

ClientAlert

Antitrust/Competition

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New Taiwan Fair Trade Act Amendments Pack Hefty 40-Fold Antitrust Fine Punch

In December 2011, Taiwan dramatically increased the stakes for companies doing business in Taiwan. Cartel fines were increased more than 40-fold in Taiwan, and Taiwan became the most recent nation to adopt a full-fledged cartel leniency program. The new fines bring Taiwan into the range of hundreds of millions of US dollars or euros for future cases. The intended result of these two actions is a sharp increase in self-reported cartel conduct to Taiwan's antitrust authorities and a steep escalation in Taiwan's cartel fines. Taiwan thus joins other cartel enforcers in the race to post the steepest governmental fines against alleged cartel conduct.

At the same time, US and European enforcement actions against Taiwan-based firms are at an all-time high. Recently, US and EU competition authorities have both imposed significant penalties on Taiwanese companies. This has included US jail time announced for several Taiwanese executives.

40-Fold+ Increase in Taiwan's Cartel Fines to Hundreds of Millions of Euros or US Dollars

In December 2011, Taiwan's Fair Trade Commission (FTC) released details of amendments to Taiwan's Fair Trade Act and a new whistle-blower leniency program. Notably, Taiwan created a new leniency program to encourage companies to cooperate with the Taiwan FTC in the investigation of cartel activity. The sweeping new cartel law significantly raises fines for companies that violate the law.

Key revisions to Taiwan's Fair Trade Act include:

- 40-fold increase in maximum fines for operating a cartel to 10 percent of annual turnover or TWD 10 billion, whichever is greater (from previous maximum fine of TWD 25 million).
 - The new TWD 10 billion maximum fine is equivalent to US\$329.8 million, or €253.5 million, at current exchange rates.
 - Of course, the fine can be higher still under the new alternative test—up to 10 percent of annual turnover.



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To encourage whistle-blowers, Taiwan is granting:

- Full immunity from cartel fines for the first whistle-blower
- Reduction in cartel fines for up to four additional leniency applicants
- No leniency for the party that initiated the cartel, or for parties that do not cooperate with investigations

Taiwan's amendments to the Fair Trade Act were ratified by Taiwan's parliament on 23 November 2011. Final amendments and implementation will follow a ten-day public consultation period, expected later in January 2012.

US and EU Competition Authorities Continue to Target Taiwanese Companies: The LCD Panel and Automotive Lights Price-Fixing Investigations

Record criminal fines for Taiwanese companies date to 2006, when various governmental authorities, including in the United States, Europe, Japan and Korea, began investigating the pricing of Thin-Film Transistor LCD screens (TFT-LCDs). The European Commission imposed significant fines on a number of Taiwanese companies, most notably Chimei InnoLux Corporation, which was fined €300 million. In the United States, Taiwanese companies Chimei InnoLux Corporation, Chunghwa Picture Tubes and Hannstar Display have pleaded guilty to anticompetitive conduct, resulting in fines of US\$220 million, US\$30 million and US\$65 million, respectively.

More recently, on 30 November 2011, a federal grand jury in California indicted a Taiwanese aftermarket automotive lights manufacturer, Eagle Eyes Traffic Industrial Co., Ltd., its US subsidiary and two senior executives for allegedly fixing prices in the aftermarket automotive lighting industry. Another Taiwanese company, TYC Brother Industrial Co., Ltd., has publicly announced that it is the amnesty applicant in the US proceedings.

Upcoming US Criminal Trials of AU Optronics Corporation and Eagle Eyes

The USTFT-LCD case is entering a new phase as the trial of an accused company, AU Optronics Corporation, its US subsidiary, and several of its employees is set to begin on 9 January 2012 in San Francisco. AU Optronics, its president and five senior sales executives were indicted on 10 June 2010. The US DOJ's indictment alleges participation in a price-fixing conspiracy involving TFT-LCDs in violation of Section 1 of the Sherman Antitrust Act. The indicted AU Optronics employees entered the United States in August 2010 to respond to the indictment and have since remained in the United States. They were permitted to post bail and remain out of prison until the conclusion of the trial—they were ordered to stay in the United States and to surrender their passports. The employees are permitted to travel only with the court's prior permission.

The US criminal trial in the Automotive Lights investigation is scheduled for June 2012. The DOJ indicted two senior executives of Eagle Eyes, including its chairman. While one executive continues to reside in Taiwan, the other executive originally was arrested and detained at Los Angeles International Airport while he was in transit in the United States on 12 July 2011, and was originally indicted on 19 July 2011. He remains in the United States and cannot leave the country.

These recent developments in Taiwan, the United States and Europe underscore the need for companies and their executives to look at antitrust risk as a global issue—one that requires risk assessment and defense locally, but on a coordinated basis worldwide.

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