note by the Secretariat	DAF/COMP/WP3/WD(2013)53
-- Note by UNCTAD "The benefit of informal cooperation agreements in the fight against cross-border anti-competitive practices".	DAF/COMP/WP3/WD(2013)64

VI. OTHER BUSINESS AND FUTURE TOPICS

ANNOTATIONS TO THE DRAFT AGENDA

Proposed Timetable	
10:00 – 10:05	**Items I.** and **II.**
10:05 – 12.30	**Item III.** Roundtable on Remedies in Cross-Border Merger Cases
12:30 – 15.00	*Lunch break*
15.00 – 16.00	**Item IV.** Definition of confidential information
16.00 – 17.00	**Item V.** Possible amendments to the 1995 Recommendation on International Co-operation
17.00 – 17:30	**Item VI.** Other business and future topics

Item III. (from 10.05 to 12.30). Under this agenda item, WP3 will host a roundtable on "*Remedies in cross-border merger cases*". The topic was agreed as a follow-up discussion to the approval by the Competition Committee of the implementation of the 2005 Recommendation on Merger Review [C(2013)72]. The roundtable is meant to build on recent discussions on this same topic as there have been several roundtables on cross-border remedies in recent years. The discussion will focus in particular on the monitoring and implementation of cross-border remedies, and on issues arising when such remedies may need to be revised. Some of the key issues that delegates are invited to address at the roundtable are listed in the WP3 Chair letter of 26 July 2013 calling for country contributions (COMP/2013.133).

Item IV. (from 15.00 to 16.00). Under this agenda item, delegates will discuss criteria used in their jurisdiction to define the notion of "confidential information". In the context of the various discussions on the possible revision of the 1995 Recommendation on International Co-operation, several delegates asked that more detailed work be done in relation to confidentiality issues. This discussion will be introduced by a Secretariat presentation based on the brief descriptions of country submissions on how domestic laws and regulations define information subject to confidential treatment, and of the results of the OECD/ICN Cooperation Survey, where appropriate. The purpose of this discussion is to identify common approaches that might facilitate the exchange of confidential information.

Item V. (from 16.00 to 17.00). Under this agenda item, WP3 will discuss possible amendments to or revisions of the 1995 Recommendation on International Co-operation. The discussion, which draws together ideas and suggestions put forward in past meetings by delegations and by the Secretariat will be based on a Note by the Secretariat. This Note will present a marked up version of the 1995 Recommendation with comments for discussion. Delegates are expected to give the Secretariat guidance to produce an initial draft revised Recommendation for discussion at the February 2014 WP3 meeting.

Item VI. (from 17.00 to 17.30). Under the last agenda item, delegates are asked to choose topics for future work for WP3. In his letter to delegates in preparation for the October meeting (COMP/2013.133), the WP3 Chair suggested three possible topics for future work: (i) New working arrangements between agencies; (ii) Investigations of consummated and non-notifiable mergers; (iii) The use of markers for cartel leniency programs. This list should not be considered exhaustive, and delegations should feel free to send other ideas for consideration by the Working Party to the Secretariat.

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

29-Oct-2013

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Cancels & replaces the same document of 25 October 2013

DRAFT AGENDA OF THE 119th MEETING OF THE COMPETITION COMMITTEE

30-31 October 2013

-- Starting at 10:00 am on 30 October 2013 --

The 119th Meeting of the Competition Committee will be held on 30-31 October 2013 in Room 12 of the OECD Conference Centre, 2 rue André-Pascal, 75116 Paris, France.

Please contact Mrs. Patricia Hériard-Dubreuil, Deputy Head of Competition Division, if you have any questions regarding this document.
[Tel.: +33 (01) 45 24 91 41; Email: Patricia.HERIARD-DUBREUIL@oecd.org]

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I. ELECTION OF CHAIRMAN AND VICE CHAIRMEN FOR 2014

II. ADOPTION OF THE DRAFT AGENDA — DAF/COMP/A(2013)3/REV2

III. APPROVAL OF THE DRAFT SUMMARY RECORD OF THE LAST MEETING — DAF/COMP/M(2013)2

For approval:

-- Summary record of 118th Comp. Committee meeting — DAF/COMP/M(2013)2
-- Summary record: Session on Russian Federation — DAF/COMP/M(2013)2/ADD1

For information:

-- List of Participants — DAF/COMP/M(2013)2/ANN1
-- Road Fuel: Executive Summary — DAF/COMP/M(2013)2/ANN3/FINAL
-- Road Fuel: Summary record — DAF/COMP/M(2013)2/ANN5/FINAL

-- Proceedings of the discussion on Role and Measurement of Quality in Competition Analysis — DAF/COMP(2013)17

IV. REPORTS BY WORKING PARTY CHAIRMEN AND BY CO-ORDINATORS

For approval:

-- Draft Report on the Implementation of the 2009 Recommendation on Competition Assessment — DAF/COMP(2013)16

V. GREECE ---OECD PROJECT ON COMPETITION ASSESSMENT OF LAWS AND REGULATIONS

Oral presentation by the Secretariat and the Greek delegation

VI. COMPETITION LAW AND POLICY INDICATOR

For reference:

-- Note by the Secretariat — ECO/CPE/WP1(2013)15
-- Annexes to the Note — ECO/CPE/WP1(2013)15/ANN1
ECO/CPE/WP1(2013)15/ANN2

VII. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Oral presentation by a WIPO representative

VIII. NAEC UPDATE

Oral presentation by the Secretariat

IX. ANNUAL REPORTS ON COMPETITION POLICY

-- **Reports to be presented by the Delegates at this meeting:**

Australia	DAF/COMP/AR(2013)25
Austria	DAF/COMP/AR(2013)26
Chile	DAF/COMP/AR(2013)27
France	DAF/COMP/AR(2013)28
Hungary	DAF/COMP/AR(2013)29
Japan	DAF/COMP/AR(2013)30
Korea	DAF/COMP/AR(2013)31
Netherlands	DAF/COMP/AR(2013)32
New Zealand	DAF/COMP/AR(2013)33
Portugal	DAF/COMP/AR(2013)34
Slovenia	DAF/COMP/AR(2013)35
Switzerland	DAF/COMP/AR(2013)36
European Union	DAF/COMP/AR(2013)37

and

Egypt	DAF/COMP/AR(2013)38
India	DAF/COMP/AR(2013)39
Indonesia	DAF/COMP/AR(2013)40
Malta	DAF/COMP/AR(2013)41
Chinese Taipei	DAF/COMP/AR(2013)42
Ukraine	DAF/COMP/AR(2013)43

Note by Kazakhstan DAF/COMP/WD(2013)133

-- **Additional reports for this meeting:**

Germany	DAF/COMP/AR(2013)44
Italy	DAF/COMP/AR(2013)45
Norway	DAF/COMP/AR(2013)46
Spain	DAF/COMP/AR(2013)47

and

Bulgaria	DAF/COMP/AR(2013)48
Peru	DAF/COMP/AR(2013)49
South Africa	DAF/COMP/AR(2013)50

X. ROUNDTABLE ON EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS TO DETECT CARTELS

For discussion

-- Note by the Secretariat DAF/COMP(2013)14

For reference

-- Expert note by Rosa Abrantes-Metz DAF/COMP(2013)20

-- Expert note by William Kovacic DAF/COMP(2013)22

Notes by Delegations

Australia	DAF/COMP/WD(2013)74
Canada	DAF/COMP/WD(2013)75
Chile	DAF/COMP/WD(2013)76
Estonia	DAF/COMP/WD(2013)77
Hungary	DAF/COMP/WD(2013)114
Israel	DAF/COMP/WD(2013)115
Italy	DAF/COMP/WD(2013)78
Japan	DAF/COMP/WD(2013)131
Korea	DAF/COMP/WD(2013)79
Mexico	DAF/COMP/WD(2013)127
Poland	DAF/COMP/WD(2013)80
Sweden	DAF/COMP/WD(2013)82
Turkey	DAF/COMP/WD(2013)129
United Kingdom	DAF/COMP/WD(2013)83
United States	DAF/COMP/WD(2013)117
European Union	DAF/COMP/WD(2013)125

and

Bulgaria	DAF/COMP/WD(2013)84
India	DAF/COMP/WD(2013)85
Latvia	DAF/COMP/WD(2013)86
Lithuania	DAF/COMP/WD(2013)87
Peru	DAF/COMP/WD(2013)126
Russian Federation	DAF/COMP/WD(2013)88
Chinese Taipei	DAF/COMP/WD(2013)89
Ukraine	DAF/COMP/WD(2013)112
BIAC	DAF/COMP/WD(2013)90

XI. ACCESSION REVIEW OF COLOMBIA **[CONFIDENTIAL]**

-- Draft Agenda DAF/COMP/ACS/A(2013)1

-- Note by the Secretariat DAF/COMP/ACS(2013)4

-- Report by the Secretariat DAF/COMP/ACS(2013)5

XII. ROUNDTABLE ON COMPETITION ISSUES IN FOOD CHAIN INDUSTRY

For discussion

-- Note by the Secretariat DAF/COMP(2013)15

Notes by Delegations

Australia	DAF/COMP/WD(2013)91
Austria	DAF/COMP/WD(2013)92
Belgium	DAF/COMP/WD(2013)128
Czech Republic	DAF/COMP/WD(2013)135
Finland	DAF/COMP/WD(2013)93
France	DAF/COMP/WD(2013)94
Germany	DAF/COMP/WD(2013)95
Greece	DAF/COMP/WD(2013)100
Hungary	DAF/COMP/WD(2013)113
Ireland	DAF/COMP/WD(2013)96
Israel	DAF/COMP/WD(2013)116
Italy	DAF/COMP/WD(2013)97
Japan	DAF/COMP/WD(2013)98
Netherlands	DAF/COMP/WD(2013)99
Norway	DAF/COMP/WD(2013)119
Poland	DAF/COMP/WD(2013)101
Portugal	DAF/COMP/WD(2013)102
Spain	DAF/COMP/WD(2013)103
Turkey	DAF/COMP/WD(2013)122
United Kingdom	DAF/COMP/WD(2013)104
United States	DAF/COMP/WD(2013)123
EU	DAF/COMP/WD(2013)105

and

Brazil	DAF/COMP/WD(2013)118
Bulgaria	DAF/COMP/WD(2013)106
India	DAF/COMP/WD(2013)107
Latvia	DAF/COMP/WD(2013)108
Lithuania	DAF/COMP/WD(2013)109
Romania	DAF/COMP/WD(2013)110
Russian Federation	DAF/COMP/WD(2013)111
South Africa	DAF/COMP/WD(2013)130
Ukraine	DAF/COMP/WD(2013)124
BIAC	DAF/COMP/WD(2013)132

XIII. OTHER BUSINESS

For information

-- Committee Progress Report DAF/COMP(2013)19

* * *

Schedule

The provisional schedule for the Competition Committee session is as follows:

Wednesday 30 October

10:00 am – 10:45 am	**Item I-IV**
10:45 am – 11:30 am	**Item V** (Greece)
11:30 am – 12:00 pm	**Item VI** (Competition Indicator)
12:00 pm – 12:15 pm	**Item VII** (WIPO)
12:15 pm – 12:45 pm	**Item VIII** (NAEC)
2:30 pm – 3:00 pm	**Item IX** (Annual Reports)
3:00 pm – 6:00 pm	**Item X** (RT on *Ex officio* Investigations)

Thursday 31 October

09:30 am – 12:00 pm	**Item XI.** (Colombia) **CONFIDENTIAL**
12:00 pm – 01:00 pm	**Item IX** (Annual reports - cnt'd)
2:30 pm – 6:00 pm	**Item XII** (RT on Food Chain Industry)
6:00 pm –	**Item XIII** (Other Business)

ANNOTATIONS

Item I.

The Competition Committee is called upon to elect its Chairman and Vice chairmen at its October session as provided by the OECD Rules of procedure of the Organisation (Rule 15 d). To prepare this election a consultation with delegates has been carried out (Letter from Chairman Jenny – Comp/2013.176).

Item IV.

The Chairs of Working Party N° 2 and Working Party N°3 will report on their meeting respectively held on 28 and 29 October 2013.

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

The ICN co-ordinator may report on ICN related developments.

Item V.

Competition Delegates will hear an oral presentation by the Greek delegation and the Secretariat on the main findings of the OECD project on competition assessment of laws and regulations, which is due to be completed in November 2013. This project, which began in January 2013, has been carried out by the OECD in close co-operation with the Hellenic Competition Commission under an Agreement with the Government of Greece (financed by the EU). The aim of this project is to identify through the screening of four sectors (building materials, tourism, retail and food processing) unnecessary restrictions to competition which hinder growth and innovation in Greece, and suggest alternative, less restrictive ways to achieve the same regulatory goals. This presentation will be an opportunity for competition delegates to gauge the impact of its work, as this project has been developed using the methodology set out in the OECD's Competition Assessment Toolkit.

Item VI.

Competition delegates will be further updated by the Secretariat on the development of an *OECD Competition Law and Policy Indicator*. The Economics Department will make a presentation based on a paper presenting the data and indicators. This document will be circulated before the meetings of the Competition Committee and the EPC/WP1 (to be held immediately before the Competition Committee meeting). This will be an opportunity for Competition delegates to provide their feedback on this work.

Item VII.

In October 2009, a representative of WIPO presented to Competition delegates WIPO's Project on Intellectual Property and Competition Policy (IP&CP), its principles and objectives (DAF/COMP/M(2009)3). At the forthcoming Committee meeting, Competition delegates will hear from WIPO delegate what has been achieved by his Organisation since then. He will also present future directions of WIPO work.

Item VIII

Competition delegates will be updated by the Secretariat on the development of the competition component of the NAEC project, further to the Committee agreement on its terms of reference in February 2013 ---DAF/COMP/M(2013)1. Based on this oral presentation, preliminary feedback from delegates will be welcomed. It will be useful in preparation of a Secretariat draft note to be circulated to delegates by the end of 2013.

Item IX.

Competition Delegates are invited to submit their country report as usual while taking note that only some of them will be presented to the October 2013 Competition Committee meeting. Countries listed in the Agenda will be invited to make an oral presentation at this session. Oral introductory remarks are not

obligatory but if such remarks are made, they should be brief (no more than five minutes) with presenters focusing on one or two important points only.

Item X.

Delegates will recall that the Committee decided to hold a roundtable on *ex officio* cartel investigations and the use of screens to detect cartels. A Secretariat background paper and 25 country contributions (see Chairman Jenny's letter requesting country contributions -- COMP/2013.134) will provide the background to the discussion, to be held on **Wednesday 30 October starting at 3:00 pm.** This roundtable will benefit from the participation of Prof. Rosa Abrantes-Metz (Global Economics Group, US), Prof. William Kovacic (George Washington University, US) and Prof. Maarten Schinkel (Professor of Economics, University of Amsterdam).

Item XI.

An accession review of Colombia will take place in a confidential session on **Thursday 31 October, from 9:30 am to 12:00 pm.** A separate agenda for this confidential item is on OLIS under DAF/COMP/ACS/A(2013)1.

Item XII.

Delegates will recall that the Committee decided to hold a roundtable on Competition issues in Food chain Industry. A Secretariat background paper and 31 country contributions (see Chairman Jenny's letter requesting country contributions -- COMP/2013.127) will provide the background to the discussion, to be held on **Thursday 31 October starting at 2:30pm.** This roundtable will benefit from the participation of Prof. Steve McCorriston (University of Exeter, UK), Prof. J. Swinnen (KU Leuven, Belgium), Mr. J.A. van Driel (Ministry of Economic Affairs, the Netherlands), Mr. F. Bergès (Toulouse School of Economics, France) and a representative from the industry (retail side).

Item XIII.

Competition delegates will decide on future topics for substantive discussions to be held in the 2014 session of the Committee.

Reminder

Future 2014 meeting dates [also on Olis under DAF/COMP/WD(2011)78]

- February 2014: Week starting on 24 (with the GFC on 27 and 28).
- June 2014: Week starting on 16 (from Monday to Thursday inclusive).
- October 2014: Week starting on 27 (from Monday to Thursday inclusive).

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

14-Oct-2013

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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WP2/WD(2013)52
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Working Party No. 2 on Competition and Regulation

WASTE MANAGEMENT SERVICES

-- Chinese Taipei --

28 October 2013

This note is submitted by Chinese Taipei to the Working Party No. 2 of the Competition Committee FOR DISCUSSION under Item VII at its forthcoming meeting to be held on 28 October 2013.

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

JT03346244

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English - Or. English

COMPETITION ISSUES IN WASTE MANAGEMENT

− Chinese Taipei −

This paper will illustrate the developments of waste management in Chinese Taipei and certain competition issues as well as cases investigated by the Fair Trade Commission (FTC). To prepare this paper, the FTC consulted with the Environmental Protection Administration (EPA) to provide relevant information.

1. Definition of Municipal Solid Waste (MSW) and the Development of Waste Management Policy in Chinese Taipei

1. The term "waste" is defined as "general waste" and "industrial waste" under Article 2 of the "Waste Disposal Act." "General waste" is "solid or liquid waste, including garbage, excrement and urine, and animal carcasses, from households or other non-industrial sources that is sufficient to pollute environmental sanitation." The definition of general waste is in line with that of the internationally-used term, "municipal solid waste (MSW)." This paper addresses the developments and achievements of the general waste management policy in Chinese Taipei.

2. Chinese Taipei implemented the "Municipal Waste Disposal Program" in 1984 at which mainly focused on landfills, and then a "Garbage Disposal Program" that the disposal of waste started to be mainly processed by incinerators, supplemented by landfills. Later, in 1998, the government further promoted the "Four in One Resource Recycling Program" to encourage recycling and expand its coverage through recycling rewards and market mechanisms. For the sake of achieving the goal of "zero waste," the EPA adopted a "mandatory waste sorting program" in 2005 to require that residents in certain counties and cities categorize their waste into recyclable items, food waste and garbage before handing them to the waste collectors. The mandatory waste sorting program has been fully implemented since 2006.

3. As result of the "waste minimization and resource recovery" waste management policy, the volume of waste clearance was reduced from 1.143 kg per capita per day in 1997 to 0.397 kg in 2012 and the recycling rate increased from 42.96% in 2007 to 65.16% in 2012, an increase of 22.2%. At the end of 2012, the treatment rate of waste[1] reached 99.99%.

2. Collection and Disposal of General Waste

4. Pursuant to Article 5 of the "Waste Disposal Act", the environmental protection unit of municipalities, cities or counties shall be responsible for the disposal of general waste. However, the law does not prohibit public or private waste disposal organizations from being commissioned to dispose of

[1] "Treatment of waste" refers to the treatment of recyclable resources or proper disposal of garbage within a field (factory) with anti-fouling treatment facilities. "The treatment rate of waste" = (waste volume of incineration + landfill + resource recycling waste + recycling of food waste) / volume of waste generated x 100%.

waste[2]. Nonetheless, according to the statistics compiled by the enforcement agencies of EPA, general waste is mainly collected and disposed of by the environmental protection units (cleaning teams)[3].

5. The approaches to collection of general waste clearance and disposal fee are prescribed under to the "General Waste Disposal Fee Collection Rules" enacted by the EPA. The fee can be collected based on either the tap water consumption, per bag, or by household at a fixed rate. Each local government may consider management costs, labor costs, restoration costs, and maintenance costs to calculate the fee rates and choose one of the three collection methods. Some local governments adopt the method of per-bag fee collection to increase the economic incentives by selling specific garbage bags to the public at different prices according to the sizes of the bags for motivating the public to take the initiative to sort and reduce the volume of their waste.

3. Waste Transfer Stations

6. The purpose of the establishment of waste transfer stations is to reduce the wear and tear of collector vehicles and save money on labor and relevant costs by shortening the waste collection routes in the remote service areas. Current transfer stations for general waste in Chinese Taipei are established and managed by the government. The operational expenditure is budgeted pursuant to the Budget Act and relevant rules which will be reviewed and approved by local councils. In another word, the determination of price or the treatment discrimination shall not be an issue here.

4. Landfills

7. As mentioned above, the government adopted the policy in 1991 for waste to "mainly be processed by incinerators, supplemented by landfills." At present, 95% of the waste is incinerated. The number of public waste landfills currently in operation has dropped from 317 to 67.

8. The landfill sites in Chinese Taipei can be divided into public and private sites. Public landfill sites mainly deal with general waste while private ones deal with industrial waste. Where any person has the need to operate a landfill site, the person may apply for a permit from the local government and start collecting waste for the landfill upon approval. Public landfill sites, on the other hand, are subject to the "The Administrative Rules for Public Waste Landfill Sites" enacted by the EPA. It provides that public landfill sites shall not handle hazardous waste, combustible waste, recyclable waste generated by households or businesses, food waste and other types of waste not suitable for landfills as designated by the competent authority.

9. General waste shall be transported to public landfill sites for burial. The public landfill sites are operated by local governments and used for disposal for waste collected by local cleaning teams at the expense of waste clearance and treatment fees. When a public landfill site has excess capacity within the area of it responsibility, it may receive general waste or industrial waste from other areas and relevant fee shall be determined by the local governments according to its waste disposal cost. Private landfill sites mostly deal with industrial waste and the fees are determined by the operators.

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2 Currently, more than 3,000 enterprises have been granted permits pursuant to the "Permit Management Regulations for Public or Private Waste Clearance and Disposal Organizations," which can be further categorized into Grades A, B and C based on the waste disposal capacity of each enterprise.

3 Taking May 2013 as an example, the general waste generated was 269,367 mt, of which 260,749 mt was disposed of and transported by the environmental protection units, while the rest was processed by public or private organizations.

5. Incineration

10. There are currently 24 waste-to-energy incinerators in operation in Chinese Taipei, of which 5 are publicly-owned and publicly-operated, 16 are publicly-owned and privately-operated, 2 are BOTs (Build-Operate-Transfer), and 1 is a BOO (Build-Own-Operate).

11. Public waste incinerators mainly process waste collected by the local cleaning teams and the operating costs are covered by the waste disposal fees collected. When an incinerator has excess capacity within the area of its responsibility, general waste or general industrial waste from other areas may be transported to such an incinerator and relevant fee shall be determined by the local government according to its waste disposal cost.

12. Privately-operated incinerators are commissioned to process waste delivered by local governments and the price will be decided by the contract between the private incinerator and the local governments. Where "publicly-owned and privately-operated" incinerators receive industrial waste collected by private waste collection companies in other areas, the fees can be set either (1) at a rate set by the local government, or (2) at a rate set by the operators of the incinerators. For BOT and BOO, the rate shall be set by the operators.

13. Since some counties/cities don't have incinerators, for proper waste disposal, general waste collected by the cleaning teams of the local governments need to rely on a regional cooperation mechanism among the local governments. There is no competition issue between incinerators. However, in terms of industrial waste collected by private waste collection businesses, the nearby private incinerator enterprises (including "publicly-owned and privately-operated," BOT, and BOO) may compete with each other. The rates may vary depending on the volume and types of waste (combustible or non-combustible, volume of ashes, etc.). Incinerator enterprises will also offer different prices to attract private waste collection businesses to transport industrial waste to their incinerators. Until now, the FTC has not yet discovered any case arising under the competition laws.

14. The environmental protection laws of Chinese Taipei do not prohibit any kind of area from establishing incinerators. The establishment, expansion or capacity increment of incinerators for general waste shall be subject to environmental impact assessments in accordance with Article 28 of the "Standards for Determining Specific Items and Scope of Environmental Impact Assessments for Development Activities" pursuant to Article 5, Paragraph 2 of the Environmental Impact Assessment Act.

6. Recycling

15. Since 1998 Chinese Taipei has been promoting the "Four in One Resource Recycling Program" which combines community residents, recycling businesses, local governments (cleaning teams) and recycling funds to fully implement the recycling and reuse plan. Moreover, pursuant to Article 15 of the Waste Disposal Act[4], the statutory businesses (manufacturers or importers of articles and containers) shall

[4] Article 15 of the Waste Disposal Act provides that, "For articles and the packaging and containers thereof that, after consumption or use, are sufficient to produce general waste possessing one of the following characteristics and cause concern of serious pollution to the environment, the manufacturer or importer of the articles and the packaging and containers thereof at issue or the manufacturer or importer of the raw materials shall bear responsibility for recycling, clearance and disposal and the vendor shall bear responsibility for recycling, clearance work.

(1) difficult to clear or dispose of;

(2) contains a component that does not readily decompose over a long period;

(3) contains a component that is a hazardous substance; and

pay recycling, clearance and disposal fees to the "Resource Recycling Management Fund" operated by a "Trust Fund Management Committee (FMC) for the Resource Recycling Management Fund" under EPA. The FMC is in charge of the determination of recyclable items and subsidy rates, audit and certification, and payment of subsidies as well as allocation of funds to recycling businesses of different materials. The purpose of the fund and the FMC is to provide economic incentives to fully accelerate the recycling of announced recyclable items. There are currently 13 categories with 33 items announced to be recyclable (a total of 7 funds are established for general waste articles and containers: waste pesticides containers, waste cars/motorcycles/scooters, waste tires, waste lead-acid accumulators, waste electrical appliances, and waste computer appliances).

7. Cases Investigated by the FTC in the Waste Disposal Market

7.1 Cartels in Waste Electrical Appliances Disposal and Waste Information Products Disposal

16. The FTC received a complaint phone call alleging that waste electrical appliances disposal enterprises and waste computer appliances disposal enterprises had jointly established an "allocation and distribution center." Prior to the establishment of this center, the waste disposal enterprises offered different purchasing prices for waste items, while after the center was established, the waste disposal enterprises convened periodic meetings to jointly decide on the purchasing prices for waste electrical appliances and waste computer appliances. The FTC therefore initiated an ex officio investigation in 2010.

17. Upon the investigation, the FTC discovered that there were 12 waste electrical appliances disposal enterprises registered with the EPA that qualified for subsidies. The enterprises in question were supposed to independently recycle and purchase waste electrical appliances from recycling businesses for disassembly and apply for subsidies with the EPA in accordance with the statutory procedures. They compete for trading opportunities through their own prices and capacity and apply for subsidies from the EPA on the basis of approved disposal volume. In this regard, they should have been deemed competitors in the same market.

18. The said 12 enterprises respectively entered into an "Agreement on Joint Recycling and Disposal of Waste Electrical Appliances" at different times between March 2001 and October 2011. The agreement provided for the allocation ratio, in-stock inventory, certification of recycled volume, operating fund for joint recycling, organizational establishment, performance bond, and default penalty. All of the enterprises were jointly allocated a certain volume of waste for recycling pursuant to the agreed allocation ratio. Each enterprise would apply for subsidies from the EPA based on such recycled volume in accordance with the required procedure. These enterprises also stipulated a "Management Rules Regarding Joint Recycling Agreement" which set the "Signatory Board" to serve as the highest decision-making organization and, under which, a management team and an operation center were also established. The management rules also governed specific recycling prices, in-stock inventory, daily reports, allocation and distribution operations, settlement on income and expenditure, designated areas, an operating fund for joint recycling and penalties for "driving up prices," "concealing stock," or "transporting across designated areas." The action of the enterprises was witnessed by an attorney and a cashier's check or promissory note of three million dollars was provided as a performance bond.

19. The parties to the agreement took turns to convene the waste electrical appliances "management team" meeting every month with meeting minutes prepared accordingly. The parties would discuss the

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(4) is valuable for recycling and reuse.

The central competent authority shall officially announce the scopes for the articles and the packaging and containers thereof and the enterprises responsible for recycling, clearance and disposal in the foregoing paragraph."

international market prices, negotiate the prices among the enterprises and decide on the final prices at such meetings. In addition, the representative of each enterprise or the convenor by rotation would attend the Signatory Board meeting which was the ultimate decision-making organization in terms of the joint recycling and disposal matters. The meeting was convened every three months in general. At such meetings, the parties would discuss major events, such as the evaluation of new participating enterprises and the allocation ratio, exchange market information, hold receptions among enterprises, discuss any violations by other enterprises, and so on. If the agenda involved both policy and execution issues, the meeting would be convened jointly in the name of the "Signatory Board" and "Management Team."

20. The FTC concluded that the 12 enterprises evenly allocate waste electrical appliances through the management team and operation center in spite of the differences in the capital expenditure, cost structure and management and marketing ability of each disposal enterprise. In order to meet the allocation ratio, enterprises with better recycling ability would have to transfer excess recyclable waste to enterprises with less recycled volume through the operation center. It caused the capacity utilization rate of most enterprises to remain under the standard, and resulted in an erroneous allocation of resources, rigid market prices, and severe damage to the competition. Such action of the enterprises was in violation of the prohibitive rule applicable to concerted actions under Article 14, Paragraph 1 of the FTA and the 12 enterprises were fined a total of 121.9 million NT dollars, ranging from 650,000 to 25 million NT dollars respectively, on March 2, 2012. The enterprises later filed for administrative appeal upon the decision. The Petitions and Appeals Committee determined that the FTC failed to expressly describe the grounds to justify the amount of the administrative fine and revoked the original sanction. The FTC re-imposed the sanction on June 24, 2013. The enterprises were respectively fined amounts ranging from 200,000 NT dollars to 12.5 million NT dollars, or a total of 58 million NT dollars.

21. In addition, the FTC also discovered that 13 (12 of which were also waste electrical and electronic goods disposal enterprises) of the 16 waste computer appliances disposal enterprises that were registered with the EPA entered into an "Agreement on Joint Recycling and Disposal of Waste Computer Appliances" at different times between July 2008 and August 2009 and stipulated a "Management Rules Regarding Joint Recycling Agreement." The contents of such documents were highly similar to those signed and stipulated by the waste electrical appliances enterprises mentioned above. The signing enterprises also remitted a check or promissory note of two million NT dollars as a performance bond to ensure that the parties to the agreement would fully perform their obligations under the agreement. The FTC found that these 13 waste computer appliances disposal enterprises jointly decided the price of waste information products and disposal volume as well as trading counterparts through the agreement in violation of the prohibitive rule applicable to concerted actions under Article 14, Paragraph 1 of the Fair Trade Act. These enterprises were respectively fined amounts ranging from 200,000 NT dollars to 2.4 million NT dollars, or a total of 18.1 million NT dollars in administrative fines.

7.2 Medical Waste

22. The FTC also dealt with three complaints alleging that certain medical waste (infectious medical waste) disposal enterprises improperly charged excessive fees. During the FTC investigation, the FTC firstly reviewed whether the enterprises fell under the definition of monopolistic enterprises set forth in Article 5 of the FTA before conducting further investigation on whether the enterprises abused their monopolistic power as set forth in Article 10, Subparagraph 2 of the FTA, i.e. to improperly set, maintain or change the price for goods or the remuneration for services. In addition, pursuant to the Waste Disposal Act, although waste clearance and disposal agencies must receive approved from the competent authority before they can be established and put in operation, the operating areas are, however, not restricted. Hospitals may directly contract a legitimate clearance and disposal agency to clear infectious medical waste. Upon reviewing the market shares and the total sales amount for the preceding fiscal year of the relevant enterprises, the FTC did not find that any enterprises in these three cases fit the definition of

monopolistic enterprises under Article 5 of the FTA. The FTC further reviewed the competition status of the market and did not find that any of the enterprises referred to in the complaints had "impeded the ability of others to compete" either. The FTC did not discover any medical waste disposal enterprise to be engaging in any unlawful action by abusing its monopolistic status.

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Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development **04-Oct-2013**

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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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Working Party No. 3 on Co-operation and Enforcement

DISCUSSION ON HOW TO DEFINE CONFIDENTIAL INFORMATION

-- Chinese Taipei --

29 October 2013

This note is submitted by Chinese Taipei to the Working Party No. 3 of the Competition Committee FOR DISCUSSION under Item IV at its forthcoming meeting to be held on 29 October 2013.

Please contact Mr. Antonio Capobianco if you have any questions regarding this document [phone number: +33 1 45 24 98 08 -- E-mail address: antonio.capobianco@oecd.org].

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English - Or. English

DEFINITION OF CONFIDENTIAL INFORMATION

− Chinese Taipei −

1. Definition and Limitation on the use of Confidential Information under Laws and Regulations in Chinese Taipei

1. The confidential information based on its nature of the information is defined by several different laws in Chinese Taipei, such as the "Classified National Security Information Protection Act"[1], the "Trade Secrets Act"[2], etc. Due to the fact that the government agencies possess or obtain varied types and high volumes of information, restrictions on the disclosure and the use of information are particularly prescribed by the "Freedom of Government Information Law," "Archives Act," "Personal Information Protection Act," and "Administrative Procedure Act," etc., in terms of the information types and the scope and subject of application.

2. Currently, the regulations on the use of information possessed or obtained by the governmental agencies are mainly governed by two laws as follows:

- Article 18 of the Freedom of Government Information Law provides that the government information in relation to the followings shall be restricted from being made available to the public:

  - Classified by law as national secrets, required to maintain confidentiality or prohibited from provision to the public according to other laws, regulations, or orders.

  - Making available to the public or provision will obstruct the investigation, prosecution, or law enforcement of a crime, impair the fair trial of a criminal defendant, or injure other people's life, body, freedom or property.

  - The draft for internal use or other preparatory works before the government agency make a decision. Such works can be made available to the public if deemed necessary for public interest.

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1 Article 2 of the Classified National Security Information Protection Act provides that "the term 'classified national security information' referred to in this Act means information that is owned by, or under the control of the Government...and that has been determined pursuant to this Act to require protection against unauthorized disclosure, and that is so designated according to its level of classification for the purpose of safeguarding the national security or national interest."

2 Article 2 of the Trade Secrets Act provides that "the term 'trade secret' as used in this Act shall mean any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations, and also meet the following requirements that: (1) it is not known to persons generally involved in the information of this type; (2) it has economic value, actual or potential, due to its secretive nature; and (3) its owner has taken reasonable measures to maintain its secrecy."

- Making available to the public or provision of the information will make difficult or disrupt the purpose of such works, where the government agency acquired or produced such information to enforce the works of supervision, management, investigation or ban.

- Making available to the public or provision of the material about the test or certification of specialized knowledge, skill or qualification will affect the enforcement of fairness and efficiency.

- Making available to the public or provision will invade personal privacy, professional secrets, or authors' ventilating right, except where it is necessary for public interest, protects of people's life, body, health, or is consented by the person concerned.

- Making available to the public or provision of the information about trade secrets or business operation of a person, legal person or group will hamper the right, competitive position or just interest of such person, legal person or group, except where it is necessary for public interest, protects people's life, body, health, or is consented by the person concerned.

- Making available to the public or provision of the culture heritage that requires special management will possibly destruct or decrease its values.

- Making available to the public or provision of the information about the government-run business entities will impair the just interests in operating business, except where it is necessary for public interest.

- Article 46, Paragraph 2 of the Administrative Procedure Act provides that a party or an affected person may apply to an administrative authority during the administrative procedure for examining, transcribing, copying or taking photographs of relevant materials or records; provided that the materials or records are necessary for claiming or protecting the requesting party's legal interests. The administrative authority cannot deny such application except for information specified as follows:

  - Drafts and other preliminary operational documents prepared before an administrative decision is made;

  - Information relating to national defense, military, diplomacy and general official secrets, which is legally required to be kept in confidence;

  - Information relating to personal privacy, occupational secrets and trade secrets, which is legally required to be kept in confidence;

  - Information [the disclosure of which] is likely to result in infringement of the right of any third party; and

  - Information [the disclosure of which] is likely to result in serious impairment to social security, public safety or the normal performance of any function in connection with other public interests.

2. Definition and Limitation on the Use of Confidential Information under Competition Law

3. The "Fair Trade Act" (FTA) itself does not provide for an explicit definition of confidential information. However, for parties involved in concerted actions that are eligible for the leniency program,

the Fair Trade Commission (FTC) issued the "Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases." Article 20[3] of the Regulation provides that the identity of an enterprise applying for immunity or a reduction in fines shall be kept confidential by the FTC unless the enterprise agrees otherwise in advance. In other words, when an enterprise under FTC's investigation into concerted actions makes an application pursuant to the leniency program, without leniency applicant's approval, "the identify of such enterprise applying for immunity or reduction of fines," will be deemed confidential information.

4. The FTC is one of the governmental agencies. As mentioned above, the relevant regulations on the use of information shall be in conformance with the "Freedom of Government Information Law," "Archives Act," "Personal Information Protection Act," and "Administrative Procedure Act." Article 27-1 of the FTA was also enacted in line with Article 46 of the Administrative Procedure Act, expressly providing for the rights of a party or an interested person involved to apply to access to the relevant materials during the course of an investigation. In addition, the FTC issued the "Regulation Governing Access to Materials and Files of the Fair Trade Commission." The Regulation provides that accessible materials and files are limited to the items enumerated in the FTC's notice (see Appendix) except when a confidentiality claim made by information provider is justified. In general, the FTC will consider by "whether the party in question claims confidentiality for information" and "whether the disclosure of information would reveal the complainant's identity" the information confidential or not.

5. Pursuant to the "Regulation Governing Access to Materials and Files of the Fair Trade Commission" and the "Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases," information the FTC obtained throughout the course of an investigation will be considered as confidential by its nature. The definition of such confidential information shall be only limited to competition law enforcement. If the party in question claims that the information be kept confidential, the FTC may, in accordance with laws, consider whether such a claim is justifiable. If the party is dissatisfied with the FTC's decision, such party may only file a joint statement when the party is also dissatisfied with the substantive decision, pursuant to Article 174 of the Administrative Procedure Act.

2.1. Administrative Litigation in Respect of the Dairy Case

6. The FTC initiated an ex officio investigation on domestic milk price hike in October 2011. The case was resolved by the 1041st Commissioners' Meeting on 19 October 2011. The three major domestic dairy enterprises, namely, Wei Chuan, Uni-President, and Kuang Chuan, were found to engage in jointly raising the price of fresh milk in violation of Article 14, Paragraph 1 of the FTA. Wei Chuan was fined 12 million NT dollars, Uni-President 10 million NT dollars, and Kuang Chuan 8 million NT dollars.

7. Currently, the case is reviewed by in the Administrative Courts. When the FTC submitted relevant case materials to the court, they were classified as File A and File B according to confidentiality. In addition to the drafts, the signing of memos and other preparatory works by the internal units of the FTC, File B includes statements and interview records of the enterprises under investigation and their trading counterparties. They contain personal identities, production and sales information and trade secrets are to be treated as confidential pursuant to Article 2, Subparagraph 1 of the Personal Information Protection Act and Article 18, Paragraph 1 of the Freedom of Government Information Law. However,

[3] Article 20 of the "Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases" provides that "the identity of an enterprise applying for immunity or reduction of fines shall be kept confidential unless the enterprise agrees otherwise in advance. Covers shall be made for conversation records or original documents carrying information on the identity of the applicant. The same measure shall be taken for other documents that may indicate the identity of the applicant. Unless otherwise stipulated, the conversation records and documents stated in the preceding paragraph may not be provided to any agencies, groups or individuals other than investigation and judicial agencies."

during the preliminary proceedings at the Taipei High Administrative Court, the judge required that the FTC reviewed the materials contained in File B and resubmitted a non-confidential version of materials for the lawyers on behalf of plaintiff to examine in order to maintain the balance between the administrative procedures and administrative litigation and to ensure equal right for defense of both parties.

8. In order to comply with the aforementioned laws and the request of the judge, the FTC re-examined File B and created a new File B. Confidential information contained therein was all concealed. During the preliminary proceeding, the court reviewed the contents of such new File B with case materials available for viewing; for the materials in File B related to the confidential information of each enterprise are not available for viewing, the judge requested that the lawyers of each enterprise individually review only the information belonging to their client. When an administrative court judge hears a case in accordance with the Administrative Procedure Act, the judge need not follow the FTC's determination of confidentiality.

APPENDIX

Reference List for the Classifications of, and Access to, the Materials and Files of the FTC

Source of materials	Category	Specific materials	Accessibility	Remarks
Materials provided by parties	Materials on the identities and backgrounds of complainants	Company license	Not accessible	
		Business license		
		Personal ID		
	Factual materials provided by complainants	Production and sales materials	Accessible in principle unless confidential by nature, but may be kept confidential at the request of the complainant with justifiable reason	Material objects (real evidence) are not accessible, but photographs of them are accessible in principle
		Statements of opinion		
		Other case-related materials		
		Materials unrelated to the case	Not accessible	Unless per other act or regulation
	Materials on the identities and backgrounds of respondents	Company license	Not accessible	
		Business license		
		Personal ID		
	Factual materials submitted by respondents	Production and sales materials	Accessible in principle unless confidential by nature, but may be kept confidential at the request of the respondent with justifiable reason	Material objects (real evidence) are not accessible, but photographs of them are accessible in principle
		Statements of opinion		
		Other case-related materials		
		Materials unrelated to the case	Not accessible	Unless per other act or regulation
Materials provided by related persons	Materials on the identities and backgrounds of related persons	Company license	Not accessible	
		Business license		
		Personal ID		
	Factual materials	Production and	Accessible in principle,	Material objects (real

	of related persons	sales materials	but may be kept confidential at the request of the related person with justifiable reason	evidence) are not accessible, but photographs of them are accessible in principle
		Statements of opinion		
		Other case-related materials		
		Materials unrelated to the case	Not accessible	Unless per other act or regulation
Materials obtained through investigation by the Commission	Interview statement records		Accessible in principle, but may be kept confidential where secrets are involved or where requested with justifiable reason by the maker of the statements	
	Questionnaire surveys	Sample design	Accessible	
		Statistical findings	Accessible in principle	
		Individual questionnaire materials	Not accessible	
	Expert opinions	Appraisal opinions	Accessible in principle, but may be kept confidential where so requested by the appraiser or provider of the professional opinion	
		Professional opinions		
		Materials on the identities and backgrounds of experts	Not accessible	
	Opinions voiced in public hearings	Records of individual statements	Accessible in principle	
		Compiled and categorized conclusions	Accessible in principle	
	Opinions voiced in symposia	Records of individual statements	Accessible in principle, but may be kept confidential depending on its nature where so requested by the symposium participant	
		Compiled and categorized conclusions	Accessible	
	Opinions of industry associations and organizations		Accessible	

	Opinions and materials from other agencies	Letters from government agencies and statements made before the commission by representatives of agencies	Accessible in principle, but may be kept confidential at the request of the agency	Agencies should have legitimate business-related reasons for requesting confidentiality.
		Commission inspection records	Accessible in principle, with the exception of any portion that involves confidential material	
	Other materials obtained by investigation	Material objects (real evidence)	Not accessible	Photographs of the material objects are accessible in principle
		Film	Not accessible	
		Audio recordings	Not accessible	
International agreements			Not accessible	

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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHINESE TAIPEI

-- 2012 --

This report is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 June 2013.

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English - Or. English

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

1.1 Summary of new legal provisions of competition law and related legislation

1. The latest amendment to the Fair Trade Act (FTA) came into effect on November 25, 2011. The main changes of that amendment included introduction of a leniency program and an increase in the maximum administrative fines for abuse of dominance and concerted actions as well as the imposition of civil liabilities for the false endorsement of goods or services.

1.1.1 The structural reform of the Fair Trade Commission (FTC)

2. The new "Organic Act of the Fair Trade Commission" (Organic Act) was promulgated on November 14, 2011, and became effective on February 6, 2012. The FTC's name was changed from the "Fair Trade Commission, Executive Yuan" to the "Fair Trade Commission" on the same day.

3. The organization of the FTC was restructured to accommodate itself to the new Organic Act. Due to the growing importance of economic analysis in antitrust cases, the FTC has transformed its "Statistics Office" into the "Information and Economic Analysis Office" as the designated unit responsible for economic analysis and industry data collection. In addition, the name of each enforcement unit has been changed to the "Department of Service Industry Competition," "Department of Manufacturing Industry Competition," and "Department of Fair Competition," respectively in line with its designated work.

4. In accordance with the new Organic Act, the nomination of Commissioners is subject to the consent of the legislature instead of Presidential appointment. The seven full-time Commissioners (reduced from nine) must have knowledge and experience with regard to law, economics, finance and taxation, accounting, or management. The terms of the Commissioners are staggered rather than consecutive. At the recent appointment of Commissioners (Feb. 2013), three of the seven Commissioners, not including the Chairperson and Vice Chairperson, were to serve for a term of two years. These changes drew attention to the fact that the application of competition law should to the fullest extent possible be free of political considerations to gain wider support for competition policy from the general public. The seven commissioners following the implementation of the new Organic Act were sworn into office on February 1, 2013.

1.2 Other relevant measures including amended guidelines

5. To cope with the latest amendment on implementation of the leniency program and the increases in administrative fines, the FTC issued the "Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases" on January 6, 2012 and the "Regulations for Calculation of Administrative Fines for Serious Violation of Articles 10 and 14 of the Fair Trade Act" on April 5, 2012. The FTC also revised all guidelines and policy statements to consist with the FTC's and name change.

1.3 Government proposals for new legislation

6. The FTC has established a taskforce to overhaul the FTA since 2006. The proposed amendment has been approved by the Cabinet on Dec. 13, 2012 and is currently pending in Congress. The key points of this proposal include[1]:

[1] For more detail of proposed amendment, please see Chinese Taipei 2011 annual report: DAF/COMP/AR(2012)48, P. 5-7.

(1) revising the pre-merger notification threshold and review period;

(2) revising relevant exemptions on concerted actions;

(3) employing search and seizure powers and to increase the expiration length of power to impose administrative penalties;

(4) differentiating administrative penalties for various violations; and

(5) applying the rule-of-reason standard to RPM.

2. Enforcement of competition laws and policies

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

2.1.1 Summary of Activities

7. The FTA permits the existence of monopolies as long as they do not abuse their market power. Concerted actions which would affect market function are forbidden by the FTA. However, while some exceptions are allowed for, these do require the FTC's prior approval and its decision is based on overall economic benefit and public interest. The FTA also bans resale price maintenance but requires the FTC to apply the rule-of-reason standard to other types of vertical restraints.

8. In 2012, the FTC processed 2,293 cases, including 2,114 cases received in 2012 and 179 cases carried over from the preceding year. By the end of 2012, 2,053 cases had been closed, and 240 cases remained pending. A total of 408 complaint cases applicable to the FTA were concluded in 2012 and, of these, 86 concerned anti-competitive practices.

9. Decision rulings on complaints and FTC self-initiated investigations were undertaken in relation to 203 cases in 2012, and only 28 of these fell into the category of anti-competitive practices. The FTC also initiated investigations into 19 anti-competitive cases.

Decision Rulings by the FTC in 2011 (Unit: Number of cases)

Year	Anti-competitive Practices	Abuse of Monopoly	Mergers	Concerted Actions	Resale Price Maintenance	Vertical Restraints
2012	28	-	1	18	4	6

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

2.1.2 Description of significant Anti-competitive cases (including those with international implications)

- Case 1: cartels in waste electrical appliances market

10. The FTC Service Center received a phone call from a citizen alleging that waste electrical appliances disposal firms had established an "allocation center." Prior to the establishment of this center, the waste disposal firms offered different purchasing prices for waste items, while after the center was established, the waste disposal firms convened periodically to jointly decide the purchasing prices of waste electrical appliances. The FTC hence initiated an ex officio investigation on July 2009.

11. The FTC's investigation revealed that 12 waste electrical appliances disposal firms were qualified for receiving government subsidies from the "Recycling Fund Management Board" (RFMB) of the Environmental Protection Administration (EPA) for recycling the listed recyclable waste electrical appliances (TV, washing machines, refrigerators, air conditioners, fans) in accordance with the environmental regulations. The 12 firms were competitors in the same relevant market and should have handled their collection of waste electrical appliances independently. However, between March 2001 and October 2011, the 12 firms not only signed an "Agreement on the Joint Recycling and Management of Waste Electrical Appliances," but also established a "Management Rules Regarding Joint Recycling Agreement." These firms met regularly to discuss and decide their purchasing prices for the waste electrical appliances, the ratio of waste electrical appliances to be disposed by each firm, and the division of trading counterparts as well as cost sharing.

12. To ensure fulfillment of the Agreement, each firm had to submit 3 million NT dollars in the form of a check or promissory note as a performance bond. Furthermore, every two firms regularly checked each other's inventory and filled out the daily recycling report as a way of monitoring. Those engaging in price jacking, hoarding, or cross-boundary purchasing would be subject to monetary penalties.

13. According to the Management Rules, a board that consisted of signatories to the Agreement was the ultimate decision maker. Under this board, there was a management team and also an operations center in charge of overseeing joint recycling, keeping stock inventory, and the income and expenditure accounts. In principle, the board meeting would be held every three month and the management team met once a month. The management team and the operations center allocated the volume of waste household appliances among the participants, despite the differences of the capital expenditures, cost structure and capacity of each participant. In order to comply with the established allocation volume, those with higher processing capacities had to share their excess volumes with smaller processing capacities through the operations center.

14. The FTC concluded that this concerted action distorted resource allocation and had led to rigid purchasing prices, which resulted in serious harm to the market competition. The firms were clearly in violation of Article 14 (1) of the FTA and the FTC imposed administrative fines ranging from NT$ 650,000 to NT$ 25 million. However, the Petitions and Appeals Committee determined that the FTC failed to justify the amount of the administrative fine and revoked the original sanction. The FTC re-imposed the fines on June 24, 2013. The 12 firms were respectively fined for an amount ranging from NT$ 200,000 to NT$ 12.5 million, a total of NT$ 58 million.

- Case 2: cartel in optical disc drive makers

15. The FTC accepted a leniency application relating to optical disc drive (ODD) cartel in late 2011 and then initiated an ex-officio investigation. After investigation, the FTC found that four ODD manufacturers between September 2006 and September 2009 had contacted one another by emails, phone calls or meetings to exchange sensitive information during the bidding process held by computer manufacturers Dell Inc. and Hewlett-Packard Company. The four companies discussed the bidding prices and the expected bidding results before or during the bidding procedures. In several bidding cases, they even reached agreements on the final price and ranking in advance. They also frequently exchanged competitively sensitive information such as productivity and output.

16. ODDs are devices such as CD-ROMs, CD-RWs, DVDRWs, DVD-ROMs, Combos, and BD DVDs that use laser light to read and write data on compact discs. In terms of size, they can be half-height, slim, or ultra-slim. The half-height drives are often used in desktop computers, and the other two are built into laptops. According to the statistics from an independent market survey company, the four companies

account for over 75% share of ODD market, while HP and Dell nearly have 10% shares of the PC market in Chinese Taipei.

17. Because 90% or more of ODDs used in HP and Dell companies were purchased through procurement events, the alleged bid-rigging conspiracies affected competition on the domestic ODD market. The FTC concluded that the four companies in violation of Article 14 of the FTA. In addition to ordering the said companies to immediately cease the unlawful act, the FTC also imposed administrative fines amounting to a total of NT$54 million on September 12, 2012.

18. This is the first cartel case on the basis of a leniency application after the FTA was amended on Nov. 23, 2011 to include the leniency program.

- Case 3: Resale price maintenance

19. The FTC found that Shine-Mei Marketing and Distribution Co., Ltd. (Shine-Mei), responsible for the distribution of the frozen and refrigerated products of I-Mei Foods Co. Ltd. (I-Mei), in January 2012 asked downstream retailers not to sell I-Mei soybean and rice milk products below a given price. The FTC initiated an investigation into this case.

20. The FTC's investigation revealed that, between January and February in 2012, the lowest price for sales promotion of I-Mei soybean milk and rice milk was NT$49 for two liters in most retail channels. After Shine-Mei notified retailers, either orally or in writing, that it would suspend supply of the products if retailers don't increase the price of these two products from NT$40 to at least NT$55 per 2L bottle.

21. Soybean and rice milk are the two commonly consumed beverages for consumers in Chinese Taipei. I-Mei is one of the three leading brands in the market and the 2L bottle is the most popular package in the hypermarket. The FTC's investigation revealed that most retailers were afraid that Shine-Mei would suspend the supply and therefore maintained the price of the two products above NT$55 after March 2012.

22. The FTC decided that, by preventing the downstream retailers from selling I-Mei soybean and rice milk below a price floor, Shine-Mei had deprived them of their freedom to determine their prices and lessened price competition on products of the same brand among different retailers and violated Article 18 of the FTA. The FTC ordered Shine-Mei to cease the unlawful act and imposed an administrative fine of NT$1,000,000.

2.2 Merger and acquisitions

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

23. Mergers involving parties reaching a certain sales volume or a particular level of market share require the giving of notification to and obtaining no objection from the FTC. The FTC makes its decision based on whether the benefits to the economy as a whole will exceed the anti-competitive effects of the proposal.

Notifications for Mergers (Unit: Number of cases)

Year	Cases under Processing			Results of Processing			Cases Pending at Year-end
	Carried Over from 2011	Received in 2012	Total	Mergers not Prohibited	Mergers Prohibited	Termination of Review	
2012	2	52	47	26	-	20	7

Statistics on Enterprise Mergers (Unit: Number of cases)

Year	Cases not Prohibited	Type of Merger (Article 6, Paragraph 1 of the Fair Trade Act)				
		Subparagraph 1	Subparagraph 2	Subparagraph 3	Subparagraph 4	Subparagraph 5
2012	26	2	21	6	2	16

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

2.2.2 Summary of significant cases

- Case 1: Nexon Co. Ltd. and Gamania Digital Entertainment Failed to file Pre-merger notification

24. The FTC received a complaint alleging that Nexon Co., Ltd. (hereinafter "Nexon") acquired over one third of the voting shares of Gamania Digital Entertainment Co., Ltd. (hereinafter "Gamania") and Gamania accounted for one quarter of the domestic online game market share, but Nexon didn't file a notification under Article 11 of the FTA.

25. The FTC's investigation revealed that, as of April 16, 2012, Nexon indeed acquired 34.6% of the issued shares of Gamania and acquisition met the criteria of Subparagraph 2, Paragraph 1 of Article 6 of the FTA. According to the statistics compiled by the Industrial Development Bureau of the Ministry of Economic Affairs, the total production value of the online game industry in 2011 was NT$24.7 billion, including NT$5.274 billion of revenues from overseas markets and NT$19.426 billion from the domestic market. Meanwhile, the sales of Gamania by online game businesses in 2011 in Chinese Taipei amounted to NT$5.543 billion, accounting for about 28.53% of the total share of the relevant market and thus reaching the merger filing threshold set forth in Subparagraph 2, Paragraph 1 of Article 11 of the FTA.

26. The FTC concluded that, Nexon had to file with the FTC before the merger. Therefore, by failing to fulfill its obligation to notify the merger, Nexon violated Paragraph 1 of Article 11 of the FTA. The FTC ordered Nexon to make necessary corrections within three months and imposed an administrative fine of NT$900,000 on Nexon.

- Case 2: Merger of MediaTek and Mstar

27. MediaTek Inc. intended to acquire over 40% of the shares of Mstar Inc. first and MediaTek would merge Mstar at a later date after the acquisition was completed. MediaTek would be the surviving company while Mstar would be the dissolved company. The merger met the type of merger prescribed in Subparagraphs 1 and 2, Paragraph 1, Article 6 of the FTA. In addition, the sales of merger parties in the previous fiscal year exceeded the notification threshold set forth in Subparagraph 3, Paragraph 1, Article

11 of the FTA and none of the exceptions prescribed in Article 11-1 applied. Thus, MediaTek Inc. was required to file a premerger notification with the FTC.

28. The FTC's investigation showed that the two parties' competed in the cellular phone chip market and TV (display) control chip market, but market structure of cellular phone chip remained competitive after the merger. As for TV control chip market, the merger parties faced strong competition from international players and the merger would not create significant barriers to market entry. In addition, the downstream firms had countervailing power to curb abuse of market power by the merging parties. Therefore, the merger in question was deemed unlikely to raise any significant competition concern.

29. Since the merger would not result in any significant competition restriction in the relevant markets while it could also improve the overall capacity of domestic TV (display) control chip makers, the FTC concluded that the overall economic benefits outweighed the disadvantages from the competition restriction and didn't prohibit it in accordance to Article 12 (1) of the FTA.

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

30. In its first amendment in 1999, the new provision of the Act required that the Act not be applied to acts performed in accordance with other laws only if such other laws do not conflict with the legislative purpose of the Act. This amendment thereby affirms that the spirit and contents of the Act be the core of economic policy.

31. The FTC has completed a comprehensive review of all relevant laws and regulations since 2001 to minimize potential conflicts among laws, to advocate free and fair competition, and to ensure the presence of a healthy operating environment in which all businesses are able to compete fairly. As a result, the FTC will continue to be aware of developments in various markets, perform reviews of other laws to determine whether they are in compliance with the Act and consult with relevant industry competent authorities to prevent related laws and regulations from impeding competition.

32. In 2012, the FTC organized and participated in seminars and consultation meetings with other government authorities related to competition issues, as summarized in the following:

- Requested price and quantity supply information from the Council of Agriculture (COA), the place of productions, fruit and vegetable whole sale markets, and called related agencies, major meat markets to learn the poultry price changes before important traditional holidays such as Lunar New Year, Dragon Boat Festival, the Moon (Mid-Autumn) Festival.

- Consulted with the Agricultural and Food Agency and Fisheries Agency, both under COA, for price and quantity information of pig, chicken, fish feed, and import fruits when investigated the cases involved pork, chicken, eggs, and fish feed during April and September 2012.

- Coordinated with Public Attorneys, the Police, the Council of Agriculture, and local governments for the surveillance of prices on important necessities, agricultural products and livestock to prevent price fixing.

- Participated in the "Meeting on the investigation of the prices of infant formula and related issues" coordinated by the Bureau of International Trade (BOT). The meeting decided that the importers or distributors of infant formula should inform the BOT if there is to be an expected rise in the price of products. The BOT should then pass on the information to all related agencies

and the FTC will investigate whether such price increase results from a concerted action or abuse of market power that might violate the FTA.

- Organized a meeting entitled "The application of relevant laws among the Bureau of National Health (now the Ministry of Health and Welfare), Ministry of Economic Affairs, Ministry of Justice, Department of Consumer Protection and the FTC on false labels and advertisements" to coordinate the divisions of the regulation on false labels and advertisements on food products and over-counter medicines.

- Organized a meeting entitle "The Application of Relevant Laws on the False Label between the Fair Trade Commission and Ministry of Economic Affairs." The FTC invited representatives from Ministry of Economic Affairs, Ministry of Justice, and Department of Consumer Protection to discuss about the division of regulations on false label and advertisements on the Internet. The meeting decided that whether pictures of commodities or labels and relevant information on commodities should be categorized as product labels or advertisements would be discussed in the cross-ministry's meeting on E-commerce held in the near future.

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget

- NT$356.593 million in 2012 (approximately equivalent to US$11.89 million in August 2013).

4.1.2 Number of employees (person-years)

33. There were 209 employees at the end of the year 2012, including all staff in the operations and administrative departments and eight full-time Commissioners. The operations departments include the Department of Service Industry Competition, Department of Manufacturing Industry Competition, Department of Fair Competition, Department of Planning and the Department of Legal Affairs. Over 90% of employees have bachelor degrees with majors in different subjects at the university level.

34. In terms of the educational background percentages, 26%, 22%, 9%, 5% and 41% of the employees majored in law, economics, business administration, accounting, and other related fields (including information management, statistics, and public administration), respectively.

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

Category	No. of employees
Economists	45
Lawyers	55
Other professionals & support staff	109
All staff combined	209

4.2 Human resources (person-years) applied to:

4.2.1 Enforcement against anti-competitive practices and merger review

36. Apart from the Department of Fair Competition, which is responsible for unfair competition practices, such as false and misleading advertisements, counterfeiting and multi-level sales cases, the Departments of Service Industry Competition and Manufacturing Industry Competition of the FTC handle all kinds of anti-competitive cases, including the abuse of dominant market positions, merger reviews, cartels and various vertical restraints.

37. The Department of Service Industry Competition is responsible for cases related to the services and agricultural sectors, and the Department of Manufacturing Industry Competition is responsible for cases related to the manufacturing sectors. There are 30 staff members in the Department of Service Industry Competition and 29 in the Department of Manufacturing Industry Competition.

4.2.2 Advocacy efforts

38. In 2012, 9 of the 26 staff members in the Department of Planning of the FTC were primarily charged with public outreach programs. However, since most of the outreach programs for competition advocacy were case-oriented, almost every department staff member played an active role in outreach activities. The FTC organized 83 seminars in 2012 for the public, students, and local governments to introduce the regulations of the FTA.

39. Furthermore, in 2012, the FTC held 10 seminars for the various business sectors to introduce the leniency program and administrative fines to ensure acquaintance with the new provisions of the FTA. The FTC also held 27 seminars for business sectors to introduce the "Code of Conduct for Antitrust Compliance of Enterprises."

4.3 Period covered by the above information

- January through December 2012

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

40. The FTC studied and published reports on competition policy issues in 2012 with the following titles. None of them is available in English.

- A Study of Merger Control under China's Anti-monopoly Law.
- A Study on Price Variation Used as a Screening Method to Detect Cartels.
- A Study on Regulations in the LPG Market.
- A Study on Regulations and Administration of Multi-Level Sales.
- A Study on the History and Reform of the FTA's Administrative Fine Regime.

41. The FTC also engaged in outsourced research, and published the following research reports in 2012. None of them is available in English.

- A Study on Harmonization of Competition Policy and Industrial Policy in the Energy Industry.
- A Study on the Defense of Regulated Sectors in Competition Law.

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COMPETITION COMMITTEE

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ROUNDTABLE ON EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS TO DETECT CARTELS

-- Note by Chinese Taipei --

This note is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION under Item X at its forthcoming meeting to be held on 30-31 October 2013.

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ROUNDTABLE ON EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS TO DETECT CARTELS

-- Note by Chinese Taipei --

1. Introduction

1. This report is divided into three parts. The first part shows the general status of ex officio cartel investigations in Chinese Taipei in recent years and the rise in the number of cartels, in which the actors were sanctioned upon such ex officio cartel investigations. The second part interprets the evaluation indicators from the aspect of industrial structures. The third part of the report explains the FTC's ex officio investigation mechanism against cartels.

2. The FTC's Ex Officio Cartel Investigations and Numbers of Sanctioned Cartel Cases

2. There are two sources of cartel cases handled by the FTC, one of which is based on complaints filed by consumers or business groups; while the other refers to the ex officio investigations led by the FTC based upon the long-term monitoring of the industries and price changes. Statistical data show that, up until December 2012, there had been 747 complaints of concerted actions received by the FTC, of which 314 were handled by initiative investigations conducted by the FTC. Of the cases investigated, 179 cases were subject to sanction, of which 112 (62.6% of the total concerted actions cases sanctioned) originated from complaints by the public or business groups, while 67 (37.4% of the total concerted actions cases sanctioned) originated from the FTC's ex officio investigations.

3. In view of the time series, the highest volume of cartel cases sanctioned occurred in 2000 (21 cases) and the second highest occurred in 2012 (18 cases). Out of the 18 cases sanctioned in 2012, 14 cases originated from initiative investigations conducted by the FTC and only 4 originated from evidence submitted by the complainants. There is a growing trend in the cases of cartel detection investigated for them that originated based on evidence of illegal activities received.

4. Moreover, in view of the number of enterprises sanctioned per case, there were 124 cases in aggregate where only 5 or fewer enterprises were sanctioned in one single case, which represents 69.27% of the total cartel cases sanctioned by the FTC. In terms of the main industry classification of each sanctioned enterprise[1], most of the enterprises sanctioned were in the industry of professional membership organizations (46 cases, representing 25.7% of total cartel cases sanctioned by the FTC). The industries that followed and their respective percentages are: retail trade (15 cases), 8.4%; electricity and gas supply (12 cases), 6.7%; the manufacture of other non-metallic mineral products (11 cases), 6.1%; the manufacture of food products (8 cases), 4.5%; programming and broadcasting activities and legal and accounting activities (7 cases each), 3.9% each; the manufacture of computers, electronic and optical products and specialized construction activities (6 cases each), 3.4% each; waste collection, disposing and

[1] The sanctioned enterprises consisted of 42 industries. The term "main industry" means any industry under which 5 (inclusive) or more cases have been subject to sanctions. The industry classification is based on the "Standard Industrial Classification" published by the Directorate-General of Budget, Accounting and Statistics, Executive Yuan.

recycling activities; and wholesale trade and water transportation (5 cases each), 2.8% each. Based on the identity of the sanctioned parties, 105 cases were companies, representing 58.66% of the concerted action sanctions decisions; 64 cases were businesses and freelance organizations, representing 35.75%; 5 cases were general public; 4 cases were foreign business units; and 1 case was a cooperative association.

5. From the statistics above, several elements of the FTC's cartel enforcement cases can be concluded as follows:

1) Recent cartel cases sanctioned were mainly discovered upon the observation of the industrial characteristics and ex officio investigations conducted by the antitrust authority. Cases discovered based on specific evidence provided by the complainants were relatively low in number.

2) Cartel cases where 5 or fewer enterprises were sanctioned in an individual case constituted more than half of the entire cartel cases sanctioned by the FTC. The most sanctioned target was companies, of which 30% were businesses and freelance organizations. The purpose of the establishment of industry associations or trade unions is to maintain the common interest of their members; however, it can become the accelerator of concerted actions if it restricts competition among the members.

3) The main industries to which the violators belong are: activities of professional membership organizations and trade unions, electricity and gas supply, the manufacture of other non-metallic mineral products, and the manufacture of food products. The homogeneity of the products or services involved is becoming increasingly high.

3. The Structural Approach of the FTC's Detection against Cartels

6. The cartels sanctioned in Chinese Taipei involve mainly 12 industries including the activities of professional membership organizations, trade unions and retail trade, etc. The source of such information is based on the 2011 Industry, Commerce and Service Census completed by the Directorate-General of Budget, Accounting and Statistics, Executive Yuan and the industry database of the FTC. Such reports do not cover market information regarding statistics of the sales amount of professional membership organizations. Therefore, the observation was conducted based on six major market structural indicators of the retail trade and other ten industries, namely, the industry scale, concentration, entry barriers, operational efficiency, innovation and industry growth trends.

7. Analysis Results: Factors that are conducive to collusion include small industry scale, high concentration, high entry barriers, high operational efficiency, low innovation and high industry growth trends. These factors are conducive to cartels. The results are compiled and shown in Table 1 (the symbol "●" indicates that the industry possesses the factors that are conducive to cartels). Most of the main industries subject to the cartel cases sanctioned by the FTC possess at least 3 or more market structural indicators that are conducive to cartels.

Table 1 Market Structure Indicators Conducive to Cartels

Industry Classification	Small Scale[2]	High Concentration[3]	High Entry Barriers[4]	High Operational Efficiency[5]	Low Innovation[6]	High Industry Growth Trends[7]
Manufacture of Food Products				●	●	●
Manufacture of Other Non-metallic Mineral Products			●	●	●	●
Manufacture of Computers, Electronic and Optical Products			●	●		●
Electricity and Gas Supply	●	●	●		●	●
Specialized Construction Activities				●	●	●
Waste Collection, Disposing and Recycling Activities				●	●	●
Wholesale Trade			●			
Retail Trade			●		●	
Water Transportation	●		●		●	
Programming and Broadcasting Activities	●				●	
Legal and Accounting Activities		●		●	●	

2 Small scale shall refer to the situation where the industry of the sanctioned enterprise consists of less than 1,000 enterprises in 2011.

3 High concentration shall refer to the situation where the CR4 value of the industry of the sanctioned enterprise is more than 50 and the HHI value is greater than 1500.

4 High entry barriers shall refer to the situation where the entry rate of the industry of the sanctioned enterprise is lower than the average entry rate of the overall enterprises of manufacturing or service industry in 2011.

5 High operational efficiency shall mean that the profit rate of the industry of the sanctioned enterprise is higher than the average profit rate of the overall manufacturing industry in 2011.

6 Low innovation shall refer to the situation where the ratio of the research and development expenditure to the total production of the industry of the sanctioned enterprise is lower than the average ratio of the research and development expenditure to the total production of the overall manufacturing industry in 2011.

7 High industry growth trends shall refer to the situation where the total income of the industry of the sanctioned enterprise is higher than the average income growth rate of the overall manufacturing or service industry.

8. Based on the FTC's analysis of the cartel cases sanctioned, the FTC has referred to several features related to the industrial structure of the violating enterprises. Such features can help us select certain industries for the purposes of supervision and control to prevent the forming of cartels and the damage to market competition caused thereby. The structural indicators of cartel detection, on the other hand, include the number of enterprises, entry barriers, constraints on available production capacity and excessive production capacity, changes in market demand, the frequency of interaction and price changes, market transparency, symmetry of costs, quality or product differentiation, and buyer power, etc. The goal of the analysis is to determine whether there exists any factor that could help form or stabilize cartels under each indicator. Structural indicators are used to keep the enforcement authority on a high alert in respect of any collusive practice that will be forming.

4. The FTC's Detection Mechanism against Cartels

9. The theory of antitrust economics indicates that in order to reach an agreement among the enterprises in respect of concerted price-fixing, the enterprises will consider the cost of reaching such an agreement (by adjusting the cost of mutual interests) and economic terms. The ex officio detection tools against cartels include the analysis of observable economic data and enterprise behavioral detection, systematic market signal detection, etc. The following is the FTC's recent experience in the sanction cases discovered through its detection mechanism.

4.1 Observation of Economic Data

4.1.1 Demand Factors:

10. Changes in demand mainly refer to demand growth, changes in demand cycles, and fluctuations in demand. When a product is in the stage of growing demand, a concerted practice is easier to maintain. This is because the implementation of an agreement regarding a concerted action is more beneficial than acting against it. Furthermore, if the fluctuations in demand become overly frequent, it will increase the difficulty for the enterprises in a concerted action to identify the cause of the price change and discover any betrayal behavior and therefore increase the instability of the concerted action.

4.1.2 Supply Factors

11. Cost Differences: When the cost is asymmetric, it is hard for the enterprises to reach an agreement regarding a fixed price. Normally, enterprises with lower costs will insist on setting a lower price, while enterprises with higher costs will insist otherwise. Such a situation will increase the difficulty for the enterprises to reach an agreement on the price.

12. Product Differentiation: In the case of product differentiation, a concerted action is made not only to determine the price or production yield, but also to negotiate with non-price factors. As a result, the higher the product differentiation is, the harder the negotiation can be. A concerted action under such circumstances is more difficult to maintain.

13. Production Capacity: When an enterprise's production capacity is excessive or has large inventories, it will have an incentive to reach an agreement on a concerted action in order to increase the production capacity utilization rate or use up the inventories.

14. Technological Innovation: Technological innovation will bring varieties of products to the market and therefore lower the possibility of concerted actions. In respect of markets with more active technological innovation, the introduction of new products and new technologies will cause changes in the product demand and supply to take place more rapidly and it will become harder to predict and therefore lower the incentive for enterprises to engage in a concerted action.

4.1.3 Economic Terms

15. If there is higher product homogeneity, a lower number of enterprises, higher market concentration, a lower elasticity of product demand, and higher entry barriers, enterprises will reach an agreement on restrictive competition more easily as the cost of paying to maintain the unlawful effect will be lower. Thus a cartel is relatively easier to form. Secondly, the transparency of market transactions and frequent interactions among the enterprises will also help the cartel to be maintained.

4.1.4 Detection of Systematic Market Signals

16. Facilitating practices in an oligopolistic market refer to those practices that tend to make it easier for enterprises to reach agreements by adopting various means to eliminate the instability of the strategies among the enterprises. The types of the facilitating practices often seen in the FTC's cases relate to the exchange of information and prices, the evidence of which is as follows:

1) Information Exchange: Where any person concurrently serves as the shareholder and the managerial officer of an enterprise or an employee hired was previously from a competitor; and where enterprises disclose price information to each other on a public or private occasion or call for a halt to low price competition.

2) Pricing Systems: Where price information is exchanged through a price adjustment announcement; where a most favored provision is in place for the enterprises of the same industry to establish a model not to compete on prices; where the enterprises publicly or in advance relay the price adjustment information to each other; and where the enterprises know the price adjustment cycles of the others. For example, in the sanctioned cases of the FTC that involved oil products, industrial paper, milk, and coffee, etc., the enterprises sanctioned all used the media to exchange the price adjustment information and reach a mutual understanding regarding the price increase.

17. The FTC collects and organizes long-term market information (including the media) both before and after a price adjustment to control the timing when such important price adjustment information is released to the market by the key enterprise and use it as the evidence for the facts to be proved.

5. FTC's Detection of Enterprise Behaviors

5.1 Case example1: Ready-mixed Concrete case

18. Ready-mixed concrete enterprises in the Chiayi area were sanctioned by the Fair Trade Commission Decision at the 757th Commissioners' Meeting on May 11, 2006 for engaging in a concerted price increase.

19. Market structure conducive to the formation of a cartel: The characteristics of ready-mixed concrete are the simple technology, high product homogeneity, inability to stock inventory, and complete substitution products. The selling market area of ready-mixed concrete is limited to a one-hour hauling radius. The geographic market is regional and it has entry barriers.

20. Detection of enterprise behaviors: From October 2004 to January 2005, the price in the Chiayi area for each cubic meter of ready-mixed concrete increased by an additional NT$150 to NT$200 for 3,000 pounds of each ready-mixed concrete enterprise. The price increase by each ready-mixed concrete enterprise was highly consistent and concurrent with the price increases conducted by the other enterprises. During such a period, the costs of the enterprises did not experience an obvious increase, and, therefore, the price was inconsistent with the cost. Market demand declined and production capacity idled, while the

price continued to rise. Downstream construction and civil engineering enterprises reported that the upstream enterprises had engaged in a concerted price increase. The prices quoted by the upstream enterprises all came back the same during the same period. However, the ready-mixed concrete enterprises used lower prices among each other to allocate the materials.

21. Ready-mixed concrete enterprises stopped initiating ancillary services starting in October and November 2004. With the economic recession and decrease in construction projects, as well as the vehicle control measures implemented by the competent authority in June 2004, the enterprises subjectively had the incentive and motive not to compete with each other based on prices in order to avoid the impact on their profits.

5.2 Case example 2: Industrial paper case

22. Three major industrial paper enterprises were sanctioned by the Fair Trade Commission Decision at the 962nd Commissioners' Meeting on April 14, 2010 for engaging in a concerted price increase.

23. Market structure conducive to the formation of a cartel: the three enterprises manufacturing first-level industrial paper had a market share of 90%. The market was highly concentrated (with HHI as high as 3700). The fundamental facilities, such as production capacity and factories, caused high entry barriers. Moreover, with the lead time of importers, it was not likely that there would be newcomers (whether in manufacturing or importing) that would be engaged in price competition at the time.

24. Detection of enterprise behaviors: the three enterprises had different cost pressures, operating strategies, and proportions for self-use, but they all raised their prices at the same time by a similar proportion. The FTC also found price deviations when comparing the price increases in relation to the historical price adjustments, the highest point of the prices, the frequency of price adjustments and international prices. The enterprises periodically discussed paper price trends and technological developments through public meetings and gatherings arranged by the association or frequently interacted with each other through golf, karaoke, and dining activities in private. The enterprises had the same price quotation and settlement system. They would use the listed price for the current month as a price quotation and issue invoices for settlement. At the end of the month, the enterprises would calculate the actual prices by using discounts.

25. The domestic market demand for industrial paper was high; however, the prices continued to rise. Upon reviewing the export information of the enterprises, they still used lower prices to export their goods and caused a market signal suggesting there was a supply shortage. The upstream and downstream enterprises were supposed to depend on each other for perpetual operations, but the downstream buyers suddenly surrounded the upstream paper suppliers in order to protest.

26. From the experiences gained based on the two cases mentioned above, the indicators used by the FTC to detect any enterprise behavior which might possibly involve collusion are (see Table 2):

1) Price Marker:

   a) These two cases of price uniformity were passed on to the counterparts simultaneously.

   b) These two cases give rise to unexplainable price deviations and high correlations after the price adjustments.

   c) The ancillary services in connection with the prices are identical. For example, the ready-mixed concrete enterprises canceled initiative price quotation services; the industrial paper

prices included shipping costs and the enterprises used the same quotation and settlement mechanism.

2) Quantity Marker:

   a) Market Share: The market is highly stable. Regardless of the increase or decrease in demand, the market share of each enterprise remains the same with similar ranking and proportion.

   b) Changes in Demand: The enterprises still have the same market shares, even with any unforeseen shock increase in demand. For example, the third enterprise in the industrial paper market with excessive production capacity would rather export at lower prices than sell to the domestic market.

   c) Volume Flow among Enterprises: This includes the transfer of materials by ready-mixed concrete enterprises among themselves, or the proportion of the self-use check in the buy-back scheme of the enterprises. Such factors may be used to determine whether the enterprises have an agreement to maintain the market shares.

   d) Production Capacity: The production capacity of each enterprise is one of the factors that can affect whether the enterprise will betray a cartel. Asymmetric production capacity, in particular, can maintain the stability of a cartel. For example, if the industrial paper enterprises that are respectively ranked second and third were to betray the cartel, their production capacity would not be sufficient to supply the entire market demand and might be countered by the enterprise ranked in first place with its massive production capacity. The excessive production capacity of an enterprise might have a deterrence effect thus enabling the enterprise to caution the other cartel members not to betray the cartel.

3) Other plus factors:

   a) Market entry barriers and the participation of enterprises are also indicators used to evaluate collusion. When the entry barriers are low, the possibility of potential new participating enterprises entering the market will be the factor to counter cartels. In other words, when the entry barriers are high, enterprises will have a better willingness to participate in a cartel.

   b) In regard to traditional industries, enterprises are long-time acquaintances. They are enemies in a competitive relationship as well as friends. A high frequency of interactions exists between these enterprises, regardless of whether through periodic official meetings via an association or gatherings in private. When the prices increase, the frequency of interactions can also raise doubts about concerted actions.

   c) The intensity of buyer complaints is another warning sign for cartels. The unusual outrage among the trading counterparts in the middle and downstream industries in the two cases mentioned above indicated a breakdown in the supposedly harmonious and dependent relationship with the upstream enterprises and also reflected the market dynamics.

   d) The current systems shall be reviewed to see if they can be conducive to collusion, such as the price quotation system and settlement method adopted by the industrial paper enterprises, or whether any enterprise uses a pre-announcement facilitating mechanism in the form of a price increase to release the price information through a prior announcement for the other enterprises in the same industry to learn about the price increase and come to

an agreement. In the ready-mixed concrete case, a new regulation was taken and caused the enterprises to anticipate a profit loss and in turn provided a motive for the enterprises to jointly raise their prices.

e) Cost information is of a confidential nature, especially for enterprises with a higher market share. Due to the economies of scale, such enterprises have lower unit costs and are therefore reluctant to reveal their costs. However, when higher costs occur (such as when the cost of raw materials rises) or when significant benefits can be anticipated in the future, truthful communication will tend to occur. As in the industrial paper case, the possibility of collusion did occur when the prices of raw materials rose, and the FTC immediately proceeded with an ex officio cartel investigation.

Table 2 Index Analysis based on Enterprise Behaviors

	Ready-Mix Concrete Case	**Industrial Paper Case**
Price marker		
1.price change	Price Uniformity	Price Uniformity
2.price deviation	Obvious	Obvious
3.ancillary service	Price Quoting Services Cancelled	Shipping Cost Included
Quantity marker		
1.market share	Stable	Stable
2.demand	Decrease	Increase
3.supply	Transfer of Materials Among Themselves	Increase in Self-Use
4.capacity	Excessive	Fixed
Plus factor		
1.entry barrier	High	High
2.buyer complaints	Strong	Strong
3.frequency of interaction	Frequent	Frequent
4. facilitating practices	Fixed Volume	Price Quotation and Settlement Systems
5.cost factor	No changes	Increased

27. Indicators of cartel detection are provided for us to observe the probability and stability of the formation of a cartel. This, however, does not mean that in the case where a cartel does exist the enterprise behaviors will fit in with these indicators. The element of mutual understanding shall still need to be proved through the investigation. Currently, enterprises will try to avoid leaving any “smoking gun” evidence. In order to prevent enterprises from colluding under the table, we evaluate the industry characteristics and market structure first and then employ a long-term detection approach in respect of enterprise behaviors, commodity price and volume changes, as well as market dynamics for a comprehensive thinking.