Using Leniency to Fight Hard-Core Cartels

Taiwan Fair Trade Commission

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Presented to

the First Asia Friendly Call on Leniency

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I. Outline

- Background
- Tools for Investigating Hard-Core Cartels
- Sanctions vis-à-vis Hard-Core Cartels
- Case Resolution without the Leniency
- Challenges and Changes
II. Background-

- The top enforcement priority is hard-core cartels. The administrative penalties imposed on companies that breach the competition law have been the most significant one among all kinds of restricted competition cases.

- The leniency program was adopted in November 2011, just more than one year.

- Reasons for implementing the leniency program:
  - Links to international experiences- The leniency policy proves very successful in fighting cartels, along with the other detection and investigation tools.
  - Participating in the ICN cartel workshops has been one of the most important sources for the Commission to grasp the international experiences related to the leniency program.
  - Peer pressure- Following the recommendations by the OECD Competition Committee, 2006
Deficiencies of investigating hard-core cartels before the 2011 amendment of the Law:

- Tools for investigating cartels are similar to those for other types of cases, e.g. abuse dominance, concerted actions and unfair competition cases.
- Investigators do have the right to request that interviewees provide facts-related materials, but they do not have the right to proceed with a raid, search or other judicial investigation.
II. Background-
Sanctions Before the 2011 Amendment

Sanctions were insignificant and were limited by the statutory cap under Article 41 of the Law before the 2011 amendment of the Law:

- For the first violation:
  - NT$25,000,000> Administrative fines >NT$50,000
  - approx. between US$833,333 and US$1,666

- For a repeated offence:
  - Less than 3 years imprisonment
  - A criminal fine less than NT$100,000,000
III. New Tools – Leniency Program

After November 2011:

- Creating the legal basis:
  - paragraph 2 of Article 35-1 of the Law: The Commission may grant a reduction of or exemption from administrative penalties to be imposed in violation of Article 14 of the Law

- Enacting the settlement procedure:
  - “Regulations on the Immunity and Reduction of Fines in Illegal Concerted Action Cases”
III. New Tools – Immunity and Reduction of Surcharges

Ever since November 2011:

- Immunity of Surcharges:
  - For the 1st Applicant
  - The Evidence provided shall allow the Commission to initiate a cartel investigation

- Reduction of Surcharges: in the period of investigation
  - 1st applicant: -100%
  - 2nd applicant: -30%~50%
  - 3rd applicant: -20%~30%
  - 4th applicant: -20%~10%
  - 5th applicant: -10%
III. New Sanctions-Based on the Turnover

After November 2011: Paragraph 2 and 3, Article 41

The Commission may impose an administrative fine of up to 10 percent of the total sales of the violators involved in any form of horizontal agreement
IV. Case without Leniency Program-

- 4 major CVS chain stores (7-11, Family Mart, Hi-Life, OK) colluding to increase the prices of all kinds of milk coffee within the same week of October 2011
  - Market structure and other factors:
    - More than 8,500 stores in 36,006 square kilometers
    - Low-price strategy
    - Sales of coffee is not the main part of total sales
    - Self-brand
  - Total penalties for 4 CVS chain stores:
    » NT$20,000,000 (US$666,666)
- “Coffee Clause”
IV. “Coffee Clause”

“Coffee Clause”

- While the legislators ratified the Commission’s proposed amendment to raise the maximum possible fines for hard-core cartels to 10 percent of the turnover, and to introduce the leniency program into the Law, at almost the same time, the Commission decided to fine four major convenience chain stores NT$20 million in total for colluding to increase the prices of milk coffee, such as lattes, cappuccinos and caramel macchiatos, by NT$5.

- “Coffee Clause” indicates that the severe punishment can provide cartel members with the incentives to apply the leniency treatment and can deter such violations.
V. Challenges and Chances

✧ Cultural problems: Respect for white-collar people:

- Most suspected cartel cases have been treated like white-collar crimes. Companies or individuals with well-educated may have been associated with wealthy or influential backgrounds so that they are able to gain the sympathy from the public easily.

- When these connections do exist, they often not only ensure the favorable treatment of the individuals involved, but also make it possible for laws to be drafted or for resources to be allocated or shifted to ensure that such crimes are not defined or enforced too strictly.

✧ Lacking in international cooperation to combat cartels
V. Challenges and Chances

- To learn from the international competition community
- To build the capacity of cartel investigations with lenient treatment
- To introduce additional tools
Thank you for paying attention.

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