

Taiwan Mobile Co., Ltd. & Bebe Poshe International Co., Ltd.

1475th Commissioners' Meeting (2020)

Case: Taiwan Mobile acquiring 85% of the shares of Bebe Poshe International through Dafu Multimedia Technology and Fubon Multimedia Technology without filing any pre-merger notification to the FTC

Keyword(s): Merger, mobile broadband

Reference: Fair Trade Commission Decision of February 12, 2020 (the 1475th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.109012

Industry: Wired Telecommunications Activities (6101), Retail Sale via Mail Order Houses or via Internet (4871), Wholesale of Cosmetics (4572), Retail Sale of Cosmetics in Specialized Stores (4752)

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

Summary:

1. Fubon Multimedia Technology Co., Ltd. (hereinafter referred to as "Fubon Multimedia Technology"), a sub-subsidiary of Taiwan Mobile Co., Ltd. (hereinafter referred to as "Taiwan Mobile"), acquired 85% of the shares of Bebe Poshe International Co., Ltd. (hereinafter referred to as "Bebe Poshe International") in July 2018. Taiwan Mobile was suspected to have indirectly obtained more than one third of the voting shares of Bebe Poshe International through Dafu Multimedia Technology Co., Ltd. (hereinafter referred to as "Dafu Multimedia Technology") and gained direct or indirect control of its management or personnel appointment and dismissal. Given the fact that Taiwan Mobile did not file a pre-merger notification, the FTC launched an ex officio investigation with the purpose of understanding whether the condition met the merger patterns described in Article 10(1)(ii)(v) and the merger filing threshold prescribed in Article 11(1) of the of the Fair Trade Law.

2. Findings of the FTC after investigation:

Dafu Multimedia Technology, a subsidiary of Taiwan Mobile, held 44.38% of the shares as well as four of the nine seats of the board of directors of Fubon Multimedia Technology. Both figures were less than half, but Taiwan Mobile admitted that through Dafu Multimedia Technology it had substantial control over the management and personnel appointment and dismissal of Fubon Multimedia Technology. Comparisons showed the personnel having the authority to determine the management policies of Fubon Multimedia Technology had all been appointed by Dafu Multimedia Technology. At the same time, Fubon Multimedia Technology was listed as a subsidiary in the consolidated financial statement and also indicated as a member of the group in the annual report of Taiwan Mobile while the business development plans and related countermeasures were also defined therein. In addition, it was clearly indicated in the annual report of Fubon Multimedia Technology that Taiwan Mobile was its final controller. Apparently, Taiwan Mobile had gained indirect control of the management and personnel appointment and dismissal of Fubon Multimedia

Technology through Dafu Multimedia Technology. Therefore, Taiwan Mobile did go through its sub-subsidiary Fubon Multimedia Technology to participate in the cash capital increase of Bebe Poshe International and acquire 85% of the shares of the latter on July 16, 2018. Later on August 12 of the same year, Taiwan Mobile obtained four of the five seats of the board of directors of Bebe Poshe International and thus gained direct or indirect control of the management and personnel appointment and dismissal of the company. The condition met the merger patterns described in Article 10(1)(ii)(iv) of the Fair Trade Law.

3. Grounds for disposition:

Taiwan Mobile accounted for one quarter of the mobile broadband service market. Meanwhile, the aggregate sales of the merging parties in the previous fiscal year exceeded NT\$40 billion and the domestic sales of two of the companies were over NT\$2 billion each. The amounts achieved the thresholds specified in Article 11(1)(ii)(iii) of the Fair Trade Law whereas the regulations regarding exemption of filing in advance set forth in the subparagraphs of Article 12 were inapplicable. In other words, Taiwan mobile was required to file with the FTC before the above merger but failed to do so. The conduct was in violation of Article 11(1) of the Fair Trade Law. Therefore, citing Article 39(1) of the Fair Trade Law, the FTC imposed an administrative fine of NT\$500,000 on Taiwan Mobile.

Appendix:

Taiwan Mobile Co., Ltd.'s Uniform Invoice Number: 97176270

Dafu Multimedia Technology Co., Ltd.'s Uniform Invoice Number: 28700383

Momo.com Inc.'s Uniform Invoice Number: 27365925

Bebe Poshe International Co., Ltd.'s Uniform Invoice Number: 24494094

Summarized by: Shen, Li-Wei; Supervised by: Kuo, An-Chi