PX Mart and RT-Mart Merger

1607th Commissioners' Meeting (2022)

Case: Merger between PX Mart and RT Mart
Keyword(s): Omnichannel integration, key channel, corporate social responsibility
Reference: Fair Trade Commission Decision of July 13, 2022 (the 1607th Commissioners' Meeting); Merger Decision Kung Ch'u Tzu No. 111001
Industry: Other Retail Sale in Non-specialized Stores (4719)
Relevant Law(s): Articles 10, 11 and 13 of the Fair Trade Law

Summary:

1. Chuan Lian Enterprise Co., Ltd. (hereinafter referred to as PX Mart) has run supermarkets while RT-Mart International Ltd. (hereinafter referred to as RT-Mart) has run retail hypermarkets. PX Mart intended to acquire 95.97% of the shares of RT-Mart. After the merger, RT-Mart would become a subsidiary of PX Mart. This result falls under the category of the merger patterns described in Subparagraphs 2 and 5, Paragraph 1 of Article 10 of the Fair Trade Law. Moreover, the domestic sales of both companies combined together achieved the filing threshold set forth in Subparagraph 3, Paragraph 1 of Article 11 of the Fair Trade Law whereas the exemption regulation in Article 12 of the same act was inapplicable. Therefore, PX Mart filed a pre-merger notification.

2. Findings of the FTC after investigation:

   (1) Market definition: Although retail businesses selling general products have started to move toward omnichannel integration in 2019, the analysis of various aspects showed that the characteristics of convenience stores and online retail businesses were still different from those of supermarkets and hypermarkets. For this reason, the product market in this case was defined as the market of hypermarkets and supermarkets. At present, there was no need to adjust the attitude of the FTC toward product market definition. As for the geographic market, the assessment was based on the entire country to evaluate the 12 counties/cities that involved overlapped managements of the two companies and the relevant geographic market of the six municipalities and the other

six counties/cities.

(2) Market share: After the merger, the merging parties would account for 38.77% of the national geographic market. Their market share in the 12 counties/cities with overlapping business operations would lie between 26.19% and 64.4% while the market shares in the six municipalities and the six counties/cities would be 34.88% and 50.22% respectively. The markets would be moderately and highly concentrated.

(3) Competition analysis:

(i) The merger could improve management efficiency and product dispatch rates, reduce store out-of-stock rates, raise the level of customer satisfaction, and boost the synergy of economy of scale and economy of scope. At the same time, with ensuing economic benefits, it would help the measures adopted by the government to stabilize commodity prices expand to RT-Mart stores and to items the merging parties promised to take. However, due to market share increase and market concentration, despite that PX Mart’s implementation of low-price strategies in the past and its commitment might ease the concern about the creation of unilateral effects, such effects could not be completely eliminated. Furthermore, there was also the concern about weakening countervailing power of upstream supplies that might lead to competition restraints. Even though the channels through which suppliers could market their products were not limited to hypermarkets and supermarkets and there would still be convenience stores, specialty stores and online channels for suppliers to choose and diversify business risks, the high 38.77% market share apparently would make the merging parties to become key sales channels for suppliers to sell products. If the merging parties started to charge additional fees or make disadvantageous changes to supply agreements after the merger, the suppliers would find it difficult to fight back. As for PX Mart’s most-favored-customer clause, the company already made the promise to delete it. Meanwhile, the possibility of the merging parties to create coordinated effects or to impede potential competitors from entering the market did not exist in this case.

(ii) Considering the likelihood of the merger leading to aforementioned competition restraints, the FTC attached the following undertakings to assure that PX Mart could fulfill its promise with regard to the concern about creation of competition restraints and that the overall economic benefit of the merger would be greater than disadvantages from competition restraints:

a. PX Mart must fulfill its promise of not randomly increasing prices. This does not include causes not associated with the merging parties, such as price hikes resulted from changes of suppliers' cost structures, are not included.
b. Within three years after the merger takes effect, PX Mart must adhere to the nationwide pricing policy of keeping the prices at retail outlets around the country consistent and further lower prices in accordance with the situation of market competition in different areas.
c. After the merger takes effect, PX Mart may not randomly raise additional fees imposed on its suppliers unless such additional fees are the results of newly added service items.
d. Within three years after the merger takes effect, PX Mart may not collect slotting fees and new store sponsorships from its suppliers.
e. Within three years after the merger takes effect, changes made to the annual supply system and revisions of transaction terms may not become more disadvantageous. If there are addition fees derived from the newly added service items, suppliers must be allowed to choose and decide whether they would use such services beforehand.
f. After the merger takes effect, PX Mart must remove the most-favored-customer clause and stipulations regarding its implementation from supply agreements.

(4) Despite that the merger would give rise to concern about the creation of competition restraints, PX Mart already made the commitment when filing the merger notification that it would take the initiative to adopt a variety of measures to fulfill its corporate social responsibility, including stabilizing commodity prices, giving assistance to promote agricultural products, enhancing services in offshore islands and remote regions, and devoting to social welfare and emergency reliefs. The FTC hopes the merger could lead to a win-win-win for the emerging parties, consumers and the general public. The undertakings are intended

to eliminate disadvantages resulting from competition restraints and to ensure the overall economic benefits. Therefore, the FTC approved the merger with undertakings attached.

Appendix:
Chuan Lian Enterprise Co., Ltd.'s Uniform Invoice Number: 16740494
RT-Mart International Ltd.'s Uniform Invoice Number: 97165560

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