

The Development of International Competition Advocacy

Abstract

Key Words : competition advocacy 、 feasibility 、 regulatory impact assessment

This research aims at exploring the feasibility of introducing competition advocacy to Taiwan. In this research competition advocacy is defined as activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms mainly through: its relationships with other governmental entities and by increasing public awareness of the benefits of competition. To achieve the research objective, comparative analysis are undertaken to review competition advocacy experiences in Taiwan, Australia, the U.S. and EU.

As a rule of thumb, means to improve competition advocacy include the following mechanism and arrangements: 1) Install mechanisms of mandatory consultation of the competition authority in legislative and regulatory procedures. 2) Enhance transparency of consultation procedures and oblige public authorities that do not follow the recommendations of the competition authority to justify their decision and eventually raise the controversy to a dispute before the political level of government. 3) Disseminate the benefits from competition both among government agencies and private constituencies and 4) Promote competition related issues through websites and press offices. On the factors affecting the effectiveness of competition advocacy to other government agencies, the timing of advocacy (e.g. ex ante or ex post) is the most important factor, which is followed by the level of bindingness of competition opinion and whether there is a mandatory requirement for competition consultation.

It is found that to date advocacy activities on regulations undertaken by Taiwan's Fair Trade Commission (FTC) are mainly ex post in nature. On the other hand, FTC has taken a active role in the liberalization of public utilities (energy, transportation and telecom) and other highly regulated markets (financial services, cable TV). In general, the FTC has performed well given the limitations it faces. In particular, the lacking of clear legal mandate for inter-agency advocacy and procedural requirement for competition consultation are the major obstacles hindering the FTC's ability to undertake competition advocacy.

Based on the findings, this research recommends the following policy initiatives to establish a harmonized regime for competition advocacy.

Regarding competition advocacy to the legislative authority and the legislation

process, it is recommended that the FTC should establish a communication and dialogue platform with the Organic Laws and Statutes Bureau of the Legislative Yuan and to promote the inclusion of competition assessment as a criterion in the Bureau's routine legislative analysis assignments. In the sense, the FTC would be in a better position to provide competition consultation in the process to the Bureau.

On the mechanisms to improve competition advocacy to other government agencies and regulators, currently the lacking of legal mandate limits FTC's ability to advocate actively in regulatory-making process *ex ante*, and invitation by other authorities for competition consultation is rare. As such, the first-best scenario will be the promotion of mandatory competition consultation obligation and binding opinion. This option, however, involves the adjustment of the status of the FTC in the administrative system. Thus the second-best scenario, which is also the recommendation of this research, is to introduce mandatory competition impact assessment from "within"--pushing for the inclusion of competition assessment in the Regulatory Impact Assessment (RIA) through the amendment of the "Guidelines for the preparation of draft legislation for the review by the Executive Yuan to include competition impact assessment. At the same time this research also suggest the amendment of the "Guidelines for the preparation of legislation and regulation of central government agencies" , to include competition impact assessment. In this reform approach, the FTA will be able to provide (still by invitation) consultation and comments *ex ante*.

In relation to competition advocacy to trade policy decision-making process, the existing trade policy-making process did not include competition assessment, in particular in the FDI review regime. This research thus suggests advocating for the inclusion of competition impact assessment in trade-related policy-making process. Finally internal organization of the FTC requires adjustment to underpin better competition advocacy works in the future. This includes the establishment of a *ad hoc* task force on competition advocacy and a advocacy consultation committee.

In conclusion, albeit limitations, FTA has performed well in advocating competition, especially in country such as Taiwan where competition is not highly valued in the traditional culture. The introduction of competition advocacy is feasible in Taiwan, yet substantial reforms are required to establish a more formally structured advocacy environment.