**Template pursuant to Section 3 (a) of the**
**ICN Framework on Competition Agency Procedures**

**Taiwan Fair Trade Commission**

The following template is submitted by the ***Taiwan Fair Trade Commission*** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

## I. Introduction

*Please add brief presentation/link to agency website.*

The Taiwan Fair Trade Commission (the Commission) is the competent authority in charge of the Fair Trade Act (the Act) and the Multi-level Marketing Supervision Act (the MMS Act) in Taiwan, R. O. C.

The Commission is charged of drafting fair trading policy, laws, regulations, and investigating and handling various activities impeding competition, such as monopolies, mergers, concerted actions, and other restraints on competition or unfair trade practices by enterprises. Moreover, it is also responsible for developing policy, completing regulations as well as investigation cases concerning multilevel marketing.

The website of the Commission is: https://www.ftc.gov.tw/ (in Traditional Chinese) or https://www.ftc.gov.tw/internet/english/index.aspx (in English).

## II. Laws, Regulations, and Policies relevant for the implementation of the CAP

*For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.*

*Please update your Template reflecting significant changes as they relate to the CAP, as needed.*

### b) Non-Discrimination

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

There is no difference between foreign and domestic enterprises in the investigation and enforcement policies and procedural rules. To deal with procedure matters involving with foreign enterprises, the Commission has issued the "*Fair Trade Commission Directions on Cases Involving Foreign Enterprises.*" (https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=754&docid=15639)

Item 4, Paragraph 8 of the Directions stipulates that, the Commission may proceed to conduct the investigation in accordance with Article 27 of the Act. However, the Commission shall have an overall consideration of foreign sovereignty, the principle of reciprocity, and whether compulsorily demanding the concerned foreign enterprise to cooperate will achieve the goal of its investigation.

Furthermore, Paragraph 12 of the Directions sets that, when materials submitted by a foreign enterprise involve trade secrets, they shall be treated in the same manner as those submitted by a Taiwanese enterprise in accordance with the Commission's relevant regulations on confidentiality.

**c) Transparency and Predictability**

*i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*

*ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*

*iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*

*iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*

*v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The relevant provisions of the Act and all the Directions (Guidelines) for handling cases are available to the public on our website.

**d) Investigative Process**

*i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*

*ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*

*iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

1. Pursuant to Paragraph 1 of Article 27 of the Act, the Commission, in conducting investigations under the Act, may proceed in accordance with the following procedures: (1) to notify the parties and any related third party to appear to make statements; (2) to

notify the parties and any related third party to submit books and records, documents, and any other necessary materials or exhibits; and (3) to dispatch personnel for any necessary onsite inspection of the office, place of business, or other locations of the parties and any related third party.

2. Regarding the notice to inform the parties and related persons to present their opinions and submit information, Articles 31 of "the Enforcement Rules of Fair Trade Act" (the Enforcement Rules) stipulates the notice shall specify the following items in writing: (1) the name and residence or domicile of the recipient of the notice; if the notified one is a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business; (2) the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter; (3) date, time, and place of required appearance; and(4) the provisions concerning punishment for failure to appear without proper reason. The preceding notice shall be served at least no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.
3. In addition to the above, Article 34 of the Enforcement Rules requires the Commission to include the following items in writing: (1) the name and residence or domicile of the notified person; if the notified one is a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business; (2) the matter to be investigated; (3) the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party; (4) the time limit for submission; and(5) the provisions concerning punishment for refusal to submit without justification.
4. Furthermore, according to Article 102 of the "Administrative Procedure Act", before rendering an administrative disposition to impose restraint on the freedom or right of a person or to deprive him of the same, the Commission shall give the person subject to the disposition an opportunity to state his opinions.

### *e) Timing of* Investigations *and Enforcement Proceedings*

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

1. For merger notifications, according to Paragraphs 7 and 8 of Article 11 of the Act, the usual waiting period is 30 working days starting from the date the Commission accepts the complete filing materials. The Commission may shorten or extend the period as it deems necessary and notifies in writing the filing enterprise of such change. When the Commission decides to extend the period in accordance with the provision, such extension may not exceed 60 working days; for cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 13 of the Act.

2. For application of concerted actions, the Commission shall make a decision within three months after receipt of the application in accordance with Paragraph 2, Article 15 of the Act. The period of which may be extended once if necessary.
3. Article 41 of the Act sets that, the power to impose disposition pursuant to Articles 39 and 40 is expired upon the lapse of five years.

**f) Confidentiality**

*i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*

*ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*

*iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

1. Confidential information obtained by the Commission through investigations usually include: information provided by enterprises or related persons, internal investigations, information obtained from reviewing process or industry investigations, information that has not been resolved by the Commissioners' Meeting, the identity of the whistleblower, and the enterprises' business secret obtained during the investigation, etc.
2. Paragraph 1, Article 15 of the Classified National Security Information Protection Act states that controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons. When a emergency occurs or classified information is disclosed, the person handles the above-stated translawion shall immediately notify the agency official and properly protect classified information with necessary measures. Once information obtained by the Commission is classified as confidential, it must be transmitted, used, kept, copied, and handed over in accordance with the provisions of the Classified National Security Information Protection Act and the Document Processing Manual. At each stage, certain regulatory measures shall be imposed.
3. Civil servants who possess confidential information are obligated to maintain confidentiality in accordance with paragraph 1, Article 5 of the Civil Servant Work Act, which states that civil servants shall have an absolute obligation to maintain the confidentiality of government agencies, and they shall not disclose any confidential matters, whether or not such matters fall within their official duties. Administrative or even criminal sanctions shall be imposed on the person who violates the regulations to prevent the leakage of confidential information.

**g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is*

*encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

1. When a civil servant is subject to recusal in the administrative procedure, Articles 32 and 33 of the Administrative Procedure Act stipulate respectively the reasons for recusing themselves and the parties applying for recusal.
2. In addition, in order to regulate the recusal of civil servants, ensure the objectivity and fairness of administrative procedures, and enhance the public's trust in the decision of the Commission, the " Fair Trade Commission Directions on Procedural Rules of Recusal" was issued in accordance with Articles 32 and 33 of the Administrative Procedure Act.

**h) Notice and Opportunity to Defend**

*i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*

*ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*

*iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

1. Regarding the relevant investigation procedures, the Commission shall conduct case investigations in accordance with Article 27 of the Act and Articles 31 to 35 of the Enforcement Rules. The Commission must also comply with Articles 36 to 43 and 102 to 104 of the Administrative Procedure Act that are related to the procedures for the investigation of facts, evidence, and statement of opinions by administrative agencies.
2. In practice, during investigation of a case, the Commission will notify all involved parties (investigated enterprise and related parties) to submit written statements and appear in the Commission to make oral statement if necessary. All involved parties can also submit written statements at any time or ask for meetings to make oral statements, as well as apply for access to the file. The Commission will consider all defense opinions, both favorable and unfavorable matters, to ensure the due legal process of the parties involved.

**i) Representation by Counsel and Privilege**

*i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*

*ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*

*iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Article 24 of the Administrative Procedure Act stipulates that, "A party may appoint an agent, unless the appointment of an agent is not permitted by law or regulation or by reason of the nature of the administrative procedure. Each party may appoint no more than three agents." Therefore, the parties or related parties may appoint an agent to submit written statements or make oral statements on the spot during investigation process of the Commission, and the agent is not limited to a lawyer. In addition, when making oral statements, the Commission also allows lawyers to accompany the party to present their opinions.

**j) Decisions in Writing**

*i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*

*ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Paragraph 1, Article 96 of the Administrative Procedure Act stipulates that an administrative disposition rendered in writing shall give the following particulars: (1) The name, date of birth, sex/gender, identification number, domicile or residence, and any other features for identification of the person subject to the disposition; if the person subject to the disposition is a juristic person or a body with a manager or representative, the name, business office or business establishment of such body, and the name, date of birth, sex/gender, identification number, and domicile or residence of such manager or represent; (2) The subject matter, facts, reasons and legal basis of the disposition; (3) Contents of the incidental provisions, if any; (4) The name of the authority rendering the disposition, with the signature and personal seal of its head officer, and also counter-signed by the agent or appointee, if any, of the authority; provided that, an administrative disposition made *en masse* by means of automatic machine

may bear only the seal in lieu of the signature; (5) Reference number and date of the document; and (6) The statement to the effect that it is an administrative disposition and the means of remedy available in case of dissatisfaction with the administrative disposition, the time period within which remedy may be sought and the authority with which application for remedy must be filed.

Therefore, all administrative sanctions (including decisions, fines, and suspension or rectify orders, etc.) made by the Commission in accordance with the Act shall be issued in written pursuant to the above-mentioned provisions.

Furthermore, in accordance with Article 6 of the "Freedom of Government Information Law", the administrative measures directly related to people's rights and interests as well as other relevant government information shall be made available to the public actively and timely.

In addition, Paragraph 1 of Article 7 of the same law states that the information shall be made available to the public actively as follows, except for the information referred to in Article 18 that is restricted from making available to the public or provision: (1)Treaties, diplomatic documents, laws, Emergency Orders, regulations and orders which are made in accordance with the Central Regulatory Standardization Law, and local autonomous laws and regulations. (2) The interpretary orders and discretionary standards made by government agencies for helping the inferior government agencies or the subordinates to interpret the laws consistently, find the facts, and exercise the discretionary power. (3) The structures, duties, addresses, telephone numbers, fax numbers, websites and e-mail addresses of government agencies. (4) Documents about administrative guidance. (5) Administrative plans, statistics and research reports. (6) Budgets and audits. (7) The results of petitions and the decisions of administrative appeals. (8) Documents related to public works and procurements. (9) Subsidies that are paid or accepted. (10) Meeting records of the agencies based on a collegiate system.

Therefore, the above-mentioned information that should be voluntarily made public by the Commission shall be published on the Commission's website in accordance with the law, except for the restricted parts.

**k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

Pursuant to Subparagraph 6, Paragraph 1, Article 96 of the Administrative Procedure Act, the written administrative disposition or decision issued by the Commission shall specify the remedies available to a person dissatisfied with such disposition or decision, the time period within which such remedies may be sought, and the agency with which an application for remedy must be filed. In addition, according to Article 48 of the Act, those who are not satisfied with the disposition or decision of the Commission will directly apply the

administrative litigation procedure. Therefore, enterprises that do not agree with the disposition or decision made by the Commission have the opportunity to appeal to the Administrative Court and seek judicial review of the disposition or decision.