

Competition law fact sheet

Taiwan

August 2024





Main features of the law

Prohibition on restrictive agreements, concerted practices, abuses of a dominant position, unfair trade practices and M&A activities that restrict competition in Taiwan

Mandatory merger control regime

Administrative and possible criminal sanctions



Enforcement trends

Focus on cartels, resale price maintenance and unfair trade practices (especially related to misleading advertisements)

Fewer cases relating to abuse of dominance

Substantive provisions

Main rules

The Fair Trade Act of 2017 (the **Act**) is the primary piece of legislation regulating competition law in Taiwan and is enforced by the Fair Trade Commission (the **FTC**).

The Act provides for prohibitions on various types of restraints of competition and unfair trade practices, mainly:

- A prohibition on concerted actions (i.e. agreements between competitors or cartels), resale price maintenance and other business practices restricting competition (e.g. refusals to deal, discriminatory treatment, tie-ins, exclusive dealing, restrictions on territories, customers, use, or otherwise);
- A prohibition on monopolies and abuses of dominance;
- A prohibition on mergers and acquisitions that restrict competition (and an associated merger control regime); and
- A prohibition on unfair trade practices.

Concerted actions, resale price maintenance and other restrictive business practices

Consistent with international practice, the Act prohibits restrictive agreements and practices between competitors ("horizontal" agreements, referred to as "concerted actions" under the Act) as well as between suppliers and resellers ("vertical" agreements).

In respect of horizontal agreements, Article 15 of the Act prohibits competitors from engaging in "concerted actions" whereby competitors jointly determine the price or quantity of goods or services on the market, share markets or otherwise agree on terms that would restrict their respective business activities (such as, for instance, on technology, facilities or trading counterparts). "Concerted actions" include contracts, agreements or any other form of mutual understanding, whether legally binding or not, and also include decisions by trade associations. Parties to a concerted action can, however, apply to the FTC for an exemption if they can demonstrate that their joint action or cooperation is beneficial to the economy as a whole and is in the public interest (for instance, R&D cooperation or standardisation agreements that would help reduce costs, improve quality, or increase efficiency can be exempted under the Act).

As regards vertical arrangements, Article 19 of the Act prohibits resale price maintenance (i.e. retail price restrictions imposed by a supplier on its resellers). Resale price maintenance can hinder competition between resellers on the resale market by depriving the resellers of their freedom to determine the prices of the products or services they are reselling. The prohibition

applies unless it can be shown that there are justifiable reasons to impose price restrictions. This can notably be the case when the resale price restrictions can be shown to incentivise resellers to increase the efficiency or quality of their pre-sale services; to prevent some resellers from free riding off the pre-sale efforts undertaken by other resellers; to encourage resellers to promote new products, services or brands (i.e. by ensuring their promotional efforts are commercially profitable or rewarded); or when resale price restrictions can enhance competition between brands. Consistent with international practice, the FTC does not consider that the prohibition under Article 19 applies to resale prices that are only suggested by the suppliers to the reseller or to agency or consignment contracts as in such cases the sale is directly concluded between the supplier and end-customer with the agent or consignee bearing no commercial risks in relation to the sale.

In addition to the above prohibitions on horizontal and vertical arrangements, Article 20 of the Act prohibits certain specified conduct that is likely to restrain competition. In a departure from international practice, the following prohibitions do not necessarily only apply to enterprises holding some degree of market power:

- Causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such enterprise or preventing such enterprise from participating in market activities in the future (e.g. boycotting);
- Treating another enterprise discriminatively without legitimate reasons (legitimate reasons include, for instance, differences in costs or transaction value, or credit risk of the trading enterprise). The FTC has however clarified that such prohibition would mainly be relevant to enterprises with a certain degree of market power;
- Preventing competitors from participating or engaging in competition by inducement through low prices (i.e. setting prices below costs or at obviously inappropriate levels in order to hinder competition or prevent competitors from competing on the market) or other improper means;
- Causing another enterprise to refrain from competing on price, or to take part in a merger, a concerted action, or a vertical restriction by coercion, inducement with interest, or other improper means; or
- Imposing improper restrictions on its trading counterparts' business activities as part of the requirements for trade engagement (such as tie-in sales, exclusive transactions, regional or customer restrictions, restrictions on use and restrictions on the business activities of trading counterparts).

Monopolies and abuse of dominance

Article 9 of the Act provides that "monopolistic enterprises" shall not engage in the following forms of abusive conduct:

- Directly or indirectly preventing any other enterprises from competing by unfair means (such as preventing upstream suppliers from selling the same input to competitors to prevent competitors from manufacturing similar products);
- Improperly setting, maintaining or changing the price for goods or the remuneration for services (such as selling its products at prices lower than the variable costs to force another business to withdraw from the market);
- Making a trading counterpart give preferential treatment without justification; or
- Engaging in other abusive conduct by relying on its market power.

A monopolistic enterprise is any enterprise that faces no competition or that has a dominant position that enables it to exclude competition in a relevant market. Under the Act, there can be more than one monopolistic enterprise in a relevant market, if the entities do not in fact engage in price competition with each other and if they, as a whole, face no competition or together hold a dominant position enabling them to exclude competition.

The *Enforcement Rules of the Fair Trade Act of 2022* set out factors that are relevant in determining whether an enterprise is monopolistic, including its market share and ability to influence prices, as well as the existence of substitutable goods or services in the market, which can be through imports or exports, or of any barriers to entry preventing or hindering competitors from entering the market. The Act provides for market share "safe harbours" and an enterprise will not be considered a monopolistic enterprise in the absence of the following circumstances:

- Where an enterprise has a market share in the relevant market of less than half of the market (i.e. less than 50 per cent);
- Where the combined market share of two enterprises in the relevant market is less than two-thirds of the market (i.e. less than 66.67 per cent); and
- Where the combined market share of three enterprises in the relevant market is less than three-fourths (i.e. less than 75 per cent).

Even where one of the above circumstances exists, where the market share of an enterprise in the relevant market does not reach 10 per cent or achieves less than NT\$2 billion (approx. US\$62 million) in total annual sales in the preceding fiscal year, such enterprise will not be considered to be monopolistic.

Mergers and acquisitions that restrict competition

The Act provides that the FTC may prohibit a “merger” transaction if the restrictive effect on competition outweighs its overall economic benefits. Under Article 11 of the Act, “merger” transactions shall be notified to the FTC before their implementation if any of the following thresholds are met:

- As a result of the transaction, any enterprise will acquire a market share of at least one-third of the market (i.e. not less than 33.3 per cent); or
- An enterprise participating in the transaction holds a market share of at least one-fourth of the market (i.e. not less than 25 per cent); or
- (i) The combined global turnover of the parties participating in the transaction in the last financial year exceeds NT\$40 billion (approx. US\$1.2 billion) and (ii) the Taiwanese turnover of each of at least two parties exceeds NT\$2 billion (approx. US\$64.1 million) in the last financial year; or
- (i) The Taiwanese turnover of one party exceeds TWD 15bn (approx. US\$481.2 million) and (ii) the Taiwanese turnover of a second party exceeds TWD 2bn (approx. US\$64.1 million).

Higher turnover thresholds apply to financial institutions.

The types of transactions that fall within the scope of the merger control regime include:

- The acquisition of more than one-third (i.e. 33.3 per cent) of the total voting shares or total capital of another company;
- Where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
- A merger;
- An arrangement with another enterprise for joint operation on a regular, ongoing basis, or the management of another enterprise's business based on a contract of entrustment; and
- Where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

The FTC will assess whether to approve or prohibit a merger by weighing the overall economic benefits against any restriction in competition that may result from the merger, and it may impose conditions for clearance should it deem this necessary to ensure that the overall benefits of the merger outweigh its restrictive effects.

It should be noted that in June 2023, the FTC published draft amendments to the Act for consultation, which include, among other things, a proposal to remove the existing market share-based notification thresholds and to retain only the sales value-based threshold, with a view to improving certainty for the parties on their merger filing requirements and to reducing compliance costs. As of the date of this publication, the amendments are yet to be approved by the Executive Yuan and the Legislative Yuan (Taiwan's respective highest executive and legislative bodies), with such approval required before the amendments can be promulgated and become effective.

Unfair trade practices

Articles 21 to 25 of the Act prohibit unfair trade practices including false or misleading advertising, counterfeiting, competing for trading opportunities through improper offerings of gifts or prizes, making false statements capable of damaging other's business reputation and any other deceptive or obviously unfair conduct.

Penalties

Where an enterprise violates the prohibition on concerted actions, resale price maintenance, other restrictive business practices (under Articles 15, 19 and 20 of the Act) or abuse of dominance (under Article 9 of the Act), the FTC can impose a corrective order requiring the enterprise to cease the violation or to rectify such violation. In addition, the FTC may impose an administrative fine of no less than NT\$100,000 (approx. US\$3,200) and up to NT\$50 million (approx. US\$1.6 million). In case of a serious violation of the prohibition against concerted actions (Article 15 of the Act) or abuse of dominance (Article 9 of the Act), the maximum amount of fines can be increased to up to 10 per cent of the total revenue of the enterprise in the previous financial year.

As regards merger control, the FTC has a wide discretion to impose sanctions on enterprises in violation of merger filing regulations, including prohibiting the merger, ordering the transfer of shares or businesses, or ordering that the relevant business operations be terminated. In addition, the FTC may impose an administrative fine of not less than NT\$200,000 (approx. US\$6,400) and up to NT\$50 million (approx. US\$1.6 million).

In case of violations of the prohibition against unfair trade practices, the FTC can impose a corrective order requiring the enterprise to cease the violation or to rectify such violation and can impose administrative fines ranging from NT\$50,000 (approx. US\$1,600) to NT\$25 million (approx. US\$800,000).

Lastly, fines can also be imposed for failure to abide by the FTC's orders (repeated failures could lead to criminal sanctions), refusal to cooperate or obstruction of the FTC's investigation, or provision of misleading information.

Extraterritorial effect

The Act has an extraterritorial reach in that it applies to anticompetitive conduct outside of Taiwan that has the effect of eliminating or restricting competition in Taiwan.

The Act's merger control provisions are also applicable to foreign mergers where the parties meet the specified thresholds in Taiwan. Changes to the merger control regime were, however, introduced in June 2023 to exempt mandatory filing requirements for purely extraterritorial joint ventures which do not carry out any economic activities within Taiwan (e.g. no sales into Taiwan by the joint venture), further streamlining the approach to merger control enforcement in line with international practice.

Enforcement regime

Public and private enforcement

The competition authority responsible for enforcing the Act is the FTC. The FTC has the power to investigate, issue orders and decisions, and impose administrative sanctions against parties involved in anticompetitive arrangements, abuse of dominance and unfair trade practices. It also has the power to investigate, approve and reject merger and acquisition transactions as well as impose administrative sanctions on failures to notify reportable transactions. There is no exclusion of the general application of the competition legislation in Taiwan, except that the Act expressly provides that it shall not apply to the exercise of rights under the Copyright Act, Trademark Act, Patent Act or other intellectual property-related legislations.

The Act provides that a third party who suffered damages as a result of infringement of the Act has the right to make a civil claim for damages against the infringer. The court may award compensation in excess of the actual amount of damages arising from an intentional infringement, up to three times the amount of proven damages (similar to treble damages under the United States private enforcement regime).

Investigation powers

The FTC has the power to require parties to appear to make statements and submit information and documents and to seize documents obtained from the investigation that may serve as evidence. The FTC does not currently have the legal right to conduct unannounced on-site searches ("dawn raids") although it has the power to dispatch personnel for any necessary inspection of the office, place of business, or other locations of the relevant organization or enterprises when investigating alleged violations of the Act.

Leniency

The Act provides for a leniency regime for enterprises violating the prohibition on concerted actions. The FTC may grant full immunity or a reduction in fines to such a leniency applicant if, before the FTC becomes aware of the illegal conduct, the enterprise voluntarily reports to the FTC details of such illegal conduct and provides evidence and assistance to the FTC during the investigation. Leniency is also available to enterprises that provide specific evidence that assists the FTC during an investigation. Only up to five enterprises can be eligible for immunity or a reduction in fines. While the first applicant may be granted full immunity, the fines for the subsequent applicants can be reduced as follows: by 30 to 50 per cent for the second applicant, by 20 to 30 per cent for the third applicant, by 10 to 20 per cent for the fourth applicant and by 10 per cent or less for the fifth applicant. Further details of the leniency regime are set out in the *Regulations on Immunity and reduction of fines in illegal concerted action cases of 2015*.

Recent enforcement trends

Mergers and acquisitions

On average, around 60 merger transactions are notified to the FTC annually, including foreign-to-foreign mergers. On average, there have been less than two published sanction decisions annually for failure to seek clearance for mergers in the last ten years, and the fines imposed are generally relatively modest in comparison to other jurisdictions. In 2024, as of the date of publication, the FTC only published two sanction decisions for failure to notify reportable transactions, with fines imposed on the parties totalling NT\$20 million (approx. US\$640,000) and NT\$100 million (approx. US\$3.2 million), respectively.

The table below provides an overview of the number of merger cases reviewed by the FTC in the last decade.

Year	Notification	Clearance		Prohibition	Review terminated
		Unconditional	Conditional		
2014	66	29	4	0	33
2015	63	24	2	0	35
2016	69	33	0	0	35
2017	44	9	2	0	33
2018	67	25	1	1	40
2019	60	26	0	1	33
2020	62	33	2	0	27
2021	69	31	1	0	37
2022	69	21	1	0	47
2023	46	28	3	0	15

Source: Statistical Yearbook of the Fair Trade Commission.

Horizontal and vertical arrangements

Consistent with international practice, the FTC has prioritised enforcement against the more severe forms of anticompetitive arrangements between competitors, i.e. cartels. The FTC has imposed fines against participants in cartels in more than 50 cases in the last decade. The FTC has also been active in pursuing anticompetitive resale price maintenance practices, with more than 25 published sanctions in the last ten years. Sectors caught by the FTC’s enforcement include daily necessities (food, home appliances, pet products and tobacco etc.), energy, construction materials, healthcare, electronics and professional services (legal, accounting, engineering, tutoring and security etc.). Whilst sanctions were mostly imposed on local Taiwanese companies, international companies were also sanctioned for anticompetitive conduct that took place in Taiwan. In certain instances, individuals and trade associations were sanctioned, particularly where they took the lead in the anticompetitive conduct.

Fines imposed are typically below the maximum amount of NT\$50 million (approx. US\$1.5 million), with the exception of a few cases where the FTC chose to impose fines based on the percentage of the total revenue of the enterprises involved on account of the seriousness of the infringement. For instance, in 2015, the FTC imposed fines totalling NT\$5.79 billion (approx. US\$190 million) on aluminium and tantalum capacitor manufacturers for exchanging competitively sensitive information and engaging in concerted practices for a prolonged period of ten years. In 2013, fines amounting to NT\$6.32 billion (approx. US\$200 million) were imposed on power producers for discussing strategies in response to

Taiwan Power Company’s requests for price reductions (the total fine was reduced to NT\$6.007 billion (approx. US\$190 million) following an appeal by the parties).

Monopolies and abuse of dominance

Compared with the enforcement against anticompetitive arrangements, the FTC has published relatively few decisions in relation to abuse of dominance (only four decisions in the past decade), covering mainly the food and technology sectors. Fines, generally ranging from NT\$1 million (approx. US\$32,000) to NT\$126 million (approx. US\$4 million) were imposed on both local Taiwanese companies and international companies. The most significant sanction of all was imposed in 2017 on a manufacturer of computer chips – the supplier was initially fined NT\$23.4 billion (approx. US\$750 million) for refusing to license its technology to other industry players, although it later settled with the FTC at a significantly lower fine of NT\$2.73 billion (approx. US\$90 million), 10 months after the sanction decision was published.

Unfair trade practices regarding misleading advertisement

Paragraph 1, Article 21 of the Act states that no enterprise shall create or use false or misleading representations or symbols related to goods that could influence trading decisions or be used in advertisements, or in any other way that is made known to the public. The FTC has imposed sanctions in a total of 71 cases in 2023 on companies that have placed misleading advertisements per Article 21 of the Act. The fines imposed were generally below NT\$200,000 (approx. US\$6,000), but real property developers faced higher fines of around NT\$1 million (approx. US\$31,000).

Key information

Relevant legislation

Fair Trade Act of 2017

Competition authority

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Relevant officials

Members of the Commission:

- Ms Lee May (Chairperson)
- Mr Chen Chih-min, Andy (Vice Chairman)
- Ms Kuo Shu-jen
- Dr Hong Tsai-lung
- Mr Shih Chih-chung
- Ms Yen Ya-lun
- Mr Lee Shih-jung

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