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Market Power in Chinese Taipei: Laws, Policies and Treatments

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Abstract. The experience of Chinese Taipei shows that opening up a previously protected market to new entrants can be a more effective and reliable way to enhance competition than regulating the behavior of dominant or monopolistic firms. Moreover, when opening up the market, the liberalizing measures adopted by government should be market-structure-neutral. That is, it should not try to dictate the direction and results of market competition. A more pressure-resistant mechanism should be designed to deal with market power, taking the form of a regime that is cross-sector, independent and collective in its decision-making, such as has been the case with Chinese Taipei's Fair Trade Commission.

Key words: Cable TV, competition law, market power, merger, telecommunications.

JEL Classifications: K21, L4, L5.

I. Introduction

The treatment of market power is an important issue in the formulation and implementation of competition policies. Different regimes have been designed and implemented in different economies to deal with the problem. We analyze the approach taken in Chinese Taipei, first by describing the prevalence of market power, and then investigating the government mechanisms that have been developed to deal with it, namely legislation, government agencies, and administrative and judicial enforcement. We next assess the effectiveness of these mechanisms. The paper concludes by deriving some lessons from Chinese Taipei for other East Asian economies about to develop their own competition policies and institutions.

II. The Formation of Market Power

1. The Prevalence of State-Owned Enterprises

Starting from a post-war agricultural economy in the 1950s, Chinese Taipei grasped the development opportunities provided by the cold war of the 1960s and made itself an export-oriented economy in the 1970s. By means of a relatively stable authoritarian political system, the ruling political power was successful in legitimizing its incumbency through economic prosperity until the 1980s. The uneven growth rate of economic and political modernization created a bottleneck in the late 1980s, setting off sweeping political reforms that last to the present. Liberalization and internationalization of the economy went hand in hand with rapid political change, which has led to much bewilderment among the general public and in certain areas of government as well (see Chu, 2001).

By and large, before 1990, the economy of Chinese Taipei had two main characteristics: export promotion incentives and protection of the domestic market. This produced a dual industrial structure. The export sector consisted of highly competitive firms and included many small and medium-sized enterprises, operating in industries such as food processing, wearing apparel, plastic products, and wooden products. In contrast, many domestic markets, for example gasoline, electricity, steel, telecommunications, banking, and insurance were dominated by state-owned enterprises or by giant private business groups. As one group of scholars put it, "The former enterprises were highly competitive and market driven, while the latter were oligopolistic and state directed" (Baldwin et al., 1995, p. 11). Under this system of authoritarian capitalism, Chinese Taipei had one of the largest state-owned sectors amongst all the non-communist countries (Chang, 1994, p. 201). In 1988, the revenues of state-owned enterprises still amounted to 15% of GNP.

Inefficiency in the domestic market was one of the main shortcomings of this authoritarian state capitalism (Liu, 1997, p. 74). The domestic market was foreclosed to a great extent, competition was scarce, and choices were limited. In view of this, and also because of the growing levels of unfair competition (by both private and state-owned enterprises) in the marketplace that were damaging the welfare of many consumers, it was declared in the cabinet meeting of June 26, 1981 that "The Fair Trade Law and the Basic Law on the Protection of Consumers need to be enacted as soon as possible so that the protection of consumers will have a comprehensive legal basis".[1]

2. The Market Concentration Ratio

The concentration ratio of individual markets may provide a useful preliminary indication of the market power therein. The Fair Trade Commission (FTC) was

[1] See Liu (1999, pp. 379–380). However, the Fair Trade Law was not enacted until 1991 (the Consumer Protection Law was enacted in 1994). It will be explained later in this paper why it took so long.

Table I. Market concentration ratio of selected products, 1993–1999

	Polyester		Cement		High-speed steel		Paper for printing		PTA (chemical)	
	CR3	CR5	CR3	CR5	CR3	CR5	CR3	CR5	CR3	CR5
1993	49.98	64.64	52.42	65.97	68.60	75.92	44.07	57.69	77.48	91.85
1995	50.74	67.61	53.50	64.78	74.40	80.53	41.47	54.09	76.10	92.84
1997	47.43	60.52	54.18	67.29	82.16	88.69	42.58	53.89	83.57	97.88
1999	37.30	48.56	55.11	66.04	80.98	86.45	40.65	51.69	86.30	99.65

Note: These markets are the third, and the sixth through the ninth largest markets in Chinese Taipei in terms of sales. The first, second, fourth and fifth largest markets (respectively, electric power, automobile gasoline, diesel, and fuel oil) are monopolized by a single state enterprise and hence are not listed.
Source: Fair Trade Commission of Chinese Taipei.

required by the Fair Trade Law (FTL) to announce a list of enterprises that had a market share in excess of 20% in their relevant markets.[2] It did so for the first time in 1993. Then over the years, by using its own database and that provided by the Ministry of Economic Affairs (MOEA), the FTC published the market concentration ratios of all non-service markets that contained the originally announced list of companies enjoying a market share in excess of 20%. There were 88 such markets, called “markets with high concentration ratios”. The publication of these ratios continued until 1999, when revisions in the Statistics Law forbade such disclosure.

Table I gives the three-firm and five-firm concentration ratios (CR) for the five product markets that were not monopolized by a single state enterprise and which recorded the largest sales levels in 1999. The changes in the concentration ratios of these markets show different patterns. Concentration in the high-speed steel market increased, most likely because the private firms in that market have faced difficulties in recent years as a result of the slump in the construction market, and therefore the giant state enterprise, China Steel Corp., became more dominant than before. The fall in concentration in the polyester market, where private firms dominate, was due mainly to increasing competition.

In the services sector (excluding public utilities), the list of monopolistic enterprises announced in 1993 included railroad passenger services, fixed line telecommunications, port services, airport ground services, long-haul bus services, life insurance, trading in commercial papers (bill financing), the stock exchange, financing of trading in stocks, and TV broadcasting.[3]

2 The Law was revised in 1999 and this obligation was deleted.

3 The FTC was also required by the original FTL to announce a list of monopolistic enterprises, defined as those firms that “have dominant power” (separately or jointly) in their relevant markets. Specifically, the thresholds were $CR1 > 0.5$ or $CR2 > 2/3$ or $CR3 > 3/4$, the firm’s own share is greater than 1/10, and its sales exceeded NT$1 billion (at the current exchange rate between the NT$ and the US$ of approximately 35:1, approximately US$30 million). Monopolists whose positions were granted by the law could be announced as such, even when they did not fulfill the above minimum

III. The Emergence of Government Mechanisms for Controlling Market Power

During the 1990s in Chinese Taipei, government mechanisms for controlling market power began to emerge, primarily within a general framework of competition laws. Recently, new mechanisms emerged in the process of regulating the cable TV market, which has become highly oligopolistic, and in liberalizing the telecommunications market, which had previously been a state monopoly. These are not the only sectors that have been liberalized or (re-)regulated, but both are very important domestic markets, and the regulatory instruments introduced for them have features that justify a careful discussion in this paper. We also discuss the FTL itself, which governs competitive behavior in general.

1. General Regimes: The FTL and the FTC

It took the Administration nearly five years to submit the FTL draft to the legislature for deliberation and enactment. From the time of its first draft, the FTL was meant to incorporate antitrust law and the law against unfair competition into one piece of legislation. However, the inclusion of antitrust provisions drew criticism from the business sector, and this resulted in a gradual reduction of the original 36 articles down to only eight as the drafting progressed. It took a total of four years and five months to complete the first reading. The external threat of trade retaliation from the U.S. played a decisive role in the passage of the FTL, pushing the legislature to complete the second and third readings in only two months.

At the same time the Organic Statute of the FTC was passed, which followed partially the examples of the U.S. Federal Trade Commission, and also the Korean and Japanese Fair Trade Commissions. The FTC has nine Commissioners, who serve a term of three years and may be re-appointed for one more term. All Commissioners are recommended by the Premier and appointed by the President. The number of Commissioners belonging to the same political party shall not be more than one-half of the total number of Commissioners. In the process of enactment, the status of the FTC was elevated from a bureau under the (MOEA) to an independent commission at the ministerial level.[4] The FTL and the FTC together constitute the first government mechanism that systematically deals with competition, market power, and the interplay between the two. The FTL is jointly enforced by the FTC, which has the right to investigate and to impose administrative remedies; the Justice Department, which can prosecute offenders suspected of criminal actions; and the civil court, which settles private disputes related to the FTL.

thresholds. No new announcement of monopolistic enterprises has been made since then and the 1999 revision of the FTL relieved the FTC of such an obligation.

4 Independence means that decisions on whether conduct violates the provisions of the FTL are made jointly by the Commissioners, and are not imposed from above by the Chairman of the FTC or the Premier.

A. Prohibition of Abuse of Monopolistic Market Power

According to the FTL, the formation of a horizontal cartel among competitors that is likely to affect the market functions of production, trading of products, or provision of services is illegal per se, unless it is found, following ex-ante investigations on a case-by-case basis by the FTC (Article 14), to be beneficial to the economy as a whole and in the public interest.[5] The issue of market power is addressed more specifically in Article 10 of the FTL, which forbids monopolistic enterprises from abusing their market power by directly or indirectly, via unfair means, preventing other competitors from competing; improperly setting, maintaining, or changing the prices of goods or services; or forcing trading partners to give unjustified preferential treatment. However, as of January 2002 only two cases have been found to be in violation of Article 10.

The FTC had been reluctant to find a violation of Article 10, due to a provision in it that directly imposes criminal punishment upon the finding of a violation. However it changed its attitude in 1999 when Article 35 of the FTL was amended, and the principle of "administrative actions prior to criminal sanctions" was introduced to replace the direct criminal sanction.[6] Accordingly, an offender will be criminally punished, with a maximum imprisonment of not more than three years or a fine of not more than NT$100 million (approximately US$2.86 million), only after it has been notified of its violation of Article 10 and it has failed to cease or rectify the denounced conduct, or resumed that conduct later.

In order to remind monopolistic enterprises not to abuse their market power, the FTL in its original version stipulated in Par. 2 of Article 10 that monopolistic enterprises shall be periodically announced by the FTC. In 1993, as noted above, the FTC announced 40 monopolistic enterprises across 33 relevant markets, of which two-thirds were state-owned.[7] This announcement was controversial. To some, it meant only a reminder, whereas others thought it to be the prerequisite for the application of Article 10. After the announcement was made, even though the FTL did not regard the mere existence of monopolies to be illegal, many of the monopolies included in it filed petitions to the FTC, claiming that the announcement had damaged their business reputations and asked the FTC to revise it. Moreover, the administrative procedure required for the announcement used up a very large amount of the administrative resources of the FTC. All this led to the deletion of the announcement provision in 1999. Nevertheless, the business community still felt threatened by the danger of being branded as monopolistic businesses by the

[5] There is no guideline on how these terms are to be measured. However, according to the practice of the FTC, the term 'in the public interest' has a broader coverage than the term 'beneficial to the economy as a whole' so as to include factors other than those of a purely economic nature, such as, for example, moral and other considerations (see Liu, 1998, p. 26).

[6] Administrative actions include the issue of cease and desist orders and of orders to rectify the wrongdoing, and the imposition of fines ranging from NT$50,000 to NT$50,000,000.

[7] See FTC Gazette (1993, pp. 1–5).

FTC, which further resulted in the addition of Article 5a in early 2002,[8] which explicitly excludes the following businesses from being recognized as monopolistic enterprises: those with less than 50% of the market share in a relevant market; or those (two) enterprises whose aggregate market share is less than two thirds; or those (three) enterprises whose aggregate market share is less than three quarters.[9]

B. Merger Control in General

The FTL adopts a "prior approval" regime for mergers of a certain size. However, given the relatively small scale of Chinese Taipei's firms and markets, merger control has little role to play. In the first decade of the FTC's operation, it rejected only two mergers.[10] Pursuant to the 2002 amendment, which extensively followed the recommendations of Liu (1998, p. 35), Article 11 now reads as follows:

"(1) Any merger that falls within any of the following circumstances shall be filed with the central competent authority:

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 year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

(2) The amount referred in No. 3 of the preceding Par. shall be determined by the central competent authority for financial and non-financial businesses respectively.

(3) After the acceptance by the central competent authority of the complete filing information, the filing businesses may not proceed with the merger until the 30th day has elapsed. If however the central competent authority deems necessary, it may shorten or prolong the period aforementioned upon written notification.

(4) The prolonging according to the last Par. may not exceed 30 days; the prolonged cases shall be decided in accordance with Article 12.

(5) If upon the expiration of the date, the central competent authority does not issue the written notification of prolonging according to the last sentence of Par. 3 or make the decision according to the last Par., the filing businesses may proceed with the merger, provided that none of the following circumstances occurs:

1. The period has been again prolonged with the consent of the filing businesses.
2. The information filed by the businesses contains falsehood".

The threshold amount was originally NT$2 billion and was raised to NT$5 billion in 2000. The FTC resolved on January 31, 2002 to adopt for financial

[8] This addition was in effect an "upgrading" of the Enforcement Rules of the FTC (refer to footnote 3).

[9] These thresholds are the same as those cited in footnote 3, but in 1993 they were stated in the administrative order issued by the FTC, while in the 2002 revision of the FTL, they became part of the law. The revision serves to appease fears that the FTC could by itself lower the thresholds in the future.

[10] These two mergers both involved cable TV businesses. They were ultimately both permitted by the FTC upon re-filing.

businesses a high threshold of NT$20 billion of revenue in the last accounting year and a low threshold of NT$1 billion, and for non-financial businesses the thresholds were set at NT$10 and NT$1 billion respectively. In other words, one of the merging financial businesses must have more than NT$20 billion in revenue and the other one over NT$1 billion, and one of the merging non-financial businesses must have more than NT$10 billion in revenue and the other one over NT$1 billion, or else they do not have to file a merger application with the FTC.

Article 12 of the FTL provides the FTC with extremely concise criteria for approving a merger application: it may not prohibit the merger if "the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint". In accordance with Article 13, if an enterprise fails to file a merger application, or proceeds with a merger despite disapproval of the application, the FTC may prohibit the merger, prescribe a period for the enterprises to split, dispose of all or a part of the shares, transfer any part of the operations, remove certain persons from positions, or make any other necessary remedies. If the enterprise further defies the disposition, the FTC may order the dissolution of the enterprise or the suspension or termination of its operations.

C. Merger Control in Cable TV

A good example of the operation of Chinese Taipei's merger law may be found in the cable TV market. Cable TV first appeared in Chinese Taipei around 1976 but was banned by the government soon thereafter, because the then ruling party and the state monopolized the TV market. It took the government 17 years to recognize the tremendous boom potential of the cable TV market and the need for "rules of the game". In 1993, the Cable TV Act was passed and the Government Information Office (GIO) was designated as the central competent authority. In 1999, the Act was amended and renamed as the Cable TV and Broadcast Act. Its aim was to curb the market concentration that has rapidly taken place and resulted in serious boycotts (used as a means of competition between the two major competitors[11]). Literally following the Cable Television Consumer Protection and Competition Act of 1992 in the U.S., the 1999 Act prescribes limits on both horizontal and vertical mergers in the cable TV market. For horizontal mergers, it is required that any system operator together with its related enterprises or other system operators under its direct or indirect control may not have more than one-third of the subscribers nationwide; may not own more than half of the system operators within one zone, provided that there is more than one system operator within the same zone;[12] or may not own more than one-third of the system operators nationwide (Article 21).

For vertical mergers, according to Article 42 of the Act, any system operator together with its related enterprises may not provide programs on more than one

[11] Two large integrated cable TV groups often resorted to boycotts against each other whenever they could not reach agreement on the terms of broadcasting each other's programs.

[12] The geography of Chinese Taipei is divided into 51 economically viable zones.

quarter of the channels available. The Act strives to maintain a minimum number of players in the cable TV market so that competition is possible. Understandable as this may seem to be from the viewpoints of cultural pluralism or grass roots democracy, its reasonableness, constitutionality and feasibility, especially in the light of the digital convergence between cable TV, broadcast and telecom, are nevertheless all found wanting.

With all the legal instruments at hand, the GIO had reacted powerlessly against the boycotts that resulted in the extensive interruption of program transmission. The FTC was forced to deal with the cable TV industry. It took a cautious step by first issuing guidelines on the activities of cable TV enterprises; it promulgated the Guidelines on the Review of the Joint Procurement of Programs, and the Guidelines on the Review of the Joint Sale of Programs. According to the former:

1. System operators that exceed the above-mentioned horizontal merger limits and undertake to procure programs jointly are deemed by the FTC to be violating Article 24 of the FTL, which generally prohibits enterprises from engaging in any deceptive or obviously unfair conduct that is liable to affect the trading order.
2. Enterprises selling programs to more than one-fourth of the channels available and demanding system operators within one zone to jointly procure programs are deemed by the FTC to be violating No. 4 of Article 19, which, when competition is likely to be lessened or fair competition impeded, prohibits any enterprise from causing another one to refrain from competing in price, or to take part in a merger or concerted action by coercion, inducement with interest, or other improper means.
3. Enterprises selling programs to more than one-fourth of the channels available and demanding system operators across different zones to jointly procure programs are deemed by the FTC to be violating Article 24 of the FTL.

Even more radical are the Guidelines on the Review of Vertical Mergers between Cable TV and Broadcast Program Suppliers and System Operators. These Guidelines first take account of the fact that the current market structure within the 51 zones is mainly monopolistic or duopolistic, and then evaluate the advantages and disadvantages of vertical mergers. In order to reduce disadvantages and fulfill the requirements for the approval of merger applications, Point 4 of the Guidelines demands that "enterprises taking part in the merger shall externalize the internal benefits and propose positive measures for the present and future to prevent competition-constraining results from being produced". Point 5 of the Guidelines further determines that in cases of merger by enterprises exceeding the market share limits, the disadvantages resulting from competition restraint obviously outweigh the overall economic benefit of mergers.[13]

[13] However, it is not a per se prohibition, because according to Point 6 of the Guidelines, support for the merger by the relevant competent authorities for industry policy, administrative regulation, communication and culture policy, or for technology development reasons, will be taken into consideration by the FTC.

The purpose of merger control lies in preventing the structural deterioration of a market, rather than being behavior-related. Behavior-related merger control cannot change market structure, certainly in the short run, and the ex-post monitoring of market behavior of enterprises is either extremely difficult or costly (Wiedermann, 1999, §21 Rdnr. 59). This is the reason why the German Law against Constraint of Competition disallows conditions imposed by cartel authorities as a prerequisite for the approval of mergers, to become a continuous behavior surveillance (Article 40(3)). The European Union holds the same stance, since merger regulations are presupposed to maintain a competitive market structure. As a consequence, any conditions attached to a merger must be related to market structure (Cook and Kerse, 2000, p. 204). However, the requirement by the FTC that positive measures to prevent competition-constraining results be proposed is obviously behavior-oriented. Such a requirement is likely to lead to an ongoing watch over cable TV enterprises and a disproportionate limitation of their freedom to do business. If such preventive measures meant that system operators must sell or dispose of their shares in the program providers, then after the sale, would the merger in question still be a vertical one? If the answer is no, then the Guidelines on the Review of Vertical Mergers between cable TV and Broadcast Program Suppliers and System Operators would become inapplicable. It is self-contradictory, if the application of a rule renders the rule itself inapplicable. Moreover, the FTC would be closing the door to vertical integration by cable TV businesses, which runs against the convergence tendency.

Another point of contention is the unparalleled requirement by the FTC that the internal benefits of mergers should be externalized, which implies that the merger alone will bring large incremental profits that should be shared with consumers. This assumption errs, however, on two points. First, cable TV enterprises are subject to tariff controls and therefore a merger will not automatically drive profits upward. Second, competition in the so-called 4C industries (cable TV, communications, e-commerce and computer network industries) is highly intensive and dynamic. Profits earned have to be reinvested. The immediate externalization of profits can amount to nothing more than short-lived price reductions and the long-term loss of quality and choice of services.

2. TELECOMMUNICATIONS LAW

The Telecommunications Law (TL) is the second law in Chinese Taipei that directly deals with the issue of market power. Telecommunications in Chinese Taipei were operated under a state monopoly by the Directorate General Telecommunication (DGT) until 1996, when the so-called three telecom laws were pushed through the Congress with unprecedented objections from the labor union of the DGT.[14] The DGT divested the service provision of telecommunications into the newly

[14] The Amendment Act to the Telecommunications Law, the Amendment Act to the Organic Statute of DGT and the Organic Statute of the Chunghwa Telecommunication Company.

established Chunghwa Telecom Company (CHT), and is now solely responsible for regulatory matters. The telecom market was then gradually liberalized on a 5-year timetable, including mobile communications and fixed-line telephony. Nevertheless, since the opening up of the telecommunications market, the incumbent carrier, CHT, has enjoyed formidable market power, commonly known as "residual monopolistic power", that needs to be counter-balanced for competition to take root.

A. A Segmented Market Structure with High Entry Barriers

The telecommunications market is artificially and highly segmented. The TL divides telecom operators into two groups, Type 1 (facility-based) and Type 2 (service-based). Type 1 businesses are further classified into mobile, satellite and fixed network services. The mobile telecom market is again divided geographically into regional and national, and business-wise into five classes – digital low-tier mobile phones (utilizing 1900 MHz frequency), cellular phones, trunking radio, paging, and mobile data. The fixed network services market is divided into integrated network, local network, long distance network, international network, and leased-circuit businesses. The TL foresees high barriers to entry in all these sectors.

Type 1 telecommunications businesses must be franchised by the Ministry of Transportation and Communication (MOTC), and Type 2 businesses require ex-ante approval from the DGT, regardless of the areas and the sectors they are in. While the unauthorized operation of Type 1 businesses is subject to criminal punishment of up to 3 years imprisonment (Article 57), the unauthorized operation of Type 2 businesses is punishable with administrative sanctions (a penalty in the amount of NT$200,000 to NT$1 million and confiscation of the equipment used for the provision of services[15]).

High barriers to entry also exist for the integrated fixed network market in the form of minimum capital of NT$40 billion, an implementation warranty fee of NT$4 billion payable to the MOTC, and a capacity of no less than 1 million numbers or communication ports prior to the provision of services (of which up to only 20% may use wireless local loop). Also, direct foreign equity on local telecom enterprises may not exceed 20% and direct and indirect foreign equity may not reach over 60%. The current telecom market structure is concentrated (five players in the mobile market and four players in the fixed network services market), the forces of competition are held back by all kinds of regulatory interventions, and hence the pressure and intensity of competition is only moderate. All this is ironically done in the name of opening up the telecom market.

[15] The US dollar equivalents are $5714 and $28,571 respectively.

B. Asymmetric Regulation of Dominant Carriers

One of the main themes of the 1999 TL amendment was the introduction of asymmetric regulation of dominant carriers. This approach was supported by two arguments. First, that it was more efficient to regulate major suppliers who could then discipline the minor players. Second, the WTO Group on Basic Telecommunications in the Reference Paper annexed to its report on February 15, 1997 stipulated that competitive safeguards against major suppliers should be maintained, and Chinese Taipei has promised to adhere to the requirement listed in the Reference Paper in its WTO accession negotiations.

According to the TL, asymmetric regulation covers the areas of interconnection, price-cap tariff control, and the abuse of market power by dominant carriers. The TL does not define the term "dominant carrier", but does authorize the MOTC to determine the identity of the dominant carriers. According to Article 5 of the Administrative Regulation Governing Tariffs of Type 1 Telecommunications Enterprises, Type I telecom enterprises that have control over essential facilities, or dominant market power over prices,[16] or subscribers or turnovers that account for at least 25% in the relevant market, are dominant.

A more inconspicuous source of asymmetric regulation is the Tariffs Attribution Scheme, which was introduced into the Administrative Regulation Governing Interconnection at the outset of liberalization in 1996. The scheme prescribes that mobile telecom companies have the right to determine tariffs, not only for mobile to mobile services, but also for fixed network to mobile communications, and also to hold proprietary rights over them. Fixed network telecom companies are obliged to collect tariffs and reimburse the mobile carriers in full, notwithstanding bad debts, and receive only an interconnection fee for this service. The mobile operators have every incentive to promote the use of mobile phones by subsidizing handsets, which makes Chinese Taipei a showplace for the newest handset models. Many young people especially subscribe to mobile services for the sake of the handsets alone and not for the service itself. This asymmetric condition has led to a penetration rate of over 80% in mobile telephony, perhaps the highest in the world.

C. Some Reflections

Since the second half of the twentieth century, regulation has become commonplace in industrialized societies and has tended to expand. This can be clearly observed in telecommunications markets around the world. Driven by the motivation to "create a free and fair environment for competition", the DGT in Chinese Taipei is more familiar, however, with technicalities than with market mechanisms and has over-confidence in the effectiveness of regulation. It has actively made and promulgated a wide range of rules and restrictions, casting a hard and fast regulatory net over the industry. Both the regulator and the telecom industry are

[16] The term "dominant market power" has not been defined.

trapped in the mire of regulation, which delays the natural rise and fall of market power. It would be more desirable to adopt a different approach. Before adding new regulations, the authority should ask itself the following three questions:

- Is what is needed more regulation or better implementation of existing regulations?
- Is what is needed more regulation or more protection of rights exercised by private parties?
- If what is needed is more regulation, are there adequate resources available to enforce it?

Moreover, asymmetric regulation as a means to enhance competition is nothing but a "Faustian Deal". It deprives the dominant carrier of the opportunity to compete fairly, on the one hand, and decreases the intensity, thereby distorting the results, of market competition, on the other, because it handicaps the powerful incumbent player by imposing a greater regulatory burden on it, in order to help the new entrants establish a beachhead. At the beginning, it can of course kick start competition, but it also lessens the intensity of competition and distorts it in the long run. As an example, the asymmetric Tariffs Attribution Scheme works in favor of the new mobile service providers at the expense of the incumbent fixed-network monopoly (CHT), and yet with the liberalization of the fixed-network services market, it dissuades new fixed-network service providers from making investments (see Chou and Liu, 2002). Furthermore, if the asymmetric scale were to be tilted in the other direction, both the profiting and losing sides would resort to heavy counterproductive lobbying activities.

IV. Assessment of the Effectiveness of the Mechanisms for Dealing with Market Power

1. The FTL and the FTC

The FTL itself is a useful instrument for dealing with the abuse of market power, especially after the 1999 amendment raised the upper limit of administrative fines by a factor of 50 to NT$50 million (US$1.43 million) and of criminal penalties 100-fold to NT$100 million (US$2.86 million). It is flawed, however, by not giving the FTC sufficient power to investigate and to break up monopolistic enterprises that have abused their market power. Generally speaking, considering its very limited budget,[17] the FTC has done a good job in fighting unfair competition. On the other hand, however, it has been too preoccupied with unfair competition (to the end of January 2002 it had found 1763 cases violating the FTL, of which 789 cases involved false or misleading representations and 565 related to deceptive or obviously unfair competition[18]) and therefore has been ineffective in curbing

[17] The FTC has an average budget of NT$300–400 million per year (around US$8.6–11.4 million).

[18] Amongst the most common types of conduct found by the FTC to be deceptive or obviously unfair are withholding important transaction information, manipulation of public tenders, and inappropriate warning letters alleging infringement of intellectual property rights.

market power. It has accordingly been suggested that the FTC should be selective in choosing which cases to deal with, and not be bound by the complaints filed by enterprises and by consumers (Liu, 1998, p. 8).

The FTC has been an active advocate within government for deregulation and regulatory reform. The Ad Hoc Committee of 461 (Par. 1, Article 46)[19] and the Ad Hoc Committee to Deregulate to Further Market Competition led to a comprehensive adjustment of economic laws in Chinese Taipei, towards the direction of achieving a competitive market environment. However, there are undeniable drawbacks from which the FTC suffers. First, a term of three years for Commissioners is too short, because a long regulatory tenure can reduce the uncertainty associated with resetting regulatory parameters and enhance the personal accountability of regulators. Second, the simultaneous expiration of terms is bad for continuity of analysis and the accumulation of experience.[20]

There are cases where the FTL and competition policy intersects with trade policy and industry policy, most notably with dumping. Dumping can at the same time violate both the FTL and the Foreign Trade Law. Both laws can be applied to dumping, because they have totally different legal consequences (Liu et al., 1998, p. 50). However, the FTC has never used the FTL to handle dumping cases. On the one hand, no dumping complaints have been filed by private enterprises with the FTC, and on the other, the FTC sees itself as subservient to the Ministry of Finance on dumping matters.

2. The Telecommunications Law

The TL copied many competition rules from the FTL when it was amended in 1999. It does not preempt or exclude the application of the FTL. The disadvantage of such duplication in the TL is that the FTC will hold itself back due to respect for MOTC and the DGT, yet these two bodies know little about competition and the rules for competition. Their handling of cases involving the abuse of market power can be very time-consuming, indecisive, and ineffective. Moreover, the MOTC and the DGT can be easily captured by interest groups due to their bureaucratic structure. The idea that the TL should resemble the FTL probably comes from the WTO Reference Paper referred to above, but this paper is directed only at countries without a competition law. Suppose that the TL contains no competition rules and people can only turn to the FTL and the FTC, and the FTC has the sole responsibility of regulating competition in telecommunications markets. It is likely

[19] Article 46 (1) of the FTL originally provided that “the provisions of this Law shall not apply to any act performed by an enterprise in accordance with other laws”. This regulation was too broad in scope and was amended in 1999. It now reads “Where there is any other law governing the conduct of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this law”.

[20] This is particularly obvious in the area known as the 4C industries, because it takes many years for the Commissioners to build the expertise and credibility needed.

that the FTC might be slow at the beginning of such a regime, but it could be more consistent, pressure-resistant, powerful and effective in the longer term. It is therefore advisable to abolish the current dual approach and let the DGT concentrate on the technical issues.

In order to deal with the convergence that is reshaping the landscape of digital network industries, the Administrative Yuan has decided to set up the so-called Telecommunications, Information and Broadcast Commission (TIBC) that integrates the GIO and the DGT and will be independent and operate at ministerial level, just like the FTC.[21] However, following the transition of government due to the presidential election in 2000, attitudes and policies have become uncertain. It will only become clear when the Government Reorganization Committee summoned by the President produces an agenda. It seems that little thought has been given to the separation of competence and cooperation between the TIBC and the FTC, and this might cause problems in the future.

V. Conclusions

The following conclusions can be drawn from the experience of Chinese Taipei in dealing with market power. They may serve as lessons for other member economies of the East Asia region as they strive to develop their competition policies and institutions:

1. The state is the biggest player in the market and the market is deeply influenced by the state. Although the activities of most dominant state-owned enterprises are restrained by their competent authorities to not be abusive, particularly in the determination of their prices, these state enterprises can still treat their trading partners unfairly. Cross-government-agency consultation was originally needed when the FTC tried to remedy such behavior, but this was often fruitless if the other government agencies (such as MOEA or MOTC) had a strong position in the cabinet and were not willing to cooperate with the FTC. However, as noted in footnote 19, the FTL has prevailed over other competition-related laws since 1999, and the FTC can now adopt a tough stance if it wishes and can proceed without concern for other government agencies and the laws that they administer.
2. Opening up a previously protected market to new entrants has proved to be a more effective and reliable way to enhance competition than regulating the behavior of dominant or monopolistic firms.
3. The corrective measures adopted by government to liberalize a previously monopolized market should be competition-neutral, i.e., it should not try to dictate the direction and results of market competition. The regulator and consumers as a whole will be better off when market forces are allowed to come

[21] This is a reasonable concept because an independent commission with its commissioners from different professional backgrounds is more competent and pressure-resistant than a traditional single-interest bureaucracy.

into play to a greater extent. Whenever market power is accumulating and the functioning of market is hampered, the best cure is to lower entry barriers, rather than creating more detailed regulation.

4. Mechanisms designed to deal with market power should take the form of a regime that is cross-sector, independent and collective in decision-making, because it is more general in scope, more pressure-resistant and often better informed. Chinese Taipei's Fair Trade Commission has been a good example.

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