



Data-driven Innovation and Competition in Taiwan: Opportunities or Challenges?

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Data-driven Innovation in Taiwan: E-commerce as an example

- ▶ A very mature industry existing for more than 20 years in Taiwan
- ▶ Sale revenue of 2017 totaled NT\$ 238.7 billion (approximately US\$8 billion), and still growing at a rate of 7.4% annually
- ▶ From e-commerce to m-commerce
- ▶ From product to service
 - FoodPanda (Germany), Gogovan (Hong Kong), Eztable (Taiwan), TaxiGo (Taiwan), JackerCleaning (Tawan)
- ▶ From domestic to cross-border
 - Taobao(China), Amazon (US), Gmarket (Korea), Rakuten (Japan)

Future Developments: Shared Economy, Big Data and Internet of Things

▶ Shared economy

- Uber, Airbnb

▶ Big Data

- Chunghwa Telecom established “big data” division to provide data analytics services in July 2018
- Application in financial market: e-loan by Esunbank

▶ Internet of things (IoT)

- IoT of Taiwan Mobile started commercial operation in July, 2018
- In cooperation with hi-tech companies in Taiwan to provide services on smart agricultural and energy managements

Competition Issues in E-commerce

- ▶ Very few e-commerce retailers would exceed the threshold of monopoly power (50% market share) under Article 9 of the Taiwan Fair Trade Act (TFTA)
- ▶ Most cases will be reviewed under Article 19 & 20, which requires lower market share / around 15%, but still unclear
- ▶ Reviewed under the rule-of-reason standard, balancing the pro and anti-competitive effects from the conducts

Competition Issues in E-commerce

► Most-favor-nation clause (MFN)

- Procompetitive effects
- Anticompetitive effects
- Factors to be considered
 - Initiated by seller or buyer?
 - MFN plus?
 - Contemporaneous or retroactive MFN?
 - Wholesale or retail MFN?
- Unlike other jurisdictions, the TFTC focuses more on *exclusionary* than collusive effects from MFN

Competition Issues in E-commerce

► Predatory pricing

- Item 3 of Article 20 of the TFTA
 - “preventing competitors from participating or engaging in competition by *inducement with low price*, or other improper means”
- The “price-cost” and “recoupment” tests
- Lower prices to create network effects or to saturate the market by new firms could be justifiable
 - “Free shipping”, “free posting”, “free processing” policy by online shopping (auction) platform: the *Shopee* case (2018)

Competition Issues in E-commerce

▶ Resale price maintenance(RPM)

- Article 19 of the TFTA

“An enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party”

- Presumed illegal / can be rebutted by justifications
- The TFTC is unclear regarding whether *“market power” is an requirement or justification*

▶ Restriction on online sale:

- Article 20, Item 5 (“improper restrictions on its trading counterparts' business activity”)
- *Maintaining product quality and brand image* is the most frequently proposed justification, but has not been well-received by the TFTC

Competition Issues in Shared Economy

- ▶ Expand the scope for market participants
- ▶ Issues of Network effect and platform dominance
- ▶ The effects of vertical integration in shared economy

Competition Issues in Shared Economy

► The Uber and Airbnb controversy in Taiwan

- The issue of defining two-sided market
 - *Approach 1*: demand substitutability to defined relevant market / network effect is a factor to adjust market-power measurement
 - *Approach 2*: treat both as “transaction” platforms to observe the substitutability resulting from change of the “total prices”
 - *Approach 3*: measuring directly the competitive effects from transaction (eg. UPPI)

Competition Issues in Shared Economy

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► The Uber and Airbnb controversy in Taiwan

- Uber

- exit the market of Taiwan in February 2017 due to the allegation of violating transportation regulations but re-entered in April, 2017
- Cooperating with local taxi companies to provide services
- *Exclusive dealing* is the major competition issue that is currently under the TFTC's watch

- Airbnb

- still constrained by regulations to provide only the information from companies or individuals *licensed to run accommodation business*
- in essence, it is similar to a hotel booking platform, facing fierce competition from Booking.com, Hotels.com, Agoda etc. in Taiwan

Competition Issues in Big Data

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- ▶ Market power gained from owning data
 - Is data itself a “recipe” for business success, or just an ingredient?
- ▶ Refusal of accessing big data by data holders
 - Should the essential facility doctrine be applied?
- ▶ Discriminatory access of big data
- ▶ Tying data with data analytics
- ▶ Data as an input for algorithm and collusion
 - The “*velocity*” aspect of big data could render the delineation of relevant market and the establishment of collusive agreement more controversial

Competition Issues in Big Data

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- ▶ In Taiwan, the competitive concerns from implementing big data are reflected in the remedies imposed on parties in merger cases
 - The acquisition of Wretch (social media) by Yahoo (2007)
 - Joint venture between telecomm and financial services companies to provide mobile payment services (2013 & 2014)
 - remedies of *open access to platform and data* by competing firms were imposed in those cases

Regulatory Response: the Financial Regulatory Sandbox

► Financial Technology Innovation Experimentation Act (FTIEA; January 2018)

- “... create a safe environment for FinTech experimentation, to develop new financial products *with the aid of new technology* and *the development of new financial technology...*”
- Capitalizing the benefits from financial technology relating to big data and data analytics are the primary driving forces behind the legislation

Regulatory Response: the Financial Regulatory Sandbox

► Relevant to competition issues

- Article 6
 - “effectively *enhancing the efficiency* of financial services”, “*reducing costs* of management and operation” are reviewing factors that need to be taken into account
- Article 13
 - when experimentation creates *detrimental effects to financial market*, it shall be terminated
- Article 17
 - when a FinTech experimentation proves to be innovative and effective in reducing costs and enhancing the interests of consumers and business, the reviewing committee should... *review and revise relevant financial laws and regulations*

Thanks for your attention.
Comments are welcomed.

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