

法規名稱：Cooperation Arrangement between the Taiwanese Fair Trade Commission and the French Competition Council Regarding the Application of their Competition Rules ("Arrangement")

簽訂日期：民國 93 年 01 月 05 日

生效日期：民國 93 年 01 月 05 日

The Taiwanese Fair Trade Commission and the French Competition Council (hereinafter referred to as "the Parties")

Recognizing that the world economies, including those of the territories falling under the jurisdiction of the two Parties, are becoming increasingly integrated,

Noting furthermore that the Parties share the view that the enforcement of the Competition and Fair Trading rules is an issue of great importance to the efficient operation of the markets falling under the respective jurisdictions of the Parties,

Noting their respective wills to increase the potential for economic efficiency resulting from the enforcement of their respective Competition and Fair Trading rules, in accordance with the principles defined within the framework of the International Competition Network,

Considering that cooperation between the Parties would lead to the fairer and more efficient enforcement of the Competition and Fair Trading rules which they have the duty to enforce,

Considering that such cooperation, combined with a procedure for regular administrative consultation, would diminish the potential for conflicts arising from differences in the enforcement of these rules or from transactions involving important interests of both Parties,

Referring furthermore to the OECD Council Recommendation Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade as adopted on 27 and 28 July 1995,

Have agreed as follows:

ARTICLE I - PURPOSE OF THE ARRANGEMENT AND DEFINITIONS

1. The purpose of the present Arrangement is to promote cooperation and mutual understanding between the Parties and to lessen the possibility of potential adverse consequences arising from differences between the Parties in the application of their respective rules on competition and fair trading.
2. For the application of the present Arrangement:
 - a) The expression "anticompetitive activities" shall designate any practice or transaction that is not authorized by the competition rules enforced by either of the Parties,
 - b) "competition rules" shall mean:
 - for the Fair Trade Commission, the Fair Trade Law, excepting Articles 20 to 24, and the related texts adopted for its implementation,
 - for the Competition Council, Articles L. 420-1, L. 420-2 and L. 420-5 of Part V of Book IV of the Commercial Code relating to anticompetitive practices, and Article L. 430-6 of the Commercial Code relating to economic concentration.
 - c) the expression "requesting Party" shall designate the Party whose rules - those falling within its jurisdiction - are affected by anticompetitive practices occurring within part or the whole of the territory under the jurisdiction of the other Party.
 - d) the expression "requested Party" shall designate the Party whose jurisdiction is affected by such practices.
 - e) the expression "enforcement measures" shall designate all enforcement of competition rules by way of investigations conducted by each of the Parties.

ARTICLE II - NOTIFICATION

- a) Each Party may, for matters falling within its jurisdiction, notify the other Party at its request, whenever it deems appropriate, about the situations in which it appears that the modalities or the measures relating to the enforcement of its competition rules may affect major interests of the other Party, on condition that:

- (i) the principle of reciprocity be respected,
- (ii) and subject to Article VII of the present Arrangement.
- b) Such situations calling for notification include the following:
 - (i) when an anticompetitive practice is exercised for the most part on the territory under the jurisdiction of the other Party,
 - (ii) when there is every reason to believe that the information sought may be found in the territory under the jurisdiction of the other Party,
- c) Notifications made pursuant to this article shall include sufficient information as to allow the receiving Party to assess all potential effects on its major interests.

ARTICLE III - EXCHANGE OF INFORMATION

- 1.
 - a) Each Party may, for matters falling within its jurisdiction, communicate to the other Party at its request all information or all documents they hold or have collected in connection with anticompetitive practices which they deem to be subject to the enforcement of the competition rules of the other Party or to warrant enforcement thereof, on condition that:
 - (i) the principle of reciprocity be respected,
 - (ii) and subject to Article VII of the present Arrangement.
 - b) Requests for information may concern anticompetitive practices or the exercise of competition in the territory under the jurisdiction of the other Party, and all elements on the economic and legal environment that are required to study such information. These requests shall be made in writing and include the following information:
 - (i) the object of the request ,
 - (ii) when they are known, the names and addresses of the natural persons and legal entities concerned,
 - (iii) the legal grounds for any proceedings in connection with which the request is made,

- (iv) the urgency of the request.
 - c) Immediately on receipt of a request from one of the Parties, the other Party shall do its utmost to swiftly provide the information or available documents.
2. Each Party may also send requests for information on a voluntary basis to private parties located in the territory under the jurisdiction of the other Party. These requests for information shall be notified to the Party in whose territory the information is to be found, on condition that:
- a) such notification be made simultaneously with that to the private party concerned, or else as soon as possible,
 - b) and in any event at least ten days before the deadline set to comply with this request. When no deadline is set in the request, the Party concerned shall be informed as soon as possible after communication to the private party in question.
 - c) The Parties shall consider the answer of the private party to the request as a constituent element of the information or documents sent in pursuance of the present Arrangement, insofar as the receiving Party shall not raise any objections within ten days after the receipt of the notification pursuant to this article, or within a shorter time period to be determined on a case-by-case basis by mutual agreement between the Parties.
 - d) Such requests for information shall be consistent with the competition rules enforced by the receiving Party.

ARTICLE IV - CONSULTATIONS

1. The Parties may consult each other when a case investigated by one of the Parties is liable to affect the interests of the other Party.
2. Where each Party shall deem itself competent to determine some or all aspects of a case, the Parties shall consult with each other so as to reach decisions acceptable to both.
3. The implementation of this article shall be subject to the same conditions as those mentioned in Article III 1. a) of the present Arrangement.

ARTICLE V - PERIODICAL MEETINGS

- 1.The contracting Parties agree to meet according to a periodicity deemed appropriate, with a view to holding reciprocal consultations and studying competition issues falling within their jurisdictions. These meetings will allow the study of respective approaches to sectoral themes or general economic aspects, and of other issues dealt with in the present Arrangement .
- 2.The implementation of this article shall be subject to the same conditions as those mentioned in Article III 1. a) of the present Arrangement .

ARTICLE VI - CONFIDENTIALITY

- 1.Without prejudice to any other provisions of the present Arrangement, all information provided by either of the Parties under this Arrangement shall be protected by the rules of professional secrecy of the Parties which are as follows:
 - for the Fair Trade Commission, Article 132 of the Criminal Code, Article 45, Article 46, Paragraph 2, Subparagraph 2 and 3 of the Administrative Procedural Act, Article 4 of the Civil Servants Service Act,
 - for the French Competition Council, Article 26 of Law 83-364 of July 13, 1983, in conjunction with Article L. 226-13 of the French Criminal Code.
- 2.Neither Party shall be bound to conduct investigations or to send information to the other Party if it decides that the execution of the request
 - a) is prohibited by the rules on competition of the requested Party,
 - b) is likely to jeopardize major interests and essential economic interests of the requested Party,
 - c) and where a criminal investigation is already underway based on the same facts and against the same persons, or when these persons have been sentenced for the same facts by a final de-

cision.

3.If either of the Parties decides not to comply with a request for information, it shall promptly inform the other Party of its decision.

ARTICLE VII - COMMUNICATIONS UNDER THE PRESENT ARRANGEMENT

Communications under the present Arrangement may be carried out orally, by telephone, in writing or by facsimile. Notifications pursuant to Article II of the present Arrangement and requests pursuant to Article III, paragraphs a) to c) of the present Arrangement shall promptly be confirmed in writing.

ARTICLE VIII - EXISTING RULES

No provisions of the present Arrangement shall be interpreted otherwise than in pursuance of existing competition rules in the territory under each Party's jurisdiction.

ARTICLE IX - ENTRY INTO FORCE AND DURATION OF THE ARRANGEMENT

- 1.The present Arrangement shall enter into force upon the date of its signature.
- 2.The present Arrangement shall remain in force until 60 days after the date on which either Party shall notify the other Party in writing of its desire to terminate the present Arrangement.

In WITNESS WHEREOF, the undersigned being duly authorized, have concluded the present Arrangement.

Done on this 5th day of January 2004 at Taipei, in the French and English languages, each text being equally authentic.

For the Fair Trade Commission

For the Competition Council

HWANG, TZONG-LEH

MARIE-DOMINIQUE
HAGELSTEEN

CHAIRPERSON

PRESIDENTE