

出國報告(出國類別： 其他公務有關活動)

出席 2014 年 2 月經濟合作發展組織  
(OECD)「競爭委員會」會議及  
「全球競爭論壇」報告

服務機關： 公平交易委員會

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## 目 錄

|                                     |    |
|-------------------------------------|----|
| 壹、參與會議之緣起及目的.....                   | 2  |
| 貳、OECD「競爭委員會」與會人員及「全球競爭論壇」與會人員..... | 2  |
| 參、OECD「競爭委員會」會議重點.....              | 3  |
| 一、「競爭與管制第二工作小組」(WP2)會議.....         | 3  |
| 二、「合作與執法第三工作小組」(WP3)會議.....         | 5  |
| 三、「競爭委員會」(CC)會議.....                | 7  |
| 肆、「全球競爭論壇」(GFC).....                | 13 |
| 一、「打擊貪腐促進競爭」圓桌會議.....               | 13 |
| 二、「藥品銷售中之競爭議題」圓桌會議.....             | 15 |
| 伍、心得與建議.....                        | 18 |

### 附錄:

- 「競爭與管制第二工作小組」(WP2)會議議程
- 「合作與執法第三工作小組」(WP3)會議議程
- 「競爭委員會」(CC)會議議程
- 「全球競爭論壇」(GFC)議程
- WP3「已完成與未申報結合案件之調查」之我國書面報告
- CC「金融消費者保護中競爭之角色」之我國書面報告
- GFC「藥品銷售中之競爭議題」之我國書面報告

## 壹、參與會議之緣起及目的：

- 一、經濟合作發展組織(OECD)「競爭委員會」(Competition Committee, CC)及其下轄之第2工作小組(WP2)、第3工作小組(WP3)每年固定在2月、6月及10月於法國巴黎OECD總部召開3次會議。「競爭委員會」各項會議主要討論競爭政策及競爭法之制定及執法方向與技巧,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。今年2月之例會在2月24日至2月26日舉行。
- 二、OECD為推動國際競爭政策發展,並增進會員國與非會員國間對話,消弭彼此間之爭議,自2002年起,每年均會舉辦「全球競爭論壇」(Global Forum on Competition),邀請各國競爭法主管機關(尤其是非會員國家)及國際組織派員與會,尋求各國間的相互瞭解,並促進各國自願性採認最佳實務(best practices)、建立各國競爭法主管機關間的合作管道、強化跨國結合案及國際卡特爾案件的調查合作。本年「全球競爭論壇」為第13屆會議,係安排於本次「競爭委員會」例會後(2月27日及2月28日)召開。
- 三、我國於2002年1月1日正式成為OECD「競爭委員會」一般觀察員(regular observer)後,即固定派員出席該委員會會議。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,且在「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」與會人員及「全球競爭論壇」與會人員

- 一、經濟合作發展組織(OECD)是由歐、美、日等34個國家所組成,自1961年9月迄今已成立53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」參與方成員,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。

二、本次「全球競爭論壇」會議開會期間為2月27日至28日，OECD邀請會員國及非會員國等計117國競爭法主管機關及UNCTAD，WTO，CUTS等32個國際組織代表與會，參加人數共約有400多人。

三、本次我國出席上開二會議人員為公平交易委員會蔡蕙安委員、綜合規劃處杜幸峰視察及服務業競爭處蔡靜慧專員。

### 參、OECD「競爭委員會」會議重點

一、2月24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：

1、「對經濟挑戰的新方法：與競爭有關之工作」(New Approaches to Economic Challenges: Work Related to Competition)報告：由NAEC工作團隊就「競爭中立」及「環保」議題與競爭關係提出報告。

(1)競爭中立(Competition Neutrality)主要討論國有事業(state-owned enterprises, SOEs)或國家投資事業(state-invested enterprises, SIEs)在全球市場競爭之影響。報告中指出，在全球50大企業中，有15家是國營事業，而且全為OECD會員國所經營。在過去15年中，SOEs及SIEs在全球市場比重有逐漸增加之趨勢，但研究顯示，此一增加趨勢會因國際化及各國管制政策而不致影響競爭，反而是各國以補助國營事業方法造成的不公平競爭才是應正視之問題。建議OECD會員或G20國家應加強國際合作，交換資訊，以討論此一問題。

(2)在環保議題上，環保政策可能會因制度或政策之設計而扭曲潛在競爭。因為環保政策設計可能對新進廠商訂定較嚴苛之政策，造成較高之沈沒成本及管理障礙，而使新進或潛在競爭廠商處於較既有廠商較不利之情勢。主席表示，此一問題可能會與競爭評估工具有關。

2、「希臘競爭評估計畫」(Greek Competition Assessment Project)報告：秘書處就希臘「解除週日交易限制」之結果提出評估報告。希臘原來對週日交易限制主要目的在保護中小企業商店，因為週日交易可能會增加大型商店或購物中心之交易，中小型商店因此而降低銷售，造成市場更集中之效果。希臘雅典大學教授Mr. Christos Genakos以「差分法」實證架構(difference-in-difference empirical framework)證明，解除週日交易限制將提高就業(尤其是學生及婦女兼職或臨時工作者)，增加業者銷售金額，且不致引起物價提升及市場集中度增加，中

小型商店不致因此受損害。

- 3、「競爭評估方法」(Methods for Competition Assessment)討論:秘書處提出競爭評估工具書第3冊「操作手冊」(Operational Manual)草案供會員討論。秘書處列出操作順序為:選擇欲評估之公共政策—利用查核表(checklist)檢查競爭要素是否可能限制競爭—尋求替代方案—建議決策者採行替代方案—施行替代方案。本會代表就該操作順序提出意見:競爭法主管機關在陳報政府核准前宜先與管制機關或主管機關討論,就替代方案之施行內容達成共識,並建議在該草案第6章「比較替代方案」中考慮加入「如何與管制機關或主管機關協商討論」之內容,以期選出最佳政策選項。
- 4、事後評估手冊(Ex Post Evaluation Manual):秘書處提出「事後評估手冊:概要」(Ex-Post Evaluation Manual: an Overview)供會員討論。本評估主要針對競爭法主管機關在對某一案件或介入(如禁止結合、對卡特爾案或濫用市場優勢地位之處分)做成決定後,對該決定之成效評估。會員就手冊內容如何實施評估、如何選擇案件、並就是否該詳列可用之評估方法或參考資料等進行討論。
- 5、「政府干預之競爭影響評估」(Evaluation of Competitive Impacts of Government Interventions):本議題討論對政府以非競爭法干預但可能對競爭產生影響之評估。本議題討論包括:
  - (1)希臘雅典大學經濟學系教授Mr. Christos Genakos報告「對價格加成管制之影響」(The Impact of Markup Regulation on Prices)。其研究顯示,政府如對價格加成採上限管制,將造成廠商默示性勾結並使價格上升。而如政府解除對價格加成之管制將會使勾結瓦解,增加廠商間之競爭。
  - (2)英國公平交易局(OFT)官員Ms. Carmen Suarez報告英國對藥房(pharmacy)管制鬆綁之影響。該報告指出,2005年英國衛生署(DOH)解除對藥房營業之部分管制,其結果使部分成藥價格下降,民眾找尋藥品時間縮短,藥房也增加其營業時間,民眾可選擇藥品項目亦有顯著增加。
  - (3)愛爾蘭競爭局前局長Mr. Declan Purcell報告愛爾蘭對計程車業解除管制之結果。2000年愛爾蘭政府開放計程車營業執照,此一政策改變使民眾等待車輛時間大量縮短,計程車營業執照不再奇貨可居成為可交易項目。惟因2010年後計程車供過於求,目前管制呼聲又起,政府打算再度管制,但將限制營業執照之交易。
  - (4)美國明尼蘇達州立大學聖路斯分校教授Mr. Kenneth Thomas報告「投資誘因對競爭之影響」(The Effect of Investment Incentives on Competition):其研究顯

示，以投資誘因(補貼或減稅)鼓勵投資可能對競爭產生負面影響及資源誤置之結果。

(5) 歐盟報告其對「國家補助」(State Aid)之評估。歐盟每年政府補助高達500億歐元，其結果雖可達成某些政策目標，但亦可能扭曲競爭及貿易。歐盟將研採「國家補助現代化」(State Aid Modernization, SAM)，主要目標為強化補助之效果及減少對競爭及貿易扭曲。

(6) 日本報告「競爭政策與政府對振興垂危事業之支援」(Competition Policy and Governmental Support for Revitalizing a Falling Company)，就該國對日本航空(JAL)申請破產之扶助措施及其公司之振興，並討論政府對單一垂危公司提供資助在競爭政策與其他政策考量之兩難。

6、未來討論主題:6月會議中將舉行「政府與民營之夥伴關係」聽證會(Hearings on Public and Private Partnership)，及舉行「寬頻發展圓桌會議」(Roundtable on Broadband Development)。

二、2月25日「合作與執法第三工作小組」(WP3)會議，由WP3主席美國司法部反托拉斯署署長Mr. William Baer主持，討論議題包括:

1、「已完成與未申報結合案件之調查」圓桌會議(Roundtable on Investigations of Consummated and Non-notifiable Mergers):本議題之討論主要針對已完成實質結合，但因未達結合申報門檻不需申報，或因自願申報制度未自動提出申報，或依規定需申報未申報，但可能有限制競爭效果結合案件之調查。

(1) 澳洲: 澳洲的結合體制並未強制規定結合廠商一定要向事先澳洲競爭與消費者委員會(ACCC)申請結合許可，故在澳洲亦無結合門檻。廠商可自行向ACCC諮詢有關結合可能之結果。如該結合案對市場競爭可能產生影響，ACCC會建議結合廠商等候其審核結果。如結合雙方逕行完成結合，ACCC將會依2010年「競爭與消費者法」(Competition and Consumer Act 2010)向聯邦法院提起訴訟，由法院決定是否禁止該結合。

(2) 英國: 英國採自願申報制，原結合審核機制分二階段，先由公平交易局(OFT)審核，如可能有重大減損市場競爭，OFT會將該結合案送請競爭委員會(CC)進行第二階段審核，CC可對該結合案做出禁止或救濟措施之決議。惟本年4月1日開始，OFT及CC將合併為單一執法機關「競爭與市場局」(Competition and Markets Authority, CMA)，但結合審核仍將維持二階段審核。對有重大競爭減損疑慮之已完成結合案，CMA可提出「開始執法令」(initial

enforcement order)，以防止結合雙方更進一步之行動及拆解已完成之整合，或在少數案件，搶先結合難以回復或回復成本較高者禁止其完成預期結合，而該命令在調查期間將一直維持有效。CMA也可不需經過競爭評估而對任何有權管轄之結合案提出「臨時執法令」(interim enforcement order)。結合雙方如違反臨時執法令，CMA可對違法當事人處以最高營業額5%之罰鍰。

- (3) 美國:在美國，依聯邦及各州法令，司法部(USDOJ)、聯邦交易委員會(USFTC)(合稱主管機關)、各州檢察總長及民眾皆可對結合案提出異議。而依Hart-Scott-Rodino(HSR)及Clayton法，事業符合結合申報規定，須向主管機關提出申報，經等候期(30日)無異議後始可進行結合。如果在等候期任一主管機關認為有必要進行更進一步審核，即可依HSR要求事業提供更進一步之資料而進入第二階段。在第二階段，等候期將延長特定期間(通常為30日，但如有現金標購報價或破產銷售則為10日)。如果再有競爭疑慮，主管機關將與結合當事人針對競爭關切要點進行補救措施規劃進行和解談判，或由主管機關向法院尋求禁止結合禁制令。DOJ可向法院提出初步及永遠禁止之判決，而USFTC則尋求初步禁止交易命令，俾於委員會達成命其停止交易之行政決議。對未達結合申報門檻，事業可不必向主管機關提出申報。但若有競爭疑慮，不論是否已完成結合，主管機關仍得向法院提出異議訴訟。對應申報結合而未依規定提出申報案件，主管機關可向法院控告當事人，要求每日最高16000美元之民事罰金，並可依法進行審理。
- (4) 日本:日本結合審核採事前申報制，初步等候期為30日。對不須申報結合案件，結合事業可逕行結合，但如有競爭疑慮，JFTC可命相關結合事業拋售股權、轉移部分資產或採取必要適當措施，以減少限制競爭之疑慮。而對應申報而未申報案結合案件，JFTC可對結合事業處以最高200萬日元之罰鍰，如有競爭疑慮，JFTC可命其停止結合，或命相關結合事業拋售股權、轉移部分資產或採取必要適當措施，以減少限制競爭之疑慮。
- (5) 韓國:韓國結合申報採強制申報制，但可分為事前申報及事後申報2種。事前申報係事業至少於結合前30日向韓國公平交易委員會(KFTC)提出申報。對大型事業或不易回復原狀之結合，必須於事前向KFTC提出申報接受審核。而對於事後申報之案件，如KFTC認為該結合有限制競爭之虞，KFTC可提出補救措施，要求結合事業降低限制競爭之行為或出售股權、資產，亦可向法院提起訴訟，要求廢止該結合或新公司之成立。對低於結合申報門檻而無須申報之案件，依KFTC結合管制規定，KFTC仍可對其進行審查，如

有限制競爭之虞，則可命結合事業出售股權、轉移資產或解除董監事等措施。對應申報未申報之案件，KFTC可依職權對其進行審核並依法處以罰鍰。

(6) 歐盟：歐盟結合管制為強制申報制，事業在結合申報前或未經許可不得進行結合。一般而言，如未符合結合申報營業額門檻案件即不需向歐盟執委會提出申報。但歐盟各會員國亦有自己之規範門檻，未符合歐盟申報門檻案件可能須依各會員國所規定之門檻，向其競爭法主管機關申報。而歐盟執委會不得對不須申報且已完成之結合提出異議。歐盟執委會對應申報未申報之結合案件仍保有審核權利，如已完成結合，歐盟執委會可並命其解散或出售股權以回復原狀。如無法回復原狀，亦可採取其他適當方法俾能回復其結合前狀態。

(7) 本會對此議題亦提出書面報告、並獲秘書處提問：「錢櫃與好樂迪案為公平會禁止結合但仍逕行結合，請說明貴會對該案所加諸之矯正措施。」惟因時間關係，主席並未請本會代表說明。

2、修正1995年國際合作建議書：會員就秘書處所提之修正草案進行討論，但因工商諮詢委員會(BIAC)所提意見未事先提交秘書處，主席爰裁示：請秘書處先將BIAC所提意見送交各國，於3月14日前彙整各國意見後，再決定是否需繼續於下次會議中討論。

3、未來討論題目：本年6月將舉辦「加強國際合作公聽會」(Hearings on Enhanced International Cooperation)及討論「政府執法及私人訴訟之關係」(Relationship between Public and Private Enforcement)。

三、2月26日「競爭委員會」(CC)會議，會議由CC主席Dr. Frédéric Jenny主持，討論議題如下：

1、「對經濟挑戰的新方法」(NAEC)：會員通過將秘書處所提之「全球化對競爭政策之意含：對結合及卡特爾執法加強國際合作之需求」(Implications of Globalization for Competition Policy: the Need for International Co-operation in Merger and Cartel Enforcement) 報告做為競爭委員會對本議題之意見，提交總理事會，俾彙整意見提交OECD部長會議。

2、委員會未來工作之策略主題(Strategic Themes for Future Committee's Work)討論：2013-2014年委員會2項主題分別為「競爭執法之國際合作」(International Cooperation in Competition Enforcement)及「評估競爭干預之影響」(Evaluating



the Impact of Competition Interventions)，本次會議討論2015-2016之策略主題。主席建議國際合作仍為未來之主題之一，請會員就秘書處所彙整各國所提意見概念文件提出另一主題建議。會員討論結果，將於「競爭中立」(Competition Neutrality)及「智慧財產權」(Intellectual Property Rights)兩者其中擇一做為未來策略主題。

- 3、未來討論題目:6月將舉行「航空業競爭圓桌會議」(Roundtable on Airline Competition)，另外將討論「競爭與標準設定」(Competition and Standard Setting)及「機關之變革」(Institutional Change)。
- 4、新機構報告-由西班牙「國家市場與競爭局」(Spain's National Authority for Markets and Competition, CNMC)主席Mr. José María Marín-Quemada報告新成立機構之職掌與權責。CNMC有500位成員，組織架構分為競爭辦公室(Competition Chamber，由主席主持)及管制辦公室(Regulatory Chamber，由副主席主持)2大部分，其主要職掌為:監督及管制經濟產業，對經濟經營者之爭端調解，執行西班牙與歐盟之競爭法規及競爭倡議。
- 5、「金融消費者保護中競爭之角色」(Competition Role in Financial Consumer Protection):本議題之討論主要為提供OECD金融消費者保護專案小組問卷調查意見。主要討論將聚焦於:(1)轉換率(switching rates)是否為競爭之適宜衡量指標?(2)從競爭觀點看投資與零售銀行業務架構分離之優缺點(the pros and cons from a competitive perspective of structural separation between investment and retail banking)。
  - (1) 會議先由英國金融行為監理局競爭處處長(Director of Competition at Financial Conduct Authority, FCA)處長Ms. Mary Starks報告「金融服務的競爭情形」(Competition in Financial Services)，其提到在金融消費者保護的方面，G20有10項主要原則，其中一項原則即是競爭，此項原則的意涵為，消費者必須要有搜尋及比較的能力，能於商品及其提供者間選擇更符合其需求的商品，並營造競爭上的壓力予商品提供者，促使其提供更具競爭力的商品、促進創新，並維持高品質服務。針對競爭與其他金融政策目標，金融管制者的普遍共識是，在更具競爭性的市場中，業者若能更加重視消費者需求並促使其瞭解相關資訊，消費者將能因此受益；只是更有效的競爭，並不代表就能達到最佳的消費者保護、市場健全效果或金融穩定，因為競爭與其他金融管制目標間的關係是相當複雜的，經常性的競爭有時可以輔助其他目標的達成，但也可能造成與其他目標間的緊張關係。在制度的安

排方面，管制者有時也可以將「管制對競爭可能造成的影響」納入考量，如英國等國家已將促進競爭或實行競爭法律納入金融管制者的基本目標之一，但還是有許多國家並未如此，因此想辦法讓管制者能一併考慮管制措施對競爭或市場所可能造成的影響，是相當重要的課題，例如有許多消費者保護措施即是為了促使消費者能做更佳的決定，其最終結果將能促進競爭。資訊提供及相關協助措施的有無，將能協助消費者做更有效率的選擇，相關協助工具包括：防止收取解約費用等不合理條件的作為、揭露或提供資訊的標準化規範、對於利益衝突或妥適建議的規範、協助轉換的措施，以及提升消費者行為認知(behaviourally informed)或促使其採取更有效率的方法。

- (2) OECD秘書處就所撰寫之背景資料進行報告，其提到由於銀行所提供的服務，具有生命周期考量(life-cycle consideration)、市場分割(market fragmentation)，及通常以綁定或搭售等方式銷售商品，造成銀行具有較高的事後(ex post)市場力，並使消費者面臨較高的轉換成本，所稱轉換成本包括契約成本、行政成本、搜尋成本及資訊不對稱問題。高轉換率代表消費者具有尋求更佳服務或其提供者的能力，但觀察發現，消費者未必皆有意願進行搜尋或轉換，其原因包括：銀行帳戶或長期貸款等契約類型可能不像保險契約具有續約或中止的期限、轉換所能帶來的利益考量、商品的透明透及其複雜性等，都將影響消費者對於金融服務的轉換能力。
- (3) 主席也針對消費者進行商品比較(shopping around)的比率、促進競爭或降低消費者轉換成本的例子，以及政府目前有採取哪些降低轉換成本的措施等問題進行提問：

I. 消費者進行商品比較的比率：

- i. 荷蘭:荷蘭消費者暨市場局(Authority for consumers and markets, ACM)曾針對特定金融商品進行調查，結果發現消費者若進行商品比較將會得到相關報償，因為藉由消費者的比較行為，同時將促使商品提供者間彼此競爭；假如消費者未施予任何壓力，商品提供者對於創新的誘因將減低，商品價格也可能因此升高。
- ii. 義大利: 義大利競爭局(Competition Authority)在2012年時，曾針對銀行服務在2007及2012年的價格趨勢進行研究，結果發現價格的動態程度並不如預期，且銀行帳戶擁有者的流動率在過去幾年呈現穩定的趨勢，無論是在同銀行的不同帳戶類型或不同銀行間均是如此，解釋上認為造成低

流動性主因是消費者缺乏資訊能力，競爭局因此決定將加強消費者資訊能力及提高其流動性作為未來的改進目標，以提高零售銀行服務的競爭動態性。

- iii. 德國:相對於其他商品，德國消費者較少就金融商品進行比較，推估其原因可能是，金融服務的價格及其資訊對於消費者而言，往往過於複雜，且消費者與其本地銀行往往存在有長期合作關係。

## II. 促進競爭或降低消費者轉換成本的例子：

- i. 我國:主席針對我國所提書面報告之問題為:「請說明有不當收取違約金案例及該行為如何限制消費者之轉換選擇?」我國代表提到，針對消費者轉換成本的問題，我國訂有「公平交易委員會對於金融業者收取房屋貸款提前清償違約金案件之處理原則」，過去曾援用前開處理原則對於若干金融業者不當收取提前清償違約金的情形進行裁處，在我國所提出的報告中即有就其中一則裁處案例進行介紹。依我國前開處理原則規定，金融業者必須提供消費者兩項選擇權，一種為「得隨時清償」的貸款條件，另一種則為定有「限制清償期間」的貸款條件，差別在於金融業者就「限制清償期間」的貸款條件必須提供較為優惠的利率，始得向消費者收取提前清償違約金，且所收取的提前清償違約金必須考量借款人之清償期間、貸款餘額等因素，採遞減之方式計收，前揭規定有助於避免金融業者藉由收取高額提前清償違約金，以限制消費者進行轉換選擇。
- ii. 韓國:韓國公平交易委員會(KFTC)過去幾年曾就若干涉及金融商品價格的卡特爾案子進行調查，其中一件個案即是在 2001 年至 2006 年間，有 16 家人壽保險公司就個人保險商品的預定利率為合意決定並為公開揭露，以避免自身流失客戶、維持穩定利潤或避免因競爭而造成損失，KFTC 認為前揭行為核屬統一價格的卡特爾行為，因而進行裁罰，希望藉由制裁，促使市場回復價格競爭，最終將可降低消費者所需負擔的費用。
- iii. 波蘭:波蘭代表報告一則涉及金融商品的反托拉斯法案例，該案起因於部分企業主控訴其境內一家在員工團體保險市場居於優勢地位的保險公司所定之契約條件不合理，例如要求至少要有 75% 以上的員工同意才可以終止契約，以及企業主在特定員工已脫離保險制度後仍需支付 3 個月的保險費，該行為造成企業主轉換至其他團體保險提供者的成本增加，並構成濫用優勢地位之情事，故遭波蘭競爭暨消費者保護署(Office of Competition and Consumer Protection, UOKiK)予以處分。

### III. 政府所採取的降低轉換成本措施：

- i. 英國:英國競爭委員會(CC)過去曾就「還款保障型保險」(payment protection insurance, PPI)進行調查,發現大多數的還款保障型保險(PPI)被涵蓋在金融商品中出售,但許多消費者卻不知悉,因此很少去比較各家銀行對於此項保險類型的提供條件並進行轉換,這造成商品提供者具有銷售優勢、缺少競爭壓力及高額價格等情事,CC 最後決定要求銀行不得將還款保障型保險(PPI)與房屋貸款、信用貸款及信用卡等金融商品一起販售。
- ii. 丹麥:丹麥競爭暨消費者管理局(Danish Competition and Consumer Authority, DCCA)曾發表一份針對丹麥地區零售銀行市場競爭情形的調查報告,結果顯示銀行在價格上並未受到來自其他銀行或消費者強大的壓力,其主要因素是因只有很少數的消費者在零售銀行服務市場係處於活躍狀態,大多數的消費者在接受銀行的貸款條件前,並未與銀行就價格或貸款條件進行磋商,為了鼓吹消費者行動及零售銀行服務市場的價格競爭,DCCA 發布有若干建議指令。
- iii. 日本:日本由於大型銀行擁有高額資本而具有優勢地位的緣故,使得借款人所具有的談判能力相較於大型銀行居於劣勢,造成借款人被迫接受大型銀行所提出的借款條件,日本公平競爭委員會(JFTC)認為大型銀行若濫用其所具有的優勢談判地位,核屬不公平交易行為,將構成違反相關法律,JFTC 過去長時間關注借款企業與金融業者間可能具有的不公平交易情事,例如金融業者是否有藉由其優勢的談判地位銷售其金融商品予借款企業。
- iv. 葡萄牙:消費者是否具有轉換能力,除了高額的轉換成本外,尚可能受到服務提供者擁有較高談判能力的影響,而造成消費者遭到封鎖(lock-in)。且該二項因素尚有交互影響的效果,例如當消費者的轉換成本越高,也可能造成事業擁有較高的市場力,因此轉換成本尚可以作為市場力的評估指標,藉以作為競爭主管機關進行市場評估的依據。

(4) OECD 秘書處就銀行業務架構分離(banking separation)議題進行報告: 由於金融危機(financial crisis)的出現,英國、美國及歐盟執委會(European Commission)已紛紛採取銀行業務架構分離的政策措施,以避免零售銀行業務從事高風險行為,而受到金融震盪的影響。所謂銀行業務架構分離在競爭上的意涵,可區分為幾個層面來談,分別為:

I. 資金成本(Funding costs): 由於大型銀行擁有比較多公眾資金,相對於小型

銀行，較不易受到個別投資者或債權人的影響，且所謂大到不能倒(**too big to fail**)的情況，其實隱含著競爭上的扭曲效果，消費者將可能會認為這些銀行會比其他小型銀行安全，最終將使大型銀行承受較小的競爭壓力，而造成較高的服務費用及較低的服務品質。當大型銀行享受較低的資金成本，將有較多餘的資金擴展業務，包括從事高風險行為，而高風險代表有比較大的可能獲得較高額的回饋，若能移除此隱形的補貼(即享受較低的資金成本)，將有助減緩競爭上的扭曲效果。

II. 經濟規模及範疇(**Economics of scale and scope**)：規模經濟有助降低銀行業務運作的單位成本，以擴展其經濟範疇，然範疇經濟或多樣性可能存在有利益衝突的情況，例如銀行貸款給那些購買其他銀行承銷證券的客戶，利益衝突的情況將更加嚴重，而銀行業務架構分離將可移除或減緩此利益衝突的情況。

III. 國際調合(**International co-ordination**)：銀行業務架構分離的措施採取與否或其採行的嚴格程度，將影響到其他國家的市場，如果各個國家採取不同的管制措施，將可能使享有較低資金成本的銀行，在其他國家享有競爭上的優勢。

(5) 歐盟執委會(EC)報告歐盟境內的銀行業務架構分離計畫，其提到該計畫的採行是為提高市場的透明度，目前在幾個主要區域均已採行該項革新計畫，例如美國的 **Volcker rule**、英國的 **Vickers report**，以及歐盟的 **Liikanen report**。為達到維持金融穩定的主要目標，歐盟將透過減少過度風險行為、移除重大利益衝突、增加透明度及最佳的資本配置、確保競爭條件不被扭曲及增加對銀行管理和監督上的便利性等措施，以有條序的解決或恢復方案實施之。在法律的設計上，歐盟將透過歐盟條約(TFEU)第 114 條規定及相關管制規則加以區隔，其區隔取向可分為以下幾種：1、制度及領域範疇：劃分出適用及不適用此項架構分離計畫的銀行。2、禁止從事某些行為：例如對於自營交易(**proprietary trading**)行為的限制。3、隔離特定交易行為：以負面表列的方式，列出有哪些行為必須被列入獨立個體被隔離，例如造市(**market making**)、店頭市場衍生金融商品或證券交易(**OTC derivatives and securitisation**)等。4、促進市場透明度：由於部分銀行將其業務轉以影子銀行(**shadow banking**)的方式操作，藉以規避金融監理，因此必須想辦法使影子銀行透明化。

6、新機構報告－英國將於本年4月1日合併原有之「競爭委員會」(**Competition Commission**)及「公平交易局」(**Office of Fair Trading**)，成立單一競爭法主管

機關「競爭與市場局」(Competition and Markets Authority, CMA)。CMA即將上任之新主席Mr. David Currie報告該機關之職掌及變革。CMA主要職掌為：「為消費者權益，在英國國內及國外提倡競爭。」預料在合併後，將可縮短案件決定的審理期限、在案件過程中施以更強而有力的監督、更具凝聚性、有更合理化的決議機制，更有彈性與誘因的使用各種可用方法，及單一競爭倡議機關及更有效率。CMA的任務即是為了使消費者、事業及整體英國經濟能變得更好，CMA計畫以五項策略方向達到該整體目標，包括：提供有效的執法、開拓競爭新領域、重新調整消費者保護焦點、實現卓越專業及開發整合性功能等

#### 肆、第12屆「全球競爭論壇」重點：

一、2月27日：本次全球競爭論壇計有117個國家代表及32個國際組織400多位代表出席。

第1日第1場會議主題為「打擊貪腐與促進競爭」(Fighting Corruption and Promoting Competition)，由CC主席Dr. Frédéric Jenny主持，會議情形如下：

- 1、OECD副秘書長Mr. William Danvers致開幕詞，他指出，OECD提倡透明化已20年，G20在2011年會議中亦通過政府全面打擊貪腐，競爭政策是打擊貪腐最佳工具之一。
- 2、國際透明化組織共同倡立者Ms. Obiageli Ezekwesili專題演講，她表示，貪腐造成經濟負成長，不穩定的政府及浪費與無效率，且投資會配置在非需要產業，而在各項公共政策中，愈長的排隊隊伍隱含愈有貪污的機會，公共政策的決策往往會因此而產生不良之決策，企業的營運成本也因此而提高。例如在非洲，固網電信業因需求人多且屬管制產業，貪腐的機會特別高，但在行動電話業開放競爭後，貪腐的機會立即降低。開放競爭才能阻檔這些提高商業成本的貪腐行為。
- 3、本次圓桌會議主要討論限制競爭行為及貪腐如何透過企業授權程序或其他型態之管制，限制市場進入之相互影響。討論內容分為：
  - (1) 如何定義貪腐？
  - (2) 那些因素會有利於貪腐的滋生及持續？
  - (3) 那些因素可協助限制或剷除貪腐？
  - (4) 競爭政府的發展如何協助打擊貪腐？
- 4、會議首先進行專家座談：
  - (1) 南非貪腐監督執行長Mr. David Lewis撰寫本次議題「打擊貪腐促進競爭」秘

書處報告。他表示，我們正在討論的貪腐是一個「邪惡」的問題(“wicked” problem)，這個「邪惡」的特徵包括：沒有一定的公式、不穩定、許多相互依賴且經常是多重起因，沒有明確的解決辦法，但要解決通常需改變行為。而貪腐與競爭的關係在於「經濟租」。增加競爭可降低經濟租，減少貪腐的機會。「好的租」包括創新租、產業政策租，而「壞的租」則由限制競爭的行為及管制來創造及維持。一個好的產業政策需要與競爭併存，以強化「好租」的產生及降低「尋求經濟租」的機會。在卡特爾、圍標調查中，同時也要調查是否有貪腐行為的包庇，寬恕政策的運用可鼓勵這些聯合行為的參與者提供更多共謀者的資料，以確保未來不再發生。而對於市場獨占地位及市場進入障礙的調查，也應檢視是否因為貪腐行為而造成市場的過度管制及市場力量不當的被維持。

- (2) 挪威柏根大學博士後研究生Ms. Tina Soreide認為，貪腐力量可藉市場力量或政治力量取得不同的契約而獲利。而貪腐是另一種「政府失靈」的現象，其特徵就是「決策的交易」，競爭越減損，其可得獲利越高。在先進國家，競爭體制的設計鮮少針對貪腐，但是在較低開發國家中，競爭愈弱，貪腐的現象愈明顯。
- (3) BIAC律師Mr. Calvin S. Goldman表示，BIAC強烈支持採取適當措施打擊貪腐促進競爭。競爭法應嚴格有效地執行。政府在調查賄賂上，應檢視供給(賄賂者)與需求(索取或接受賄賂者)雙方面，除競爭法主管機關外，反貪腐機關亦應參與調查。
- (4) 國際反貪腐資源中心共同創立者Mr. Micheal Kramer律師表示，針對圍標行為，尤其是國際性政府採購案件，通常會有貪腐發生的機會。圍標是另一種勾結，這些圍標會以不同形式發生：陪標(陪標者獲得某種形式之補償)，輪流得標，排擠其他投標參與者，市場瓜分等。投標者間共謀勾結是常見的現象，而在開發中國家經常伴隨官員的貪腐，在圍標者間獲取利益。最常見的勾結在：道路的建築、修補與維護，藥品的供應，重大建築工程、重大科技計畫及政府採購。如何偵測及偵破這些勾結需要政府機關間及國際合作。
- (5) OECD反貪腐處賄賂工作小組主席Mr. Drago Kos表示，OECD反貪腐賄賂工作小組剛於本年2月15日舉行反貪腐賄賂會議，這是全世界惟一一個針對反賄賂的會議，主要在確保市場運作機能。

5、本議題共有24個國家提出報告，主席就各國報告依主題提問。

二、如何與ICN合作:主席邀請ICN主席，德國聯邦卡特爾署署長**Mr. Andreas Mundt**就OECD競爭委員會與ICN之工作分工及合作提出報告。ICN主要特徵在於：非政府顧問(Non-Government Advisor, NGA)直接參與ICN工作、ICN網站直接提供資訊給所有會員參考、透過議題討論，提供會員分享工作成果。CC主席則表示，OECD是政策導向的平台，CC主要提供會員競爭政策與其他政策間之互動關係，提供競爭政策主管機關與其他政策社群對話平台，而且OECD有強大的秘書處可提供開會資料之準備，透過會員合作，共同創造及檢視問題。

三、本日第三場會議為羅馬尼亞同儕檢視，由荷蘭消費者與市場局委員**Ms. Anita Vetger**、法國競爭局副主席**Ms. Elisabeth Flury-Herard**、哥倫比亞競爭監督委員會副主席**Mr. Pablo Felipe Robleda del Castillo**及拉脫維亞競爭委員會主任委員**Mr. Skaidrite Arama**分別就秘書處所提馬尼亞競爭政策報告內容提出檢視問題，由羅馬尼亞競爭委員會主任委員**Mr. Bogdan Chiritoiu**逐一答復。

四、2月28日「全球競爭論壇」第2日會議，討論主題為「藥品銷售中之競爭議題」(Competition Issues in the Distribution of Pharmaceuticals)由多明尼加共和國競爭委員會主席(President, Procompetencia) **Ms. Michelle Cohen**女士主持、本議題共有32個國家提出報告。

1、本議題主要討論競爭政策如何在藥品市場中起作用，確認在不同銷售階段中可能產生之問題及瞭解競爭與管制間如何相輔相成。

2、上午進行專家座談，邀請英國East Anglia大學教授**Mr. Farasat Bokhari**，加拿大Calgary大學教授**Mr. Aidan Hollis**，印度消費者團結與信託協會(Consumer Unity & Trust Society, CUTS)秘書長**Mr. Pradeep S. Metha**，英國倫敦經濟學院教授**Mr. Panos Kanavoas**，英國RBB經濟諮詢顧問公司合夥人**Mr. Adrian Majumdar**，OECD衛生處(OECD Health Division)資深衛生政策研究員**Ms. Valérie Paris**及世界衛生組織合作中心主任(Head of the WHO Collaborating Centre)**Ms. Sabine Vogler**就市場結構、水平整合、濫用市場力量、解除管制等議題進行討論。

(1) 英國倫敦經濟學院教授**Mr. Panos Kanavoas**就歐洲國家藥品銷售市場結構，市場進入及退出，酬勞與折扣、水平與垂直整合、及其他額外服務等提出檢視。他認為，在市場結構、市場進入與退出及銷售佣金及折扣方面，可以競爭代替管制。

(2) OECD衛生處(OECD Health Division)資深衛生政策研究員**Ms. Valérie Paris**報告「藥品產業中突顯及評估銷售鏈之核心指數」(A Core Set of Indicators to



Characterise and Assess the Distribution Chain in the Pharmaceutical Sector)。她指出，藥品行銷管制通常是對所有權及授權、零售業之垂直整合、公共義務的提供、利潤的加成及藥品的折扣等。而對零售業之管制則有：藥品銷售許可(處方藥及成藥)、藥房之執照許可(營業家數、距離)、藥房之營業服務義務(營業時間、銷售商品範圍、延遲條款)及價格加成或零售價格等。但沒有單一指數可以衡量服務品質。藥房所屬藥師的或醫療人員分配密度或許可用取代來衡量服務品質，而對於日漸增多偽藥之資料則無法獲得以列入評估。

- (3) 加拿大Calgary大學經濟學系教授Mr. Aidan Hollis認為，藥房在消費者加入保險時即已取得市場優勢地位。這導致藥房可逕行提高零售價格及在品質上的超額競爭，而保險公司則會利用不同的策略以控制價格加成。競爭政策將導致超額的藥房數量、較高的服務品質、單一藥房營業額偏低及成本提高，其結果是高度競爭但可能不利於經濟效率。而保險公司亦會利用不同的方法限制給付價格，如：對專利藥品利用成本有效分析及參考價格，學名藥則因其為同質產品，其價格應反映生產成本。從反托拉斯觀點，每種策略有不同的效果及競爭本質。競爭法主管機關應有正當理由檢視保險公司所用之策略機制，協助引導選擇這些機制。
- (4) 世界衛生組織合作中心主任(Head of the WHO Collaborating Centre)Ms. Sabine Vogler報告「藥房產業之自由化」(Liberalization in the Pharmacy Sector)。她檢視了歐盟國家對藥房產業之自由化經驗：新藥房成立之管制、藥房所有權之管制及成藥在藥房以外之銷售管道。此一解除管制最主要理由為增加消費者取得藥品之能力(更多藥房及成藥銷售者，營業時間延長及服務範圍增加)，更低的藥品價格及提升藥房服務品質。其結論為，自由化不一定能完全符合人民之期待，藥房數目可能增加，但某些地區可能無法均等分配(都會地區數量集中，偏遠地區可能沒有或鮮少藥房服務)。
- (5) 英國East Anglia大學教授Mr. Farasat Bokhari報告「評估藥品業批發與零售之結合」(Evaluating Wholesale and Retail Mergers in Pharmaceuticals)。他利用藥房銷售資料，模擬預測結合後價格變動，以計算福利之影響。其結論為：(1)消費者經由不同管道所獲得的最終產品會因為不同的附加服務(批發商的運送頻率、醫生建議的取得處所及藥師的產品建議與諮詢)會有很大的差異性。(2)以結合前的市占率做為分析基礎無法做為市場力的衡量。(3)個別藥品的銷售量容易取得，可用來做為加總做為藥房連鎖店的銷售總額。(4)本文之觀察及預測值可用來獲得消費者福利之改變，並做為比較利潤改變，以評估結合整體影響。

- (6) 英國RBB經濟諮詢顧問公司合夥人**Mr. Adrian Majumdar**從英國零售業角度探討藥品銷售競爭問題。他指出，英國公平交易局曾指出三種產品需要分開研析：處方藥品、僅供藥房銷售藥品及一般銷售藥品(藥房及超市皆何銷售之售品)。處方藥之價格由衛生署嚴格管制，沒有價格上之競爭。藥房銷售藥品則分為2種：競爭品項及非競爭品項(管制項目)，其價格競爭品項存在於一般銷售藥品之競爭。藥房的結合可能因影響地域性的藥房競爭而引起政府機關的關注。而藥房與批發商之垂直整合及藥房連鎖店之結合可能引發市場投入封鎖(input foreclosure)之關切，此一關切需考量封鎖能力與誘因及最終對消費者之影響。
- (7) CUTS秘書長**Mr. Pradeep S. Metha**報告印度藥品產業之競爭問題。他指出，印度藥品市場兩個主要問題：勾結行為及強制行為。勾結行為存在於醫療體系中的供給鏈：(1)從藥品生產者到醫師：誘使醫師開立不理性的處方箋或開立昂貴藥品，(2)從醫院的醫師至診所：經常轉診至診治性測試及抽取轉診佣金。強制行為則存在於藥品配銷及供給鏈：批發商及零售商停止銷售某些利潤較低之藥品，造成民眾無法購得可負擔之藥品。他並提出「全印度化學家與藥商組織」(All India Organization of Chemists and Druggists, AIOCD)被印度競爭委員會(CCI)處分之個案做為案例分享。

### 3、下午首先進行分組討論，共分3組：

- (1) 第1組由馬來西亞競爭委員會執行長**Ms. Shila Dorai Raj**主持，討論各國如何對藥品零售業進行管制，管制理由及可能對競爭之扭曲，並討論解除這些管制之經驗。
- (2) 第2組由摩洛哥競爭委員會主席**Mr. Abdelali Benamour**主持，討論在不同銷售階段中之水平關係，如藥房連鎖店之結合，批發商之集中及水平協議。
- (3) 第3組由俄羅斯聯邦反壟斷局副局長**Mr. Anatoly Golomolzin**主持，主要討論從競爭觀點看製造商、批發商/經銷商及零售商間之垂直關係，並討論不同銷售模型的優缺點及垂直結合與垂直協議之影響。我國被分配在第3組，本會代表於分組討論中就我國所提書面報告中案例：「和安行股份有限公司以遠低於進貨成本之價格排除其他廠商參進競爭之情形，涉及違反公平交易法案」提出報告說明。會後荷蘭代表向本會表示，該國目前正調查與本案類似之案件，希望能與本會聯繫溝通。另Bokhari教授則建議本會能加入經濟分析，以強化本案之論證。

3、下午第二場由各分組主持人做綜合報告，並由各國代表綜合討論。主席在請各國代表就未來題目提出建議後，結束本次會議。

## 伍、心得與建議

- 一、OECD 全球競爭論壇所討論之議題常涉及其他政策範疇，如今年的「藥品銷售中之競爭議題」及「打擊貪腐促進競爭」及「競爭影響評估」之倡議議題，其層次常涉及其他機關職掌及本會與其他機關之互動與合作，且須從經濟發展或其他政策角度探討競爭政策之擬定。本會在此類議題上應嘗試與其他主管機關更進一步之討論與互動，以建全本會在競爭政策擬定上之能力及對強化本會對其他機關競爭倡議之內涵。
- 二、本次會議所討論之各項主題，秘書處皆提供詳盡之參考文件，尤其是 WP2 本年度策略主題之一「競爭評估」，其各項文件可做為未來本會倘擬定相關評估計畫之參考。另 WP3「已完成與未申報結合案件之調查」議題、CC 之「金融消費者保護中競爭之角色」及全球競爭論壇會議第二天所討論之「藥品銷售中之競爭議題」各國報告，皆可做為本會在執法時參考。為利同仁瞭解參考，會議相關文獻將建置於本會 BBS 網站供同仁參閱。

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

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

**DRAFT AGENDA OF THE 56th MEETING OF WORKING PARTY No. 2**

**24 February 2014**

**-- Starting at 10.00 a.m. --**

*To be held on 24 February 2014 in Room CCI 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].

**JT03352968**

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**DRAFT AGENDA OF THE 56TH MEETING OF WORKING PARTY NO. 2**

**24 February 2014, from 10.00 – 18.00  
OECD Conference Centre, Room CC1  
2, rue André-Pascal, 75116**

**I. ADOPTION OF THE DRAFT AGENDA** [DAF/COMP/WP2/A\(2014\)1/REV2](#)

**II. APPROVAL OF DRAFT SUMMARY  
RECORD FROM LAST MEETING**

-- Draft Summary Record from the last meeting

[DAF/COMP/WP2/M\(2013\)3](#)

-- Summary of Discussion of the Roundtable  
on Waste Management Services

[DAF/COMP/WP2/M\(2013\)3/ANN2/FINAL](#)

**For information:**

-- Executive Summary of the Roundtable  
on Waste Management Services

[DAF/COMP/WP2/M\(2013\)3/ANN3](#)

-- List of Participants:

[DAF/COMP/WP2/M\(2013\)3/ANN1](#)

**III. NEW APPROACHES TO ECONOMIC CHALLENGES:  
WORK RELATED TO COMPETITION**

**IV. GREEK COMPETITION ASSESSMENT PROJECT**

**For discussion:**

-- Working Paper by the Secretariat:  
Reforming Store Opening Hours in Greece

[DAF/COMP/WP2\(2014\)1](#)

**For information:**

-- Report to the Greek Government on Competition Assessment:  
is available in the following link: <http://www.oecd.org/daf/competition/Greece-Competition-Assessment-2013.pdf>

**V. METHODS FOR COMPETITION ASSESSMENT**

**For discussion:**

-- Draft of Competition Assessment Toolkit, volume 3:  
Operational Manual

[DAF/COMP/WP2\(2014\)2](#)

**VI. EX POST EVALUATION MANUAL**

**For discussion:**

-- Ex Post Evaluation Manual: An Overview

[DAF/COMP/WP2\(2014\)3](#)

**VII. EVALUATION OF COMPETITIVE IMPACTS OF GOVERNMENT INTERVENTIONS**

**For discussion:**

-- Paper by Christos Genakos  
-- Briefing Note by Carmen Suarez  
-- Paper by Declan Purcell and Paul Gorecki  
-- Paper by Kenneth Thomas

[DAF/COMP/WP2\(2014\)4](#)

[DAF/COMP/WP2\(2014\)5](#)

[DAF/COMP/WP2\(2014\)6](#)

[DAF/COMP/WP2\(2014\)11](#)

-- Fact sheet by the Secretariat:  
Ex post Evaluations of Pro-competitive Regulatory Reforms

[DAF/COMP/WP2\(2014\)7](#)

-- Draft Methodological Guidance Paper by the European Commission:  
Evaluation in the field of State Aid

[DAF/COMP/WP2\(2014\)8](#)

-- Competition Assessment Toolkit, volume 1: Principles

[DAF/COMP/WP2\(2014\)9](#)

-- Competition Assessment Toolkit, volume 2: Guidance

[DAF/COMP/WP2\(2014\)10](#)

**VIII. FUTURE TOPICS**

**IX. OTHER BUSINESS**

*ANNOTATIONS***PROPOSED TIMETABLE**

|               |  |
|---------------|--|
| 10h00 – 10h05 | <b>Item I, II</b>  |
| 10h05 – 11h00 | <b>Item III</b> (NAEC)                                   |
| 11h00 – 11h45 | <b>Item IV</b> (Greek Competition Assessment project)    |
| 11h45 – 12h30 | <b>Item V</b> (Methods for Competition Assessment)       |
| 12h30 – 13h00 | <b>Item VI</b> (Ex Post Evaluation Manual)               |
| 13h00 – 15h00 | <b>LUNCH</b>   |
| 15h00 – 17h45 | <b>Item VII</b> (Evaluation of Government Interventions) |
| 17h45 – 17h55 | <b>Item VIII</b> (Future Topics)                         |
| 17h55 – 18h00 | <b>Item IX</b> (Other Business)                          |

**Item III**

As a broad horizontal project within the OECD, the NAEC workstream is producing materials that have implications for competition, but which are not within the project being produced by the Competition Committee. During this agenda item, the Secretariat will update delegations about work ongoing with a competition implication and be open to questions and discussions on this work. Topics covered may include work on state-owned enterprises and the environment.

**Item IV**

The report on the Greek competition assessment project was released on 27 November 2013. This report built on the techniques and methods in the OECD's Competition Assessment Toolkit. While a broad overview of the report was provided to the Competition Committee in October 2013, this will be the first chance to discuss the details of what occurred in the project with delegates. A presentation will be made about the techniques used to estimate potential benefits to employment from revising opening hours legislation, which had been among the most restrictive in the OECD.

**Item V**

Assessing the competitive impact of different types of government policies can yield substantial benefits, whether for businesses -- by increasing the purchasing, production, marketing and sales options or for consumers -- by enhancing choice and lowering prices or raising quality for consumers. The Competition Assessment Toolkit provides methods and techniques for assessing various types of policies, such as permits, price regulations, advertising restrictions and many others.

The first draft of the Operational Manual (Volume 3) of the Competition Assessment Toolkit will be released for discussion. The purpose of the volume is to provide an accessible explanation, from a very practical perspective, of how to review regulations for their competitive effects. The volume builds upon the outline previously distributed to delegates as [DAF/COMP/WP2\(2013\)7](#).

Delegates are asked to provide their feedback to this Secretariat document. Four questions to consider are:

- *Is the manual drafted appropriately for its audience of government officials?*
- *Do you have any comments on it?*
- *Can you propose relevant examples from your country's experience that could be included in the manual?*
- *Would you like to hold conference calls to refine the draft before the next meeting of the Working Party No. 2?*

### **Item VI**

The Secretariat will outline a possible structure of the Ex Post Evaluation Manual and propose a time table for its completion. Comments will be sought from delegates.

### **Item VII**

This hearing falls into the Competition Committee's work stream on evaluation and will focus on the evaluation of government interventions that are not competition law interventions, but that have the potential to affect competitive conditions. Methods for evaluation will be illustrated with respect to specific policy interventions. The evaluations would concern lifting or imposing restrictions, but would not necessarily be related to advocacy by competition authorities. Topics will include effects of a maximum price regulation in the agrifood sector, evaluations of incomplete implementation of policy changes recommended by a market study in the pharmacy sector, effects of eliminating licensing restrictions in the taxi industry and evaluation of the competitive advantages that can arise from providing subsidies to one firm in a country but not its competitors. Experts who will give presentations will include: Professor Christos Genakos (Athens University of Economics and Business), Carmen Suarez (OFT), Declan Purcell and Professor Kenneth Thomas (University of Missouri-St Louis).

The Secretariat will present a fact sheet collecting empirical estimates of pro-competitive regulatory reform. The evaluations used will be academic, governmental or other sources that have appropriate data and methods. This fact sheet will classify different reforms according to the regulatory impact they have in the Competition Assessment Checklist and seek to identify ranges and average effects of policy changes affecting different types of restriction on competition.

The European Commission will make a presentation about ex post evaluation of subsidies, in light of a guidance paper that was recently released for public consultation. The paper proposes a methodology for ex post evaluation of the impacts of subsidies. One or more experts will be present to provide comments on the presentations and discussions.

Building on the theme of methodologies for evaluating impacts of subsidies, and also following on the Report to the Council on the Implementation of the Recommendation on Competition Assessment, the existing Competition Assessment Toolkit volumes 1 and 2 have been updated to reflect the possibility of assessing competitive effects of subsidies and identifying techniques that could be used for jurisdictions that wish to evaluate competitive effects of subsidies and develop alternatives that would still achieve the government's policy objective. The suggested changes will be presented for discussion.



**Item VIII**

It was agreed in writing that in the meeting of June 2014 there would be a Hearing on Public Private Partnership (PPP). Topics for the WP2 October 2014 meeting will be discussed and decided.

**Item IX**

The next meeting of Working Party No. 2 will occur on 16 June 2014.

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

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

**DRAFT AGENDA OF THE 118TH MEETING OF THE WORKING PARTY No. 3**

**25 February 2014**

*To be held on 25 February 2014 from 10:00 to 17:30 at the OECD Conference Centre, in room CC 1, 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].

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**DRAFT AGENDA OF THE 118<sup>TH</sup> MEETING OF WORKING PARTY NO. 3**

**25 February 2014, beginning at 10.00 a.m.**

**OECD Conference Centre, Room CC 1**

**2 rue André-Pascal, 75116 Paris**

**I. ADOPTION OF THE DRAFT AGENDA** [DAF/COMP/WP3/A\(2014\)1/REV1](#)

**II. ADOPTION OF THE SUMMARY RECORD OF THE LAST MEETING**

-- Summary record from the last meeting of  
29 October 2013

[DAF/COMP/WP3/M\(2013\)3](#)

**Approved by written procedure:**

-- Summary of Discussion of the Roundtable on the  
Definition of Transaction for the Purpose of  
Merger Control Review (June 2013)

[DAF/COMP/WP3/M\(2013\)2/ANN2/FINAL](#)

**For information:**

-- List of participants for the meeting of  
29 October 2013

[DAF/COMP/WP3/M\(2013\)3/ANN1](#)

**III. ROUNDTABLE ON INVESTIGATIONS OF CONSUMMATED AND NON-NOTIFIABLE MERGERS**

**For discussion:**

-- Note by the Secretariat

[DAF/COMP/WP3\(2014\)1](#)

-- Submissions by delegations:

Australia

[DAF/COMP/WP3/WD\(2014\)16](#)

Canada

[DAF/COMP/WP3/WD\(2014\)10](#)

Chile

[DAF/COMP/WP3/WD\(2014\)13](#)

Estonia

[DAF/COMP/WP3/WD\(2014\)12](#)

Germany

[DAF/COMP/WP3/WD\(2014\)20](#)

Ireland

[DAF/COMP/WP3/WD\(2014\)27](#)

Israel

[DAF/COMP/WP3/WD\(2014\)15](#)

|                 |   |
|-----------------|---|
| Japan           | <a href="#">DAF/COMP/WP3/WD(2014)9</a>  |
| Korea           | <a href="#">DAF/COMP/WP3/WD(2014)2</a>  |
| Mexico          | <a href="#">DAF/COMP/WP3/WD(2014)4</a>  |
| Poland          | <a href="#">DAF/COMP/WP3/WD(2014)18</a> |
| Portugal        | <a href="#">DAF/COMP/WP3/WD(2014)21</a> |
| Slovak Republic | <a href="#">DAF/COMP/WP3/WD(2014)17</a> |
| Spain           | <a href="#">DAF/COMP/WP3/WD(2014)25</a> |
| Sweden          | <a href="#">DAF/COMP/WP3/WD(2014)6</a>  |
| Turkey          | <a href="#">DAF/COMP/WP3/WD(2014)28</a> |
| United Kingdom  | <a href="#">DAF/COMP/WP3/WD(2014)7</a>  |
| United States   | <a href="#">DAF/COMP/WP3/WD(2014)23</a> |
| European Union  | <a href="#">DAF/COMP/WP3/WD(2014)19</a> |

and

|                    |   |
|--------------------|---|
| Brazil             | <a href="#">DAF/COMP/WP3/WD(2014)5</a>  |
| Bulgaria           | <a href="#">DAF/COMP/WP3/WD(2014)8</a>  |
| Colombia           | <a href="#">DAF/COMP/WP3/WD(2014)1</a>  |
| Latvia             | <a href="#">DAF/COMP/WP3/WD(2014)22</a> |
| Lithuania          | <a href="#">DAF/COMP/WP3/WD(2014)14</a> |
| Russian Federation | <a href="#">DAF/COMP/WP3/WD(2014)11</a> |
| Ukraine            | <a href="#">DAF/COMP/WP3/WD(2014)24</a> |
| Chinese Taipei     | <a href="#">DAF/COMP/WP3/WD(2014)3</a>  |
| BIAC               | <a href="#">DAF/COMP/WP3/WD(2014)26</a> |

#### **IV. REVISION OF THE 1995 RECOMMENDATION ON INTERNATIONAL CO-OPERATION**

**For discussion:**

-- Note by the Secretariat

[DAF/COMP/WP3\(2014\)2](#)

#### **V. OTHER BUSINESS AND FUTURE TOPICS**

*ANNOTATIONS TO THE DRAFT AGENDA***Proposed Timetable**

|               |   |
|---------------|---|
| 10:00 – 10:05 | <b>Items I. and II.</b>   |
| 10:05 – 12.30 | <b>Item III.</b> Roundtable on Investigations of Consummated and Non-notifiable Mergers |
| 12:30 – 15.00 | <i>Lunch break</i>  |
| 15.00 – 17.00 | <b>Item IV.</b> Revision of the 1995 Recommendation on International Co-operation       |
| 17.00 – 17.30 | <b>Item V.</b> Other business and future topics   |

**Item III. (from 10.05 to 12.30).** Under this agenda item, WP3 will host a roundtable on “Investigations of Consummated and Non-notifiable Mergers”. The discussion will offer WP3 delegates the opportunity to share experiences on how agencies address alleged anti-competitive effects of consummated mergers that have not been subject to merger notification, either because they fell below statutory notification thresholds, because there was no obligation to report the transaction (e.g., the notification system has other exceptions or is voluntary), or because the parties failed to meet their filing obligations. This is an area where agencies have different powers. Some agencies have the authority to review consummated and non-notifiable mergers under their merger review systems; other agencies may need to resort to general antitrust provisions on horizontal agreements and unilateral conduct or abuse of dominance.

**Item IV. (from 15.00 to 17.00).** Under this agenda item, WP3 delegates will discuss a revised draft of the 1995 OECD Council Recommendation concerning Co-operation between Member Countries on Anticompetitive Practices affecting International Trade. To prepare this discussion, the Secretariat will circulate a revised draft of the Recommendation based on the discussion that took place in WP3 in October 2013 and on the preparatory work done by the Secretariat and a group of delegations after the October meeting.

**Item V. (from 17.00 to 17.30).** Under this agenda item, WP3 will be asked to confirm its work plan for 2014. Following the Chair’s suggestion in his letter of 20 November 2013 (COMP/2013.216), WP3 will organise a Hearing on Enhanced International Co-operation next June. In addition, WP3 delegates should decide on a second agenda topic for June and start to identify at least one topic for the October 2014 meeting. The “Use of Markers for Cartel Leniency Programs” was identified as a possible topic for either the June or October 2014 meetings of WP3, together with possible follow-up from the Enhanced Cooperation Hearing in June. Other topics that delegations put forward at the last October meeting for consideration by WP3 include: (i) public interest considerations in merger assessment; (ii) pay-for-delay in pharmaceutical cases; (iii) relationship between public and private enforcement; and (iv) how to define the “jurisdictional nexus” in merger control regimes.

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

**DRAFT AGENDA OF THE 120th MEETING OF THE COMPETITION COMMITTEE**

**26 February 2014**

*The 120th Meeting of the Competition Committee will be held on 26 February 2014 in Room 1 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris*

Please contact Ms 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. ADOPTION OF THE DRAFT AGENDA**

[DAF/COMP/A\(2014\)1/REV1](#)

**II. APPROVAL OF THE DRAFT SUMMARY  
RECORD OF THE LAST MEETING**

**For information:**

--List of Participants

[DAF/COMP/M\(2013\)3/ANN1](#)

--Summary record of 119<sup>th</sup> Comp. Committee meeting

[DAF/COMP/M\(2013\)3](#)

-- Summary record of the accession review of Colombia  
[CONFIDENTIAL]

[DAF/COMP/ACS/M\(2013\)1](#)

**III. REPORTS BY WORKING PARTY CHAIRMEN  
AND CO-ORDINATORS**

**a) *Competition policy and regulation***

Report by Chairman of Working Party N°2

**b) *Cooperation and enforcement***

Report by Chairman of Working Party N°3

**c) *UNCTAD***

Report by the UNCTAD Coordinator

**d) *ICN***

Report by the ICN Coordinator

**IV. NAEC**

**For discussion:**

--Note by the Secretariat

[DAF/COMP\(2014\)4](#)

**For reference:**

--Summary record of the February 2013 session  
of the Competition Committee

[DAF/COMP/M\(2013\)1](#)

**V. STRATEGIC THEMES FOR FUTURE COMMITTEE'S WORK**

**For discussion**

--Compilation of Delegates' responses

[DAF/COMP\(2014\)5](#)

**VI. RELATIONS WITH NON-MEMBERS**

[CONFIDENTIAL]

**For discussion**

--Participation Plan of the Competition Committee

[DAF/COMP\(2014\)2](#)

## **VII. COMPETITION ROLE IN FINANCIAL CONSUMER PROTECTION**

### **For discussion**

- Issues paper by the Secretariat
- Compilation of responses to the questionnaire of the G20/OECD Task Force on Financial consumer protection

[DAF/COMP\(2014\)6](#)

[DAF/COMP\(2014\)7](#)

### **Notes by Delegations**

Denmark  
Finland  
Germany  
Ireland  
Italy  
Japan  
Korea  
Netherlands  
Poland  
Portugal  
Switzerland  
United Kingdom

[DAF/COMP/WD\(2014\)1](#)  
[DAF/COMP/WD\(2014\)6](#)  
[DAF/COMP/WD\(2014\)5](#)  
[DAF/COMP/WD\(2014\)4](#)  
[DAF/COMP/WD\(2014\)8](#)  
[DAF/COMP/WD\(2014\)7](#)  
[DAF/COMP/WD\(2014\)11](#)  
[DAF/COMP/WD\(2014\)9](#)  
[DAF/COMP/WD\(2014\)12](#)  
[DAF/COMP/WD\(2014\)3](#)  
[DAF/COMP/WD\(2014\)10](#)  
[DAF/COMP/WD\(2014\)2](#)

And

Russia  
Chinese Taipei

[DAF/COMP/WD\(2014\)14](#)  
[DAF/COMP/WD\(2014\)13](#)

## **VIII. OTHER BUSINESS**

- i) Presentation by the Spanish delegation on recent Competition developments**
- ii) Presentation by the UK delegation on recent Competition developments**
- iii) Future Work**

- Future Roundtable Topics

[DAF/COMP/WD\(2013\)1/REV2](#)

### **iv) Evaluation of the Competition Committee's Work**

- Use of the Competition Division's Work in 2013
- Use of the Competition Committee's Work Product 2013

[DAF/COMP/WD\(2014\)15](#)

[DAF/COMP/WD\(2014\)16](#)



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### Schedule

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

|                     |   |
|---------------------|---|
| 10:00 am – 11:00 am | <b>Item I-III</b>   |
| 11:00 am – 12:00 pm | <b>Item IV (NAEC)</b>   |
| 12:00 pm – 12:30pm  | <b>Item V Strategic Themes</b>                                      |
| 12:30 pm – 1pm      | <b>Item VIII Other Business</b>                                     |
| 3pm – 3:30pm        | <b>Item VI (Participation Plan) CONFIDENTIAL</b>                    |
| 3:30 pm – 5:30 pm   | <b>Item VII (Competition Role in Financial Consumer Protection)</b> |

### ANNOTATIONS

#### Item III

The Chairman of Working Party n°2 will report on the meeting of the Working Party held on 24 February 2014.

The Chairman of Working Party n°3 will report on the meeting of the Working Party held on 25 February 2014.

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

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

#### Item IV

In February 2013, Competition delegates agreed to contribute to the OECD New Approaches to Economic Challenges (NAEC)—[DAF/COMP/M\(2013\)1](#). As a result, a Secretariat draft note, which analyses the rationale for enhanced cross-border co-operation in competition law enforcement, has been prepared benefiting from Competition delegates' comments, supplied under written procedure. It is expected that at its February meeting, the Committee will have a discussion on this note and will agree to its transmission to the Secretary General in preparation of the 2014 OECD Ministerial Meeting.

#### Item V

On 20 January 2014, the Chair of the Committee wrote to the Delegates to elicit their views on possible strategic themes for the Committee's work in 2015-2016 [COMP/2014.38]. This strategic approach which started with the identification of two themes for 2013-14, "International cooperation in competition enforcement" and "Evaluating the impact of competition interventions", has represented a meaningful change in the Committee working methods. This has resulted in a stronger focus of time and resource, and a more coherent approach to planning the work; at the same time, some flexibility was retained as it was possible under this approach to address also other matters of topical interest. Based on a

compilation of Delegates' responses regarding possible themes, it is expected that a consensus view will emerge from the Committee's discussion in February. This will be important to continue to chart the Committee's future work under this longer term strategic approach.

### Item VI

In February 2013, the Committee approved its participation plan, which reflected its global relations strategy at the time, and agreed to revisit it in 2014 in preparation of the 2015-16 PWB. A Secretariat note will serve as a basis for the discussion which will take place in a confidential session **in the afternoon (from 3pm to 3:30pm)**.

### Item VII

Competition delegates agreed in October 2013 to have a discussion in February 2014 on the role of competition in financial consumer protection with the aim to feed into the survey initiated by the G20/OECD Task Force on Financial consumer protection, which is developing a set of principles, one of which being on competition. The Committee's discussion will be based on a presentation by Mary Starks (UK Financial Conduct Authority) of the competition related responses to a questionnaire circulated in preparation of this G20/OECD Survey. These responses will be compiled and circulated before the meeting, and delegates will be invited to comment on them. Also, the discussion will be supported by a short Secretariat issues paper, focusing on i) switching rates (are they a good measure of competition?) and ii) the pro and cons from a competition perspective of structural separation between investment and retail banking. This discussion will take place **in the afternoon (from 3:30pm to 5:30pm)**.

### Item VIII

i) Mr. José Maria Marín Quemada, the President of the Spanish Competition Authority will present the new Spanish Authority for Markets and Competition (Comisión Nacional de los Mercados y la Competencia, CNMC). This presentation will take place **in the morning before the lunch break**.

ii) Lord Currie, the Chairman of the UK Competition and Markets Authority (CMA), will introduce this new Authority, which replaces the Office of Fair Trading. His presentation will take place **in the afternoon** after the discussion on financial consumer protection.

iii) The Competition delegates will have to decide on roundtable topics for the October 2014 Committee roundtables. The topics for the June 2014 Committee roundtables were agreed as follows: i) Airline competition; ii) Generics-- Update on developments since the 2009 roundtable.

**REMINDER  
SCHEDULE OF COMPETITION MEETINGS**

Future meeting dates (also on OLIS under [DAF/COMP/WD\(2013\)134](#))

**2014**

| <b>Meetings</b>                    | <b>2014</b>              |                             |                             |
|------------------------------------|--------------------------|-----------------------------|-----------------------------|
|                                    | <b>February</b>          | <b>June</b>                 | <b>October</b>              |
| <b>Working Party 2</b>             | Monday 24                | Monday 16                   | Monday 27                   |
| <b>Working Party 3</b>             | Tuesday 25               | Tuesday 17                  | Tuesday 28                  |
| <b>Competition Committee</b>       | Wednesday 26             | Wednesday 18<br>Thursday 19 | Wednesday 29<br>Thursday 30 |
| <b>Global Forum on Competition</b> | Thursday 27<br>Friday 28 | N/A                         | N/A                         |

**2015**

| <b>Meetings</b>                    | <b>2015</b>                |                             |                             |
|------------------------------------|----------------------------|-----------------------------|-----------------------------|
|                                    | <b>February</b>            | <b>June</b>                 | <b>October</b>              |
| <b>Working Party 2</b>             | Monday 16                  | Monday 15                   | Monday 12                   |
| <b>Working Party 3</b>             | Tuesday 17                 | Tuesday 16                  | Tuesday 13                  |
| <b>Competition Committee</b>       | Tuesday 17<br>Wednesday 18 | Wednesday 17<br>Thursday 18 | Wednesday 14<br>Thursday 15 |
| <b>Global Forum on Competition</b> | Thursday 19<br>Friday 20   | N/A                         | N/A                         |

**2016**

| <b>Meetings</b>                    | <b>2016</b>               |                             |                             |
|------------------------------------|---------------------------|-----------------------------|-----------------------------|
|                                    | <b>February</b>           | <b>June</b>                 | <b>October</b>              |
| <b>Working Party 2</b>             | Monday 8                  | Monday 13                   | Monday 10                   |
| <b>Working Party 3</b>             | Tuesday 9                 | Tuesday 14                  | Tuesday 11                  |
| <b>Competition Committee</b>       | Tuesday 9<br>Wednesday 10 | Wednesday 15<br>Thursday 16 | Wednesday 12<br>Thursday 13 |
| <b>Global Forum on Competition</b> | Thursday 11<br>Friday 12  | N/A                         | N/A                         |



OECD Conference Centre, Paris (Room 1)

## Draft Agenda (as at 19.02.2014)

**Chair:** Frédéric Jenny  
Chairman of the OECD Competition Committee (France)

### Thursday 27 February

|  |  |
|--|--|
| <p><b>OPENING SESSION</b></p> <p>09:00 am – 09:45 am</p> | <p><b>OPENING REMARKS</b></p> <p>William Danvers<br/>Deputy Secretary-General, OECD</p> <p><b>KEY NOTE SPEAKER</b></p> <p>Obiageli Ezekwesili<br/>Co-founder of Transparency International</p> <p><b>INTRODUCTORY COMMENTS</b></p> <p>Frédéric Jenny<br/>Chairman of the OECD Competition Committee</p>  |
| <p><b>SESSION I</b></p> <p>09:45 am – 1:15 pm</p>        | <p><b>FIGHTING CORRUPTION AND PROMOTING COMPETITION</b></p> <p><b>Chair:</b> Frédéric Jenny (Chairman, OECD Competition Committee)</p> <p><i>This session will discuss the ways that anti-competitive behaviour and corruption interact through the corruption of business licensing processes or other types of regulation to restrict entry. More general links between corruption and anti-competitive behaviour will also be addressed such as public and judicial attitudes to these two abuses, as well as the links between institutions engaged in fighting them. Participants will be encouraged to discuss relevant cases from their own jurisdictions, including advocacy efforts, and also any formal or informal agreements with anti-corruption institutions.</i></p> <p><b>Discussant:</b> Obiageli Ezekwesili (Co-founder of Transparency International)</p> <p><b>Panellists:</b></p> <ul style="list-style-type: none"> <li>• Calvin S. Goldman (Partner, Goodmans LLP, BIAC)</li> <li>• Drago Kos (Chairman of the Working Group on Bribery, Anti-corruption division, OECD)</li> <li>• Michael Kramer (Attorney of Law and co-founder of International Anti-corruption Resource Centre, US)</li> <li>• David Lewis (Executive Director, Corruption Watch, South Africa)</li> <li>• Tina Søreide (Post-doctoral researcher in law and economics, University of Bergen, Norway)</li> </ul> |

# 13<sup>th</sup> GLOBAL FORUM ON Competition



PARIS, 27– 28 FEBRUARY 2014



## Thursday 27 February (cont'd)

### SESSION I (cont'd)

#### Documentation:

|                                |                     |
|--------------------------------|---------------------|
| Call for contributions         | DAF/COMP/GF(2013)14 |
| Background note by David Lewis | DAF/COMP/GF(2014)1  |
| Paper by W. Michael Kramer     | DAF/COMP/GF(2014)7  |
| Paper by Tina Søreide          | DAF/COMP/GF(2014)9  |

#### Written contributions

|                |                        |
|----------------|------------------------|
| Benin          | DAF/COMP/GF/WD(2014)1  |
| Brazil         | DAF/COMP/GF/WD(2014)48 |
| Canada         | DAF/COMP/GF/WD(2014)14 |
| Colombia       | DAF/COMP/GF/WD(2014)10 |
| Czech Republic | DAF/COMP/GF/WD(2014)55 |
| Ecuador        | DAF/COMP/GF/WD(2014)29 |
| European Union | DAF/COMP/GF/WD(2014)40 |
| France         | DAF/COMP/GF/WD(2014)52 |
| India          | DAF/COMP/GF/WD(2014)26 |
| Indonesia      | DAF/COMP/GF/WD(2014)21 |
| Japan          | DAF/COMP/GF/WD(2014)37 |
| Kenya          | DAF/COMP/GF/WD(2014)45 |
| Latvia         | DAF/COMP/GF/WD(2014)4  |
| Mexico         | DAF/COMP/GF/WD(2014)50 |
| Morocco (CC)   | DAF/COMP/GF/WD(2014)24 |
| Poland         | DAF/COMP/GF/WD(2014)15 |
| Russia         | DAF/COMP/GF/WD(2014)38 |
| Singapore      | DAF/COMP/GF/WD(2014)6  |
| Sweden         | DAF/COMP/GF/WD(2014)8  |
| Tunisia        | DAF/COMP/GF/WD(2014)28 |
| Ukraine        | DAF/COMP/GF/WD(2014)23 |
| United States  | DAF/COMP/GF/WD(2014)19 |
| Zambia         | DAF/COMP/GF/WD(2014)34 |
| BIAC           | DAF/COMP/GF/WD(2014)53 |

1:15 pm – 2:30 pm

**Buffet lunch offered by the OECD to all participants**  
(Château - Rooms G. Marshall & R. Ockrent)

### SESSION I (cont'd)

#### FIGHTING CORRUPTION AND PROMOTING COMPETITION

2:30 pm – 3:30 pm

The Roundtable discussion continues.



## Thursday 27 February (cont'd)

### SESSION II

3:30 pm – 6:00 pm

[Open to country representatives and intergovernmental organisations only - Report under restricted circulation on Olis]

### PEER REVIEW OF ROMANIA'S COMPETITION LAW AND POLICY

**Chair:** Frédéric JENNY

*"Peer review" is a core element of OECD work. The mechanisms of peer review vary, but it is founded upon the willingness of a country to submit its laws and policies to substantive questioning by other peers. The process provides valuable insights into the country under study, getting to the heart of ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions. In 2014, Romania's competition law and policy will be subject to such a review.*

For discussion:

Draft Report by the Secretariat

DAF/COMP/GF(2014)2

#### **Examiners:**

- Anita Vegter (Member of the Board, Authority for Consumers and Markets, Netherlands)
- Bruno Lasserre (President, Autorité de la Concurrence, France)
- Pablo Felipe Robledo del Castillo & German Bacca Medina (Superintendent and Deputy Superintendent, SIC, Colombia)
- Skaidrite Abrama (Chairperson, Competition Council, Latvia)

**The Romanian Panel** will be headed by Bogdan Chiritoiu (President of the Romanian Competition Council).

6:00 pm – 8: 00pm

**Cocktail hosted by the Delegation of Romania on the occasion of its Peer Review** (Château - Rooms G. Marshall & R. Ockrent)



## Friday 28 February

### SESSION III

09:15 am – 12:30 pm

### COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS (Roundtable in plenary)

**Chair:** Michelle Cohen (President, Procompetencia, Dominican Republic)

*This full day session looks at the market for the distribution of pharmaceuticals which differs from other consumer markets. Its particular features imply that market competition cannot fully be relied upon to reach an efficient allocation of resources. In addition, many governments consider that drugs should be affordable and accessible to all citizens. Market competition cannot ensure that these equity and fairness concerns are met. Hence, this market is heavily regulated. Even so, competition can and should play a role in ensuring that this market works well for consumers, so that these can benefit from higher quality, greater choice and variety, more innovation and lower prices. This session will provide an overview of how competition works in this market, to identify the main problems that can arise at different level of the distribution chain. Participants are invited to share experiences so as to better understand the interplay between competition and regulation.*

#### Panellists:

- Farasat Bokhari (Senior Lecturer in Economics, University East Anglia)
- Aidan Hollis (Professor in Economics, University of Calgary )
- Panos Kanavos (Reader in International Health Policy, London School of Economics)
- Adrian Majumdar (Partner, RBB Economics)
- Pradeep S Mehta (Secretary General, CUTS)
- Valérie Paris (Senior Health Policy Analyst, OECD Health Division)
- Sabine Vogler (Head of the Pharma Team, Austrian Health Institute and Head of the WHO Collaborating Centre)

#### Documentation:

Call for contributions  
Background note by the Secretariat  
Paper by Farasad Bokhari  
Paper by Panos Kanavos  
Paper by Sabine Vogler

DAF/COMP/GF(2013)15  
DAF/COMP/GF(2013)3  
DAF/COMP/GF(2014)4  
DAF/COMP/GF(2013)8  
DAF/COMP/GF(2013)6



# 13<sup>th</sup> GLOBAL FORUM ON Competition



PARIS, 27– 28 FEBRUARY 2014



## Friday 28 February (cont'd)

### SESSION III

(Cont'd)

#### Written contributions

##### Received:

|                |                        |
|----------------|------------------------|
| Bulgaria       | DAF/COMP/GF/WD(2014)2  |
| Canada         | DAF/COMP/GF/WD(2014)16 |
| Chile          | DAF/COMP/GF/WD(2014)3  |
| China          | DAF/COMP/GF/WD(2014)7) |
| Estonia        | DAF/COMP/GF/WD(2014)9  |
| European Union | DAF/COMP/GF/WD(2014)32 |
| Finland        | DAF/COMP/GF/WD(2014)35 |
| France         | DAF/COMP/GF/WD(2014)44 |
| Germany        | DAF/COMP/GF/WD(2014)54 |
| Hungary        | DAF/COMP/GF/WD(2014)18 |
| India          | DAF/COMP/GF/WD(2014)27 |
| Indonesia      | DAF/COMP/GF/WD(2014)20 |
| Japan          | DAF/COMP/GF/WD(2014)36 |
| Latvia         | DAF/COMP/GF/WD(2014)5  |
| Lithuania      | DAF/COMP/GF/WD(2014)11 |
| Mexico         | DAF/COMP/GF/WD(2014)49 |
| Morocco (CC)   | DAF/COMP/GF/WD(2014)25 |
| Norway         | DAF/COMP/GF/WD(2014)13 |
| Pakistan       | DAF/COMP/GF/WD(2014)46 |
| Peru           | DAF/COMP/GF/WD(2014)22 |
| Poland         | DAF/COMP/GF/WD(2014)39 |
| Romania        | DAF/COMP/GF/WD(2014)30 |
| Russia         | DAF/COMP/GF/WD(2014)33 |
| Senegal        | DAF/COMP/GF/WD(2014)41 |
| Spain          | DAF/COMP/GF/WD(2014)47 |
| Switzerland    | DAF/COMP/GF/WD(2014)17 |
| Turkey         | DAF/COMP/GF/WD(2014)51 |
| Chinese Taipei | DAF/COMP/GF/WD(2014)31 |
| Ukraine        | DAF/COMP/GF/WD(2014)12 |
| United States  | DAF/COMP/GF/WD(2014)43 |
| CUTS           | DAF/COMP/GF/WD(2014)42 |

##### Announced: BIAC

12:00 pm – 12:30 pm

**REMARKS** by Angel Gurría, Secretary-General, OECD

12:30 pm – 2:00 pm

**BREAK**

**SESSION III (cont'd)**

2:00 pm – 3:30 pm

**BREAKOUT SESSIONS: COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS**

[Participants will be allocated in breakout rooms for this session by the Secretariat]



## Friday 28 February (cont'd)

### SESSION III (cont'd)

#### Session 1

**Moderator:** Shila Dorai Raj (CEO, Malaysia Competition Commission)

**Panellist:** Sabine Vogler (Head of the Pharma Team, Austrian Health Institute)

*Session 1 will examine how the market for the retail distribution of pharmaceuticals is regulated. The session will also discuss the experience of those countries that have moved from a regulated environment to a less constrained one. Finally, it will examine what impact this deregulation has had on retail prices and on the availability of medicines to final consumers.*

#### Session 2

**Moderator:** Abdelali Benamour (President, Competition Council in Morocco)

**Panellists:** Aidan Hollis (Professor of Economics, Calgary University, Canada), Pavos Kanavos (Reader in International Health Policy, London School of Economics, UK) and Pradeep Mehta (Secretary General of CUTS, India)

*Session 2 will examine to what extent countries make use of price and margin regulation to control final prices of prescription pharmaceuticals, originators and generics, and to what extent they rely on competition. The session will discuss how successful different approaches are in constraining consumers' and insurers' drug expenditure. It will also discuss the role that pharmacies and doctors can have in supporting governments' and insurers' attempts to keep drug expenditure under control.*

#### Session 3

**Moderator:** Andrey Tsyganov (Deputy Head of FAS in Russia)

**Panellists:** Farasat Bokhari (Senior Lecturer in Economics, University of East Anglia, UK) and Adrian Majumdar (Partner at the consulting firm RBB Economics, UK)

*Session 3 will examine vertical and horizontal relationships between players in the distribution chain, and discuss the kind of competition concerns that arise from these relationships.*

3:30 pm – 5:00 pm

### COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS

(Wrap-up in plenary session, Cont'd)

1. Report by Moderators

General Discussion

2. Summary and final remarks by session chair

### FINAL SESSION

5:00 pm – 6:00 pm

### OTHER BUSINESS AND PROPOSALS FOR FUTURE WORK

## Annex: Practical Information

### Registration

Forum participation is **by invitation only**. It is restricted to government representatives, intergovernmental organisations and regional banks as well as selected invitees. No financial support is available for participants' travel to and stay in Paris. Registration is mandatory. For OECD non-members, registration should be done as soon as possible. Members should register as usual through their Permanent Delegations in Paris.

When you arrive at the OECD Centre in Paris, you will need to present an identity card or passport to obtain your Forum badge. Badges will be delivered at the Welcome Desk upon arrival. **The desk will open at 8.00am on Thursday 27 February 2014. Given the high number of participants, you should allow a minimum of 30-45 minutes for registration.** The GFC will start at 9 am sharp and you should plan to be seated in the room behind your plate at least 5 minutes before the start.

### Documentation

The Global Forum on Competition website (<http://www.oecd.org/competition/globalforum>) is our vehicle for conveying general information and documentation. Unless explicitly requested not to do so, we will reproduce written contributions on the site. GFC participants will find the background documentation and the agenda on their table upon their arrival in Room 1 where the Forum will take place. **In a bid to be environmentally friendly, we will not circulate paper copies of the numerous country contributions. Please bring your own copies with you.** Participants will also be able to access Forum documentation on their personal computers through the OECD's free WiFi access in the room.

### Seating arrangements

Participants will be seated behind their country/economy plate in French alphabetical order, followed by international organisations and selected invitees from business and civil society. Given the large number of delegations represented at the Forum, access to seats equipped with a microphone is limited. In principle, each delegation will have a minimum of one seat with a microphone. For countries with large delegations, the allocation of more seats equipped with a microphone will be considered. Such allocation will be made according to registrations on a first come, first served basis. A number of seats without a microphone will also be available in the rear of the room.

### Breakout Sessions

For the discussion on "Competition Issues in the Distribution of Pharmaceuticals" on Friday 28 February, three breakout sessions are organised in addition to the plenary session to allow a more informal and lively dialogue among fewer participants. Participants will be allocated to the three sessions by the Secretariat. Information on allocation to the three sessions will be provided during the plenary session prior to the breakout sessions. Participants are kindly invited to attend the session they have been allocated to, to observe the timing and to return to the plenary session immediately after. During the final plenary session they will hear reports from the breakout session moderators and from the experts. A number of participants will be called to describe in four minutes experiences of particular interest to all participants.

## Working Methods

Discussions will be held in the two OECD official languages (English and French), with simultaneous interpretation. The Chairman (and Session Chairs where relevant) will use traffic lights to regulate the timing of interventions. The high number of participants means that participants will need to be disciplined in their interventions in order to allow as many delegates as possible to have the opportunity to speak. Interventions should be as concise as possible, and each intervention will be limited to a maximum of three minutes. Time constraints may not permit the presentation of the numerous written contributions. Countries who have contributed in writing (in response to the two calls prepared by the OECD Secretariat) will be notified in advance if the session's Chair intends to call upon them to make brief comments on specific points from their written contributions. We will do our best to warn those concerned as soon as feasible, but the late receipt of some country contributions often delays this process. Consequently, countries may not be notified until a few days before, or even on the eve or on the first day of the Forum. Please carefully check your emails on those days since this will be the only way to communicate efficiently with you. The Secretariat will inform the speakers scheduled on the agenda of the time allocated to them. They are kindly invited to keep their presentations strictly within the indicated limits. This should allow for periods of general discussion long enough to encourage lively exchanges among participants.

## Accommodation, Visas, About the Conference Centre

A [list of hotels](#) is provided on the OECD website and bookings may also be made through our [booking website](#). Hotel information and booking facilities are provided for convenience only and do not constitute an endorsement or recommendation by the OECD of the services of a particular hotel, nor a guarantee of quality. We suggest that you verify the nature of the services, the applicable rates and any other relevant information directly with the hotel.

European Union citizens do not require a visa for entry into France. For others, depending on your nationality, the length and purpose of your stay in France, a visa may be required before departure. For further information, please consult the [French Ministry of Foreign Affairs](#) website.

Please note that the **OECD cannot organise a visa on your behalf** and that there are long deadlines to get visas in some countries. A personalised invitation letter can be provided by the OECD for the purpose of getting a visa if necessary.

The OECD Conference Centre provides all necessary facilities including phone booths, free WiFi access, computers with free Internet access, a bookshop, coffee and snack bars, and a restaurant. Please consult the [Conference Centre](#) website for more information.

## General information

|                            |  |
|----------------------------|--|
| <b>Currency</b>            | Euro (€, EUR)  |
| <b>Electricity</b>         | 220 V, 50 Hz   |
| <b>Time Zone</b>           | GMT/UTC + 1 (Central European Time)  |
| <b>Telephone Area Code</b> | The international code to call France is "+ 33". When calling from abroad, the number should be dialled without the first "0". |

Unclassified

DAF/COMP/WP3/WD(2014)3

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

12-Feb-2014

English - Or. English

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

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

**INVESTIGATIONS OF CONSUMMATED AND NON-NOTIFIABLE MERGERS**

-- Chinese Taipei --

**25 February 2014**

*This note is submitted by Chinese Taipei to the Working Party No. 3 of the Competition Committee FOR DISCUSSION under Item III at its forthcoming meeting to be held on 25 February 2014.*

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].

**JT03352322**

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*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

DAF/COMP/WP3/WD(2014)3  
Unclassified

English - Or. English

– Chinese Taipei –

**1. The merger notification regime in Chinese Taipei**

1. The merger regulation under the Fair Trade ACT (FTA) in Chinese Taipei adopts the “pre-merger notification regime.” For any merger transaction falling into the definition in Article 6<sup>1</sup> and meeting the threshold for merger notification<sup>2</sup> in Paragraph 1, Article 11 of the FTA, the merging parties shall file a notification with the Fair Trade Commission (FTC) in advance.

2. Paragraph 3,4 and 5, Article 11 of the FTA provides as follows:

*“Enterprises shall not proceed to merge within a period of 30 days from the date the Central Competent Authority accepts the complete filing materials, provided that the Central Competent Authority may shorten or extend the period as it deems necessary and notifies the filing enterprise of such change in writing.*

*Where the Central Competent Authority extends the period in accordance with the proviso of the preceding paragraph, such extension may not exceed 30 days; for cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 12.*

*Where the Central Competent Authority fails to notify of the extension as referred to in the proviso of Paragraph 3 or makes any decision as referred to in the preceding paragraph when the period is going to expire, the enterprises may proceed to merge provided that the merger may not proceed under any of the following circumstances: 1. Where the filing enterprises consent to a further extension of the period. 2. Where the filing contains any false or misleading item.”*

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<sup>1</sup> The term “merger” as used in the FTA refers to the following transactions:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

<sup>2</sup> Any merger that falls within any of the following circumstances shall be filed with the central competent authority in advance:

1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceed the threshold amount publicly announced by the central competent authority.

The threshold amount of the sales referred to in Subparagraph 3 of the preceding paragraph may be announced separately for financial enterprises and non-financial enterprises by the Central Competent Authority.



## 2. Dispositions on non-notifiable mergers

3. The FTA clearly points out that notification is required for all mergers meeting the thresholds of market shares or sales revenue. In consideration of the stability of the legal system, for enterprises which do not meet the above threshold, the FTC cannot request merging parties to file a notification. This is also the reason why the FTC sets the threshold for merger notification to select those mergers with certain impacts on the market. In addition, merger are also exempted from the FTA in the following situation where the Financial Competent Authority deems it necessary to adopt an emergency measure prescribed in financial laws such as the Banking Act, Insurance Act and the Financial Institutions Merger Act, and where such measure does not have any significant adverse effect on the competition in financial markets. The above laws state expressly these specific mergers are exempted from application of the FTA, and thus the FTC has no room to intervene. To sum up, for non-notifiable mergers, regardless of whether the mergers are completed or not, the FTC cannot intervene, review, or challenge in principle.

### 2.1 Case 1: *The FTC's stance on non-notifiable mergers regarding the franchise agreement*

4. In the early stages of the implementation of the FTA (Feb. 1992 to Jan. 2002), the FTC adopted the “ex-ante approval regime” for the merger review, and only set a single threshold of the sales amount. Retailers such as convenience store chains needed to acquire the FTC’s merger approval before signing franchise agreement. However, in order to well allocate the administrative resources, the FTA was amended in Feb. 2002 to adopt the “pre-merger notification regime”. It also introduced the dual thresholds of the sales amount. As a result, since the merged parties, namely franchisee who are either individual sole proprietorships or partnerships, do not meet the lower threshold of NT\$1 billion sales in the previous fiscal year, no notification is required to be filed with the FTC in advance. In terms of market share thresholds, it is rather hard to define the market of convenience store chains and, therefore, the FTC does not apply market share thresholds prescribed in Subparagraph 1 and 2, Paragraph 1, Article 11 of the FTA to such cases at present for merger filing.

5. In order to monitor the structural change of the convenience store chain market and to prevent the franchising headquarters from dominating the market through “creeping mergers,” the FTC reached the following resolution on November 28, 2012 at the 1099<sup>th</sup> Commissioner’s Meeting: “due to differences in defining relevant market and its market share of convenience store chains, the FTC shall sustain its decision made by the 536<sup>th</sup> Commissioner’s Meeting, which the franchising of a convenience store chain is not required to file a merger notification in advance. However, the FTC will continue conducting market survey on convenience store chains for further evaluation of the needs to include franchises into current merger regime.”

## 3. Review of notifiable mergers but failed to file with the FTC or proceed with merger despite being prohibited

6. According to Article 13 of the FTA, where an enterprise fails to file a notification for any merger being notifiable, or proceeds with the merger despite being prohibited, the FTC may (1) prohibit such merger, (2) prescribe a period for such enterprise(s) to split, (3) dispose of all or a part of the shares, (4) transfer a part of the operations, (5) remove certain persons from positions, or (6) make any other necessary dispositions. For an enterprise violating the disposition made by the central competent authority pursuant to the preceding paragraph, the FTC may (1) order the dissolution of such enterprise(s), or (2) the suspension or (3) the termination of their operations. In addition, the FTC may impose an administrative fine between NT\$100,000 and NT\$50million on such enterprise(s), pursuant to Paragraph 1, Article 40 of the FTA.

7. Accordingly, when an enterprise fails to file a merger notification, or proceeds with the merger despite being prohibited, the FTC retains its authority to review such mergers based on the FTA. Since the types of the above administrative dispositions are adverse actions of a punitive nature under Article 2 of the Administrative Penalty Act, they are subject to the three-year time limit prescribed in Article 27 of the Administrative Penalty Act. In other words, where the FTC intends to sanction enterprises for failing the above notification obligation, it has to act within statutory time limit, beginning from the date of the merger.

**3.1 Case 2: Mergers failing to file a pre-merger notification-Nexon Co., Ltd., and Gamania Digital Entertainment Co., Ltd., failed to file pre-merger notification**

8. The FTC received a complaint alleging that Nexon Co. Ltd. (hereinafter “Nexon”) acquired more than one third of the voting shares of Gamania Digital Entertainment Co., Ltd. (hereinafter “Gamania”) and continued to purchase its shares in the public market. Gamania has more than one fourth of the market share in the domestic online game market; however, Nexon failed to file a pre-merger notification with the FTC.

9. The FTC’s investigation showed that, as of Apr. 6, 2012, Nexon was in possession of 34.6% of the issued shares of Gamania, it fell into the merger transaction type of Subparagraph 2, Paragraph 1, Article 6 of the FTA: possession or acquisition of more than one-third of the shares or capitals. Furthermore, statistics on revenues of the online game industry from the Industrial Development Bureau of the Ministry of Economic Affairs showed that the output value of the domestic online game market in 2011 was about NT\$24.7 billion, including NT\$5.274 billion in revenues from overseas markets and NT\$19.426 billion from the domestic market. The sales of Gamania in 2011 reached NT\$5.544 billion, which was accounted for about 28.54% of the domestic market share, the second largest in the market; it also met the one-fourth market share threshold for pre-merger notification set forth in Subparagraph 2, Paragraph 1, Article 11 of the FTA.

10. The FTC concluded that Nexon had violated Article 11 of the FTA for failing to notify the FTC, and imposed an administrative fine of NT\$0.9 million on the company pursuant to Article 13 and Article 40 of the FTA.

**3.2 Case 3: Mergers despite being prohibited-Cashbox Partyworld Co., Ltd. & Holiday Entertainment Co., Ltd. merger case.**

11. After the FTC prohibited the merger of Cashbox Partyworld Co., Ltd. (hereinafter “Cashbox”) and Holiday Entertainment Co., Ltd. (hereinafter “Holiday”), it was informed that the two enterprises substantially proceed with merger through cross-shareholdings, the control of the board of directors and the assignment of personnel. They failed to file a notification with the FTC and violated the FTA. The FTC thus decided to further investigate these two companies.

12. The FTC’s investigation found that Cashbox and Holiday had filed pre-merger notifications on multiple occasions. The FTC concluded after its investigation that the anti-competitive disadvantages outweighed the overall economic benefits and prohibited the merger of the two companies in 2007, 2008, and 2009, respectively. However, the two companies jointly operated a call center and computer audiovisual information services through their co-investment companies. Holiday also contracted the KTV operations of its store on Linsen North Road to Cashbox. The office of Holiday’s Chairman was also leased from Cashbox. These acts fell within the type of mergers for regular joint operations prescribed by Subparagraph 4, Paragraph 1, Article 6 of the FTA.



13. In addition, Cashbox obtained one director's seat and two supervisors' seats through its subsidiary during Holiday's election of directors on June 13, 2007. As a result, Cashbox directly or indirectly controlled three out of five seats on the board of directors and two seats on the board of supervisors of Holiday. In addition, Cashbox also assigned Li Hao-yin, one of its directors, to serve concurrently as Holiday's CEO so that Cashbox could actually control Holiday's business operations and the appointment and discharge of its personnel, which also met the merger type of controlling the business operation or personnel appointment or discharge of another enterprise as stated in Subparagraph 5, Paragraph 1, Article 6 of the FTA.

14. The FTC concluded that the above practices of Cashbox and Holiday had reached the threshold for pre-merger notification. They failed to file the merger notification with the FTC and violated Article 11 of the FTA. The FTC ordered the parties to cease the joint operation and to remove those who served concurrently as directors, supervisors or the CEO in the two companies within three months so that there would be no more substantial control pursuant to Article 13 of the FTA, and also imposed administrative fines of NT\$3 million and NT\$1.5 million on Cashbox and Holiday pursuant to Article 40 of the FTA.

#### **4. Follow-up review for those cleared and consummated merger cases**

15. For those consummated and cleared mergers, the FTA does not expressly provide any justification for further review even when the FTC found competition issues later. In short, the FTC can only re-open investigations on those false notification cases.

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

**ROLE OF COMPETITION IN FINANCIAL CONSUMER PROTECTION**

**-- Note by Chinese Taipei --**

**26 February 2014**

*This note is submitted by Chinese Taipei to the Competition Committee FOR DISCUSSION under Item VII of the agenda at its forthcoming meeting to be held on 26 February 2014.*

**JT03352694**

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*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

1. This paper addresses the issues concerning the role of competition in the regulatory system on financial consumer protection in Chinese Taipei. We will illustrate the policy perspective and the coordination between the Fair Trade Commission (FTC) and other financial supervisory authorities. In preparing this submission, the FTC consulted with other government agencies, including the Financial Supervisory Commission (FSC) and the Central Bank.

## **1. The overview of financial market and its regulated measures in Chinese Taipei**

2. By the end of December 2013, there were thirty-nine domestic banks, thirty-one local branches of foreign banks, and twenty-four credit cooperatives in Chinese Taipei. The total loans of the above banks is NT\$20,561 billion, NT\$567 billion, and NT\$392 billion respectively. As for the number of insurance companies, there were twenty-three Non-Life insurances and thirty Life insurances. The insurance premium income in 2013 were NT\$124.226 billion and NT\$2444.303 billion respectively.

3. Financial industry has been a highly regulated industry by the government in Chinese Taipei. Take banking as an example, the FSC adopts heavy regulations, including: (1) market entry barriers and restriction on opening branches: pursuant to Article 21 and 26 of the Banking Act, a bank or a branch office commence business operations shall be approved by the FSC, and the FSC may impose restrictions on the establishment of new banks or additional branches in specific geographic areas depending on local financial and economic conditions; (2) restrictions on business activity: pursuant to Article 22 of the Banking Act, a bank shall not conduct any business other than as approved by the FSC; (3) deposit insurance system: pursuant to Article 10 of the Deposit Insurance Act, financial institutions having been duly approved to accept deposits, postal savings or to be consigned to manage trust funds used for the purpose designated by the financial institutions with guaranteed principal and interest (referred to collectively as “deposits”) shall apply to the Central Deposit Insurance Corporation to participate in deposit insurance; (4) deposit reserve system: pursuant to Article 42 of the Banking Act, a Bank shall provide reserves for different types of deposits and other types of liabilities incurred by such bank in accordance with the rates established by the Central Bank. In particular, there has various investment restrictions for commercial banks under the Banking Act, including: (1) restrictions on investment amount: a commercial bank invests in a non-financial related business, the investment shall not exceed 5% of the total paid-in capital or the total issued shares of such business; (2) restrictions on types of investment: a commercial banks may invest in securities, but the types and limits with respect to the securities which may be invested in shall be prescribed by the FSC; (3) restrictions on investing owned assets: with the exception of warehousing for business use, a commercial bank shall not invest in real estate for self use in an amount in excess of the net worth of such commercial bank at the time such investment is made.

4. The enforcement of the aforementioned financial regulations can reduce the scale of competition among financial enterprises and give financial enterprises the higher profitability than other industrial enterprises. Therefore, the financial enterprises will be strong enough to prevent the financial crisis happening. On the other hand, if an individual financial institution or the market has a illiquidity or financial problems, the above financial regulations can ensure those problems not spread out to other financial institutions or the market immediately, and the goal of financial regulation-safety and soundness of the market will be achieved. In short, the regulated measures adopted by the FSC, including three goals: (1) promote sound business management at financial institutions; (2) maintain financial stability; and (3) facilitate the development of financial markets. Thus, in some case, competition may not be the primary goal of the FSC.

## **2. The system and protection mechanism of the financial services market in Chinese Taipei**

5. To enhance competition in the market for financial services and eliminate competitive restrictions or unfair trade practices among financial enterprises, the FTC enacted the “Fair Trade Commission

Disposal Directions (Policy Statements) on the Business Practices of the Financial Industry.” Where the financial enterprises are engaged in concerted, deceptive or obviously unfair trade conduct which may violate the Fair Trade Act (FTA), or where mergers involving financial enterprises reach a certain scale, notifications shall be filed with the FTC in advance. In this regard, the objective of the FTC is to ensure effective competition and the protection of the public interest (i.e., consumer interests) in the financial services market. On the other hand, the objective of the FSC is to strengthen the operation of financial enterprises, sustain financial stability, and promote the development of the financial market as well as consumer protection. Therefore, the development of and competition in the market for financial services are supervised by different government authorities in Chinese Taipei. The FSC is in charge of financial regulation and supervision, and the FTC is in charge of competition policy.

6. However, financial regulations adopted by the FSC or the Central Bank usually are intended to achieve other policy goals (i.e., financial stability) instead of competition, which may sometimes have negative impacts on competition. For example, if an excessive competition affects financial stability, the competent authority may instruct financial enterprises to engage in anti-competitive conduct by itself or through the association. In this case, the FTC may, pursuant to Paragraph 2, Article 9 of the FTA, consult with the competent authority to deal with the matters. In practice, the FTC will consider the policy objective or public interest in relation to the disputed anti-competitive conduct, and consult with the competent authority to determine a proper measure which balances market competition, financial stability, and consumer rights.

**2.1 Case example 1: Coordination between the FSC and FTC regarding the Bankers’ Association’s drafting of the “Guidelines on the Financial Service Fee Standards for Financial Enterprises”**

7. In order to encourage banks to charge reasonable financial service fees, the FSC requested that the Bankers’ Association of Chinese Taipei (the Bankers’ Association) in 2009 draft the “Guidelines on the Financial Service Fee Standards for Financial Enterprises.” However, the Bankers’ Association claimed that the draft, since it involved partial self-regulation, might be considered a concerted action. The FSC thus asked the FTC for an opinion.

8. The FTC reviewed the draft and found that Article 3 and Article 4 in the Draft expressly listed standards for cost items and items that could not be charged for. Such articles might potentially restrict competition. In this regard, the FTC requested that the FSC and Bankers’ Association provide further information on the issue. In response, the FSC suggested that the purpose of the fee standards was to encourage financial enterprises to charge reasonable financial service fees, which would ensure fair competition and balance the benefits of financial institutions and consumers. In addition, when information such as items regarding the financial service fees, pricing units, and fee amounts are fully disclosed, consumers can make comparisons more easily, thus reducing disputes.

9. However, the FTC concluded that cost items are an important foundation for pricing. Each individual enterprise has different advantages in its business operations, and the cost calculation might differ as a result of individual advantages. Furthermore, the cost calculation is a part of the internal business strategies. If all cost items were to be listed, then the freedom of business operations would be restricted, and the cost calculation would be rigid. The FTC therefore informed the FSC: “Article 3 in the Draft listed the items for cost calculation. It limits how enterprises calculate costs and might lead to rigidity in trading terms and substantively restrict competition. In addition, each enterprise has different service costs. The cost calculation shall be based on the individual enterprise’s actual operations and shall not be uniformly set by the Association. If the FSC intends to regulate financial service fees, the proper way is to regulate them through acts or regulations according to Article 46 of the FTA.”

10. Consequently, the FSC replied to the Bankers' Association as follows: "The FTC suggested that paragraph 2 of Article 3 in the Draft, which lists the items for cost calculation, limits how enterprises calculate costs and might lead to rigidity in trading terms and restrict free competition. Since each enterprise has different service costs, the cost calculation shall be based on the individual enterprise's actual operations. Cost items shall not be listed to substantially restrict competition. Such regulations shall therefore be deleted."

### **3. Regulations on the protection of financial consumers in Chinese Taipei**

11. The "Financial Consumer Protection Act" was promulgated in 2011 in Chinese Taipei. The term "financial consumer" as used in the Act refers to parties that receive financial products or services provided by a financial services enterprise, but does not include (1) qualified institutional investors; or (2) natural persons or juristic persons with a prescribed level of financial capacity or professional expertise. Articles 8-10 of the Act regulate the types of behaviors, including: (1) a financial services enterprise, in publishing or broadcasting advertisements or carrying out solicitation or promotional activities, shall not engage in falsehood, deception, concealment, or other conduct sufficient to mislead another party, and shall verify the truthfulness of the content of its advertisements. The obligation it bears to financial consumers shall not be less than that indicated in the content of the aforementioned advertisements or in the materials or explanations provided to financial consumers in the aforementioned solicitation or promotional activities; (2) before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully understand the information pertaining to the financial consumer in order to ascertain the suitability of those products or services to the financial consumer; and (3) before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully explain the important aspects of the financial products or services, and of the contract, to the financial consumer. The content thereof shall include, without limitation, aspects of material significance to the interests of the financial consumer, such as transaction costs, and possible gains and risks.

12. Pursuant to Article 1 of the "Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of the Financial Industry," if financial enterprises exploit their superior position or take advantage of the trait of information asymmetry to cause trading counterparts to make erroneous decisions or compel trading counterparts to enter into dealings with them, thereby restraining competition or competing unfairly, for example, where financial institutions act in concert to fix deposit and loan interest rates or related service fees, or prices of other goods or services; conceal the terms and conditions of applications for credit cards or specific kinds of loans; fail to disclose information on major transactions; improperly restrain borrowers of loans secured by real estate from repaying their loans ahead of schedule; improperly exercise protective measures over creditors' rights; fail to provide a clear scope of the guarantor's or the joint guarantor's responsibility; or at the time of marketing a consumer loan combined with products (or services), fail to adequately disclose the nature of the consumer loan. A financial enterprise, which engages in one of the following restrictive, deceptive or obviously unfair types of conduct, is likely to be in violation of the FTA.

13. Based on the above Policy Statements, it is shown that information disclosure is the primary objective in designing a regulatory system of financial consumer protection in Chinese Taipei. Such disclosure allows consumers to understand product features and restrictive covenants when making a trading decision. It helps eliminate the adverse selection due to the consumer's lack of information, which might impede market competition.

#### **4. The role of competition in financial consumer protection: actions by the FTC in information disclosure and switching options**

14. To prevent financial enterprises from taking advantage of their superior position or asymmetric information, which might cause the consumers to make wrong trading decisions or force them to trade and lead to restrictive or unfair competition, the FTC has formulated relevant rules. Examples of these concern concealing certain terms or conditions for credit card or special loan applications, failing to disclose material trading information, failing to clearly define the scope of the guarantor's or the joint guarantor's responsibility, or failing to adequately disclose the nature of the consumer loan at the time of marketing a consumer loan combined with products (or services), where the FTC deems such practices to be capable of restraining competition or creating unfair competition by their nature and are able to potentially violate the FTA.

15. In addition, consumers often fail to consider the additional fees attached to the main product before making a trading decision. Therefore, enterprises tend to conceal information on additional fees. In this case, in their pursuit of a competitive advantage, financial enterprises tend to apply a short-term pricing strategy to attract consumers. However, the loan rates will go up once the promotional period is over. For example, financial enterprises often offer a 20-year mortgage with a promotional discount interest rate for the first three years to attract borrowers, but the mortgage rate will be significantly raised starting from the fourth year, thus increasing the borrowers' burden with regard to the principal and interest payments. Therefore, the Central Bank in 2010 requested that the Bankers' Association notify banks of the following: when underwriting a mortgage, borrowers shall be given obvious warnings regarding the risk of changes in the mortgage rate, and interest rate information shall be fully disclosed. On the other hand, the FTC has also established the following guidelines to regulate the financial enterprises. For example, important terms of the transaction shall be "negotiated in individual contracts," or "contractual terms shall be printed in bold font." The purpose is to arouse awareness of consumers in regard to the additional fees attached to the main product. Consumers will then give full consideration to the main product as well as the additional fees before making the decision.

16. Besides offering consumers more information on product features and additional fees before the transaction, consumers might face the issue of switching to other products after a transaction is made. In other words, consumers can choose whether to switch to other financial enterprises or to continue trading with the current one. Herein the switching costs play an important role in the above decision. In order to make it easier for consumers to switch to different financial enterprises, the FTC has issued the "Fair Trade Commission Disposal Directions (Guidelines) on the Charging of Penalties for the Prepayment of Housing Loans by Financial Enterprises." It stipulated that (1) a financial enterprise shall not refuse a borrower's prepayment of a housing loan and shall issue a certificate of repayment as soon as possible; (2) only when a financial enterprise provides a better loan interest rate with a "repayment prohibited period" to a borrower may it negotiate with the borrower concerning the prepayment penalty for such a loan; and (3) the charge for the prepayment penalty shall decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance. The objective of the above Guidelines is to prevent financial enterprises, given their superior position, from improperly charging borrowers a prepayment penalty and increasing their borrowing costs.

##### **4.1 Case example2: MassMutual Mercuries Life restricted consumers' switching option by improperly collecting housing loan prepayment penalty in violation of the FTA**

17. The Complainant signed a "Supplemental Agreement to Loan Agreement" on April 12, 2006 with MassMutual Mercuries Life for two housing loans of NT\$2,400,000 each. Article 2 of such Supplemental Agreement provided that "the fixed interest rate for the period from April 12, 2006 to April 12, 2011 should be 2.95% ... 'fixed interest term.' Whereas the borrower intends to obtain the

abovementioned prime interest rate and to compensate the lender for any loss arising from the borrower's prepayment after providing such prime interest rate, the borrower hereby agrees to pay the lender a prepayment penalty equal to 1% of NT\$1,085,000 whenever the prepayment amount reduces the principal down to NT\$1,085,000 or lower."

18. Pursuant to the Items 6 of the "Fair Trade Commission Disposal Directions (Guidelines) on the Charging of Penalties for the Prepayment of Housing Loans by Financial Enterprises" provides that "the charge for the prepayment penalty shall decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance." But in this case, the actual penalty calculation used by MassMutual Mercuries Life was merely to deduct the repayment limit from the loan balance. In other words, if the principal is paid down to NT\$1,085,000 or lower within the "fixed interest term," the single prepayment penalty is always NT\$10,850. Thus, no matter when a borrower repays to the limit mentioned above within the "fixed interest term," the amount of the prepayment penalty is always the same. It showed that the actual penalty calculation failed to decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance.

19. The FTC found that from May 2005 to March 2007 MassMutual Mercuries Life used the "Supplemental Agreement to Loan Agreement" in 138 cases, in which prepayment penalties were collected in 21 cases pursuant to the above-referenced article. The FTC concluded that the penalty calculation was inconsistent with Item 6 of the "Fair Trade Commission Disposal Directions (Guidelines) on the Charging of Penalties for the Prepayment of Housing Loans by Financial Enterprises". Therefore MassMutual Mercuries Life was in violation of Article 24 of the FTA and was imposed an administrative fine of NT\$200,000.

## **5. Conclusion**

20. In order to avoid vicious price competition which harms the regular operations of financial enterprises, the FSC sometimes allows industrial associations to set the pricing standards and cost items to be disclosed. This is because the main objective of the FSC is to stabilize the financial market. However, such measures might have the side effect of restricting competition. As a result, the FTC often consults with the FSC in advance to comprehend the benefits of such measures to the financial services market. If it is necessary to restrict competition due to the peculiar features of the financial services market, such limitations shall be set by the competent authority through legislations, not by the associations or through self-regulation to constrain financial enterprises by forcing them to adopt a uniform practice.

21. Since information asymmetry might exist between financial service providers and consumers, the FSC imposes mandatory disclosure regulations on financial enterprises. If financial enterprises fail to disclose certain material trading information, the FTC might also consider it to be a violation of the FTA. It gives consumers a better understanding regarding the features of and potential fees in relation to financial products before making the trading decision. It also allows consumers to search for, compare and switch to other financial products. Thus it might eliminate the adverse effect on market competition due to information asymmetry.

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COMPETITION COMMITTEE**

**Global Forum on Competition**

**COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS**

**Contribution from Chinese Taipei**

-- Session III --

*This contribution is submitted by Chinese Taipei under Session III of the Global Forum on Competition to be held on 27-28 February 2014.*

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## COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS

### -- Chinese Taipei --

1. This paper will outline the pharmaceutical market and the drug pricing system under the National Health Insurance (NHI) in Chinese Taipei, and address the competition issues and cases in pharmaceutical industry that have been investigated by the Fair Trade Commission (FTC). In preparing this paper, the FTC consulted the central health competent authority, the Ministry of Health and Welfare, to provide relevant information.

#### 1. Chinese Taipei's Pharmaceutical Industry

2. In accordance with Article 6 of Chinese Taipei's "Pharmaceutical Affairs Act," the term "Pharmaceuticals" refers to the following "active pharmaceutical ingredients (API)" and "preparations": (1) drugs which are listed in the Chinese Pharmacopoeia, or in the Pharmacopoeia of other countries, the official National Formularies or any of their supplements recognized by the central health authority; (2) drugs which are not included in the preceding Sub-paragraph but are used in diagnosing, curing, alleviating or preventing the diseases of human beings; (3) other drugs which are sufficient to affect the body structure and physiological functions of human beings; (4) drugs which are used in preparing such drugs set forth in the preceding three sub-paragraphs. "Pharmaceuticals" can thus be divided into API (including pharmaceutical intermediates) and preparations. Preparations are processed and compounded from raw materials into a specific pharmaceutical form and dosage for easy taking, and consist of both Western medicines and Chinese medicines. The Ministry of Health and Welfare has classified pharmaceutical preparations into four categories according to safety and efficacy: (1) medicines prescribed by physicians; (2) medicines designated by physicians, pharmacists or assistant pharmacists; (3) over-the-counter medicines, which are mild and have a broader safety scope, and thus can be purchased without prescription from physicians; and (4) preparations of inherited formula, namely, Chinese medicines. Thus, pharmaceutical industry in Chinese Taipei includes API, Western medicine and Chinese medicine preparations, and other relevant products.

3. The value of total output of pharmaceutical manufacturing in Chinese Taipei in 2012 was NT\$69.6 billion dollars (about US\$2.32 billion dollars) with a large contribution coming from API products and Western medicine preparations<sup>1</sup>. The value of imports was NT\$73.91 billion dollars (about US\$2.464 billion dollars), of which Western medicine preparations accounted for 92%. Domestic pharmaceutical manufacturers provided 61% of volume in the market, but only made up about 23.2%<sup>2</sup> in terms of total sales income. The major reason, taking preparations as an example, is that most domestic pharmaceutical manufacturers are small to medium-sized companies that lack the capability to develop new drugs, and hence mainly produce generic drugs so that new drugs or patented drugs are largely imported.

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<sup>1</sup> Department of Industrial Technology, Ministry of Economic Affairs: "2013 Yearbook of Pharmaceutical Industry", p3.

<sup>2</sup> *Ibid*, p.54.

4. There are two marketing channels for pharmaceuticals in Chinese Taipei, namely, API products and preparations. The API and preparations products produced in other countries are sold by their commercial agents to compete with domestic pharmaceutical manufacturers who purchase domestically-made pharmaceutical raw materials or else import raw materials to produce API products. Finished API products and preparations are sold to hospitals, clinics and pharmacies and then to consumers. Such sales channels are one way and straightforward. Hospitals are the largest customers in the market, and account for about 50% of sales. Furthermore, since the procurement of medicines by public hospitals requires that certain tender procedures be followed, as to whether or not the “procurement price” is reasonably in line with the NHI “medicine payment” claimed by hospitals has become the focus a public opinion.

## **2. Regulations on the distribution of pharmaceuticals**

5. As stipulated in Articles 14 and 15 of the Pharmaceutical Affairs Act, “pharmaceutical firms” refer to dealers and manufacturers of drugs or medical devices that are engaged in wholesaling, retailing, importing and exporting pharmaceuticals. Any person with the intent to be a pharmaceutical firm is required to file an application to the municipal or county (city) health competent authority in order to receive approval and registration. The applicant is only permitted to start operation after paying the license fee and obtaining a business license. Pharmacies selling medicine are subject to the same regulations applied to pharmaceutical firms as they are engaged in the retailing of drugs of a certain level, in accordance with Paragraph 2 of Article 34 of the same Act. In addition, as stipulated in the Pharmacist Act, pharmacists shall be responsible for the sale or management of pharmaceuticals, and have to ensure that customers understand the directions and warnings related to any medicine they purchase. It is inappropriate to sell medicine through channels other than bricks and mortar stores, as it would not be possible to ensure that the people’s interests and rights in taking medicine were protected. To protect public health, pharmaceuticals, unlike other merchandise, are prohibited from distribution through the Internet, mail order or TV shopping in Chinese Taipei.

## **3. NHI Pharmaceutical pricing system**

6. The National Health Insurance (NHI) implemented in Chinese Taipei in 1995 is a single-payer compulsory social insurance plan. Medical services covered by the NHI include outpatient clinics, hospitalization, drugs and laboratory testing. The scope of drugs payment is very wide, ranging from domestically and internationally manufactured pharmaceuticals to imported pharmaceuticals for a total of at least 17,000 Western medicines preparations. There are no regulations that apply to pharmaceutical ex-factory prices in Chinese Taipei, but there are regulations regarding NHI payments and prices for medicines covered by the NHI in accordance with the “National Health Insurance Drug Payment Particulars and Regulations”.

7. On the structure of pharmaceutical distribution, large hospitals are the major marketing target. The NHI intended to make sure medical resources were used efficiently by attracting patients with minor ailments to clinics with a referral system and higher deductions. Unfortunately, the referral system has not succeeded so that large hospitals still hold most of the medical resources. Medicines produced by domestic pharmaceutical manufacturers account for only one third of the total medicine used by large hospitals, but medicines produced by/imported from international pharmaceutical firms account for a larger proportion. In other words, clinics and pharmacies are the marketing target of domestic pharmaceutical manufacturers.

8. As the NHI expenditure on pharmaceuticals has been increasing, the Ministry of Health and Welfare and the National Health Insurance Administration (NHIA) have been holding meetings with medical care institutions to discuss and amend the NHI pharmaceutical pricing regulations. An agreement was reached on September 17, 1996 to draft the “Principles of the National Health Insurance Drug Pricing System”, which took effect on November 1, 1996. One controversial point concerning these principles was

that the NHIA took international pharmaceutical price information as a reference for setting the price paid to the original drug manufacturers. The NHI pays the same price and forces drug manufacturers to adopt a unified payment for most drugs, with only a few essential drugs being paid up to the highest limit. The Ministry of Health and Welfare announced the “Guidelines for the National Health Insurance Drug List and Payment Schemes” on March 30, 1999 that showed the list of NHI pharmaceutical products and the prices that would be paid. The announcement was intended to disclose the content and claims procedures regarding which pharmaceuticals were covered by the NHI, as well as their pricing and payment.

#### **4. Controversial “drug pricing black hole”**

9. The term, “drug pricing black hole”, is an expression with a negative connotation used to describe the drug price gap in the NHI system. It indicates that the government pays medical care institutions higher prices for drugs than the actual price agreed upon procurement.

10. In the report of the NHIA regarding solving the problem of the NHI drug price gap, the gap was divided into two types, rational and irrational:

##### **4.1 Rational price gap**

###### **4.1.1 Clinics**

11. Clinics or primary-level NHI medical care institutions use a simple form for claiming a pharmaceutical payment of NT\$75 every 3 days, but the average pharmaceutical price every 3 days is only NT\$50, resulting in a difference of about NT\$25.

###### **4.1.2 Hospitals**

12. Public and private hospitals, regardless of whether they are large or small, may obtain discounts from pharmaceutical firms according to the amount of pharmaceuticals purchased, the delivery location, and pay out conditions. The discounts vary from 15% to 30%.

##### **4.2 Irrational pricing difference**

###### **4.2.1 High discount rates, or gifts**

13. Private general hospitals may obtain higher discounts or receive high value gifts for drugs whose patents have expired but where the price remains the same, but still claim the NHI payment at the same price on the drug list. This is the main cause of the “drug pricing black hole”.

###### **4.2.2 Claiming the payment for “drug B” with the price of “drug A”**

14. Some NHI medical care institutions purchase and use drug A at a lower price, but claim the NHI payment for a more expensive drug B. Fines and punishments are stipulated in Paragraph 3 of Article 4 of the “Regulations of National Health Insurance Drug Payment Price Adjustment” against fraudulent claims or non-claims for NHI payment. Such cases were found in the early stages after the implementation of the NHI, but are now rarely seen.

15. In September 1999, the FTC investigated whether the drug price gap violated the regulations of the Fair Trade Act (FTA). The investigation involved meetings with the health authority, pharmaceutical manufacturers and medical care experts before the drafting of the “Guidelines for the Disclosure of Procurement Information at Medical Care Institutions (Draft)”. The FTC attempted to help the NHIA obtain the actual trading price in the market as a reference for lowering the threshold of the drug price.

However, it was concluded that the issue of the drug price gap relied on the cooperation between various institutions so that it could not be solved solely by the administrative regulations stipulated in the aforementioned draft proposed the FTC. Moreover, the trading information between three parties, the buyer (medical care sector), the seller (pharmaceutical firms) and the NHIA, to some extent is available to each of them. It is unlike those cases where the FTC found asymmetric information between trading parties. Therefore, the FTC decided to suspend the finalization of the guidelines.

## **5. Competition among generic drugs**

16. According to the statistics for pharmaceutical permits in 2012, permits for generic drugs in Chinese Taipei accounted for 82.4%, out of which permits for domestically made generic drugs made up 89.6% and those for imported ones the remaining 10.4%. As revealed by data in past years, about 70% of NHI drugs were domestically made generic drugs. Pharmaceutical supply in Chinese Taipei relies mainly on domestic pharmaceutical manufacturers. There are no trading and import barriers, or restrictions on the acquisition of generic drugs, and competition among generic drugs is intense.

17. When the patents of patented drugs expire, the patent holding pharmaceutical manufacturers are forced to lower their prices and face competition from generic drugs. This fact applies to all pharmaceutical manufacturers around the world. In order to rationally control expenditure on medicine, unless the expired patented drugs are marked as irreplaceable, pharmacists can replace them with substitutes, which are less expensive or made by other pharmaceutical manufacturers but contain the same active ingredients (including generic drugs). Physicians are allowed to prescribe appropriate medicine based on the patient's condition, and there are no restrictions on the use of generic drugs or the highest daily limit of pharmaceutical expenditure. The NHI pharmaceuticals and amounts of NHI payments are disclosed on the NHIA website. The NHIA does not offer any financial incentives to physicians, pharmacists or consumers regarding prescribing or using generic drugs. To avoid unnecessary waste and the irrational use of generic drugs, the NHIA reviews pharmaceutical expenditure carefully. Medical records have been integrated by cloud computing technology, and are provided as a reference to physicians for prescribing generic drugs. All these measures have been intended to improve the quality of medical care and ensure resources are used rationally.

18. In Chinese Taipei, pharmaceuticals should go through the process of Drug Review and Registration, and can only be manufactured, imported or distributed after being granted a permit. The review process emphasizes safety, efficacy and quality: the safety review includes a discussion of pharmaceutical toxicity and adverse effects; the efficacy review involves the evaluation of the therapeutic effect; and the quality review seeks sustainable and stable manufacturing and management. Generic drugs should be consistent with the original patented drugs in terms of ingredients, drug form, therapeutic effect and dosage. They should be considered as the formula and product, to which modifications are made for developing new drugs. Hence, documents regarding their safety and efficacy are not required while applying for Drug Review and Registration. With respect to quality, applicants are required to submit the standard operational handbook for chemical manufacturing and control (the content should include controls over the physical and chemical properties of raw materials, testing specifications and methods, manufacturing processes and stability tests, etc.). A common practice in many countries is that, for generic drugs, it is not necessary to repeat all the clinical trials regarding the safety and efficacy of their active ingredients. According to international regulations, after development and production generic drugs are subject to bioequivalence tests by taking the original patented drugs as the standard control. The generic drugs and standard control are administered to the same group of subjects under the same conditions. The results should show no statistically significant differences between generic drugs and the standard control in terms of pharmacological effects or the amount and speed of active ingredients in blood circulation or on the functioning site. The results serve as a major reference for proving the safety and efficacy of generic drugs. Such a procedure is considered adequate for clarifying consumers' concerns about generic drugs.

19. There are no regulations in favor of the distribution and use of generic drugs in Chinese Taipei, but the differences in the prices of generic drugs and their original patented drugs are disclosed on the NHIA website.

**6. Case example: Hoan Pharmaceuticals violated the FTA by selling its product at a price under its cost for driving competitors out of the market**

20. The East Bamboo Co., Ltd. (hereafter referred to as the EB Company) was the sole sales agent of 10mg Epram Tablets whereas Hoan pharmaceuticals (hereafter referred to as the H company) was the sole sales agent of 10mg Lexapro® film-coated tablets. Containing the same active ingredient, Escitalopram, these two drugs were both used for treating depression, and thus these two companies were competitors. In September 2008, they both tendered for the supply of pharmaceuticals to the private Kaohsiung Medical University Chung-Ho Memorial Hospital (hereafter referred to as Chung-Ho Hospital). The EB Company complained to the FTC that they suspected the H Company offering depression drugs at a price below cost.

21. As revealed by the FTC's investigation, 10mg Lexapro® film-coated tablets, which had solely been distributed by the H Company in Chinese Taipei since 2005, constituted the original patented drug for depression with Escitalopram as an active ingredient. The 10mg Epram Tablets solely distributed by the EB Company since 2008 constituted the first generic drug sharing the same active ingredient as Lexapro® film-coated tablets. Before the introduction of the generic drug to the market, the H Company had already begun to sell Lexapro® in 2005, and up to 2007, achieved a sales volume of 123,038 packs (each pack contained 28 tablets for a total of 3,440,000 tablets) to 186 trading counterparts. By that time, the H Company had already established a strong marketing relationship with various large hospitals, clinics, pharmacists and shipping companies.

22. To offer tender for the supply of drugs to various medical centers, regional hospitals and large local hospitals, it is usually required that companies provide a document to prove that their drugs have been used by other medical centers. That is, if a company's tender has been accepted by one medical center, the company will have more chances of supplying drugs to other medical centers, regional hospitals and large local hospitals. It can be seen as the threshold for achieving a higher pharmaceutical sales volume. If the EB Company's tender was accepted by Chung-Ho Hospital on September 16, 2008, it could have offered tenders to other hospitals. This might have resulted in intense price competition for the H Company.

23. Both 10mg Lexapro® film-coated tablets and Epram Tablets were paid for by the NHI at the price of NT\$34.4 per tablet and NT\$27.5 per tablet, respectively. Although they contained the same ingredients, the former were manufactured by the patent holder and so the NHI payment price was NT\$6.9 higher than that of the latter. Medical care institutions could obtain more profit with a higher pharmaceutical price gap (i.e. the NHI payment price is higher than the purchase cost). Even if the EB Company were to offer some free pharmaceuticals (the maximum pharmaceutical price gap that medical care institutions can have is NT\$27.5), as long as the H Company were to sell the drug at a price that was NT\$6.9 lower, medical care institutions could profit from the NT\$27.5 price gap. Therefore, no rational economic reasons were found to explain why the H Company offered the tender for the supply of the drug at only NT\$1 to Chung-Ho Hospital.

24. The H Company's tender for the supply of the drug at a price much lower than the purchase cost in 2008 excluded the EB Company from offering tenders to other large hospitals. From 2008 to November 2010, the EB Company was excluded from offering tenders to most large hospitals and its Epram Tablets could only be sold to small hospitals and clinics. According to statistics compiled by the NHIA on the sales of these two drugs, from 2008 to 2010, 10mg Epram Tablets among all Escitalopram-based drugs accounted for shares of 1.61%, 4.89% and 5.36% of the market, respectively. Furthermore, on October 1,

2009, the NHI payment price for 10mg Epram Tablets was lowered from NT\$27.5 to NT\$25.6 and the sales revenue was significantly affected while the EB Company was able to enter the market of the NHI covered drugs.

25. The FTC concluded that the H Company, which offered a tender for the supply of Lexapro® at a price much lower than its purchase cost, i.e., at a price of NT\$1, and excluded other companies from fair competition, violated the regulations stipulated in Paragraph 3 of Article 19 of the FTA. The H Company was ordered to cease the behavior described above and was subjected to a penalty of NT\$3,000,000. However, this case was revoked by the Taipei Higher Administrative Court. One of the reasons given was that the FTC made such judgment only based on the price that the NHI paid for these two drugs without taking into account the actual trading price, discount, gifts and quantity among all medical care institutions while comparing their sales volumes and costs. The Court is of the view that the FTC erroneously determined that there lacked rational economic reasons for such deals only by observing an individual transaction. The FTC subsequently appealed this case to the Supreme Administrative Court. The case has returned to the Taipei Administrative Court again as its ruling was revoked by the Supreme Administrative Court.