



ICN UNILATERAL CONDUCT WORKSHOP – TOKYO 2023  
BREAKOUT SESSION 1

HOW ABUSE OF SUPERIOR BARGAINING POSITION IS  
REGULATED IN TAIWAN?

**Matt Liu**

Partner, Tsar & Tsai

7 March 2023

# Regulatory Overview



2

- The Taiwan Fair Trade Act prohibits the following abuses
  - Abuse of dominant market power
  - Abuse of non-dominant market power that is likely to harm the market competition or the trading order
- Exploitative abuse is regulated under the following three provisions
  - Art. 9 - prohibiting abuse of dominance (50% market share threshold for a single firm)
  - Art. 20 - prohibiting abuse of relatively strong market position in vertical restraints (market share is relevant but no clear market share threshold is prescribed)
  - Art. 25 - prohibiting deceptive or obviously unfair conduct that harms the trading order (market share is irrelevant)

# Abuse of Superior Market Position



3

- In the past, abuse of superior market position was regulated Art. 20
- Art. 20 – prohibiting vertical restrictions that is likely to harm the market competition by firms with relatively strong market position
  - No market share threshold is prescribed in Art. 20
  - The TFTC's 2016 ruling sets forth the 15% market share threshold
    - Principle - No harm to the market competition will be presumed if a firm's market share is lower than 15%
    - Exception – If a firm abuses its superior market position or the economic dependency, likelihood to harm the market competition would be found even if its market share is lower than 15%

# Policy Debate



4

- Controversy
  - Abuse of superior market position or economic dependency does not necessarily harm the market competition
  - The TFTC did not prove the market share in some decisions
- Art. 20 is not an appropriate tool to tackle abuse of superior bargaining position or economic dependency
- Another more appropriate provision is necessary

# The TFTC's Change of Its View



5

- The TFTC's White Paper on Digital Economy
  - Challenges in market definition and market share calculation
- The TFTC's change of its view – from Art. 20 to Art. 25
  - Abuse of superior bargaining position or economic dependency will no longer be regulated under Art. 20
  - Instead, it will be regulated under Art. 25
    - Market share of the infringing firm is irrelevant
    - Harm to the trading order is easier to be proven than harm to the market competition
    - Repetitive conduct must be proven in order to establish the harm to the trading order