

Recent Developments and Amendments to Competition Law and Policy

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1. Market Definition

- Amending the “Fair Trade Commission’s Principles for Handling Relevant Market Definitions” to address the difficulties in enforcing the law in digital cases (under amendment):

	Existing Provisions	Draft Amendment
Digital Cases	Difficulties: 1. Characteristics of a multilateral market . 2. Zero price to users of the platform.	1. Add definitions of a “ multilateral market ” and “ indirect network effect .” 2. Revise the considerations for market definition .

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2. Merger filing

- Deleting “Market Share Threshold for Merger Filing” (under consideration)

	Existing Provisions	Draft Amendment
Threshold for Merger Filing	annual sales amount.	Maintain
	market share.	1. Delete 2. Create new threshold?

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- Facilitate the Merger Filing Process (Amended)

	Before amendment	After amendment
Documentation	complicated	simple
Filing Methods	Paper + e-Filing	1. Paper + e-filing 2. e-filing (paperless)
Consulting Service before filing	None	Yes

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- **Reducing the Burden of Filing in specific cases (Amended):**

	Before amendment	After amendment
Foreign enterprises establish or operate a joint venture outside Taiwan , and the joint venture will not engage in economic activities within Taiwan .	Should be filed	Exemption from filing

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- **Reducing the Burden of Filing in specific cases (Amended):**

	Before amendment	After amendment
1. For a merger conducted outside Taiwan , the transaction amount of the merger is less than NT\$2.5 billion .	Regular Procedures	Simplified Procedures
2. For a horizontal merger , the total sales amount of the related products of the merging enterprises in Taiwan is less than NT\$200 million .		
3. For a vertical merger , the total sales amount of the relevant products of the merging enterprises in respective markets in Taiwan is less than NT\$200 million .		
4. The merging enterprise has no sales amount in Taiwan.		

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3. Concerted Actions

- Amended the “Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions” (Amended) to strengthen the incentives for reporting:

	Before amendment	After amendment
Reward Amount	Maximum: NT\$50 million “per case”	Maximum: NT\$100 million “per informer”
Reward Payment Methods	<ol style="list-style-type: none"> The reward is NT\$500,000 or less: paid on one occasion. The reward exceeds NT\$500,000: paid in several installments. 	The portion of the reward for each informer that is NT\$1 million or less will be paid first , and then the rest will be paid in several installments .

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- Adding the types of “Concerted Actions” (under consideration):

	Existing Provisions	Draft Amendment
Types of Concerted Actions	Mutual understanding among horizontal competing enterprises .	<ol style="list-style-type: none"> Maintain Mutual understanding among horizontal competing enterprises and other enterprises.

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4. Order in real estate transactions

- “Justice in Habitat” is the focus of our country’s policy. The recent high-profile amendment in the law is “The Equalization of Land Rights Act”:

	Fair Trade Act	The Equalization of Land Rights Act (Amended)
Provisions	1. False advertisements 2. Improper marketing	§47-5 (NEW) prohibits: 1. Dissemination of disinformation to influence the price of real estate transactions. 2. Making false transactions to create the appearance of active real estate transactions. 3. Continuously buying or reselling real estate at an increased price.
Penalties	“NT\$50,000 – NT\$25 million” “per violator”	§81-3 (NEW) “NT\$1 million – NT\$50 million” “per household or building”
Competent Authority	Fair Trade Commission	Ministry of the Interior

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5. False Advertisements

- “Combating scams” is an important policy in Taiwan.
- TFTC is devoted to detecting false advertisements, especially online advertisements.
- Amendment to the “Principles for Handling Cases about Internet Advertisements by the Fair Trade Commission” (Amended)

	Before amendment	After amendment
Dissemination of advertisements through social media or e-mail .	It is not directly specified as an Internet advertisement.	It is directly specified as an Internet advertisement.
Advertisements endorsed by Internet celebrities	It is not directly specified that Internet celebrities will be deemed to be advertisers.	It is directly specified that if an Internet celebrity sells a product/service as a vendor, he/she will be deemed to be an advertiser.

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- Amendment to the “Principles for Handling Cases under Article 21 of the Fair Trade Act by the Fair Trade Commission” (Amended)

	Before amendment	After amendment
Disseminating product/service information through social media or communication software groups	It is not directly specified as an advertisement.	It is directly specified as an advertisement.
Announcing False online game odds	It is not directly specified that this is a false advertisement.	It is directly specified that this is a false advertisement.

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- Considering the shift in the burden of proof to handle specific cases (under consideration)

	Existing Provisions	Draft Amendments
Announcing False online game odds	The TFTC has to prove that the announcement is false.	The online game company has to prove that the announcement is true.

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6. Types of Investigation

	Existing System		Draft Amendments
	Case-specific investigations	General Industry Investigations	Industry-specific Investigations
Provisions	§26, 27	None	Draft Amendment §27-1
Threshold for Starting Investigations	<ol style="list-style-type: none"> 1. For specific cases 2. Reasonable doubt of violating the law 	Having the need to study the industry.	<ol style="list-style-type: none"> 1. Significant, High-profile or emerging business model cases. 2. Without reasonable doubt of violating the law, but there is a need to know the detail.
Compulsory	Yes	None	Yes (highly controversial)

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THE END
THANK YOU

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Enforcement of Investigation Cases

Chia-Hui YANG

Foodpanda Imposed Restriction on Restaurant Business Activities Case

1. Sanction against foodpanda, a food delivery platform, with a fine of NTD 2 million (approximately USD 63,400) in 2021
2. Reasons for the sanction:
 - (1) Dine-in price restriction: Restaurants must set the same prices for their food items on the foodpanda platform as their dine-in prices.
 - (2) Restriction on customer pick-up: Restaurants could not refuse orders for food to be picked up by the customers themselves through the platform.

Foodpanda Case: Theory of Harm

1. Restrictions on dine-in price:

- (1) Restaurants are not able to implement differentiated pricing.
- (2) Dine-in prices may be set as the " floor price" , and foodpanda' s behavior indirectly ensures that the restaurant' s delivery prices on other platforms cannot be lower.

2. Limitations on customer pick-up:

- (1) Customers who choose to pick up their orders are often overlapping customers of the restaurant, and foodpanda does not help the restaurant expand its market.
- (2) Restaurants are required to pay commissions to foodpanda, which can be seen as the restaurants subsidizing the consumers who order from the platform.

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Case of price manipulation by Dried Scallop Suppliers

1. In November 2021, two major groups (Northern Group and Southern Group) importing dried scallops repeatedly raised their wholesale prices.
2. After an investigation by the TFTC, it was determined that the reasons claimed by the suppliers, such as the pandemic, port congestion, and cost factors, were not valid reasons.
3. The suppliers applied for leniency and admitted exchanging sensitive price-related information. They also offered core evidence (Line messages).
4. Competition in traditional industries is usually focused on price and quantity. There is zero tolerance for price manipulation by the two major groups.

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Case of Collusive Reduction of Warranty Period by Household Air Conditioner Businesses

1. Household Air Conditioner Businesses compete on warranty services, as warranty coverage is an important consideration for consumers.
2. In 2019, 15 suppliers got together for meals to establish a mutual understanding to jointly reduce the warranty period. This agreement was documented and signed, resulting in the warranty period being shortened from 7 years to 3 years.
3. Some suppliers applied for the leniency program.
4. Several whistleblowers provided online discussion content and screenshots of documents and received rewards.

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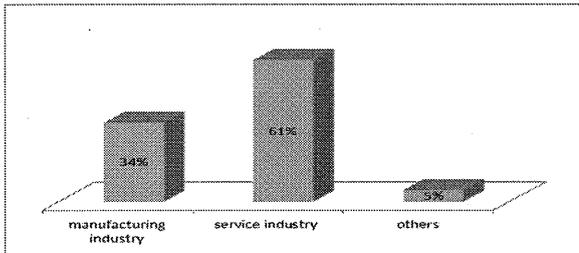
Case of establishing uniform standards for building appraisal fees by National Association of Civil Engineers

1. Appraisal cases normally include current condition, damage and water leakage appraisals requiring reports from impartial third-party entities.
2. Local associations raised concerns that inconsistent appraisal fees had led to disputes. The National Association of Civil Engineers (NACE) had a duty to resolve this issue.
3. In 2018, NACE held a council meeting and decided to establish uniform standards for various appraisal fees and informed local associations.
4. After receiving the notification, some local associations adjusted their minimum appraisal fees while others did not.
5. The informant submitted the notification document and received the reward.

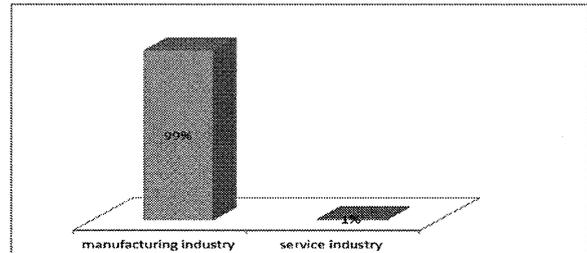
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Statistics for cartel cases in recent years (2018~)

GDP percentage



Percentage of Penalty amount



1. Manufacturing industry accounts for approximately 34% of total GDP, while the service industry accounts for 61%. However, the cartel cases and the amounts of the fines are higher in the manufacturing industry.
2. Types of cartel: hardcore cartels dominate with 90%, and include price-fixing and market allocation.

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Taiwan cartels and challenges

1. The cartel types among small and medium-sized enterprises in Taiwan have mostly engaged in price-fixing.
2. The cartel targets and collusive patterns have gradually changed.
3. Trade associations (including professional groups) release price recommendation lists that are controversial.
4. Challenges in digital enforcement are unavoidable.

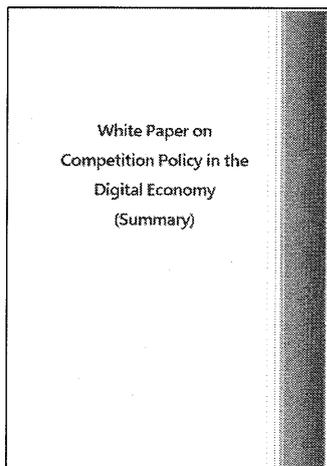
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White Paper on Competition Policy in the Digital Economy

Chun-Ting CHEN

Overview

Released on December 20, 2022



- 01 Market Definition & Market Power Assessment
- 02 Abuse of Dominance
- 03 Mergers
- 04 Algorithms & Collusion
- 05 False Online Advertising

● Market Definition & Market Power Assessment

- Two-sided or multi-sided platform
 - Dynamic competition: competitive threat does not come from *direct* competitor
- Offline v. Online markets

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● Abuse of Dominance

- Google Maps (self-preferencing), Google Android
- On-going case: Apple App Store

Privacy Policy & Competition

- Different role of competition policy and data protection regulation
- When to intervene?

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● Mergers

Killer Acquisition

- M&A strategy: aiming to eliminate competitors?
- Benefits of acquired entity

● Algorithms & Collusion

- To engage with external technical experts
- To encourage leniency and whistleblower programs

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● False online advertising

Unfair competition

- False or misleading advertising
- Keywords advertising → using competitors' trademarks as keywords
 - To understand how Google Ads works and whether Google could take on some role
- Web Programming → improper use of SEO

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Our Position

- Importance of local nexus
- Ex-ante or ex-post control?
- Best principle: adopting an *issue-driven* approach

International Cooperation and Collaboration

Tzu-Shun HU

Areas of Cooperation between the USA and Taiwan

- Mutual Support of International Organizations
- Capacity Building Programs
- Periodical Interactions

Mutual Support of International Organizations

- ICN
 - ✓ Supporting a 2024 ICN Workshop in Taiwan
- OECD
 - ✓ Competition Committee
- APEC
 - ✓ Economic Committee
 - Competition Policy and Law Group (CPLG)

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Capacity Building Programs

- Programs for Emerging Agencies in Southeast Asia
 - ✓ Regional Antitrust Seminar
 - ✓ Technical Assistance

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Periodical Interactions

- High-Level Officials
 - 2023 Bilateral Meeting in the US
 - 2024 Taiwan International Conference on Competition Policy/ Law
- Working-Level Officials
 - Information Exchange
 - Cross-Border Case Enforcement