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**Session I : The objectives and operation of competition law
and policy**

*The objectives and operation of competition law
and policy from Chinese Taipei's perspective*

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Chairman Chih-Kang Wang's Speech
at the APEC Conference
on
Competition Law and Policy
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Chairman, Ladies and Gentlemen,

I have been asked by the organizer of this conference to address the issues covered in Topic I, i.e., the objectives and operation of competition law and policy, from the perspective of Chinese Taipei.

Chinese Taipei, after nearly ten years of policy debate, decided in 1991 to establish a legal framework to strengthen the implementation of its competition policies in the various areas now covered in its Fair Trade Law. The Law is a relatively new creation in the legal history of Chinese Taipei. Its broad coverage is a reflection of the legislators' perception of the pervasiveness of anti-competitive and unfair business practices in the economy. This development has been considered as an essential element of Chinese Taipei's political democratization and economic liberalization.

I, as the Chairman of the Fair Trade Commission since its establishment in 1992, have witnessed our effort to establish a new trading order under the Law; in fact, I am a part of that process. I would therefore consider myself well positioned, if not best positioned, to report to you our experiences as they relate to issues in Topic I. My report in the following would follow the guidelines given by the organizer of this conference.

Chinese Taipei in the past decade has gone through a series of reforms to bring its economy closer to a market-oriented economy where competition rather than the state dictates the direction of trade. In fact, this is an unavoidable trend. The economy has grown into one with such a size and complication that no government, no matter how competent, can effectively manage it through state planning or active intervention. In the period of 1981 to 1993, the average growth rate is 7.7% which is relatively high when compared with the neighboring economies; while the

average inflation rate is 2.2% and the unemployment rate is 1.7%. This is so, despite the world in this period of time experienced several recessions. We believe the economic liberalization policy we have pursued has contributed a great deal to this steady economic growth.

The process of economic liberalization in Chinese Taipei has several dimensions which coincide with the elements of competition policy as the New Zealand Ministry of Commerce has rightly set out in the discussion outline, that is, free trade, deregulation, privatization, competition law and industrial policy.

Before I go into the issues listed in the discussion outline and, as a matter of background, I like to give you a brief account of what have been done in Chinese Taipei in those areas covered by the broadly defined concept of "competition policy".

In the area of free trade, Chinese Taipei has made a series of efforts to open up its market since mid-1980s. In the years between 1984 and 1994, there had been seven rounds of self-initiated tariff reductions, resulting in a reduction of 70% in tariff rates. Specifically, the average nominal tariff rate for industrial products was reduced from 24.4% in 1984 to 6.5% in 1994, and the average rate for agricultural products was reduced from 34.82% to 21.63% in the same period of time. This, together with the tariff concessions Chinese Taipei has offered in conjunction with its GATT / WTO accession, would make Chinese Taipei's tariff level fall very comfortably within the range of the OECD countries.

On the non-tariff side, Chinese Taipei's past liberalization efforts and its accession concessions would result in full elimination of quantitative restrictions that are not GATT / WTO justified, with or without a transition period.

On services trade, the liberalization efforts in recent years have produced a very remarkable result which in return helps Chinese Taipei's further liberalization in the context of its accession to the GATT / WTO. Chinese Taipei's draft schedule of commitments on trade in services have been considered by its trading partners as one of the most comprehensive and entailing the highest degree of liberalization, when compared with economies that are similarly situated. The liberalization in this sector will be further deepened along with Chinese Taipei's de-regulation move in the various service sectors. This is a part of the ambition to mark Chinese Taipei a regional operation center.

Trade liberalization has brought more competitors into the local market. Local

consumers benefit from cheaper and better supply of goods and services. The local industry, however, faces adjustment pressure in order to meet competition at a global scale. We consider this a necessary process in order to mark our industries more competitive in the world market.

In the area of de-regulation, since mid-1980s, deregulation has been a primary focus of Chinese Taipei' economic policy. Before this de-regulation move took place, the economy was subject to intensive regulation which however had contributed to the steady and fast growth of the economy in the 1960s and 1970s. In those regulated sectors, market access had been restricted in order to avoid unnecessary waste of resources and to assist the industry to achieve the necessary scale of economy in the shortest time-span possible. The de-regulation move started with the lifting of the various foreign exchange and interest controls. The securities, banking, transportation, tele-communications and the various other markets were then opened to new entrants, local as well as foreign. In addition to market opening, the regulators have been gradually reducing regulation and other types of intervention either on their own initiatives or in conjunction with the Fair Trade Commission as the primary enforcer of the competition law.

In the area of privatization, state enterprises had been important instruments in the implementation of a growth-oriented economic policy in the 1960s and 1970s, especially in those areas where the private sector did not have the ability or was too risk-averse to invest in. However, the economy of Chinese Taipei has developed to such a stage that much of the function of state enterprises can be covered by the private-sector initiative. The inefficiency inherent in the operation of the state enterprises has gradually made them a burden of the state. To keep the inefficiently-operated enterprises alive would cost the economy dearly by providing them with a certain amount of monopoly power or injecting government funds into the operation to make up the loss. Privatization has been singled out by the policy makers as the only way out. So far, we have privatized, among others, stateowned steel, petrochemical, civil engineering, and property insurance companies; there are a number of state enterprises, including state banks, on the list for the second and third phases of the privatization process. For competition law enforcers, especially the Fair Trade Commission, the important thing to do is to monitor the operation of these enterprises in order to avoid abuse of their residual monopoly power.

In the area of industrial policy, one of the factors that have been generally

attributed to the economic success of Chinese Taipei is the careful formulation and implementation of industrial policies. Policy instruments include direct government grants, tax incentives and other forms of subsidies, together with government ownership and statutory monopolies and oligopolies, had been used to gear the direction of industrial development at what were perceived as the right directions.

All of these policy instruments have impacts on competition and in today's economic environment they must be, and have actually been, reassessed. Subsidies and other tools in a complex and internationalized economy such as Chinese Taipei are much less useful, yet may still create the same amount of anti-competitive effects as well as damage the sense of equity in the economy as a whole. The task for Chinese Taipei's enforcer of competition law and the maker of the industrial policy is to work together to seek a good balance between the need for industrial development and the benefit that effective or fair competition brings to the economy.

Ladies and gentlemen, I am not here to tell you why Chinese Taipei's economic development is a success. My purpose is rather to tell you what we have done and intend to do in the future with our competition law and policy in order to facilitate our further economic development and, at the same time, improve the welfare of our consumers.

To this end, let me first give you a rather brief account of our Fair Trade Law. As I have said, the Law has a broad coverage which reflects the legislators' ambition to have a comprehensive treatment of the issues involved. The Law provides rules for regulating monopolistic/ oligopolistic pricing and other behaviors, mergers, price fixing and other horizontal collaboration among competitors, and vertical restraints. In addition to those in the anti-trust category, the Law also provides rules for regulating unfair trade practices such as false advertising, commercial disparagement, passing-offs, and infringement of well-known marks. A legal basis is provided for the Commission to build a regulatory framework to deal with multi-level sales, a distribution mode that is gaining popularity in Chinese Taipei.

To ensure compliance, the Law gives the Fair Trade Commission the disciplinary power to issue the cease and desist order, to require correction of illegal practices and, in case of failure to comply with the order, to impose administrative fines. In addition, the Law accords private parties with civil and criminal remedies.

Despite the court and the prosecutor also have the competence, the enforcement largely falls upon the responsibility of the Fair Trade Commission. The Commission is an independent administrative agency with a certain amount of judicial power and function. It is equipped with investigative power for discovery of illegal practices.

I have separately prepared a paper that gives a more detailed account of the Fair Trade Law and the Fair Trade Commission, which will be circulated at a later stage.

I would then like to deal with the three main issues of (i) approach to competition policy, (ii) approach to competition law, and (iii) special factors considered in the formulation of the policy and application of the law, from the perspective of Chinese Taipei.

Approach to Competition Policy

It has been our position that liberalization, de-regulation, and privatization are parts of the broadly defined term of "competition policy". Competition law is one element, and probably the most important one, of the competition policy at a time when the economy has been much liberalized and the private sector and private economic activities have become the mainstream of the economy. However, in the earlier phase of economic liberalization, the primary objectives of competition policy, i.e. efficient allocation of resources and better choices for the consumers, can be more effectively pursued by trade liberalization and deregulation, supplemented by privatization. Trade liberalization and deregulation may be so effective as to change the whole structure of a particular sector or even several sectors of an economy; they are particularly useful in liberalizing a distortion-ridden or tightly controlled economy.

Competition law, given its case-specific approach, is less effective in the restructuring of a sector that is overly concentrated. This is particularly true in the case where the competition authority is not equipped with the power to order divestiture or dissolution in order to eliminate existing over-concentration. However, when a specific sector has been sufficiently liberalized by way of introducing new competitors into the market, competition law and its enforcement would play a primary role in maintaining the market order as well as avoiding distortion

caused by private practice. Moreover, a case-by-case assessment approach normally adopted by competition law could make the enforcement as precisely focused as possible.

In the case of Chinese Taipei, the Fair Trade Law does not give the enforcement agencies the authority to order divestiture or dissolution of pre-existing monopoly or oligopoly. The Commission does however possess the authority to coordinate with other regulators to accelerate the liberalization or de-regulation process of a particular sector. The exercise is to narrow down the application of a particular clause in the Fair Trade Law that exempts certain regulated industries from the application of the Law. I will deal with the details on the exemptions in the later part of my presentation today.

As to the relationship between industrial policy and competition policy, the Government of Chinese Taipei recently made known the Government's clear intention to give more weight to the competition policy as opposed to traditional industrial policy in the shaping of the overall economic policies.

I think the message that I would like to convey here is that competition policy is an important element, if not the most important element, of our over-all economic policy. Competition law, being a part of the competition policy, is expected to be aggressively enforced, even to initiate liberalization and/or de-regulation process that falls within the competence of other authorities.

Approach to Competition Law

The Fair Trade Law provides a two-track system for enforcement of the Law: the administrative system and the judicial system. The Fair Trade Commission is the core of the administrative system and is provided with the power to impose administrative sanction; whereas the judicial system provides civil remedy and in certain cases criminal remedy as well.

In the areas of collusion, monopolistic/oligopolistic practice, resale price maintenance, and most of the unfair trade practices such as false advertising, a private party can seek remedy by filing a complaint either to the Commission or the Court, or to both. The two can then independently process the case and possibly come out with different conclusions.

Therefore, a great deal of effort has been made to reach an understanding to

coordinate the two institutions, so as to avoid conflicts. In actual practice, the court has relied heavily on the advice of the Commission in the interpretation of the Law or even the application of the Law to specific cases.

As the firms in Chinese Taipei are mostly of small or medium size, the Commission's enforcement of the Law primarily focuses on the corporate conducts, such as collusion and vertical restraints, and take a more lenient position in the control of merger.

Although the Law adopts a per se rule in the regulation of horizontal collaboration (i.e. collusion), the strength of the rule has been weakened by (1) the Commission's exercising its discretionary power not to apply the rule to collusion that has little effect on the competition, and (2) the various exceptions allowed for different kinds of situation, such as export/import cartels, collaboration among small/medium sized firms, joint venture to develop technology or improve products, standardization of specification, recession cartels that are of beneficial effect to the economy as a whole and consistent with public interest.

The Law requires the Commission to apply the rule of reason in the case of vertical restraints (with the exception of resale price maintenance) and the broad category of unfair trade practices. The Commission in actual practice looks into the market share of the firm or the transaction involved, in order to ascertain whether the effect of the conduct requires the Commission's making administrative disposition.

Public interest consideration comes into play when the Commission is considering whether to grant exception to the per-se rule of collusion, and whether to initiate administrative proceeding on unfair or deceptive trade practices that are not specifically mentioned in the Law.

The merger rule requires the Commission to consider whether the benefit to the economy as a whole will exceed the anti-competitive effect of the intended merger.

Exemption from the competitive law is provided to certain conducts of firms in a regulated sector and holders of intellectual property rights. State firms, public utilities and transportation business, when approved by the highest administrative authority in Chinese Taipei, are exempted for a transition period of five years. The transition is to expire in February 1996.

Special Factors Considered in the Formulation of Competition Policy and Application of the Competition Law

Natural Monopolies

Natural monopolies normally refer to the situation where the size of the market is such that there is only one or two firms can operate efficiently. The phenomenon is more common in a closed market where demand and supply are restricted to local sources and outlets. When international trade occurs, the relevant market would be expanded and the conditions which give rise to natural monopoly will then distinguish. Therefore, it seems that the best solution to address the issue of natural monopoly is to open the market for international trade.

The issue then is whether the product involved is suitable for international trade. Distance and transportation used to be the main concern for developing international trade in certain specific products. However, given the state of the transportation and telecommunications industries today, there are few products that are not internationally tradable.

In Chinese Taipei today, natural monopolies exist more in the service sectors, such as securities central depository services, securities exchanges, wholesale of agricultural products, and certain telecommunications services. This is probably due to the nature of the services trade, i.e. simultaneous production and consumption and therefore geographical proximity between producers/suppliers and consumers, makes the trade less international. Advancement in the telecommunication technology may help reduce the significance of geographical locations of the parties concerned, and then to increase the possibility for international trade. This trend is evidenced by the intensive negotiation on liberalization of services trade in the Uruguay Round.

The Fair Trade Law does not give the Commission the direct authority to break existing monopolies, but does provide a basis for the Commission to coordinate with other agencies responsible for regulation these monopolies. The Commission has been monitoring statutory monopolies and constantly reviews the need for maintaining them, in conjunction with Chinese Taipei's continuous liberalization move. At the same time, the Commission has compiled a list of firms that may be considered as monopolies by using certain set standards, and watched very closely on their pricing and other business practices, especially those that are of discriminatory nature.

Regulated Sectors

Regulated sectors usually cover, among others, public utilities, transportation, telecommunications, banking, securities, and insurance. The Fair Trade Law does not give across-the-board exemptions for these sectors. Rather, the Law talks about specific acts of firms that are sanctioned by other laws as exemptions. The Commission therefore has established a task force to have a comprehensive examination of all the existing "other laws" with a view to defining the scope of exemptions that are permitted by the Law. The task force has seven study groups under it, and has so far held 51 meetings. There are 215 laws and regulations under review. At the same time, the task force also held conferences respectively with the Ministry of Economic Affairs, the Ministry of Transportation and Telecommunications, the Ministry of Interior, the Ministry of Education, the Council of Agriculture and other agencies to discuss revision or even deletion of provisions in the laws or regulations that are not compatible with the much liberalized economy of today. The process will continue in keeping pace with the changing economic environment.

State Firms

Chinese Taipei was a typical developing economy in the 1960s and 1970s in that many of the economic activities that involved high commercial risk were taken up by the state or its instrumentalities, including state-owned enterprises. As I have said, the general perception nowadays is that the private sector is now capable of covering almost all the economic activities, and state firms are no longer useful. The Fair Trade Law gives only a five-year transition period for specific conducts of state firms approved by the highest administrative authority; upon the expiry of the transition period, state firms will be subject to the Fair Trade Law as much as private firms.

In fact, the specific conducts that are entitled to the exemption are rather limited in number. The Commission has been very alert of the discriminatory practices of state firms or even the state itself in their procurement projects. The Commission has been enforcing the Law on the "private economic activities of public entities (including the state and its instrumentality, as well as state-owned firms)". Given the size of the government procurement market in Chinese Taipei, this part

of the Commission's function has proved to be most valuable in keeping a sense of fairness in the community and also to a certain extent lowering the procurement cost.

Other Exemptions and Special Considerations

The Fair Trade Law of Chinese Taipei also gives special consideration to intellectual properties by providing that the legitimate exercise of intellectual property right should be exempted from the application of the Law. The Commission's interpretation of this provision is that it is not broad enough to exempt whatever that is done by the right-holders. Rather, it is the Commission's view that competition law should apply in order to maintain a balance between the interest of the right-holders and the users. The balance is a floating one, particularly in an economy striving to turn itself from a technology-importer to a supplier or even an exporter. This is a delicate issue for us at the Commission.

The Commission is willing to consider favorably joint ventures for development of high technology, and is generally sympathetic to the special need of small/medium sized firms, especially when they encounter difficulty in facing counter-parties or competitors which are much larger in size. This is particularly an issue, when the local market begins to see the emergence of chain stores such as 7-11 or large super-markets or even hyper-markets. The traditional retail stores are facing extraordinary competitive pressure and may even be driven out of the market by the larger players. The Commission, though sympathetic, is yet to develop a framework to deal with the issue, in order to strike a balance between the need for efficiency inherent in the larger-scale distribution units and the non-economic benefit that small/medium sized firms bring to the community.

Conclusion

Chairman, in conclusion, I like to say that our experience with the structuring and implementation of our competition law and policy proves to be a positive one. Our liberalization policy and other policies directed at increasing competition in the local market have helped our steady growth at a time when the world faced recessionary pressure. The policies also create the necessary amount of pressure to

help structural adjustment that we need in order to be internationally competitive.

It is because of our experience, we in Chinese Taipei support APEC members' discussion on competition policy and law. The exercise, we believe, would serve at least two purposes: (1) facilitating trade and investment liberalization by identifying and structuring right approaches to deal with trade and investment barriers that are associated with members' competition policies and laws or the lack thereof, and (2) facilitating economic growth of individual members by identifying and structuring the right approaches to competition policy and law for members at different levels of economic development .

There is no doubt that a great deal of efforts has to go into the process in order to produce the expected result. We in Chinese Taipei are prepared to participate in the process to the fullest extent possible.

Thank you.