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*Taiwan**

– Prof. Changfa Lo†

Taiwan is geographically located on the western rim of the Pacific Ocean, with a certain degree of fame for its economic development and democratisation in recent decades. In 1895, a military defeat forced China to cede Taiwan to Japan. Taiwan reverted to Chinese control after World War II.

Following the Communist victory on the mainland in 1949, two million Nationalists fled to Taiwan and established a Government using the 1946 Constitution drawn up for all of China.

Over the next five decades, the ruling authorities gradually democratised and incorporated the native population within the governing structure. In 2000, Taiwan underwent its first peaceful transfer of power from the Nationalist to the Democratic Progressive Party. Throughout this period, the island prospered and became one of East Asia's economic 'Tigers'. The dominant political issues continue to be the relationship between Taiwan and China – specifically the question of eventual unification – as well as domestic political and economic reform.

PROFILE	
Population:	22,749,838***
GDP (Current US$):	528.6 billion**
Per Capita Income: (Current US$)	23,400 (at PPP.)**
Surface Area:	35,980 sq. km
Life Expectancy:	77.06 years**
Literacy (%):	96.1 (of ages 15 and above)
HDI Rank:	--

Sources:
- CIA Government Publications, Factbook
(**) For the year 2002
(***) For the year 2003

Economy

In the earlier stages of Taiwan's economic development, the focus was on the agricultural sectors. Starting from 1963, the total value of industrial production exceeded that of agricultural production and since then, Taiwan became more and more industrialised.

In the 1980's, Taiwan's economy began to transform from being regulated, towards a more open and liberalised economy. The structure of industries became less and less labour intensive, and more and more technology and capital intensive. This transformation was then considered an economic miracle and became one of the economically successful patterns for many developing countries.

Currently, rapid growth can be found in electronic and information technology related industries, which form the main stream of Taiwan's industries. The production and exportation of electronic and information technology related products have become the most significant in terms of their total values. Taiwan has also made itself an important place in the world, producing electronic products. It is further moving towards developing a higher knowledge-based economy.

Competition Evolution and Environment

Taiwan is composed of a main island and some small islands. Due to the country's geographical nature and its pool of natural resources, the need for Taiwan to develop its foreign trade is important. In its earlier stage of development, the economy relied more on (SoEs) and some big companies, surrounded and supported by smaller 'satellite factories' to form production teams engaging in local and international competition. During this early stage, the enhancement of export capability was more important than the healthy development of the domestic market.

Recently, the apparent trend of the world economy has been towards more liberalisation and globalisation. To

* Original paper submitted in November 2004. Revised in May 2005 & February 2006

cope with such a trend and to meet with the need for development, it was necessary to establish fair and reasonable grounds for competition. With this in mind, the Government of Taiwan started to draft its competition law in the early 1980s.

During the drafting period, the National Federation of Industries and the General Chamber of Commerce of Taiwan considered the Fair Trade Law as conflicting with business and industry development, and restricting business activities. They, thus, adopted a series of steps to obstruct the enactment of the Law. The Fair Trade Law, the competition law of Taiwan, was eventually passed in 1991, with the efforts put forth by the Government, consumers and scholars. It started to be implemented in February 1992, and has undergone several amendments in 1999, 2000 and 2002.

Competition Law and Institutions

One of the most prominent aspects in the FTL is to establish an independent governmental agency, the Fair Trade Commission, to take charge of the enforcement of the Law. The Commission is placed under the Executive *Yuan*, i.e. the Cabinet level of Taiwan, for the purpose of enhancing its position to carry out duties and to deal with large companies, including huge SoEs.

The FTC is not only vested with the power to carry out the legislative intent illustrated in the FTL, but also granted a position to consult with different governmental agencies to advocate and promote a competitive environment. The Commission also plays an important role in the deregulation process of Taiwan.

The role of the Fair Trade Commission in the enforcement of the Law is somewhat different from that of the enforcement agencies in many other countries, in which the competition authorities are only responsible for the enforcement of laws governing restrictive business practices; whilst unfair trade practices are generally under the jurisdiction of the judicial system. Parties alleging any involvement of unfair trade practices, by other parties, would usually have to resort to the Courts in these jurisdictions.

In addition to enforcing the law *vis-à-vis* restrictive business practices, the FTC also administered issues related to unfair trade practices. Consumers or competitors accusing others of any of the unfair trade practice provisions in the Fair Trade Law are allowed to bring complaints before the Commission, asking the Commission to issue orders against, and impose fines on, such violations.

The Commission, accordingly, is granted with the power to impose administrative fines; to issue 'cease and desist' orders; to require the respondent to correct its practices; to require the divestiture of an enterprise engaging in illegal mergers; and to issue orders requiring the respondent to take any other appropriate measure.

The Commission has broad powers in dealing with violations. In most cases, if the Commission finds that there is a violation of the Law, an amount sufficient to deter future violations would generally be imposed on the respondent. The Law was amended in February of 1999, raising the pecuniary penalties to NT$50,000,000 for administrative fines and NT$100,000,000 for criminal fines, the purpose of which is to punish those seriously violating the Law.

In order to ensure proper and fair imposition of the fines, the Commission has developed sentencing guidelines, requiring the staff handling the cases, and eventually the Commissioners to consider:

- The motive and purpose of the violation; expected and real profits from the violation; the degree of damages to the trading order;
- The violator's scale of business and its operational situation, as well as its market position;
- The violator's previous records of breaching the Law;
- Whether the Commission had, in the past, conducted an industry-wide corrective programme or had launched educational/warning programme in regard to the violation in question;
- Whether the violator is cooperative with the Commission in its investigation; and
- Whether there is any solid evidence showing the violator's regret or remorse regarding the conduct.

The sentencing guidelines consist of a calculation method, which contributes to the speeding up of the decision-making process concerning the level of fines for individual cases.

If the wrongful Act is to be corrected, the Commission will require the necessary corrective steps to be carried out by the respondent. For example, in some false and misleading advertisement cases, the Commission has demanded of the respondents to put a statement in the same newspaper that contained the original advertisements, the same size as the wrongful advertisements, indicating not only that the previous advertisements had been deemed by the Commission as false or misleading, but also the companies were required by the Commission to make such corrections. This would, in most cases, act as a deterrent against further violations by the company in question, or by other companies, as the correction statements could damage their image.

If a case involving public interest, in which direct punishment of the respondents would not generate the optimal outcome, the Commission would consider adopting administrative settlements. Although the scheme of administrative settlement was rarely used, the positive effects from those cases resolved through administrative settlements were considered substantial.

For example, there was once a complaint against a French constructor of the Taipei rapid transportation system, alleging misuse of the constructor's relatively advantageous power over the other party. The Commission considered that if the case was resolved through imposing fines and issuing a 'cease and desist' order, the consequences may involve prolonged appeals and deeper distrust between the parties, which would eventually harm the completion of the transportation system. Therefore, the Commission decided to call both parties to the Commission to discuss possible administrative settlement. The Commission was able to hammer out terms and conditions agreed by both sides, under which the unfair elements were eliminated.

The Commission also, in its early period of implementing the Law, frequently use the 'industry wide corrective programmes' to eliminate industry-wide practices. If the Commission finds that a particular type of violation is widely committed by firms of a particular sector for a long time, and if it would not be feasible for the Commission to launch widely-covered investigations, the Commission will consider fully researching the scope and nature of the violation and to issue papers stating how and why the acts are violating the Law.

The Commission will also state in the paper such acts be stopped, and if, after the specified period, the Commission finds that there are still similar violations occurring, it will consider imposing very severe punishment. The approach has proved to be effective in correcting some 'traditional' violation patterns. Examples include recommendations to the banking industry with regard to the terms and conditions set out in their loan contracts, which were considered as unfair; and a correction programme for the practices of brokers of real estate collecting service fees from the buyers.

In addition to the industry-wide corrective programmes, the Commission also launches a number of educational/ warning programmes targeting some sectors, whose previous practices are very likely to breach the Law. For example, publishers of primary school textbooks were considered more likely to break the Law by collectively monopolising the market. The Commission decided to issue a comprehensive statement explaining what practices were considered as violating the Law.

Also, for example, considering that a number of wine importers had been punished by the Commission for engaging in false and misleading indications of the age and places of origin on their imported wines, the Commission issued a pamphlet indicating the practices which are likely to contradict the Law.

Other examples include requiring enterprises in a weak industry to make their contract terms (especially the items and rates of their service fees) more transparent; and monitoring the transaction behaviour by the enterprises selling memberships for overseas resort centres on a time-sharing basis, and requiring the transaction conditions to be more transparent.

Publicity or advocacy is also considered important in that if a decision on a specific case or on a more general aspect of competition policy earns support from the society, it could be more effectively enforced, especially when the decision is against the vested interests of influential groups. In addition, making the general public aware of some important case decisions will help to deter potential violations and to educate those who are unaware of the specificities of the law in the likelihood that they may violate it unknowingly.

The idea of a competition law was very unfamiliar to the society of Taiwan when the Fair Trade Law was first introduced. Many practices that were once widely adopted by the business community were suddenly declared unlawful. Had there not been any transitional arrangements made, there could have been a severe impact on, and too much resistance from, the business community as a whole.

As indicated above, the Fair Trade Law was enacted on February 04, 1991 and was put into effect one year later to allow the business community to get familiar with the contents and ideas of the Law, and to let the businesses adjust their practices. This approach was considered successful in terms of minimising resistance and reducing possible violations in the commencement period of implementing the Law.

Another transitional arrangement was for the SoEs. The Law provided, in its original version, that SoEs would be exempt from the application of the Law for five years if the Executive Yuan agreed such exemption on a case-to-case basis. Although such exemptions in fact did not constitute an important deviation from the Law, they played a very important role in making the relevant ministries and vested interest parties accept the enactment of the Law.

Box 31.1: Petroleum Giants to Pay Fines for Price Collusion

Chinese Petroleum Corp and Formosa Petrochemical Corp might be facing government fines for price collusion after the two oil refiners announced price hikes almost simultaneously.

Citing a rise in international crude oil prices, the state-run Chinese Petroleum Corp announced that it would raise its wholesale gasoline and diesel prices by NT$1 per litre across the board, an average increase of 5.37 percent. The company also adjusted its prices for natural gas with an average increase of 2.99 percent.

An hour after Chinese Petroleum's announcement, Formosa Petrochemical said that it would match its rival's move by raising its wholesale gasoline and diesel prices by NT$1 per litre. Formosa Petrochemical said it was also under increasing pressure from rising oil prices, with global crude oil prices having surged 26 percent to US$54.7 per barrel from US$43.6.

In response to allegations of price collusion, the Fair Trade Commission said that it might impose fines of up to NT$50mn (US$1.58mn) if the two companies are found to have engaged in the practice.

The Commission in October 2004 fined the two rivals NT$6.5mn each for engaging in price collusion after a ruling that they had violated Fair Trade Laws and consumers' rights.

Source: Taipei Times, March 11, 2005.

Anticompetitive Business Practices

As mentioned in the preceding part, the Fair Trade Law of Taiwan governs basically every kind of RBPs and UTPs, including the multi-level sales scheme.

With regard to the RBPs, most important is the Law's prohibition of the misuse of market power by monopolists. Under Article 10 of the Law, no monopolistic enterprise shall engage in any of the abusive acts using its market power. The Taiwanese Government uses this provision actively in dealing with big SoEs in the country. Examples include preventing the state-owned petroleum company from excluding new entrants into the petroleum market prior to its liberalisation, and dealing with the state-owned telecom company with regard to basic telecommunication services prior to the fixed-network market, which was opened up for private companies.

The second type of the RBPs prohibited under the FTL is horizontal restraints. These are called 'concerted actions' in the Law and defined in Article 7 as 'an agreement or understanding with or without binding effect, by a firm with any other competing firm, to jointly determine the price or any other terms of transactions for goods or services'.

Article 14 of the FTL also prohibits enterprises from engaging in concerted actions; with the exception that, in limited exceptional circumstances, an exemption could be granted for certain concerted actions. In the past ten years, around 70 cartels have already been identified by the Government and thus prohibited. The cartels include those that engaged in bid-rigging, price-fixing, output restricting, etc. In recent years, it is becoming more and more difficult to spot cartels. It is even more difficult to discover the operations of international cartels.

The third type of the RBPs provided for in the Law is merger and acquisition activities. M&As are not always anticompetitive in nature, but if the outcome of a merger or acquisition is able to create a monopoly or to increase substantial market power, there is a competition concern. The basic criterion imposed by Article 12 of the FTL, when determining the application for approval by the FTC, is to see whether the benefit of the merger to the overall economy outweighs the disadvantages of its restraints on competition. The Government of Taiwan, however, seldom prohibits M&As.

The FTL also governs vertical restraints. In case a supplier adopts some distribution strategies such as resale price maintenance, tying, exclusive dealing or territorial restraints, it will be considered as having violated the FTL if certain criteria are met. In this regard, Article 18 of the Law prohibits resale price maintenance without regard to whether such acts have pro-competitive effects. In other words, the *per se* rule is applied in resale price maintenance. Article 19 prohibits a company from limiting its trading counterparts' business activity improperly, if such an act is likely to lessen competition or to impede fair competition.

Besides, the Fair Trade Law covers a wide range of unfair practices and prohibits the adoption of these acts by firms. Examples include misleading representations (counterfeit or passing-off) provided in Article 20; false or misleading advertising stated in Article 21; damage to business reputation provided in Article 22; and other deceptive or obviously unfair conduct provided in Article 24 of the Law.

Most noteworthy is Article 24 of the Law, which is called drift net or an all-inclusive provision, which is applied to many types of business activities. For example, when the biggest earthquake hit Taiwan in 1999, the Article was applied to deal with unreasonable price hikes. This seemed to be an important factor for Taiwan to maintain stable prices in the market in that difficult period. Nevertheless, this Article is not applied without any controversies.

For instance, if an IPR holder sends a warning letter to the sales channels of the alleged counterfeiter, asking them to stop selling the allegedly counterfeited goods, without having obtained an infringement report from an impartial institution, then it is very likely that the IPR holder will be considered as acting in violation of Article 24. There are a lot of debates on the appropriateness of such an application. Such a practice once even gave rise to a Section 301 (United States Trade Law) issue.

Other Competition Related Legislations

There are a number of other legislations that have played important roles in promoting a competitive environment in Taiwan, including, for instance, the Trademark Law, the Patent Law, the Copyright Law, etc.

- The legislative purposes of the Trademark Law are to protect the right of trademarks and the interests of the consumers, and to ensure fair competition in the market and proper development of businesses;
- The Patent Law was enacted to encourage, protect and make efficient use of inventions and creative works, and eventually to enhance the development of industries; and
- The Copyright Law is to protect and balance the interest of the right-holder on the one hand, and the public interest of promoting cultural development on the other.

These laws are not necessarily enacted to regulate economic activities. However, the application of these laws could produce a result of fairer competition. For instance, the Trademark Law could eliminate unfair business competition through free-riding practices between or amongst enterprises. The Patent Law and the Copyright Law have the functions of prohibiting infringing and pirating practices, as well as deceptive activities to protect interests arising from innovation.

An important development in 1999 concerned the relation between the Fair Trade Law and other legislations. The original Article 46 of the FTL provides that the provisions of this Law shall not apply to any activity carried out by any enterprise in accordance with other laws. It was considered necessary to have such exemptions during the first few years of the implementation of the Law.

However, after a period of time of implementing the Law, which was long enough to allow the public and private sectors to familiarise themselves with the Law and to adjust their practices accordingly, it was considered no longer necessary to provide such exemption.

The current FTL provides in Article 46, which was amended in February 1999, that where there is another law governing the conducts of enterprises, such other law shall only apply if it does not conflict with the legislative purpose of the Fair Trade Law. This new provision would provide the FTC with greater power to handle cases or competition matters involving other laws in a more effective manner.

For instance, some professional associations are legally vested with the right to decide fees or charges for their members' services. This type of provision in other laws, and the practices adopted accordingly, have been subject to review by the Commission under the current provision of Article 46. The Commission can now take a firmer position requesting the stopping of such practices, or even requesting amendments of such laws.

Telecommunications Sector[1]

Telecommunications liberalisation began in 1990 with the opening of value-added networks to competition. Change in the telecommunications industry was advanced by privatisation, deregulation and re-regulation (equally important to maintaining a fair and competitive market).

Article 11 of the 1996 Telecommunications Law of Taiwan classifies telecoms enterprises into Type I and Type II, depending on whether they have telecoms line facilities and equipment. Type I is defined as one that installs telecoms line facilities and equipment in order to provide telecoms services. For example, fixed line operators, mobile communication operators, etc, are all included in Type I. Type II telecoms enterprises are defined as all telecoms enterprises other than Type I telecoms enterprises.

Whilst the Directorate General of Telecommunications (DGT) exercises regulatory authority over the telecoms sector in Taiwan, pursuant to the provisions of the Telecommunications Law 1996, the Government Information Office (GIO) regulates the closely-related media industry.

The 1999 amendments to Taiwan's Cable Radio and Television Law have removed restrictions against cross-industry participation by cable TV operators and telecoms enterprises, and gradually relaxed restraints upon foreign ownership ratios. In addition, special regulations have been adopted to protect the rights and interests of

1 http://www.winklerpartners.com/htmlffiles-english/Publications/articles/WP_Telecom_Env2913.pdf

subscribers. These regulations specifically list the items that must be included in contracts between operators and subscribers, further protecting the interests of subscribers.

Box 31.2: Monopoly in Fixed-Line Telecommunications

A private telecommunications company wrote a letter complaining against Chung Hwa Telecommunication Co., Ltd. (CHT). CHT was alleged, through its '099 Convenience Number' services (combination of telecoms and computer technologies) which was introduced on September 7, 1999, to have set a uniform rate of NT$.06 per second for both local-099-local calls and local-099-mobile phone calls.

By doing so, CHT increased the rate for local calls by a factor of nine from the original rate of NT$1.7 per five minutes, and decreased the rate for local calls to mobile phones by 40 percent from the original rate of NT$6 per minute. It was also alleged that CHT used the revenue generated from its monopoly business to subsidise its business that had been opened to competition by other privatised sectors.

Before introducing its '099' services, CHT had submitted a tariff proposal to the Ministry of Transportation and Communications and the Ministry of Economic Affairs for approval. The Ministry of Transportation and Communications, however, instructed the Directorate General of Telecommunications to change the approved rate to a '*provisional; experimental rate,'* with a provisional testing period of two months, because the Ministry had discovered a number of issues regarding the tariff proposal.

CHT structured the pricing of its '099' services such that it may have obstructed fair competition in a number of ways.

Whilst the Fair Trade Commission has always been positive to carriers' introduction of new telecoms technologies and new telecoms services, mobile telephony, which has been opened to competition, and fixed line telecoms were still being operated by CHT on a monopoly basis. This calls for special vigilance against a carrier with multiple networks using its monopoly to subsidise operations in open sectors and, thereby, extend its market clout improperly and allowing other anticompetitive conditions to emerge.

To maintain fair, orderly competition in the telecoms market, the Commission made some valid recommendations to the Ministry of Transportation and Communication, so that CHT's services do not thwart fair competition, such as that CHT should collect fees on the basis of its actual costs, etc.; and should provide equal access to its '099' services to subscribers to other private mobile telephone carriers.

Source: Fair Trade Commission website: http://www.ftc.gov.tw/

Consumer Protection

In Taiwan, the Consumer Protection Law, enacted on January 10, 1994, has not only promoted the consumer movement enormously, but also helped consumers to pay more attention to the quality of consumption and learn the correct consuming concept of safety.

Amongst the contribution of consumer organisations in Taiwan, the Consumers Foundation, Chinese Taipei, has been actively developing awareness about consumers' rights since it was established, and has greatly raised consumer awareness. Throughout the 23-year period of consumer protection activities, the spirit of consumer protection has continued to grow strongly and deeply in the domestic consumer sector.

Consumer protection work is highly elaborate and complicated. The Consumer Protection Commission (CPC) of Taiwan coordinates, supervises and directs the pertinent ministries and agencies under the Executive Yuan and the Provincial, Municipal, County and City authorities to study, formulate and implement substantive plans for consumer protection, in line with the fundamental policies and measures. Whilst reviewing and amending related policies from time to time, the CPC also combines the strengths of the Government, business operators, consumers, consumer protection groups and other private organisations to jointly create a safe and fair consumer environment. This is expected to protect the rights and interests of consumers, ensure the safety of consumers, and raise the quality of life in Taiwan.

The powers and responsibilities given to the CPC are as follows:

- to study, propose and review basic policies and measures concerning consumer protection;
- to study, revise and review consumer protection plans and to examine the results of their implementation;
- to review consumer protection proposals, and promote, coordinate, and evaluate their implementation;
- to study trends and issues of domestic and foreign consumer protection related to socio-economic development;
- to coordinate the consumer protection-related policies and measures of the various ministries and agencies under the Executive Yuan;
- to supervise the competent authorities in charge of consumer protection and to direct consumer ombudsmen on exercising their powers; and
- to periodically announce the results of efforts to protect consumers and to release related information.

Concluding Observations and Future Scenario

Along with its economic development, Taiwan conducted important deregulation activities to establish a sounder environment for enterprises to engage in competition. These deregulations include the privatisation of SoEs and

the removal of unnecessary barriers to market access. Deregulation is a continuous process for the Commission.

Another positive aspect of the implementation of the FTL is that the Commission maintains a high profile in its law enforcement activities. This has contributed to creating wide awareness of this law, particularly among enterprises, promoting better conformity with the rules set forth in the Law.

† ***Professor Chang-fa Lo*** *is the Dean and professor of Law at the College of Law, National Taiwan University. He is also the Director of the NTU College of Law WTO Research Centre. He graduated from Fu-Jen University and earned his LL.M degree at National Taiwan University. He later received his SJD degree from Harvard Law School. He used to practice law in Taipei and to serve as a Commissioner of the Fair Trade Commission and an Advisor of Taiwan's WTO accession. He teaches International Economic Law; Private International Law; Government Procurement Law; Competition Law and Its International Aspects; Seminar on International Trade Law. He has published nine books relating to international trade law, including New Legal Order Under the WTO: International Economic and Trade Law Studies V and Government Procurement Law and Government Procurement Agreement: International Economic and Trade Law Studies VII.*