



**Asia-Pacific
Economic Cooperation**

2010/SOM1/CPLG/014
Agenda Item: 7 (1)

Merger Regulation and Case

Purpose: Consideration
Submitted by: Chinese Taipei



**Competition Policy and Law Group Meeting
Hiroshima, Japan
28 February-1 March 2010**

Merger Regulation and Case Presentation

Chinese Taipei
February 28, 2010

1

Instruction of Legal Framework

◆ **Legislative history:**

- ◆ Promulgated in February 1991
- ◆ Came in force in February 1992
- ◆ Amended in 1999, 2000 and 2002.

◆ **Two focuses of the amendment in 2002**

- ◆ Establishing transparent enforcement procedures to accommodate the then newly implemented Procedure Act
- ◆ Amendment of merger regulation

2

Chinese Taipei Fair Trade Commission:

The CTFTC was established on January 27, 1992:

- ◆ a ministerial level government agency consists of 9 full-time commissioners and issues its decision independently by majority vote.
- ◆ equipped with the investigatory power and authorized to take disposition on any case violating the Fair Trade Act

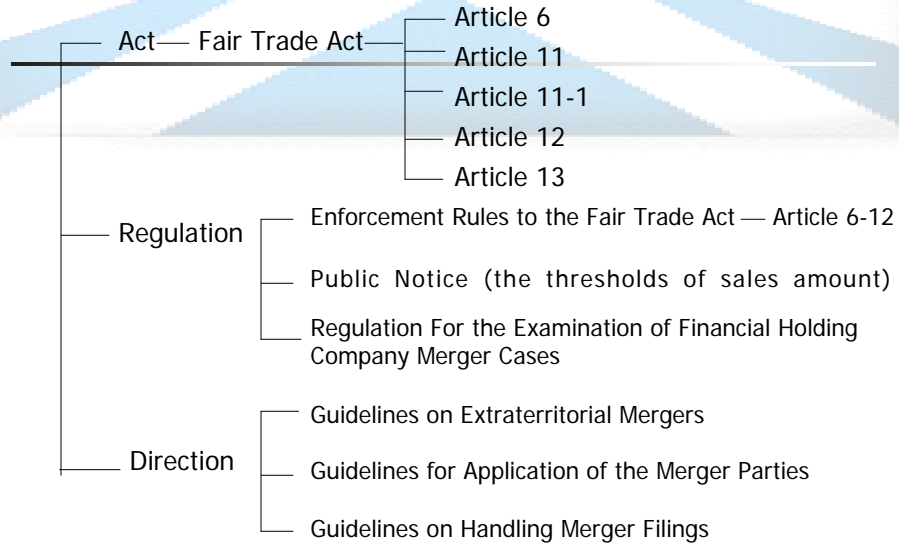
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Amendment of merger Regulation in 2002

- ◆ "prior approval system" is changed into a "pre-merger notification system"
- ◆ Distinguishing the publication of the sales volume thresholds between financial institutions and non-financial institution enterprises
- ◆ Shortening waiting period
- ◆ Adding exemption for mergers which reduce no competition of the market

4

Legal framework of merger notification system



5

Fair Trade Act

Article 6 (Definition of merger)

1. Where an enterprise and another enterprise are merged into one.
2. Where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;

➡ In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise under subparagraph 2 shall be included.

6

3. Where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;

See the proportion of the business or how important the business or property is

4. Where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or

Ex. take more than half seats on the board of directors

5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

Article 11 (thresholds for notification, waiting period, exclusion)

• Thresholds

market share

- $A+B \geq 1/3$
- $A \text{ or } B \geq 1/4$

In most countries, they do not use this standard as thresholds, and therefore we are estimating whether it needs to be amended .

turnover

- financial enterprises:
A > NT \$20 billion & B > NT \$1 billion
- non-financial enterprises:
A > NT \$10 billion & B > NT \$1 billion

Notification and Waiting Period

- Merging parties file an application to the CTFTC
- If they do not receive the CTFTC's notice or any formal decision within 30-days, they are free to finalize the notified mergers.
- Such a period may be further shortened or else extended to 60 days at the discretion of the CTFTC on a case-by-case basis.
- Only when the overall economic benefit of the merger could not outweigh the disadvantages resulted from competition restraint can the CTFTC prohibit the merger.

9

◆ **Waiting period**

- 30 days
- CTFTC may extend to 60 days

◆ **Proviso**

when the waiting period is going to expire, the enterprises may proceed to merge, but the merger may not proceed under any of the following circumstances:

1. Where the filing enterprises consent to a further extension of the period.
2. Where the filing contains any false or misleading item.

10

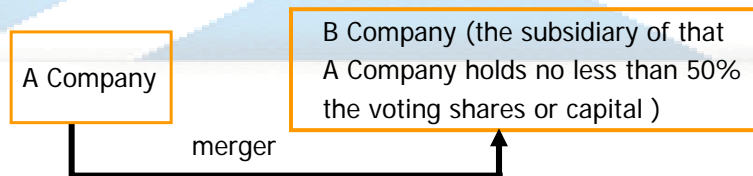
Documents required to be submitted with the filing

- * a written report form specifying some information
- * basic data on each participating enterprise
- * the financial statement and operating report
- * data such as the production or operating costs, sales prices, and production and sales values (volumes)
- * an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition
- * major future operating plans ; overview of the long-term investments ; information of the market structure ; other documents as specified by the central competent authority

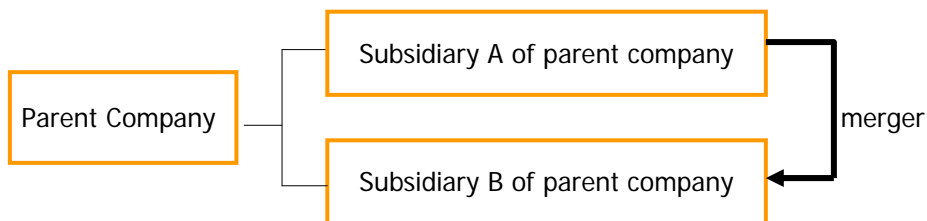
11

Article 11-1 (exception of merger)

1. Where any of the enterprises participating in a merger already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise.



2. Where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge.



12

3. Where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely.

➡ Because first three types of merger, they involve only adjustments of the existing internal economic structure of enterprises, and do not necessarily increase the economic scale or reduce the efficiency of the competition in the market.

4. Where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Law or Article 28-2 of the Securities and Exchange Law, redeems its shares held by shareholders so that its original shareholders' shareholding falls within the circumstances provided for in Article 6, Paragraph 1, Subparagraph 2 herein.

➡ it is simply an act of a company in securing its rights as creditor for its own interest in property and falls outside the purpose of this Law for merger regulation, which is to prevent harms caused by concentration of economic power by requiring pre-merger filings.

13

Article 12 (Review standard)

The Central Competent Authority may not prohibit any of the mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

Economic Benefit > the disadvantages resulted from competition Restraint

➡ CTFTC will not prohibit the merger

The Central Competent Authority may attach conditions or require undertakings in any of the decisions it makes on the filing cases referred to in Article 11, Paragraph 4 herein in order to ensure that the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint

14

Punishment(Article13 & 40)

- The following types of mergers will be disposed by the CTFTC
 - merging parties does not notify the CTFTC before implementing a merger
 - a merger takes place before the deadline of waiting period
 - a merger proceeds despite the CTFTC decides to prohibit such merger
 - merging parties fail to perform the conditions and obligations required by the CTFTC
 - false or misleading application documents
- The CTFTC may disposed the first four types of mergers in the following ways:
 - Prohibit such merger; or
 - Prescribe a period for such enterprise(s) to split; or
 - Dispose of all or a part of the shares; or
 - Transfer a part of the operations; or
 - Remove certain persons from positions; and
 - 100,000 NTD ≤ Administrative penalty ≤ 50 million NTD
- merging parties provide false or misleading application documents
 - 50,000 NTD ≤Administrative penalty ≤ 50 million NTD

15

Fair Trade Commission Guidelines on Handling Merger Filings

- **In 2006, the CTFTC issued “Guidelines on Handling Merger Filings” for eliminating the uncertainty and easing the burden for the merger parties.**
- The core:
 - Chinese Taipei is a small and open economy:
 - The Merger Guidelines screen notifications of mergers, and shorten the waiting period for the approval of mergers without apparent competition concerns so as to make the CTFTC's merger reviewing process more reasonable, transparent and predictable.

16

The motives of a merger

- **Cost Savings**

External growth may be cheaper than internal growth – acquiring an underperforming or young firm may represent a cost effective method of growth

- **Managerial Rewards**

External growth may satisfy managerial objectives – power, influence, status

- **Efficiency**

Improve technical, productive or allocative efficiency

- **Synergy**

The whole is more efficient than the sum of the parts ($2 + 2 = 5!$)

- **Shareholder Value**

Improve the value of the overall business for shareholders

- **Asset Stripping**

Selling off valuable parts of the business

- **Economies of Scale(Scope)**

The advantages of large scale production that lead to lower unit costs

- **Risk Bearing**

- Diversification to spread risks

- **Control of Markets**

- Gain some form of monopoly power
- Control supply
- Secure outlets

17

Basically there are three methods to test merger

- ◆ SLC test (entry barriers, substitute and complement on relevant markets, competitors, concentration level, economy of scale and scope..)

- ◆ Dominance test

- ◆ Public interest test

Usually used measures:

- Concentration Ratio (CR)
- Herfindahl-Hirschmann Index (HHI)

- ➡ Chinese Taipei Fair Trade Commission has set out a Fair Trade Commission Guidelines on Handling Merger Filings . (the merger test which CTFTC adopts are closer to SLC test.)

18

- **Simple Procedure** - From past empirical cases, CTFTC sifted some types of merger which may not bring the result of competition restraint substantially. In principle these particular types are presumed that

➡ Economic Benefit > the disadvantages resulted from competition restraint

- **General Procedure** – If the merger **does not lessen competition substantially after examining of SLC test**, it would be presumed

➡ Economic Benefit > the disadvantages resulted from competition restraint

19

Definition of Market

A relevant market consists of a **product market** and a **geographic market**

- **Product market** means the scope of goods or services that in terms of functionality, characteristics, purposes or prices, have high degree of demand or supply substitutions.
- * **Geographic market** means a region or scope in which the merging parties supply particular goods or services, and the trading counterpart can select or switch easily to other suppliers. In addition to the consideration of the above-mentioned product market and geographic market, depending on the case, the duration of a merger affects the relevant market is examined.

20

The Commission, in the general procedure of merger review, shall consider the following factors when assessing the competition restraints resulted from the horizontal merger:

- ◆ Unilateral Effects
- ◆ Coordinated Interaction
- ◆ Extent of Entry
- ◆ Countervailing Power
- ◆ Other factors affecting the result of competition restraints

21

- ◆ The presumption of substantial lessening competition
 - ◆ If the merger parties have following situations, in principle, CTFTC will determine the merger could be harmful to competition and the overall economic benefits shall be examined further.
 - the sum of market share of merger parties reach to one-half of the market;
 - the sum of market share of top two enterprises in a relevant market reaches two-thirds of the market; and (top 2=2/3)
 - the sum of market share of top three enterprises in a relevant market reaches three-fourths of the market. (top 3=3/4)
 - ◆ However, the above circumstances are adopted only in horizontal merger and the sum of market share of merger parties need to be over than 15% in the latter two.

22

With regard to the merger filing that has suspicion of obvious competition restraints, the filing enterprises shall submit the following factors of overall economic benefits to the Commission for deliberation:

- ◆ Consumer interests.
- ◆ The merging parties are originally at the weaker position in the trading.
- ◆ One of the merging parties is a failing enterprise.
- ◆ Other concrete results related to overall economic benefits.

23

Factors Affecting Competition Restraint in Vertical Merger

- ◆ The Commission, in the general procedure of merger review, shall consider the following factors when assessing the competition restraints resulted from the vertical merger:
 1. The probability of other competitors selects their trading counterparts after the merger.
 2. The degree of difficulty for an enterprise not participating in the merger enters the relevant market.
 3. The possibility of merging parties abuses its market power in the relevant market.
 4. Other factors that may result market foreclosure.

24

Merger Case : Instant Noodles Manufacturers

Background:

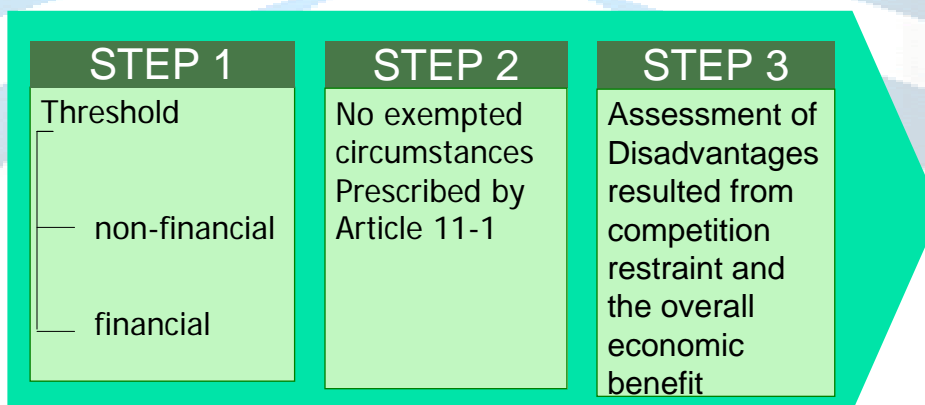
- Uni-President Corporation & Weilih Food Industrial Co., Ltd, the 2 largest enterprises in the market
- Uni-President Corporation planned to indirectly hold 49.79% of the shares in Weilih Food Industrial Co., Ltd

Main disputes:

- Estimation of overall benefit and the competition restraint

25

Procedure aspects



26

Merger Case: Instant Noodles Manufacturers

Market Definition

1. **Product market:** the market of instant noodles, beverage, edible oils and fats, and health drinks.
2. **Geographic market:** there was no particular regional restriction on manufacturing, transportation, sales channels of the aforesaid instant noodles, beverage, oil and fat, and health drinks, the whole islands should be the geographic market in this case from the perspective of the existing domestic geographical environment, and transportation and communications factor.

27

Merger Case : Instant Noodles Manufacturers

Estimation of the competition restraint

- Unilateral Effects:
 - the merging parties are now the main competitors to each other, the total market share reached around 70%. The merger will reduce the existing competition pressure to the parties.
- Coordinated Interaction: not conspicuous
- Extent of Entry :
 - the entry barriers are not high, but the distribution spots are important
 - The market is slightly shrinking
- Countervailing Power:
 - The merger will reduce the countervailing power of downstream distributors

28



◆ The Outcome

In addition to seeking public opinions, the CTFTC held a hearing for this merger case. After investigation and evaluation, it was difficult for the Commission to believe that the overall economic benefits of the merger would outweigh any disadvantages that might result from competition restraint.

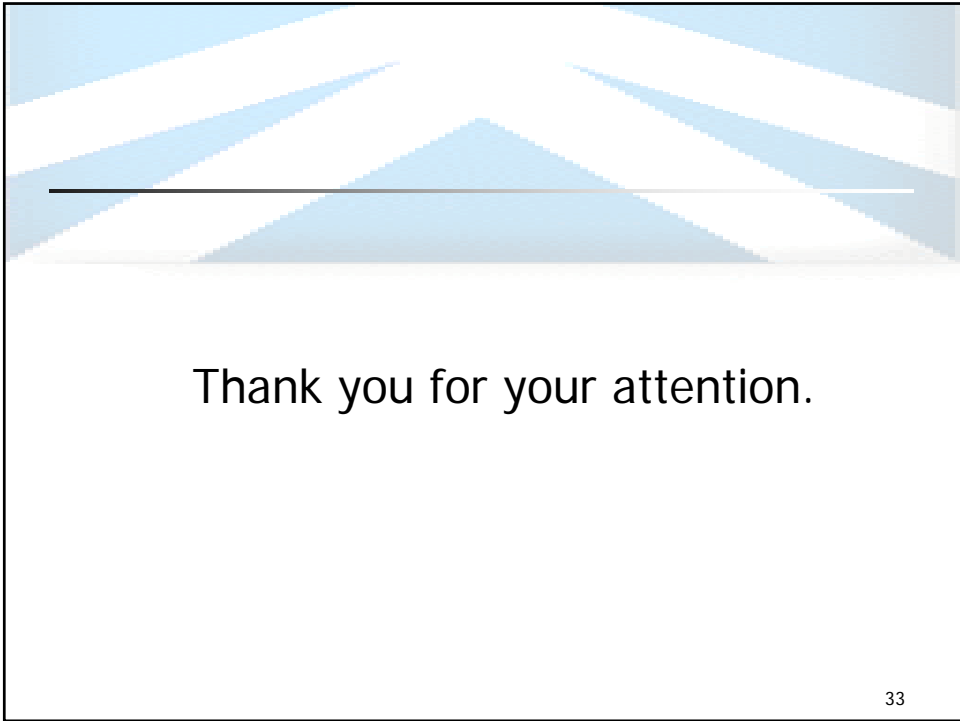
➡ CTFTC prohibited the merger of Uni-President Corporation and Weilih Company

31

Conclusion

- ◆ To establish transparent enforcement standards, the CTFTC will continue to review related competition regulations and case handling guidelines to assure the transparency, accountability and predictability of the administrative procedure enhancing the positive interaction with enterprises as well as their understanding of and compliance with the regulations.
- ◆ Globalization has already blurred the boundaries that once separated domestic markets. The CTFTC keeps making efforts to be in line with the world trend (i.e. the OECD and the ICN merger review process best practices for future amendment.), and is keen to coordinate with other competition agencies for reduction of cost in multinational merger reviews.

32



Thank you for your attention.