



Effective Remedies in Chinese Taipei Merger Cases

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26 SEP. 2013

- MERGER REVIEW
- CASE STUDY: TSM PLATFORM
- CASE STUDY: ONE RED
- CONCLUSION

MERGER REVIEW

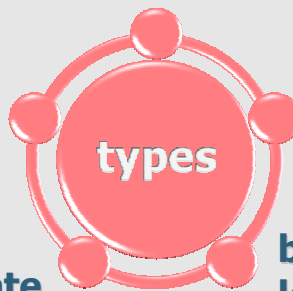
Merger Types

Article 6

directly or indirectly control the business operation

merged into one

hold or acquire the shares or capital contributions



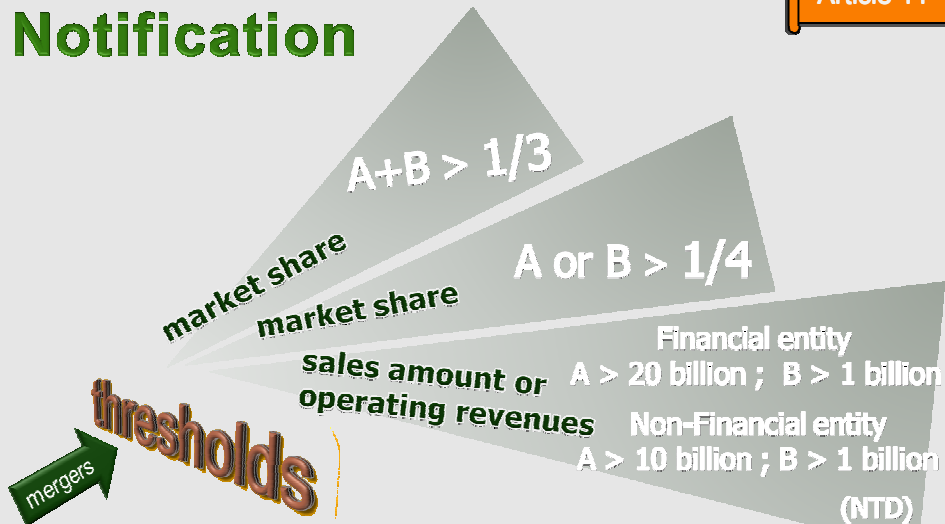
operate jointly or be entrusted by

be assigned by or leases from the whole/major part of business or properties

Thresholds for Notification

Article 11

Notification



Merger Review

CASE STUDY:
TSM

Case study:
One red

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Exception of Merger

Article 11-1

1

- Where any of the enterprises participating in a merger already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise.

2

- Where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge.

3

- Where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely.

4

- Where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Law or Article 28-2 of the Securities and Exchange Law, redeems its shares held by shareholders so that its original shareholders' shareholding falls within the circumstances provided for in Article 6, Paragraph 1, Subparagraph 2 of Fair Trade Act.

Merger Review

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TSM

Case study:
One red

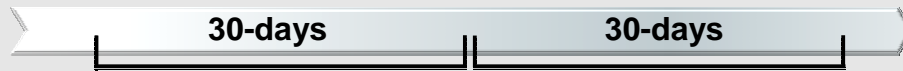
Conclusion

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Period & Standard

Article 11 & 12

Waiting Period



receives all
the required
documents

all merger reviews shall not be completed

Reviewing Standard

Overall
economic
benefit > Lessening
competition

Merger Review

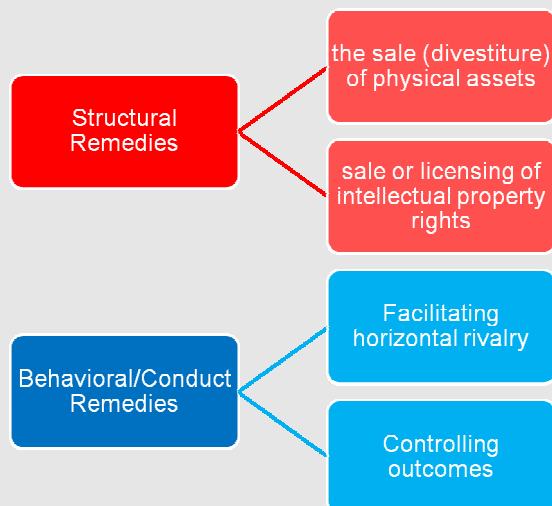
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Types of Remedies



Merger Review

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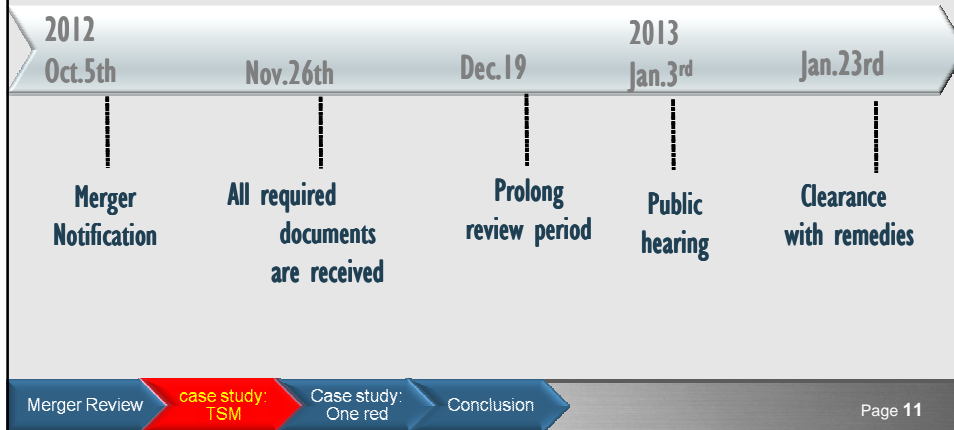
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Structural Remedies vs. Behavioral Remedies

- Structural Remedies
 - Are generally one-off remedies that intend to restore the competitive structure of the market.
 - Are easier to supervise.
 - Directly and effectively restore competition lost.
- Behavioral Remedies
 - Usually in conjunction with a structural remedy.
 - Require ongoing monitoring, enforcement and/or cooperation between the parties.
 - Have significant disadvantages in terms of cost, effectiveness and risk of market distortion.

CASE STUDY: TSM PLATFORM

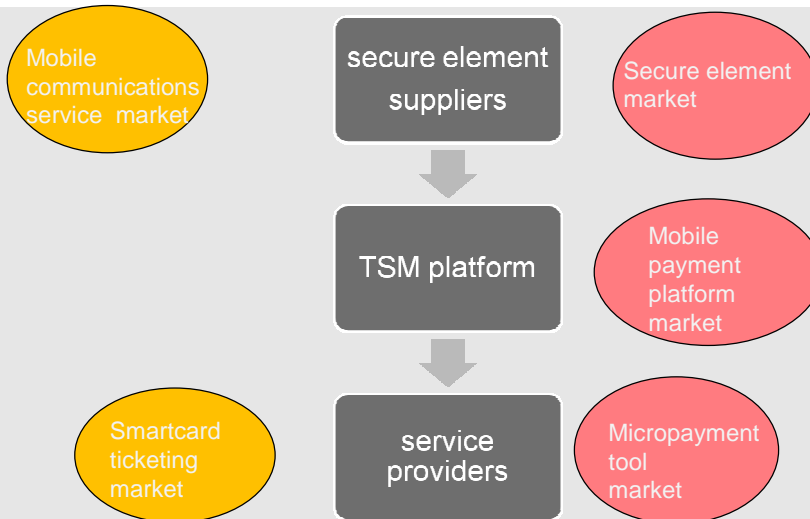
Timeline



Background



Market



Remedies(**Structural**)

Four years after the new business is set up:

- ❶ the total shares held by or the capital contributions from the merging parties (and their subsidiaries and affiliates) shall not exceed one half of the voting shares or total capital of the new business.
- ❷ the shares held by or the capital contributions from EasyCard Investment Holding Co., Ltd. (and its subsidiaries and affiliates) shall not exceed one tenth of the voting shares or total capital of the new business.

Remedies(**Structural**) con'd

New business:

- 3**and the merging enterprises shall not prevent horizontal competitors (including mobile communications service providers and smartcard ticketing businesses) from joining or pulling out from(through share holding, acquisition or disposal) the new business without justification. Based on the principle of openness and liberty of capital investment, the new enterprise and the merging enterprises may raise capital by issuing shares to subjects including but not limited to horizontal competitors already participating in the merger.
- 4**shall not engage in any financial business or services, except when the plans for such operations are submitted to the FTC in advance and the FTC assesses that the overall economic benefit will be greater than disadvantages from competition restrictions thereof incurred and gives its written approval.

Remedies(**Behavioral**)

- 5**To ensure that other payment platforms could take part in the competition, the new business and the merging enterprises may not refuse without justification requests from other mobile payment platforms for connection directly or through an interface or obstruct other mobile payment platforms from entering the market.
- 6**Without justification, the new business may not treat the merging enterprises (and their subsidiaries and affiliates) preferentially on the terms for service providers or secure element suppliers.
- 7**Without justification, the new business may not treat any service provider or secure element supplier differentially.
- 8**The new business and the merging enterprises may not engage in any practices to restrict competition or impede fair competition, such as joint boycotting, against any specific enterprises.

Remedies(**Publication of Information**)

Two months before the Trust Service Management platform begins operation, the new business is required to provide the FTC with:

- **9** the management regulations for the Trust Service Management platform (including but not limited to details of cooperation between service providers and secure element suppliers) and publicly announce the regulations before they take effect.
- **10** a set of regulations regarding the protection of personal and transaction information and publicly announce the regulations before they take effect.

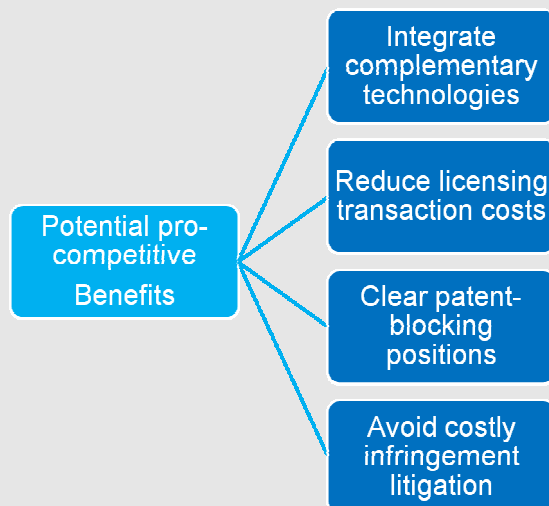
Remedies(**Supervision**)

- **11** Five years after it is set up, the new business is required to provide the FTC with the following information before the end of March each year: a list of shareholders, total sales in the previous year, the number of names of service providers worked with, the regulations for the operation of the Trust Service Management platform, and new business items not registered in the declaration.

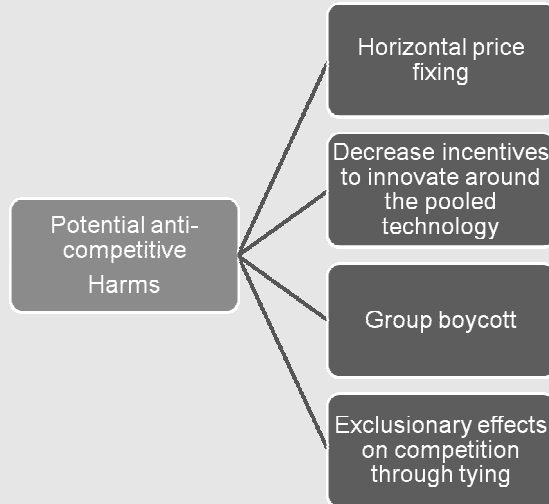
CASE STUDY: ONE RED



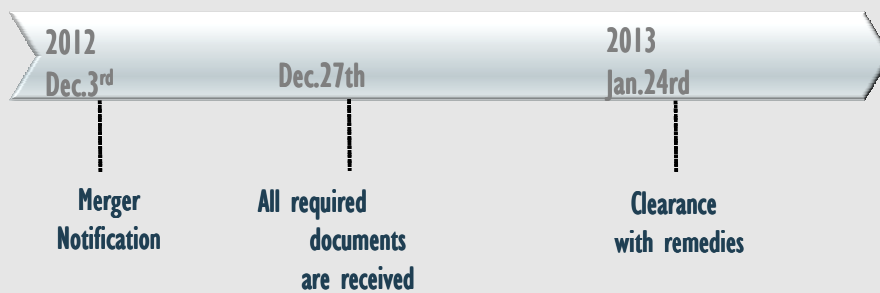
Patent pool



Patent pool (con'd)



Timeline



Background

LG
Electronics
, Inc.

Pioneer
Corporation

Koninklijke
Philips
Electronics
N.V.

Sony
Corporation

One Red

Merger Review

CASE STUDY:
JOINT
VENTURE

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Market--optical storage media



Merger Review

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TSM

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Remedies(Behavioral)

- 1 The applicants shall not engage in any concerted action such as establishing agreements on the prices or production quantities of DVD products, exchanging important trading information and so on.
- 2 The applicants and One-Red, LLC shall not restrict licensees from regarding the range of application of licensed technologies, trading counterparts or product prices.
- 3 The applicants and One-Red, LLC shall not restrict licensees from disputing the necessity and validity of patents to be licensed.

Remedies(Behavioral) con'd

- 4 The applicants and One-Red, LLC shall not restrict licensees from conducting R & D, manufacturing, using, selling or adopting competitive technologies during or after the licensed period.
- 5 The applicants and One-Red, LLC shall not refuse to provide licensees with the contents, scopes or validity periods of patents licensed.

Agreements for Limiting anti-competitive harms

- 1 Obligation for patent holders to grant essential patents to the pool
- 2 Non-exclusive licenses
- 3 Include only essential patents
- 4 Apportionment of Royalties
- 5 Patent expert-independent review
- 6 Remove non-essential patents
- 7 Confidentiality
- 8 FRAND grant back (fair, reasonable, nondiscriminatory conditions)
- 9 Open patent pool

CONCLUSION

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Structural vs. Behavioral vs. Hybrid

Seeking public comment to serve as reference for the decision is important.

“Merger remedies” must be able to “restore competition” effectively.

Thank you



Taiwan Pingxi(Pingsi) Sky Lantern Festival