Summary of Competition/Antitrust Laws and Application in Select Jurisdictions

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Synopsis

This document is intended to explore Competition Laws in different international jurisdictions in relation to providing insight to the Legislative Council on the matter of exploring the proposed Competition Law. Specifically, the U.S. Antitrust Law is detailed in order to determine the origin and context surrounding the issue. In addition, it has been determined that the "Antitrust" nomenclature in the U.S. does not alter the intention of Competition Laws or dramatically differ from those across the world. It does seem, however, that the U.S. employs harsher penalties if competition laws are breached but this is due to the economic environment in the U.S. as opposed to a different set of circumstances proposed by "antitrust". Lastly, a summary of competition laws from different countries is given to provide context.

Antitrust v. Competition Law

Antitrust laws, also referred to as "competition laws", are statutes developed by the U.S. Government to protect consumers from predatory business practices by ensuring that fair competition exists in an open-market economy. Antitrust laws are applied to a wide range of questionable business activities, including but not limited to:

- *Market Allocation:*are agreements in which competitors divide markets among themselves. In such schemes, competing firms allocate specific customers or types of customers, products, or territories among themselves.
- *Bid Rigging:*a form of fraud in which a commercial contract is promised to one party even though for the sake of appearance several other parties also present a bid
- *Price Fixing:* an agreement between participants on the same side in a market to buy or sell a product, service, or commodity only at a fixed price, or maintain the market conditions such that the price is maintained at a given level by controlling supply and demand. The group of market makers involved in price fixing is sometimes referred to as a *cartel*.

The American term anti-trust arose not because the U.S. statutes had anything to do with ordinary trust law, but because the large American corporations used trusts to conceal the nature of their business arrangements. Big trusts became synonymous with big monopolies; the perceived threat to democracy and the free market these trusts represented led passage of the Sherman and Clayton Acts.

An overview of the three core federal antitrust laws in place in the United States:

I. The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Long ago, the Supreme Court decided that the Sherman Act does not prohibit *every* restraint of trade, only those that is *unreasonable*. For instance, in some sense, an agreement between two individuals to form a partnership restrains trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. On the other hand, certain acts are considered so harmful to competition that they are almost always illegal. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids. These acts are "*per se*" violations of the Sherman Act; in other words, no defense or justification is allowed.

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the Department of Justice. Criminal prosecutions are typically limited to intentional and clear violations such as when competitors fix prices or rig bids. The Sherman Act imposes criminal penalties of up to $100 million for a corporation and $1 million for an individual, along with up to 10 years in prison. Under federal law, the maximum fine may be increased to twice the amount the conspirators gained from the illegal acts or twice the money lost by the victims of the crime, if either of those amounts is over $100 million.

II. The Federal Trade Commission Act bans "unfair methods of competition" and "unfair or deceptive acts or practices." The Supreme Court has said that all violations of the Sherman Act also violate the FTC Act. Thus, although the FTC does not technically enforce the Sherman Act, it can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices that harm competition, but that may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC brings cases under the FTC Act.

III. The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates (that is, the same person making business decisions for competing companies). Section 7 of the Clayton Act prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly." As amended by the Robinson-Patman Act of 1936, the Clayton Act also bans certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or acquisitions to notify the government of their plans in advance. The Clayton Act also authorizes private parties to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.

The Origin of Antitrust Law in the U.S.

The 1890 Sherman Antitrust Act

Congress passed this act in 1890 and has been regarded as the source of all anti-monopoly laws. The law forbids every contract, scheme, deal, and conspiracy to restrain trade. It also forbids schemes to secure monopoly of a given industry. In 1911, the Supreme Court of the United States found that the Standard Oil violated the Sherman Act because it restricted trade, particularly because it bought out the small independent refiners or that of lowering the price in a given region to force bankruptcy of competitors. The court ordered the Standard Oil Company to dismantle 33 of its most important affiliates, giving the stocks to its own shareholders and not to a new trust.

This was a landmark ruling in the economic history of the U.S. and was used as the basis for American doctrine on antitrust policy. The Clayton Antitrust Act of 1914 came later and it provided some more solid jurisdiction basis. This explicitly condemns commercial practices like price discrimination, exclusive commercial relations, and the buying out of competitors.

The economy in the 1880s was increasingly competitive. Output in the allegedly monopolized industries was expanding rapidly, and prices were falling. Antitrust was government's response to politically powerful farmers and small businessmen who were opposed to economic change and sought protectionist legislation.

Until the late 1800s the federal government encouraged the growth of big business. By the end of the century, however, the emergence of powerful trusts began to threaten the U.S. business climate. Trusts were corporate holding companies that, by 1888, had consolidated a very large share of U.S. manufacturing and mining industries into nationwide monopolies. The trusts found that through consolidation they could charge monopoly prices and thus make excessive profits and large financial gains. Access to greater political power at state and national levels led to further economic benefits for the trusts, such as tariffs or discriminatory railroad rates or rebates. The most notorious of the trusts were the Sugar Trust, the Whisky Trust, the Cordage Trust, the Beef Trust, the Tobacco Trust, John D. Rockefeller's Oil Trust (Standard Oil of New Jersey), and J. P. Morgan's Steel Trust (U.S. Steel Corporation).

Consumers, workers, farmers, and other suppliers were directly hurt monetarily as a result of the monopolizations. Even more important, perhaps, was that the trusts fanned into renewed flame a traditional U.S. fear and hatred of unchecked power, whether political or economic, and particularly of monopolies that ended or threatened equal opportunity for all businesses. The public demanded legislative action, which prompted Congress, in 1890, to pass the Sherman Act. The act was followed by several other antitrust acts, including the clayton act of 1914 (15 U.S.C.A. §§ 12 et seq.), the Federal Trade Commission Act of 1914 (15 U.S.C.A. §§ 41 et seq.), and the Robinson-Patman act of 1936 (15 U.S.C.A. §§ 13a, 13b, 21a). All of these acts attempt to prohibit anticompetitive practices and prevent unreasonable concentrations of economic power that stifle or weaken competition.

Penalties and Fines

The U.S. Department of Justice (DOJ) can prosecute violations of the federal antitrust statutes as felonies. Moreover, the Sherman Act was amended by the Antitrust Criminal Penalty Enforcement Act of 2004, which increased corporate fines from a maximum of $10 million to a maximum of $100 million and increased fines for individuals from a maximum of $350,000 to a maximum of $1 million. The amendment also increased the maximum jail time for individuals from three years to 10 years. Since the beginning of 1997, the U.S. Department of Justice has prosecuted international cartels affecting over $10 billion in U.S. commerce. Since 2004, the U.S. Department of Justice has levied at least 12 separate fines of $10 million, or more for Sherman Act violations. In general, Department of Justice criminal fines have increased dramatically since 1997 from an average in the previous decade of $29 million per year up to a high of $1.1 billion in 1999, with an average of over $250 million per year. Marvin Price, chief of the Chicago Field Office of the U.S. Department of Justice Antitrust Division, states that over $3 billion of such fines have been levied since 1993, with over $1 billion levied in the past three years. The following are some of the significant corporate fines levied against conspirators in cartels during the past 10 years:

- Hoffman-La Roche, Ltd. was fined $500 million in 1999 for its role in a conspiracy to fix the prices of vitamins
- Samsung Electronics Company, Ltd., and its U.S. subsidiary, was fined $300 million in 2006 for its role in a conspiracy to fix the prices of DRAM memory chips;
- BASF AG was fined $225 million in 1999 for its role in a conspiracy to fix the prices of vitamins;
- Hynix Semiconductor, Inc., was fined $185 million in 2005 for its role in a conspiracy to fix the prices of DRAM memory chips;
- Archer Daniels Midland Co. was fined $100 million in 1996 for its role in a conspiracy to fix the prices of lysine and citric acid;
- Dupont Dow Elastomers LLC was fined $84 million in 2005 for its role in a conspiracy to fix the prices of chloroprene rubber;
- Irving Materials, Inc., was fined $29.2 million in 2005 for its role in a conspiracy to fix the prices of ready-mixed concrete (the largest fine ever involving domestic cartel activity).

In addition to massive corporate fines, in the last four years more individuals (usually executives of offending corporations) have

been sentenced to prison terms of one year or longer for their illicit participation in cartel activities than in the previous decade combined. It is important to note that while violations of Sherman 2 are subject to the same criminal enforcement as Sherman 1 violations, criminal enforcement by the Department of Justice is almost always reserved for hardcore Sherman 1 violations such as horizontal price-fixing. In fact, the number-one priority of the Antitrust Division of the Department of Justice is the prosecution of international price-fixing cartels.

The increase in criminal sentencing for antitrust violations can be attributed in part to the Department of Justice's leniency program. Enacted in 1978 and substantially expanded in 1993, the DOJ's leniency program provides essentially that the DOJ will not prosecute the first corporation involved in a conspiracy that qualifies for leniency by coming forward and reporting its illegal conduct and cooperating fully with the DOJ. Leniency applies to the first-cooperating corporation, regardless of whether that defendant comes forward before or after an investigation has been initiated. Significantly, such amnesty from criminal prosecution is provided to all officers, directors, and employees who cooperate. In addition, the corporation receiving leniency is subject only to single damages in ensuing private litigation, which makes the joint and several liability of their nonleniency receiving co-conspirators that much more costly. In other words, violators have strong incentives to blow the whistle on their co-conspirators, who then face the brunt of criminal penalties and private treble damages suits, including being exposed to a heightened level of joint and several liability.

Potential for Large Civil Recoveries

Fines and jail time are often only the beginning of an antitrust violator's problems. Inevitably, in the wake of DOJ or European Union fines and prison sentences or on the heels of a DOJ or European Union criminal investigation, there is an onslaught of private civil litigation seeking treble damages and attorneys' fees, often in the form of nationwide class actions. For instance, after paying the U.S. government $500 million in criminal fines in 1999, Hoffman-La Roche subsequently paid civil plaintiffs hundreds of millions of additional dollars. Further, antitrust defendants are subject to joint and several liabilities, which means that in Sherman 1 cases, any single responsible party can be held liable for all the damages caused by a cartel.

The potential for large civil recoveries cuts both ways though. On the one hand, a business may find itself defending against a class action complaint seeking millions in damages; on the other hand, businesses harmed by antitrust violations may stand to recover large monetary awards. This is particularly evident in so-called "opt-out" litigation, in which an absent class member (which is any class member other than the named class representative plaintiff) decides not to participate in a certified class action or accept its share of a class recovery,

and instead pursues subsequent individual litigation against the defendants. A number of corporations have had great success in recent years pursuing opt-out litigation, often recovering many times what they would have received as part of a class recovery.

The whole philosophical or ideological defense of government regulation is based on the notion that free markets are prone to various “imperfections” such as so-called “free-market monopoly”. Government regulation supposedly escalated in the late nineteenth and early twentieth centuries as a benevolent and public-spirited response to growing market failures.

Difference Between Antitrust Law and Competition Law

The term *antitrust* was originally formulated to combat "business trusts", now more commonly known as cartels. Other countries use the term "competition law". Many countries including most of the Western world have antitrust laws of some form; for example theEuropean Union has provisions under the Treaty of Rome to maintain fair competition, like Australia under its Trade Practices Act 1974.

A distinction between single-firm and multi-firm conduct is fundamental to the structure of U.S. antitrust law, which, as noted antitrust scholar Phillip Areeda has pointed out, "contains a 'basic distinction between concerted and independent action.'"Multi-firm conduct tends to be seen as more likely than single-firm conduct to have an unambiguously negative effect and "is judged more sternly”. European competition law also includes a fundamental distinction between single-firm and multi-firm conduct, but a different analytical structure is applied.

Below is a synopsis of Antitrust/Competition Laws in Different Countries:

	New Zealand	Canada	Taiwan	Australia
Relevant Legislation	Commerce Act (1986); Dairy Industry Restructuring Act (2001); the Telecommunications Act (2001); and the Electricity Industry Reform Act (1998)	Competition Act; Competition Tribunal Act; Consumer Packaging and Labeling Act; the Textile Labeling Act; Precious Metals Marking Act; Criminal Code	• Comprehensive regulation of antitrust and unfair competition activities was established in Taiwan when the *Fair Trade Act* came into effect in **1992**. • The regulatory framework is similar to civil law systems such as those used in Germany and Japan. Over the past 12 years, *the Fair Trade* Act has been amended three times, the most recent amendments being made after Taiwan's accession to the World Trade Organization in 2002—the law was officially in effect in January of 2003	*Competition and Consumer Act 2010*
Scope of Coverage	• The framework provided by the **Commerce Act** is a set of generic competition laws that focus on promoting competitive market behavior and structure. The Act prohibits contracts or arrangements by firms that could lead to a substantial lessening of competition, the use of substantial market power to deter or eliminate competition, and mergers or acquisitions that would substantially lessen competition. • The **Commerce Act** has the provision for price control if the general competition measures are not effective.	Anti-competitive agreements; Providing a framework to allow for mutual legal assistance in non-criminal competition matters	***The Fair Trade Act*** *governs two broad categories of anti-competitive or counter-competitive business conduct*: **restrictive business practices** and **unfair competition**. The Fair Trade Commission handles its caseload in accordance with these two broad categories, and further sub-divides them among the following subject matters: (1) **under restrictive business practices**: monopolies, business combinations, concerted actions, resale price maintenance and other restrictive business practices, and (2) **under unfair competition**: impediments to fair competition, counterfeit commodities or trademarks, false, untrue and misleading advertisements, damage to	Telecommunications Competition Act 2002 against price discrimination among Telecommunication market.

			business and other deceptive or unfair business conduct.	
Prohibition on anti-competitive agreements	The **Commerce Act** prohibits conduct that restricts competition. ***The types of conduct covered are contained in Parts II and III of the Act.*** Part II of the Act prohibits certain restrictive trade practices. The main practices that are prohibited include: • **section 27**, *which prohibits contracts, arrangements or understandings substantially lessening competition*; • **section 29**, *which prohibits contracts, arrangements or understandings containing exclusionary provisions*; • **section 30**, *which prohibits arrangements that lead to prices being fixed by competitors*; • **section 36**, *which prohibits a person that has a substantial degree of market*		Major examples of anti-competitive agreements include: bid rigging, price fixing, market allocation, sales and production quotas and discriminatory standards	*Applied to all. -Anti-competitive practices generally and in the telecommunications industry (Parts IV and XIB). -Agreements that substantially lessen competition, market sharing or price fixing agreements, and agreements that give rise to primary or secondary boycotts -Abuse of dominance (misuse of market power); exclusive dealing; resale price maintenance; mergers or acquisitions which substantially lessen competition; and unconscionable conduct (Part IVA) – this involves business taking unfair advantage in commercial and consumer transactions.

	power in a market from taking advantage of that power for exclusionary purposes; and • **sections 37 and 38**, *which prohibit suppliers fixing the prices at which goods may be sold by other businesses.* Part III of the Act prohibits business acquisitions that have, or would be likely to have, the effect of substantially lessening competition in a market.			
Prohibitions on abuse of a dominant position	The Commerce Act of 1986 determines/ specifies that: Per Section 36: - Prohibits person(s) in a dominant position in a market from using that position for a proscribed purpose. The three elements of the provision are as follows: *(i) a person who has a dominant position in a market,* *(ii) who has used that position,* *(iii) for the purpose of restricting entry in a market, deterring competitive conduct in a market or eliminating a person from a market.* Assessment of dominance first requires definition of the relevant market, and then consideration of dominance within that market.	"Buying up a competitor's customers or suppliers, using discount brands to keep out competitors, cutting off essential supplies to rival companies, using long-term contracts to stop customers from changing suppliers; and overstepping authority granted by intellectual property rights such as trademarks and patents	Major examples of anti-competitive agreements include: bid rigging, price fixing, market allocation, sales and production quotas and discriminatory standards	*Applied to all. Prohibits cartel conduct (Division 1 of Part IV) The TP Act arrangements that substantially lessen competition, secondary boycotts, misuse of substantial market power, mergers or acquisitions that may substantially lessen competition and resale price maintenance.
Definition of dominance	> 40% of market share	Not specified;	< 50% of Market Share	>45% market share
Merger Control	- A clearance is granted if the Commerce Commission assesses that a proposed merger will not lead to substantially lessening competition in	Applied to all markets	Applied to all; mergers are approved by the Taiwanese Fair Trade Commission (FTC)	Applied to all markets

	a market. - An authorization is granted if the Commerce Commission assesses that the benefits to the public will outweigh the competitive detriments of the proposed merger.			
Thresholds for requiring merger approval	– the merged entity (including any interconnected or associated persons) has less than in the order of a 40 percent share of the relevant market; – the merged entity (including any interconnected or associated persons) has less than in the order of a 60 percent share of the relevant market, and faces competition from at least one other market participant having no less than in the order of a 15 percent market share	Market share; when price fluctuations in given product/serve market exceed 5% then merger is under review; but no numerical number is assessed to break a merger	In general, any merger involving at least one Taiwanese enterprise that gives rise to one of the following three situations may not be completed without prior approval of the Fair Trade Commission: (1) where, as a result of the transaction, the relevant enterprises will have at least one third of the relevant market share, (2) where at least one of the relevant enterprises has one fourth of the relevant market share, or (3) where the sales for the preceding fiscal year of the relevant enterprises exceeds a periodically adjusted official threshold.	Market share threshold: <20 % of market share
State aid control	The federal government only in matters that cannot be resolved per state competition law regulations.		Not applicable.	The federal government agreed to intervene only where the relevant state or territory government failed to provide independent prices oversight of the market.
Exemptions and exclusions	- Partial Exemptions: Collaborative initiatives might be facilitated by creating partial exemptions from the Commerce Act for particular specified activities. However, such an approach is likely to be problematic in practice, as it would be difficult to foresee all of the activities to be exempted and then draft the exemptions appropriately. * an example of a full exemption would be the market for tertiary education (College/ University) they have their own markets for students and can garner individual market power	Collective bargaining; Associations of fishermen; Underwriting of insurance and securities; amateur sports leagues;	All exemptions and exclusions are reviewed and approved by the Taiwanese FTC. They are subject to periodic review to determine their continuity and are based on the criterion that their enactment will benefit the public (consumer)	Applied to all. Except international liner cargo shipping and collective bargaining agreements.
Exemptions on grounds of	- An authorization is granted if the	Those organizations such as trade	Applied adopting the criteria that the	***Work in progress

economic benefit/ public interest	Commerce Commission assesses that the benefits to the public will outweigh the competitive detriments of the proposed merger. - Authorizations are also granted with respect to restrictive trade practices. Such an authorization is granted if the - Commerce Commission considers that the public-benefit from the contract or arrangement will outweigh the detriment from the lessening of competition.	associations or business firms that exchange statistics, develop product standards, define terminology, engage in cooperative research and development, restrict advertising expenditures, adopt common weights and measures, packaging, etc.	agreement should contribute to improving production or distribution, promoting technical or economic progress, but not eliminating competition substantially.	
*Exemptions on grounds of public interest**(included above)***	The Commerce Act does not define *"benefit to the public"***(public interest)**, but in 1990 the Act was amended to add section 3A which provides that, in determining: whether or not, or the extent to which, conduct will result, or will be likely to result, in a benefit to the public, the Commission shall have regard to any efficiencies that the Commission considers will result, or will be likely to result, from that conduct. The Commission takes a net approach to assessing public benefit. It weighs the likely benefits against the likely detriments to determine the net public benefit.			***Work in progress
Investigative powers	The Act permits the Commission to require businesses and individuals to provide information and to use search warrants to obtain documents. The Commission can order confidentiality for commercially sensitive information.	The Competition Bureau can at any time request documentation that relates to possible anti-competitive practices. In especially egregious cases, the Bureau will recommend sending the company under investigation to the Competition Tribunal	The Taiwanese Federal Trade Commission (FTC)	The National Competition Council (NCC), The Australian Competition and Consumer Commission (ACCC), Commonwealth Director of Public Prosecutions (CDPP)
Penalties for failing to cooperate with investigation	· Awards of damages; · Injunctions (including interim injunctions) restraining businesses and individuals from conduct that may breach the Act; · Ordering a person or company to	Civil order issued and legal proceedings will ensue if fail to cooperate in investigation;	A fine of no more than NT$ 250,000 but no less than NT$20,000 in accordance with Article 43.	

	dispose of specified assets or shares; · Pecuniary penalties of up to $10 million on companies and $500,000 on an individual, where the Commission has brought a case; and · Ordering a variety of other remedies, including varying contracts that breach the Act.			
Powers of issuing directions	The New Zealand Commerce Commission; and independent authority of the New Zealand Federal Government.		The Taiwanese Federal Trade Commission (FTC)	Australian Competition and Consumer Commission (ACCC), which is an independent authority of the Australia government
SMEs	Small and Medium Enterprises (SMEs) are not exempted from competition laws. Nonetheless, issues relating to SMEs have not been of major concern in the region. Adopted a policy of minor significance approach for exempting small businesses, as the small businesses play such a large role in the economy, it is more difficult to regulate them. However, hardcore conduct such as price fixing, bid rigging and output restriction are intensely/strictly regulated.	No specific SME exemptions were given; the small size of SME's may preclude them from the application of some of these guidelines	The FTC has not developed a comprehensive set of specific policies or guidelines in relation to application of the Law in cases involving SMEs. However, issues are handled case-by-case. Article 14(1)-7 of FTL *the nature of the exemptions* -- This is one of the gateways provided under Article 14 of FTL *The definition of small business* -- According to Article 21 of the Enforcement Rules of FTL, the small and medium-sized enterprises mentioned in Subparagraph 7, Article 14 of the Law shall be determined in accordance with the statute for Development of Small and Medium-sized Enterprises	
Thresholds for exempting anti-competitive conduct	None specified	None specified	Article 46, paragraph 1, of the Fair Trade Law states that the provisions of the Law shall not apply to any act performed by an enterprise in accordance with other laws. Under this provision, the Fair Trade Law is subject to statutory	

			exemptions that immunize certain categories from anti-trust liability Article 5 of the Farmers Association Act and Article 5 of the Fishermen Association Act, associations may jointly engage in the operation of some business activities related to farmers or fishermen's affairs. These constitute statutory exemptions from the prohibition of concerted action granted under Article 46, paragraph 1 of the Fair Trade Law. Article 37 of the Architects Act, which provides that architect associations shall establish rules to govern architect's business and under these rules there shall be provision-stating rates of remuneration for architectural services. Associations' engaging in price collusion has been considered illegal per se by our law. But the Architects Act provides a basis for an exemption from	

			the anti-trust liability.	
Issues of Concern	* For three industries (dairy, electricity and telecommunications) where there are competition concerns that may not be adequately dealt with by the general provisions of the Commerce Act, the Government has introduced specific regulatory legislation. The legislation relating to electricity lines businesses is included as Part 4A of the Commerce Act. Standalone legislation exists in relation to the dairy and telecommunication industries.		Not applicable.	
Enforcement agency	***The Commission** is responsible for enforcing the Commerce Act and Fair Trading Acts, as well as a range of regulatory regimes contained within industry specific legislation.* The Commission seeks to encourage all businesses to comply with the Commerce Act, by: - Investigating conduct that may breach the business acquisition and restrictive trade practice provisions of the Act; - Determining whether certain restrictive trade practices should be authorized; - Determining whether applications for the clearance and authorization of business acquisitions should be granted; - Where necessary, taking court action to pursue breaches of the legislation and defend appeals against its adjudication decisions; - Reporting to the Minister of Commerce where requested on the	Competition Bureau (specifically the Commissioner of Competition)	The Taiwanese Fair Trade Commission (FTC)	The Australian Competition and Consumer Commission (ACCC)

	necessity of price control for particular goods and services; - Providing information and guidance to the business community and other groups on the requirements and effects of the legislation and the Commission's enforcement approaches.			
Organization structure	The New Zealand Commerce Commission is comprised of 12 core board members and is headed by the Chief Executive - Underneath the board are the Sub-Branches of the Commission: the Enforcement Branch, the Organization Branch, and the Regulation Branch - Each Branch is headed by one "General Manager" and is comprised of numerous Subcommittees	Competition Bureau is part of the Department of Industry; Commissioner is appointed by the federal cabinet and has exclusive statutory responsibility for administration and enforcement of the Competition Act	The FTC is by law allocated a quota of 180 to 242 personnel; it actually had 214 personnel at the end of June 2009. Personnel consists of: Law: 67 persons (31%) Economics: 47 persons (22%) Others: 100 persons (47%)	The ACCC staff consists of six fulltime members, and twelve associate members; eight of these are ex-officio, being economic regulators from other federal or state and territory bodies.
Power & Functions	Given the task of investigating, determining and applying applicable remedies to infringements of the New Zealand Code of Conduct. They are also poised to make decisions on proposed mergers while educating the business community and the public on competition law and keeping them up to date on current competition issues.	Launch inquiries, challenge civil matters before the Competition Tribunal and refer evidence of criminal offenses to Canada's Attorney General	According to Article 26 of the Fair Trade Law, "The Fair Trade Commission may investigate and handle, upon complaints or ex officio, any violation of the provisions of this Law that harms the public interest". Article 28, states: "The Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission." In charged of (1) preparation and formulation of fair trade policy, laws and regulations; (2) review of any fair trade	Empowered to investigate, determine, and apply remedies in respect of infringements of the conduct rules and make decision on proposed mergers, and educate the business community and the public on competition issues.

			matters related to this Law; (3) investigation of activities of enterprises and economic conditions; (4) investigation and disposition of any case violating this Law; and (5) any other matters related to fair trade.	
Funding Arrangement	**2010-11 Total Annual Budget for enforcement and acquisition costs**: $121.5 mil USD; Total persons (staff memebers) per year: 44 total for Enforcement, Advocacy, and Merger review (combined) www.treasury.govt.**nz/budget**/2010/estimates/est10commer.pdf	An independent law enforcement agency, though funding arrangement is unclear	Not Applicable.	The Australian Competition and Consumer Commission (ACCC) The budget for 2010-2011 is 145,382 Australian dollars. Includes: consumer protection, regulated national infrastructure markets and services estimated through regulation, including enforcement, education, and infrastructure services
**Punishments (monetary for forming corporate coalitions/ monopolies)*	Pecuniary penalties for contravening or attempting to contravene section 47 can be up to $500,000 for an individual and $5 million for a body corporate. Other remedies include injunctions, damages or divestiture of assets.	$10 million for first offense; $15 million for second offense for infringement	*Civil penalties:* The maximum administrative fine will be imposed for any act in violation of the FTL is NT$25,000,000 *Criminal penalties:* Article 35, 36 and 37 of FTL. They are imprisonment for not more than 2 or 3 years, detention, or in lieu thereof or in addition thereto a fine. *Other penalties/sanctions:* When an enterprise violates the provision of this Law, the Fair Trade Commission may order the said enterprise to discontinue its act or set a time limit for it to take corrective action.	Civil Penalties: up to $10 million, or up to 3 times the gains made as a result of the cartel, or 10 per cent of the group's turnover. criminal convictions and gaol sentences of up to ten years -Companies that do not comply with the restrictive trade practices provisions of the Trade Practices Act may be fined by the Federal Court. There are three ways the maximum fine can be calculated. The maximum possible fine is the larger of A$10,000,000; or three times the value of the illegal benefit; or (if the value of the benefit cannot be ascertained) 10% of turnover for the preceding 12 months. Individuals may be fined up to $500,000 -Companies that do not comply with the consumer protection provisions of the Trade Practices Act may be fined by the Federal Court, up to $1.1 M for companies and $220,000 for individuals.

The Complaint Process in Canada:

Making a Complaint

Bureau staff will evaluate your situation and market conditions against the three criteria mentioned above. If the criteria have been met, Bureau officers will begin interviews and a review of records, documents and other sources of information. The Bureau can also apply to the courts for subpoenas or use other compulsory means to continue its investigation.

The Bureau conducts its investigations in private and keeps confidential the identity of the source and the information provided. However, if someone has important evidence about an offence under the Act, that person may be asked to testify in court.

Resolving Abuse of Dominant Position Complaints (Canada)

Where appropriate, the Commissioner will open discussions to try to obtain voluntary compliance with the law; sometimes this is all the action needed to correct the situation. A more formal solution would involve the registration of a consent agreement with the Competition Tribunal when all parties agree on a solution that will restore competition to the marketplace.

The Competition Tribunal is like a court, chaired by a judge and independent of any government department.

If voluntary compliance cannot be achieved, the Commissioner may file an application for an order before the Competition Tribunal to remedy the situation. The Tribunal has a number of remedies at its disposal to overcome the effects of anti-competitive acts

and restore competition. The most common remedy is an order that requires the anti-competitive conduct to stop. If the Tribunal believes more has to be done, it may make an order requiring the dominant company to sell some of its assets or shares.

The Tribunal may also impose an administrative monetary penalty on the company that was found to have abused its dominant position. This penalty can be for any amount up to $10,000,000 for the first order and $15,000,000 for any subsequent order made by the Tribunal against the same company.

***From Competition Bureau website*
www.competitionbureau.bc.ca

The 2003 OECD Economic Survey of Australia[1] noted that the NCP reform has reaped a number of benefits for its economy, including a substantial contribution to improving labour and multifactor productivity and economic growth. $7,000 higher household's income as a Organisation for Economic Cooperation and Development, 2003, *Policy Brief: Economic Survey of Australia* 2003. result of the Competition Law.* Organisation for Economic Cooperation and Development, 2003, *Policy Brief: Economic Survey of Australia* 2003.

Australia*:*

** small businesses→ exemptions must be there. Conditions? collective bargaining. How to define cartels as well as how do they regulate or exempt public institutions. (to be researched)

More on SMEs in Taiwan:

According to the 1995 White Paper on Small and Medium Enterprises (SMEs), 96% of Chinese Taipei's firms are SMEs. In 1994, SMEs employed approximately 80% of the labor force, and accounted for slightly over 50% of our export and 32% of the total sale. What is worth noting is that the SMEs accounted for 70% of the total export in 1982 and 40% of the total sale in 1986. The Law provides a number of possibilities for the Commission to grant exception to the general rule against horizontal collaboration. Specifically, a collective effort by SMEs for purposes of improving their efficiency or increasing competitiveness is permissible.

Anti-competitive conduct matters

During 2002-03 the ACCC investigated around 200 competition matters. This figure includes matters where the ACCC sought additional information to establish whether there was a contravention and/or if ACCC action was appropriate. Some investigations were concluded after initial inquiries and others were investigated in depth. Six competition proceedings were concluded during the year, and 28 competition matters were continuing before the courts as at 30 June 2003.

Vitamins case

In February 2003, the ACCC commenced proceedings against F Hoffmann-La Roche (Switzerland), BASF Aktiengesellschaft (Germany), Takeda Chemical Industries (Japan) and various related companies in the Asia Pacific region, alleging they fixed prices for vitamin C used for human consumption. The ACCC has obtained leave of the Federal Court to serve the proceedings on alleged participants located in Switzerland, Germany and Hong Kong. The proceedings arise from alleged agreements implemented overseas between January 1991 and October 1995, and which are part of the broader global vitamins cartel, which ceased in about 1999.

Obstetricians

In October 2002, orders were made by consent against three obstetricians in a regional area who had agreed, in December 2000 and January 2001, to boycott certain billing arrangements being offered by a number of private health insurance funds. The outcome of the boycott was that approximately 200 affected patients were required to pay a gap for the in-hospital medical expenses associated with the birth of their child that they would not have been required to pay if the conduct had not occurred. Approximately A$97,000 was ordered be repaid to affected patients.

Pfizer Inc's Acquisition of Pharmacia Corporation

The ACCC analysed the impact of this worldwide merger on competition in a range of markets for human pharmaceutical products and products used for animal healthcare in Australia. The ACCC was concerned that the proposed merger may have resulted in a substantial lessening of competition in the market for cattle progesterone delivery services (used for the management of cattle reproduction). To address these concerns, the ACCC accepted an undertaking from Pfizer for the divestiture of the intellectual property and business associated with the CueMate cattle progesterone product. The undertaking aims to preserve competition between two key

products used for the treatment of non-cycling cows and synchronisation of the mating of multiple cows. In addition, the ACCC considered the undertakings that had been given by the parties, to the European Commission, were sufficient to address concerns in the Australian market.

API and Sigma

The ACCC declined to authorise a proposed merger of two major pharmaceutical wholesalers. The merger would have given the merged entity approximately 60 per cent of the pharmaceutical wholesaling market in three major Australian states and up to 50 per cent in the remaining states. The ACCC considered that the deterioration in competitive pressure, as a result of the merger, would be a major public detriment and not likely to be overcome by any anticipated benefits. The scope for parallel conduct between the merged entity and the one remaining full line wholesaler would be significant and the ACCC foresaw a high probability of decreased service levels and higher prices to pharmacists, and thus to consumers.

Foxtel and Optus

In November 2002, the ACCC announced that it would not oppose the content sharing arrangements proposed by Australia's two largest pay-TV firms, Foxtel and Optus. Initially, the ACCC viewed the proposed arrangements as raising significant competition concerns beyond the market for retail pay television services. This was particularly so given that Optus is both the number two telecommunications and pay television provider in these markets, and Foxtel is 50 per cent owned by Telstra, the largest telecommunications carrier. However, the ACCC indicated that the court enforceable undertakings proposed by Foxtel, Optus, Telstra and Austar (the third largest pay-TV firm) sufficiently addressed concerns about the potential anti-competitive effects of the proposed arrangements between Foxtel and Optus. The undertakings provide access to programs for pay-TV operators, broader choice for consumers, and access to both Telstra's cable network and Foxtel's set-top boxes.

Highlights from select academic studies on antitrust/competition laws:

"Competition in Antitrust Regulation: Law Beyond Limits"

By: Ronald A. Cass
Journal of Competition Law & Economics

Antitrust regulation is written in such a way that it doesn't contain strong economic language that will confuse Congress and also because businesses can't function properly if they have to worry if they are violating activities on a day to day basis

- Judge Easterbrook urged courts to be circumspect and scholars to be mindful of courts' limitations
    - Judges should use filters
        - The part invoking antitrust law demonstrate the logical case for concluding that the defendant has market power
        - …enriching the defendant and expensing the consumer (should be clear)
        - different from rest of companies or acting in the same way as others in industry
        - …conduct has reduced output
        - …are pursued by consumers or business rivals

Over the last 25 years antitrust enforcement in the U.S. has remained focused on horizontal arrangements that, on their face, harm consumers instead of on big monopolization cases. (article also looks at U.S. prior to 1984)

Monopolization cases reflect concerns about industry structure, rather than practices that directly undermine competition and harm consumers by restricting production and raising prices…the move from these to less high-profile cases of bid-rigging and price-fixing undoubtedly has been beneficial to the U.S. economy and to consistent application of clear legal rules

Antitrust regimes are popping up abroad. Textually, many of the world's competition laws are more than a little redolent of U.S. antitrust law, but theories of antitrust liability that now have been rejected in the U.S. are far more readily embraced elsewhere (pg 142)

Europe…has deployed its competition laws in a manner far closer to the Raising Rivals' Cost Plus (?) school than to the Legal Modesty regime that has influenced law in the U.S. for so many years. European authorities operate under particular assumptions that aren't robustly tested and has sacrificed long-run gains from dynamic competition to a preference for short-run increases in the prospects for other competitors

The picture is different in the field of antitrust because many of the largest and most important cases decided by other competition authorities are essentially disputes between rival U.S. businesses

The difference between foreign competition authorities' approaches and the more modest U.S. approach-which gives greatest weight to the most credible data and requires claims of adverse effects on competition to be supported by robust economic analysis- is especially clear from the

lengthy decision published by the EU' competition authority, which plainly did not approach the decision in the manner that U.S. law would require

Forum-shopping across the world, (some jurisdictions give less penalties)

Success in one competition law forum often can produce pressure for other decision-makers in other forums to follow suit

The change in the FTC's decision- and the announced intent of its sister agency at the DOJ to move in a direction more in line with Europe's approach to single-firm monopolization or dominance standards- comes at a time when the most visible decisions in antitrust are coming rom Europe, Japan, and Korea rather than the United States

"Economic Development, Competition, and Competition Law"
by Kenneth M. Davidson
American Antitrust Institute

The pursuit of fair or effective competition can contribute to improvements in economic efficiency, economic growth (increase in value of goods and services produced by an economy) and development, and consumer welfare…competition tends to bring about enhanced efficiency by disciplining firms to produce at the lowest possible cost and pass these cost savings on to consumers, and motivating firms to undertake research and development to meet customer needs…there is little indication that newly formed competition authorities have demonstrated a capacity to enforce the kinds of provisions that are typically included in competition laws.

New competition agencies typically lack the understanding necessary to apply their laws. More important, there is an equal or greater lack of understanding by the business community that is supposed to abide by the competition laws and a similar lack of understanding among the businesses and consumers that are supposed to be protected by the competition laws…modern competition laws have been written by competition law and economic experts in a manner that is understandable only to competition law experts…unless the reader of this provision has a model of what constitutes undistorted competition in his or her head, she is not likely to have a clear idea of what activities will distort competition

The reader, enforcer, or business undertaking may have difficulty in distinguishing between a lawful price fixing agreement (such as a contract for the sale of goods to consumers or competitors) and an unlawful price fixing agreement (such as an agreement by all suppliers of a product to reduce supply of the product and raise its price to consumers). "Don't know how a market economy is supposed to run".

European competition authorities issued a 94 page set of guidelines on horizontal agreements and state that "many agreements" between competitors are lawful (January 14, 2011) (need for detailed examinations). Other transactions such as "natural monopolies", "network effects",

“essential facilities”, and intellectual property rights that present competitive issues of such complexity that there is little uniformity of view among competition experts about the kinds of business practices that should be considered lawful under competition laws

The Growth Report: Strategies for Sustained Growth and Inclusive Development (2008)…study on different economies (HK included). Said that economic growth requires sustained governmental effort that reflects the success and failure of public growth policies

Hong Kong has fully exploited the world economy, maintained macroeconomic stability, mustered high rates of saving and investment, allowed markets to allocate resources, and committed and capable governments.

The most important feature of competition laws is the protection that they offer to small new businesses. The protection of small companies reflects a fundamental advantage of a market economy over a planned economy.

Competition law protects new powerless businesses in a variety of ways. It restricts the conditions that a more powerful company can put on those with whom it deals. Conditions that are unrelated to a sale that would forbid future competition are generally unlawful. Buying up competitors is generally unlawful. If transitional economies want to develop new innovative businesses they need policies that make it easy for new companies to form and competition laws to ensure that neither existing domestic or foreign companies can prevent the development of new companies