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Contributing Editor:
Euan Burrows
Ashurst LLP

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1 General

1.1 Please identify the scope of claims that may be brought in your jurisdiction for breach of competition law.

For civil actions in relation to alleged violations of the Fair Trade Act (FTA), the plaintiff may seek the following reliefs: suspension and/or prevention of infringing conduct; monetary damages; and injunctive relief.

The plaintiff may also report the violation to the Taiwan Fair Trade Commission (TFTC), the competent authority for competition law in Taiwan. If the TFTC initiates an investigation of the matter or imposes sanctions on the enterprise in question, subsequent legal action would fall under administrative proceedings.

Although the FTA stipulates criminal penalties for restriction of competition, in practice, criminal penalties are only imposed if the sanctioned enterprise refuses to comply with a TFTC order to cease and desist from further unlawful conduct, so criminal penalties for violations of competition law have become relatively rare in Taiwan in recent years.

1.2 What is the legal basis for bringing an action for breach of competition law?

(1) **Suspension and prevention of infringing conduct**
Article 29 of the FTA provides that a party injured by an enterprise's FTA violations may request the court to order the enterprise to cease such infringing conduct; a party may also request the court to pre-emptively order the enterprise to cease its conduct if the party may likely be injured by such conduct. While it is also possible for a plaintiff to request other specific performance to prevent likely harm, such cause of action has been rare in practice.

(2) **Damages claim**
Articles 30 and 31 of the FTA provide that an enterprise shall be held liable for compensation to parties injured by its FTA violations. If the enterprise's infringing conduct is found to have been intentional, the plaintiff may request monetary compensation of up to three times the amount of damages incurred.
A plaintiff may also file damages claims through other provisions of law, such as Article 184, Paragraph 2 of the Taiwan Civil Code, which is a generic provision holding a party responsible for providing compensation to another party injured by their violation of the law (Intellectual Property and Commercial Court 109-Min-Gong-Shang-Zi-2 Civil Decision).

(3) **Restoration of tarnished business reputation**
Article 33 of the FTA allows a plaintiff to also request the contents of the court's (favourable) decision to be published in a newspaper as a way to restore the credit or business reputation of the plaintiff, as well as a way to "set the record straight" to the public. As a result, this relief is not always available in competition law cases; it is usually only requested in cases involving the tarnishing of a business reputation, such as the use of forgeries or frivolous legal warning letters, which is prohibited under the Unfair Competition Chapter of the FTA. The court will not grant such relief if the plaintiff's credit or business reputation has not been tarnished.

(4) **Provisional proceedings**
Provisional relief that may be requested by a plaintiff includes a provisional attachment order and an order for injunctive relief to temporarily maintain the *status quo*. They are respectively based on Article 522, Paragraph 1 and Article 538, Paragraph 1 of the Taiwan Code of Civil Procedure. For details regarding such provisional relief, please see the responses to section 2.

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

Competition law claims are based on national law only, namely the aforementioned FTA.

1.4 Are there specialist courts in your jurisdiction to which competition law cases are assigned?

Taiwan does not have a specialist court for competition law cases. For competition law cases contesting the TFTC's decisions, they are adjudicated by the administrative courts. However, for civil and administrative competition law cases involving intellectual property disputes, the matter will be adjudicated by the Intellectual Property and Commercial Court.

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation? If collective claims or class actions are permitted, are these permitted on an "opt-in" or "opt-out" basis?

As mentioned above, any person may submit a FTA violation complaint to the TFTC, and if the TFTC believes there is a genuine likelihood of a FTA violation, it may initiate an administrative investigation. Subsequent legal action will be considered in administrative proceedings.

For civil actions, in theory, any party that has been injured by an enterprise's FTA violation may bring the aforementioned civil claims to court. However, there is some ongoing dispute as to whether "any party" includes ordinary consumers; there has been at least one court decision that concluded ordinary consumers have standing only if their consumer rights have been directly injured as a result of unlawful competition (Taiwan High Court 90-Shang-Zi-488 Civil Decision).

Multiple plaintiffs may initiate a civil action as co-plaintiffs under Article 53 of the Code of Civil Procedure, or in the alternative, appoint a representative plaintiff amongst themselves to represent their joint interests pursuant to Article 41 of the same in a fashion similar to class actions. Both mechanisms work on an opt-in basis. In practice, however, such "class action" proceedings under Article 41 of the Code of Civil Procedure are generally limited to consumer protection disputes involving a large number of individuals, and there has yet to be any competition law class actions.

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

For first instance administrative proceedings over a TFTC fine of more than NT$1.5 million, the case is generally heard before the High Administrative Litigation Court of a High Administrative Court, unless the following exceptions are present: administrative law disputes involving intellectual property are heard by the Intellectual Property and Commercial Court. If the TFTC's fine is less than NT$1.5 million and/or accompanied by other sanctions, the case is heard before the District Administrative Litigation Court of a High Administrative Court; and if the fine is less than NT$500,000, simplified litigation procedural rules will also apply.

For civil actions, since an FTA violation is considered an act of infringement of rights, pursuant to Article 15, Paragraph 1 of the Code of Civil Procedure, the court where the act of infringement occurred shall have jurisdiction. Please note that this includes the place where the act of infringement took place as well as the place where the results of such infringement took place (Supreme Court 56-Tai-Kang-Zi-369 Decision).

For first instance civil actions involving an intellectual property rights dispute alongside the FTA violation, the Intellectual Property and Commercial Court has exclusive jurisdiction; for example, cases that involved abuse of dominant market power and standards-essential patent licensing were handled by the Intellectual Property and Commercial Court. The above does not apply if there is "consensus jurisdiction" and "deemed consensus jurisdiction" under the Code of Civil Procedure, which would also provide the respective district courts with jurisdiction.

1.7 Does your jurisdiction have a reputation for attracting claimants or, on the contrary, defendant applications to seize jurisdiction, and if so, why?

Although the potential for awarding treble damages may represent a factor to attract plaintiffs to file suit, in actual practice, civil damages claims for restriction of competition (e.g., abuse of dominant market position, concerted action/cartels) are relatively rare. This may be attributable to the difficulty for plaintiffs to meet its burden of proof with civil procedure mechanisms alone, so if a plaintiff wishes for relief, the far more common practice is to simply complain to the TFTC and cause the TFTC to initiate an official investigation. In addition, for the serious restriction of competition violations, the FTA allows the TFTC to impose a fine of up to 10% of the sanctioned enterprise's sales turnover of the past fiscal year, which represents a far stronger "bite" to discourage further violations than virtually all civil damages claims, so injured parties often rely on making complaints to the TFTC instead of initiating civil actions to resolve restriction of competition violations in Taiwan.

1.8 Is the judicial process adversarial or inquisitorial?

Civil proceedings are adversarial in Taiwan. The plaintiff has the burden of proof to support its claims through sufficient evidence.

The judge, however, has the power to pose questions to or request clarifications from the parties, as well as to order the parties to submit statements or evidence in support of their factual and legal arguments (Article 288, Paragraph 1 and Article 199 of the Code of Civil Procedure).

1.9 Please describe the approach of the courts in your jurisdictions to hearing stand-alone infringement cases, including in respect of secret cartels, competition restrictions contained in contractual arrangements or allegations of abuse of market power.

While Taiwan courts can hear standalone competition law infringement claims, there is virtually no precedent of standalone competition law claims initiated independently of the TFTC (the TFTC does not initiate competition law violations in an administrative court). Almost all civil proceedings involving parties other than the TFTC are follow-on civil compensation claims after the TFTC has already sanctioned an enterprise for a competition law violation.

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Yes, interim remedies are available in competition law cases.

In civil complaints, the plaintiff may petition for an injunction to enjoin the defendant from conducting specific acts that violate the FTA. However, the courts' standard to grant such injunctive relief is relatively high. A plaintiff may also petition for a provisional attachment on the defendant's bank account or assets if the complaint involves a monetary claim and it is shown that the defendant may be unable to pay out the awarded amount afterwards. Also, the plaintiff may petition the court to preserve evidence held by the defendant before the action is filed with the court.

In an administrative action, the plaintiff who was ordered by the TFTC to cease and desist from the breaching conduct may

apply to suspend the order until the administrative court renders the final decision on such administrative action. However, the administrative courts have nearly never granted such a petition given that it would be difficult for the courts to determine the petition before it could review the merits of the case.

2.2 What interim remedies are available and under what conditions will a court grant them?

For provisional attachment petitions in a civil action, the primary consideration of the court in granting the petition is whether it would be difficult or impossible to order the defendant to comply with the plaintiff's requested relief via compulsory enforcement if the matter is left until a final court decision has been issued.

A provisional injunction petition in a civil action is only granted to "prevent serious harm or imminent danger" to the petitioning party. In addition to the aforementioned enforcement issue, the court will also consider the following factors:

(1) The petitioner's chances of prevailing in the action – the lower the chances, the less likely the petition will be granted.
(2) Whether a denial of the requested injunctive relief would cause irreparable harm to the petitioner or the respondent party.
(3) Balance of interests between the parties – a comparison of how much benefit or harm there is to the parties by granting or denying the petition.
(4) The impact of the petition on public interest.

While the petitioner has the obligation to provide preliminary substantiation for their requested provisional relief, the court may, at its discretion, require the petitioner to provide a bond to offset any insufficiencies in their reasoning as perceived by the court. In cases involving intellectual property rights, the petitioner would have to meet a higher standard to obtain the injunctive relief. Specifically, the petitioner not only has to meet a higher threshold for substantiating their requested provisional relief, but the court will reject a petition that it believes to be insufficiently substantiated instead of providing an opportunity for the petitioner to provide a bond (Article 52 of the Intellectual Property Case Adjudication Act; Article 37, Paragraph 1 of the Intellectual Property Case Adjudication Rules).

For an administrative action, the sanctioned enterprise may petition the administrative court or the Intellectual Property and Commercial Court for an injunction order to temporarily maintain the *status quo* or temporarily suspend the enforcement of the administrative sanctions (Article 298, Paragraph 2 and Article 116 of the Administrative Litigation Act, Article 71 Paragraph 1 of the Intellectual Property Case Adjudication Act). However, as mentioned in the response to question 2.1 above, there are almost no cases in which the sanctioned enterprise's request for provisional relief is granted.

3 Final Remedies

3.1 Please identify the final remedies that may be available and describe in each case the tests that a court will apply in deciding whether to grant such a remedy.

The possible final remedies include monetary compensation and specific performance, including the obligation to engage in or refrain from a certain act and the restoration of business reputation.

For monetary compensation, even though the general principle under Article 213 of the Civil Code is to restore the parties to their original state, monetary compensation can still be ordered if it is no longer possible to restore the parties to their original state. As it is generally no longer possible for parties in a civil action over a competition law dispute to be restored to their original state, monetary compensation is the main form of relief. The factors examined by a civil court for determining the amount of compensation would be no different from those of any other civil action, namely besides the prerequisite demonstration that the tort/breach in question had in fact occurred (i.e., the violation of the FTA), the court will look at the extent of the damages incurred by the plaintiff, whether the defendant acted intentionally or negligently, and the degree of causation between the FTA violation and the resulting damages.

For the obligation to engage or refrain from a certain act, it is based on the aforementioned cause of action to "suspend and prevent the infringing conduct". While the court will look at many of the same elements as described in the above paragraph, the overall consensus in practice is that the court will not need to inquire as to whether the defendant had acted intentionally or negligently.

As to the restoration of business reputation, in case of the aforementioned relief of disclosing the court's decision in a newspaper, the court will examine how the plaintiff's reputation has been tarnished by the defendant's acts, whether publishing the decision in a newspaper would restore the plaintiff's reputation, as well as whether such order would be an equitable and proportional response to both parties (Taiwan Kaohsiung District Court 103-Su-Zi-1190 Civil Decision).

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available? Are there any examples of damages being awarded by the courts in competition cases that are in the public domain? If so, please identify any notable examples and provide details of the amounts awarded.

For monetary compensation in a civil action involving a competition law violation, the court will generally only award an amount based on the provable damages incurred by the plaintiff, which includes actual damages and lost profits (Article 216, Paragraph 1 of the Civil Code). In addition, if the defendant unjustly profited off the infringing conduct, the plaintiff may request monetary compensation based on the amount of such unjust profits (Article 31, Paragraph 2 of the FTA).

In the event the plaintiff can prove that it incurred damages but lacks the evidence to narrow these down to a definitive amount or otherwise has clear difficulties in proving the amount, the court may, at its discretion, determine an amount based on the totality of the circumstances of the case (Article 222, Paragraph 2 of the Code of Civil Procedure).

Regarding exemplary damages, as mentioned previously, a plaintiff may request monetary compensation of up to three times the amount of damages proved if the defendant's infringing conduct was intentional. In such case, the court will examine the defendant's anticompetitive conduct, its duration, the defendant's subjective "malice", the extent of injury that may potentially be inflicted on the plaintiff, and the amount of unjust profits earned. However, there have been a few cases in which the court believed that the compensatory damages amount was sufficient to restore the plaintiff and thus denied relief for exemplary damages (e.g., Supreme Court 91-Tai-Shang-Zi-475 Civil Decision, Intellectual Property and Commercial Court 104-Min-Gong-Shang-Zi-3 Civil Decision).

3.3 Are fines imposed by competition authorities and/or any redress scheme already offered to those harmed by the infringement taken into account by the court when calculating the award?

The civil court does not need to take into account the fines imposed by the TFTC when determining the appropriate monetary compensation amount. However, for requested specific performance, if the TFTC has already ordered the defendant to engage in or desist from engaging in the same requested act, then the civil court may take such order into account in deciding whether to grant the plaintiff's specific performance claim.

4 Evidence

4.1 What is the standard of proof?

The default standard of proof for civil actions is, in essence, a "preponderance of evidence". According to the Code of Civil Procedure, when a judge presides over a dispute, they shall fully review the parties' arguments and the results of the investigations of evidence, then make a determination of the facts pursuant to their own "free assessment/evaluation".

4.2 Who bears the evidential burden of proof?

The Code of Civil Procedure provides that each party has the burden of proof to support facts that are favourable to their own position. So, in principle, the plaintiff has the burden of proof in civil actions, and if the plaintiff cannot sustain the burden of proof for its own arguments, then the defendant need not provide any support for its arguments for the court to reject the plaintiff's claims. Once the plaintiff has met the burden of proof, it would be up to the defendant to support its arguments that oppose those of the plaintiff.

4.3 Do evidential presumptions play an important role in damages claims, including any presumptions of loss in cartel cases that have been applied in your jurisdiction?

The FTA does not contain any provisions on the presumptions of loss for cartel cases.

In general, a plaintiff requesting monetary compensation in a civil action involving a FTA violation will have to prove that "its interests have been infringed upon" and "the defendant's conduct is sufficiently causally related to the injury" (Taiwan High Court 92-Zhong-Shang-Zi-81 Civil Decision). The closest example of an evidential presumption may be the case mentioned in question 3.2 above, where the court will determine on its own the amount of damages incurred by a plaintiff who cannot prove the exact amount (Article 222, Paragraph 2 of the Code of Civil Procedure); however, the prerequisite condition for such determination is that the plaintiff has already sustained its burden of proof that an injury has occurred, thus there are no evidentiary "shortcuts" for a plaintiff in proving the above two elements in a civil damages claim involving FTA violations.

4.4 Are there limitations on the forms of evidence that may be put forward by either side? Is expert evidence accepted by the courts?

The section on evidence in the Code of Civil Procedure categorises the kinds of evidence that parties may submit in a civil action in Taiwan, which include witness examinations, expert opinion/testimony, documentary evidence, inspection/assessments, and examinations of parties.

For expert evidence, the expert must be court appointed rather than chosen by the parties on their own. Prior to appointment, the court will allow the parties to provide their opinions on the expert candidates, and if the parties agree on appointing a certain expert, the court must appoint such individual unless the court has other reasons to believe such individual is inappropriate (Article 326 of the Code of Civil Procedure). The court has the authority to order the appointed expert to present their opinion via a written report as well as to testify before the court (Article 335 of the Code of Civil Procedure). However, the court is not bound by the court-appointed expert's opinions in its fact-finding.

With that said, parties are generally not prohibited from submitting as evidence written reports prepared by individual(s) deemed "expert(s)" by the party; the key difference is that since such evidence is not presented by court-appointed expert, the court would consider this as documentary evidence rather than expert opinions, and the court has sole discretion in whether to take such evidence into account.

4.5 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?

There is no Taiwan equivalent to the discovery mechanisms commonly found in Anglo-American jurisdictions. Parties in a civil action in Taiwan may obtain information through the following mechanisms:

(i) **Prior to the commencement of proceedings**
At this stage, the parties may petition a court for (typically *ex parte*) preservation of evidence orders against the other party only when there is a credible threat or difficulty in accessing such evidence once the proceedings have begun. The petitioner must therefore describe with some specificity the name of the other party, the evidence to be preserved, the disputed fact to be proved by such evidence, and the reason why such evidence needs to be preserved (Articles 368–370 of the Code of Civil Procedure and Article 46 of the Intellectual Property Case Adjudication Act).

(ii) **While the proceedings are underway and evidence is in the opposing party or a third party's possession**
(1) Evidence in the opposing party's possession:
A party may petition the court to order the opposing party to produce evidence if such evidence: (i) has been cited by the opposing party in the proceedings; (ii) may be turned over to or inspected by the petitioning party pursuant to law; (iii) is created in the interests of the petitioning party; (iv) is the commercial books of the opposing party; or (v) is created for matters that relate to the current civil action. If the above evidence contains confidential information or trade secrets of a party or third party, and its disclosure will severely harm such party or third party, the party (in possession) may refuse to disclose such evidence unless the court believes it necessary that such evidence be disclosed. In such case, the disclosure may be made *in camera* (Article 344 of the Code of Civil Procedure).
In a civil competition law action involving intellectual property rights, if a party is required to disclose trade secrets in its possession, it may request the court to issue confidentiality orders to the other party, their agents, or

any other persons relevant to the litigation (Article 36 of the Intellectual Property Case Adjudication Act).

(2) Evidence in the possession of a third party (including the competition law authority):

A party may petition the court to order the third party to produce evidence, and if the court believes such evidence is material and the petitioning party has proper cause to make the disclosure request, the court will order the third party to produce such evidence. If the third party refuses to comply without proper cause, the court may impose a fine of no more than NT$30,000 and, when necessary, issue a compulsory enforcement order for disclosure (Article 346, Paragraph 1 and Article 347, Paragraph 1 of the Code of Civil Procedure).

If the evidence is in the possession of a government agency or public official such as the TFTC, the court may issue a subpoena for such evidence (Article 350, Paragraph 1 of the Code of Civil Procedure).

Pursuant to the same Article 36 of the Intellectual Property Case Adjudication Act as mentioned in (ii) (1) above, in a civil competition law action involving intellectual property rights, a third party may request a court to issue confidentiality orders to the parties, their agents, or any other persons relevant to the litigation with respect to the disclosure of trade secrets held by such third party.

4.6 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?

The default rule is that unless the law prescribes otherwise, if a court issues a subpoena for an individual to testify as a witness in a civil action, such individual may not refuse to appear unless there is a proper and reasonable cause. As such, the court will impose a fine of no more than NT$30,000 on a witness for failing to comply with a subpoena request to testify; if the witness repeatedly fails to comply, the court may issue consecutive fines or even order the witness to be forcibly detained and made to appear (Article 303 of the Code of Civil Procedure). However, in practice, civil courts virtually never resort to physical detainment in order to compel witness appearance.

The specific process for witness questioning depends on the adjudicating judge's practices and are not fixed in statute. Generally, in practice the process is very much similar to that found in many other jurisdictions; namely, the party that summoned the witness starts off with a direct examination, followed by the opposing party's cross-examination, which may then be followed by the summoning party's redirect examination, as well as the opposing party's redirect cross-examination afterwards. At any point during the party's questions, the judge may interject with questions of their own to the witness. A few other courts would have the judge conduct the bulk of the witness questioning, with both parties then posing their questions to the witness if the presiding judge deems such questions relevant to the subject issues – in such case, the parties' questions are no longer distinguishable as "direct examination" and "cross-examination".

4.7 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?

The TFTC's decision to sanction an enterprise for FTA violation(s) does not bind the civil court in a related damages case; the civil court must determine on its own whether the defendant enterprise's conduct actually infringed on the rights of the plaintiff as alleged (Taiwan High Court 90-Shang-Geng(II)-Zi-122 Civil Decision). Similarly, a foreign competition law authority's sanction decision does not bind the Taiwan court.

However, in practice, a competition law authority (domestic or foreign)'s decision to sanction a defendant enterprise will likely play a material role in the civil court judge's opinion of a related civil damages claim.

4.8 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?

As mentioned in question 4.5 above, the court may conduct parts of proceedings *in camera* when arguments or evidence presented by the parties contain the trade secrets of the parties or of a third party, and it may prohibit or restrict access to those litigation documents (Article 195-1; Article 242, Paragraph 3; Article 344, Paragraph 2; and Article 348 of the Code of Civil Procedure; Article 32, Paragraph 1 of the Intellectual Property Case Adjudication Act; and Article 14 of the Trade Secrets Act, among others).

Also, as mentioned, in a civil competition law action involving intellectual property rights, the judge may take any or all of the following measures to protect the trade secrets involved in the litigation: conduct hearings *in camera*; prohibit or restrict access, reproduction or copying of litigation documents; and issue confidentiality orders to relevant parties.

4.9 Is there provision for the national competition authority in your jurisdiction (and/or the European Commission, in EU Member States) to express its views or analysis in relation to the case? If so, how common is it for the competition authority (or European Commission) to do so?

There is no mechanism for the TFTC to provide its comments in a related civil action, nor has the TFTC ever intervened in a civil action to support a party and/or express its views on the matter.

As the TFTC will always be a party in an administrative proceeding regarding its competition law decisions, it will of course be able to express its views or analysis of the matter as a party.

4.10 Please describe whether the courts in your jurisdiction have a track record of taking findings produced by EU or domestic *ex-ante* sectoral regulators into account when determining competition law allegations and whether evidential weight (non-binding or otherwise) is likely to be given to such findings.

Results of investigations conducted by domestic *ex-ante* sectoral regulators (e.g., trademark prosecution status in a competition law claim relating to a trademark infringement warning letter) have been considered by the courts as evidence in an action involving competition law claims. While it is likely the judges tend to give some evidentiary weight to those findings, they are not required to do so under law.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

Conceivably, yes. When a defendant enterprise argues in response to a plaintiff's allegation that its conduct did not

constitute a violation of the FTA, one potential line of argument may be that it had a proper cause to act in a manner that would otherwise constitute a FTA violation – for example, the defendant enterprise may argue that it was compelled to treat the plaintiff in a different/discriminatory manner compared to other transaction partners because the defendant enterprise must adjust its commercial terms and conditions pursuant to a variety of factors, such as market supply and demand, cost differences, transaction volume, credit risk, etc.

5.2 Is the "passing on defence" available and do indirect purchasers have legal standing to sue?

The "passing on defence" is not recognised in Taiwan practice. As for indirect purchasers' standing, as mentioned in the response to question 1.5 above, in civil actions, the Taiwan courts generally require the plaintiff to have been directly injured by the alleged unlawful competition conduct in order to have standing to sue the defendant enterprise, so ordinary consumers, who are more often than not indirect purchasers, may encounter difficulty in suing a defendant enterprise in a civil action.

5.3 Are defendants able to join other cartel participants to the claim as co-defendants? If so, on what basis may they be joined?

Defendants cannot petition to join other cartel participants to the proceeding as co-defendants. However, it is theoretically possible to join other cartel participants as interveners if it is demonstrated that such participants' "legal interests" may be jeopardised without timely joining the proceeding. The above legal interest does not include any indirect or consequential harm incurred as a result of the proceeding.

6 Timing

6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

Yes. For a civil damages claim in relation to competition law, the statute of limitations is two years after becoming aware of the infringing conduct and the party that engaged in the infringing conduct. In addition, if 10 years have elapsed since the infringing conduct, the claim will also be disallowed (Article 32 of the FTA).

6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

The first instance generally takes around 12 to 18 months to come to a court decision, whether before a civil court, the Intellectual Property and Commercial Court or a criminal court. The second instance of a civil action may take two years, and the third and final instance may take more than one year. Currently, there is no relevant procedure in Taiwan to expedite proceedings.

7 Settlement

7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example, if a settlement is reached)?

The parties may always mutually agree to end the civil proceedings at any time without the court's consent. The plaintiff may withdraw all their civil claims at any time, which would directly close the entire case; one exception to note is that if the defendant has already made their oral arguments (which would be near the very end of the civil proceedings), the plaintiff will need to obtain the defendant's consent before they may withdraw their claims.

The parties may attempt to settle at any time during the civil proceedings. If the court believes the parties have a chance to settle, it may also attempt to cause the parties to settle at any time. Once settlement is reached, the proceedings end immediately, and the settlement has the same binding power on the parties as a final court decision would have had. In the event there is cause to void a settlement, the parties may request the court to continue the proceedings (Article 263, Paragraph 1; Articles 377 to 380 of the Code of Civil Procedure).

7.2 If collective claims, class actions and/or representative actions are permitted, is collective settlement/settlement by the representative body on behalf of the claimants also permitted, and if so on what basis?

In cases involving a representative plaintiff chosen among all the co-plaintiffs, the representative plaintiff by default has the authority to act on behalf of all co-plaintiffs, including the power to withdraw claims or settle with the defendant, unless the representative's such authority has been otherwise restricted by the other co-plaintiff(s). In addition, although a single co-plaintiff may restrict the representative plaintiff's power to withdraw or settle the case (on the co-plaintiff's behalf), such restriction will not have effect with regard to the other co-plaintiffs (Article 44, Paragraphs 1 and 2 of the Code of Civil Procedure).

8 Costs

8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

In general, the losing party bears the litigation costs, which includes the court fees, expert appointment fees and any other expenses required for the court to adjudicate the case.

As for attorneys' fees, these are not included among the aforementioned "litigation costs" unless the attorney was appointed by the judge as a special representative, if attorney representation in the matter was mandatory under law, or if the matter is before the third instance court; in this case, the attorneys' fees of the prevailing party are included as part of the "litigation costs" but the court will determine the appropriate amount, which is usually much less than the actual amount paid by the prevailing party. The losing party will not be made to bear the fees of the attorneys retained by the prevailing party in the first instance and second instance proceedings.

8.2 Are lawyers permitted to act on a contingency fee basis?

This is permitted for civil actions, but prohibited for criminal actions.

8.3 Is third-party funding of competition law claims permitted? If so, has this option been used in many cases to date?

There are currently no laws regarding the third-party funding of

competition law claims, and there has yet to be any case in which this option was pursued.

9 Appeal

9.1 Can decisions of the court be appealed?

For general civil actions, a party may contest a District Court's decision by appealing the decision to the High Court, and a party may contest a High Court's decision by appealing the decision to the Supreme Court.

Appeals for civil cases that involve the protection of intellectual property rights under the FTA are slightly different:

(i) If the Intellectual Property and Commercial Court is the court of first instance and a single judge presided over the first instance, unless otherwise specified by law, an appeal of the judge's decision will also be made to the Intellectual Property and Commercial Court, and the appeal will be adjudicated by a chamber consisting of three judges.

(ii) If a District Court is the court of first instance (as agreed by the parties beforehand or deemed consensus by the parties), unless otherwise specified by law, an appeal will be made to the Intellectual Property and Commercial Court.

(iii) When the Intellectual Property and Commercial Court is the court of second instance, unless provided otherwise in law, an appeal will be made to the Supreme Court (Article 48 of the Intellectual Property Case Adjudication Act).

10 Leniency

10.1 Is leniency offered by a national competition authority in your jurisdiction? If so, is (a) a successful, and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Yes. The TFTC has established a leniency policy that is only applicable to horizontal concerted action/cartel cases:

(i) Eligible parties: enterprises engaging in concerted action or a cartel member (Article 35, Paragraph 1 of the FTA and Article 2 of the Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases).

(ii) Timeframe: (1) before the TFTC became aware of the unlawful activity or the commencement of an official investigation; or (2) during the TFTC's investigation (Article 35, Paragraph 1 of the FTA).

(iii) Results: if the applicant meets the requirements for an exemption or reduction of fines under the Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases, the TFTC will provide a conditional offer to the applicant for the exemption or reduction of fines that would originally be imposed on the applicant, as well as well as providing an agreement detailing the terms of the conditional exemption or reduction of fines (Articles 6 and 13 of the Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases).

Since the leniency policy is considered a form of administrative leniency and can only eliminate or reduce administrative fines, even if a leniency applicant was eventually offered an exemption or reduction of fines, such applicant is not released from any civil liabilities it may have incurred as a result of its actions.

10.2 Is (a) a successful, and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

The FTA does not contain any provision that would enable a leniency applicant to subsequently withhold evidence.

The only potentially relevant point is mentioned in the response to question 4.8 above, namely that a party (i.e., the leniency applicant) may refuse to disclose evidence in court if the evidence contains its own trade secrets or those of a third party that, if disclosed, would expose itself or the third party to severe harm. The court may still order the disclosure of such evidence *in camera* and/or with other access restrictions in place.

Again, as mentioned, although there has been an increase in numbers, there are still very few civil damages claims relating to concerted action/cartel violations in Taiwan, and there has yet to be any dispute arising from a defendant's refusal to disclose evidence on grounds that it was a leniency applicant; therefore, further observation is needed for future developments on this issue.

11 Anticipated Reforms

11.1 What approach has been taken for the implementation of the EU Directive on Antitrust Damages Actions in your jurisdiction? How has the Directive been applied by the courts in your jurisdiction?

This is not applicable in Taiwan.

11.2 Please identify, with reference to transitional provisions in national implementing legislation, whether the key aspects of the Directive (including limitation reforms) will apply in your jurisdiction only to infringement decisions post-dating the effective date of implementation; or, if some other arrangement applies, please describe it.

This is not applicable in Taiwan.

11.3 Are there any other proposed reforms in your jurisdiction relating to competition litigation?

On June 6, 2023, the TFTC issued its latest proposed amendments to the FTA in relation to competition litigation for public comments. The main points are:

1. Broadening the scope of activities that would be considered concerted action: a third party (or an upstream or downstream party) promoting or acting in concert to restrict competition with competitor(s) at the same supply chain level will also constitute concerted action.
2. Allow the publication of decisions on electronic versions of newspapers. In cases of reputational damage, the prevailing plaintiff may request the decision to be published in an electronic version of a newspaper in addition to the physical version.

Dr. Chung-Teh Lee is a co-founder of Lee, Tsai & Partners and has practised for more than 40 years. He specialises in construction projects, cross-border transactions, competition law and dispute resolution. He is a former judge and was appointed by the Ministry of Transportation and Communication as a member of the Dispute Resolution Board for the Taiwan High-Speed Rail project. He is listed as a ranked lawyer in dispute resolution law, real estate & projects and TMT (technology, media and telecoms) by *Chambers and Partners*. He was named amongst Taiwan's Top 100 Lawyers in 2022 and 2023 by *Asia Business Law Journal*. He is currently the intellectual property rights committee co-chair of the European Chambers of Commerce Taiwan.

Lee, Tsai & Partners Attorneys-at-Law
9F, 218 Tun Hwa S. Road
Sec. 2, Taipei 106033
Taiwan

Tel: +886 2 2378 5780
Email: CTLee@leetsai.com
URL: www.leetsai.com

Aaron Chen is a partner at Lee, Tsai & Partners. He specialises in competition law, intellectual property, corporate governance and commercial arbitration and litigation. Mr. Chen has over 15 years of experience advising clients in all types of competition law matters and has representing clients in landmark cases in relation to concerted action and abuse of dominant position. Mr. Chen also routinely provides advice on obtaining pre-merger approvals and other competition law matters to clients in a wide range of industries. Mr. Chen was recognised amongst Taiwan's Top 100 Lawyers by *Asia Business Law Journal* in 2019. He currently acts as the chairperson of the Competition Law Committee of the Taipei Bar Association, the vice-chair of the Competition Law Committee of the Taiwan Bar Association, and as the advisor of the Fair Trade and Consumer Relationship Commission, Chinese National Federation of Industries.

Lee, Tsai & Partners Attorneys-at-Law
9F, 218 Tun Hwa S. Road
Sec. 2, Taipei 106033
Taiwan

Tel: +886 2 2378 5780
Email: AaronChen@leetsai.com
URL: www.leetsai.com

Oli Wong is a senior associate at Lee, Tsai & Partners. She specialises in competition law, biotechnology, medical and pharmaceutical law, mergers & acquisitions, as well as international trade & economics law. Ms. Wong has extensive experience acting in various cartel investigations and unfair competition cases on behalf of domestic and international clients. Ms. Wong also advises many publicly listed companies on cross-border mergers & acquisitions, group restructuring, and medical and pharmaceutical matters.

Lee, Tsai & Partners Attorneys-at-Law
9F, 218 Tun Hwa S. Road
Sec. 2, Taipei 106033
Taiwan

Tel: +886 2 2378 5780
Email: OliWong@leetsai.com
URL: www.leetsai.com

Lee, Tsai & Partners is a full-service boutique local firm. The firm has extensive experience representing clients in competition litigation, both in public and private enforcement, ranging from concerted actions, abuse of dominant position to other unfair competition conducts. The firm also has substantial experiences advising clients on merger approvals and vertical restrictions (price-based or otherwise). The firm has successfully assisted clients in resolving competition law matters that involve intellectual property rights, such as standard-essential patents (SEPs), as well as competition law matters arising from other jurisdictions, such as responding to competition investigations by authorities in the US and the EU. The firm's client profile includes semiconductor design houses and manufacturers, telecommunications companies, infrastructure providers, independent power producers, and petrochemical companies, etc.

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