UPEC, Kaiya Food Co., Ltd. & Luxe Enterprises Ltd.

1434th Commissioners' Meeting (2019)

Case: UPEC filed a pre-merger notification regarding its intention to purchase the Taipei Plant and its fresh food recipes of Luxe Enterprises through its newly established Kaiya Food

Keyword(s): Production of fresh food, chain convenience store

Reference: Fair Trade Commission Decision of May 1, 2019 (the 1434th Commissioners' Meeting); Letter Kung Zhi Tzu No.1081360220

Industry: Manufacture of Prepared Meals and Dishes (0897)

Relevant Law(s): Articles 10, 11 and 13 of the Fair Trade Law

Summary:

1. Uni-President Enterprises Corp. (hereinafter referred to as UPEC) intended to purchase the Taipei Plant and its fresh food recipes of Luxe Enterprises Ltd. (hereinafter referred to as Luxe Enterprises) through its newly established Kaiya Food Co., Ltd. (hereinafter referred to as Kaiya Food). The condition met the merger pattern described in Subparagraph 3, Paragraph 1 of Article 10 of the Fair Trade Act. Moreover, as UPEC accounted for more than one quarter of both the instant noodle market and the dairy product market, it achieved the merger-filing threshold specified in Subparagraph 2 of Paragraph 1 of Article 11 of the same law and the proviso in Article 12 did not apply, the company filed a merger notification with the FTC.

2. Findings of the FTC after investigation:

(1) The products at issue in this case were fresh food products, but Uni-president did not make fresh food products. The FTC had surveyed the sales of boxed meals, sandwiches and hot food in chain convenience stores before and compiled related statistics. Therefore, the product market in this case was defined as the "chain convenience store fresh food production market." If the merging parties were not likely to create competition restraints in the market, expanding the product market range would make the creation of competition restraints even more unlikely. Meanwhile, as the shelf life of fresh food was short, the products could only be sold domestically. In addition, since convenience store chains had outlets in all counties and citie, the geographic market was defined as the entire country.

(2) Luxe Enterprises had been producing fresh food for President Chain Store Corporation. Both parties had signed an OEM agreement and maintained a cooperative relationship. In 2017, the sales of fresh food products prepared at the Taipei Plant of Luxe Enterprises accounted for a very large percentage of the plant's total output and most of the products were sold to President Chain Store Corporation and its affiliates. According to the survey on the management of chain convenience stores conducted in 2017, the FTC estimated the sales of fresh food produced by the Taipei Plant of Luxe Enterprises only made up a small percentage of all the fresh food sold in chain convenience stores. Therefore, the merger would not cause any changes to the level of competition in the fresh food production market.

(3) Even though President Chain Store Corporation, an affiliate of UPEC, was a major supplier of chain store fresh food, the products from the Taipei Plant of Luxe Enterprises merely accounted for less than 10% of the fresh food sold at President Chain Stores. Moreover, as the fresh food products sold at these stores came from a number of OEM sources, the stores did not particularly rely on any single supplier. At the same time, due to limited space, the Taipei Plant of Luxe Enterprises did not have the capacity to increase its production in the high season. All OEM fresh food suppliers had cooperated with President Chain Store Corporation for more than 15 years and supplied products stably. In other words, such existing cooperation would not be affected after the merger was completed.

(4) The merger could offer consumers alternative choices outside conventional dining businesses, and the vertical supply chain integration could even promptly respond to the changes of consumer demand, to stimulate each convenience store chain to upgrade the quality of their products, as well as to engage in R&D so that diverse products would be offered to better meet the demand in the market. In the meantime, after the merger UPEC could supervise and manage the production of fresh food directly, use its food safety labs to strengthen food safety control, and increase inspection frequency to assure food safety. It would be beneficial to the overall economy.

(5) After the above comprehensive assessment, the FTC concluded that the merger would not lead to any significant competition restraint and therefore, citing Paragraph 1 of Article 13 of the Fair Trade Law, the FTC did not prohibit the merger. At the same time, the FTC also adopted the simplified procedure to shorten the time required for processing the merger approval.

Appendix:
Uni-President Enterprises Corporation’s Uniform Invoice Number: 73251209
Kai Ya Food Co., Ltd.’s Uniform Invoice Number: 50906114
Luxe Enterprises Ltd.’s Uniform Invoice Number: 83414913

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