Uni-President and PresiCarre Merger

1647th Commissioners' Meeting (2023)

Case: Merger between Uni-President and PresiCarre
Keyword(s): Hypermarket, buyer power, differential treatment, market foreclosure
Reference: Fair Trade Commission Decision of May 3, 2023 (the 1647th Commissioners' Meeting); Merger Decision Kung Ch'u Tzu No. 112001
Industry: Manufacture of Dairy Products (0850), Manufacture of Non-alcoholic Beverages (0920), Manufacture of Noodles, Couscous and Similar Farinaceous Products (0892), Other Retail Sale in Non-specialized Stores (4719)
Relevant Law(s): Articles 10, 11 and 13 of the Fair Trade Law

Summary:

1. Uni-President Enterprises Corporation (hereinafter referred to as Uni-President) and President Chain Store Corporation (hereinafter referred to as PCSC) originally held 40% of the shares of PresiCarre Corporation (hereinafter referred to as PresiCarre). France-based Carrefour Group intended to sell the 60% of shares of PresiCarre to Uni-President Group. After the merger, Uni-President would hold 70% of PresiCarre and PCSC 30%. PresiCarre would become a subsidiary of Uni-President. 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. Meanwhile, the shares of the merging parties in the domestic instant noodle, dairy product and convenience store markets in 2021, as well as their global and domestic sales in the previous fiscal year both achieved the filing thresholds specified in Subparagraphs 2 and 3, Paragraph 1 of Article 11 of the same act and the exemption regulation in Article 12 of the same act was inapplicable. Therefore, a pre-merger notification was filed with the FTC.

2. Findings of the FTC after investigation:

(1) Uni-President has produced food products, including dairy items, instant noodles and non-alcoholic beverages. The company has supplied products to hypermarkets, supermarkets and convenience stores. Hence, Vertical business relations did exist between

Uni-President and PresiCarre. In the meantime, as PCSC and PresiCarre both have run online shopping, they were horizontal competitors. The upstream market in this case was defined as dairy product market, instant noodle market and non-alcoholic beverage market. At the same time, the downstream market was defined as the market of hypermarkets, market of supermarkets, and online shopping market for daily food products and consumables. The case involved horizontal and vertical merger patterns.

(2) Vertical competition analysis: PresiCarre had relative dominance over suppliers while the sales of products of the company's own brands continued to grow over the years. To prevent PresiCarre from using its dominant position to push its own brands or treating suppliers differentially without justifications, and to protect the interests of small and medium suppliers, the FTC attached the following undertakings:

(i) Compared to suppliers of certain status, PresiCarre may not offer Uni-President better business terms or engage in differential treatment without justifications.
(ii) Within three years after the merger takes effect, PresiCarre must continue to execute special projects for small and medium suppliers who bring in per month products worthy of less than NT$1 million on average and also assure revisions or changes of such projects will not be more disadvantageous to small and medium suppliers.
(iii) Within three years after the merger takes effect, PresiCarre may not terminate business relations with any small and medium suppliers or remove them from the supplier list without justifications. Notices must be given a reasonable period of time in advance if any business relations with small and medium suppliers will be terminated with justifications. Any such termination or removal must be made with the provision of reasons and such small and medium suppliers must be allowed to ask for reconsideration.

(3) The results of horizontal competition analysis revealed that it was necessary to prevent retailers from engaging in rapid online and offline omnichannel integration and also cross-industry management strategies of distributor groups from forming buyer power, so that further adoption of joint purchase and marketing strategies would become possible; or, the negotiating power against suppliers increases to even restrict competition in the downstream market. Therefore, the following undertakings were attached:

(i) Within three years after the merger takes effect, PresiCarre and PCSC may not initiate joint purchase negotiations with any individual suppliers unless such negotiations are proposed by their suppliers or the causes cannot be attributed to PresiCarre or PCSC.

(ii) Within three years after the merger takes effect, PCSC may hold or acquire up to 30% of the total shares of PresiCarre. The directors or general manager of PCSC may not hold more than two thirds of the corporate board seats of PresiCarre. Those who hold general manager and manager positions may not have been the general manager or holding managerial positions at PCSC within the two previous years or hold such positions concurrently.

(iii) Within three years after the merger takes effect, PresiCarre may not randomly increase additional fees on its suppliers. Additional fees derived from newly added service items are not included. However, suppliers must be given the liberty to choose and decide whether they want to use such services and their consent must be obtained in advance.

(iv) Within three years after the merger takes effect, any changes PresiCarre makes to the annual supply system may not be more disadvantageous to its suppliers unless such changes are made due to reasonable business considerations and the suppliers have given their consent or the changes are made to improve consumer welfare.

(4) Within three years after the merger takes effect, Uni-President is required to present reports on the results of undertaking fulfillment and overall economic benefit enhancement to the FTC before Jun. 1 each year.

(5) According to the abovementioned, in order to assure the overall economic benefit can be greater than disadvantages from competition restraints, by citing Paragraph 2 of Article 13 of the Fair Trade Law, the FTC approved the merger with undertakings attached.

Appendix:
Uni-President Enterprises Corporation’s Uniform Invoice Number: 73251209
President Chain Store Corporation’s Uniform Invoice Number: 22662550

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