

FTC Regulation Amendment

1643rd Commissioners' Meeting (2023)

Case: "Merger Types to Which Paragraph 1 of Article 11 of the Fair Trade Law Does Not Apply" and "Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings" amended

Keyword(s): Merger, disposal directions (guidelines)

Reference: Fair Trade Commission Decision of March 29, 2023 (the 1643rd Commissioners' Meeting)

Relevant Law(s): Articles 11 and 12 of the Fair Trade Law

Summary:

1. The added and amended provisions in the "Merger Types to Which Paragraph 1 of Article 11 of the Fair Trade Law Does Not Apply" are as follows:

- (1) Point 5 regarding the merger type of "foreign enterprises merging by setting up or managing extraterritorial joint ventures and such joint ventures not engaging in economic activities in the country" was added.
- (2) The merger type of "foreign enterprises merging by setting up or managing extraterritorial joint ventures and such joint ventures not engage in economic activities in the country" has no direct, substantial or reasonably foreseeable influence on relevant domestic markets and there is no need to regulate such mergers. Hence, there is no need to filed with the FTC for this type of mergers.
- (3) The wording of "such joint ventures not engaging in economic activities in the country" means that the economic activities of such joint ventures do not involve the supply and demand in relevant product or service markets in the country. The so-called "economic activities" include commercial practices such as marketing products or services, giving price quotes, making price negotiations, and signing transaction, undertaking or delegation agreements with trading counterparts.

2. The amendment made to the "Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings" is as follows:

- (1) Taking into consideration the efficiency of merger reviews and the

agency's law enforcement experiences with regard to extraterritorial merger cases, the FTC added case types to which simplified procedures may apply in order to speed up the review process for mergers that have only slight influences on domestic markets.

- (2) The merger type of "merging parties adopting cash transaction to merge outside the country and the amount not exceeding NT\$2.5 billion" was added to become Subparagraph 6, Paragraph 1 of Point 7. The merger transaction amount is determined in accordance with the amount recorded in the merger agreement, the transaction price decided by the board of directors or during a shareholders meeting, the valuation opinion provided by specialists, or a transaction price reasonably estimated. A merger transaction amount in a foreign currency shall be converted to NTD according to the exchange buying rate announced by Bank of Taiwan (or cash buying rate if it is unavailable).
- (3) The merge types of "one of the merging parties filing the merger due to the situation described in Subparagraph 1 or 2, Paragraph 1 of Article 11 of the Fair Trade Law and the merger case meets one of the following conditions: A. The domestic sales of products or services of the merging parties in a horizontal merger in the previous fiscal year were less than NT\$200 million; B. The domestic sales of products or services of the merging parties of a vertical merger in each one's market in the previous fiscal year were less than NT\$200 million; and C. The domestic sales of the merging parties in the previous fiscal year were all zero," were added to become Subparagraph 7, Paragraph 1 of Point 7. According to the FTC's experiences, when one of the merging parties achieves the market share threshold specified in Subparagraph 1 or 2, Paragraph 1 of Article 11 of the Fair Trade Law and files the merger with the FTC, whether the total domestic sales of a horizontal merger or the domestic sales of each individual merging party of a vertical merger were less than NT\$200 million, or, besides the merging party that achieves the market share threshold, the domestic sales of the remaining merging parties in the previous fiscal year were all zero, the influences on the relevant markets will be insignificant. In this case, simplified procedures shall be applied.

Summarized by: Wen, Che-Chia; Supervised by: Liao, Hsien-Chou