

Great Wall Enterprise

1608th Commissioners' Meeting (2022)

Case: Great Wall Enterprise violated the Fair Trade Law by merging with FoodChina Company without filing a pre-merger notification

Keyword(s): Bulk commodity, corn, illegal merger

Reference: Fair Trade Commission Decision of July 20, 2022 (the 1608th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 111057

Industry: Manufacture of Prepared Animal Feeds (0870), Wholesale of Grain and Field Bean (4531)

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

Summary:

1. When conducting business inspections at FoodChina Company, the FTC found out that through enterprises under its control, Great Wall Enterprise Co., Ltd. (hereinafter referred to as Great Wall Enterprise) had acquired an accumulation of 34.14% of the shares of Food China Inc. (hereinafter referred to as FCI), the parent company of FoodChina Company registered in the British Cayman Islands, as of the end of August in 2020. Since FoodChina Company was wholly owned by FCI, the acquisition of over one third of the voting shares of FCI became a merger between Great Wall Enterprise and FoodChina Company as described in Article 10(1)(ii) of the Fair Trade Law. Meanwhile, the domestic sales of both Great Wall Enterprise and FoodChina Company in 2019 also achieved the merger-filing threshold. In other words, Great Wall Enterprise had to file the merger but did not do so and it constituted an violation of the Fair Trade Law. Therefore, the FTC initiated an ex officio investigation.
2. Findings of the FTC after investigation:
 - (1) The business items of Great Wall Enterprise included animal feed, bulk commodities, meat products and foods. Among them, bulk commodities were mainly used to produce the company's own products and only a small quantity of the bulk commodities was sold to outsiders. Meanwhile, FoodChina Company primarily bought and sold bulk grains and served as a purchasing agent. Both companies bought and sold bulk commodities, especially corn.
 - (2) Through enterprises under its control, Great Wall Enterprise gradually acquired the shares of FCI in 2020 and the total shares it obtained

accumulated to 34.14% in August of the same year. Later, Great Wall Enterprise continued to make purchases. After acquiring over 50% of FCI shares on November 9, 2020, Great Wall Enterprise included the revenues of FCI and FoodChina Company, wholly owned by FCI, in its consolidated financial statement. It was an indication that Great Wall Enterprise had gained control of the financial and management policies of the two companies. At the same time, Great Wall Enterprise's appointment of personnel with the authority to make management decisions of Food China Company showed that Great Wall Enterprise had direct or indirect control of the business management and personnel appointment and dismissal of FoodChina Company. For this reason, it could be concluded that after Great Wall Enterprise acquired over 50% of FCI shares on November 9, 2020 and gained direct or indirect control of the business management and personnel appointment and dismissal of FCI and FoodChina Company, the condition fell under the category of the merger patterns described in Article 10(1)(ii)(v) of the Fair Trade Law.

- (3) None of the merging parties in this case was a financial institution. In the previous fiscal year, 2019, the domestic sales of Great Wall Enterprise and its subsidiaries exceeded NT\$15 billion whereas the domestic sales of Food China Company also surpassed NT\$2 billion, both achieving the merger-filing threshold specified in Article 11(1)(iii) of the Fair Trade Law.

3. Grounds for disposition:

- (1) The merger between Great Wall Enterprise and FoodChina Company fell under the category of the merger patterns described in Article 10(1)(ii)(v) of the Fair Trade Law and achieved the merger-filing threshold specified in Article 11(1)(iii) of the same act while the exemption regulation set forth in Article 12 of the same act was not applicable. As a result, Great Wall Enterprise was required to file a pre-merger notification with the FTC in advance but did not do so. It was in violation of Article 11(1) of the Fair Trade Law.
- (2) After taking into account that Great Wall Enterprise had made a mistake when calculating the filing threshold and, therefore, did not file the pre-merger notification as it should have, the separate and consolidated shares of Great Wall Enterprise and FoodChina Company in the domestic corn spot market in 2020 and 2021, the level of impact of the unlawful act on market competition, the duration of the violation, the sales of the offender, the cooperativeness throughout the investigation, and the violation of merger-filing regulations being the second time, the FTC imposed an administrative fine of NT\$600,000 on Great Wall Enterprise and at the same time ordered the company to file for the approval of the merger within three months or make necessary corrections.

Appendix:

Great Wall Enterprise Co., Ltd.'s Uniform Invoice Number: 73008303

FoodChina Company's Uniform Invoice Number: 12686147

Summarized by: Tsai, Hui-Chi; Supervised by: Yu, Wei-Jhen