



**Asia-Pacific
Economic Cooperation**

2011/SOM1/CPLG/011b

Agenda Item: 6

Report on Merger Regulations in Chinese Taipei

Purpose: Information
Submitted by: Chinese Taipei



**Competition Policy and Law Group Meeting
Washington, D.C., United States
7-8 March 2011**

Merger Regulations in Chinese Taipei

Chinese Taipei Fair Trade Commission
(CTFTC)
7 March 2011

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Brief History of Merger Regulations in Chinese Taipei

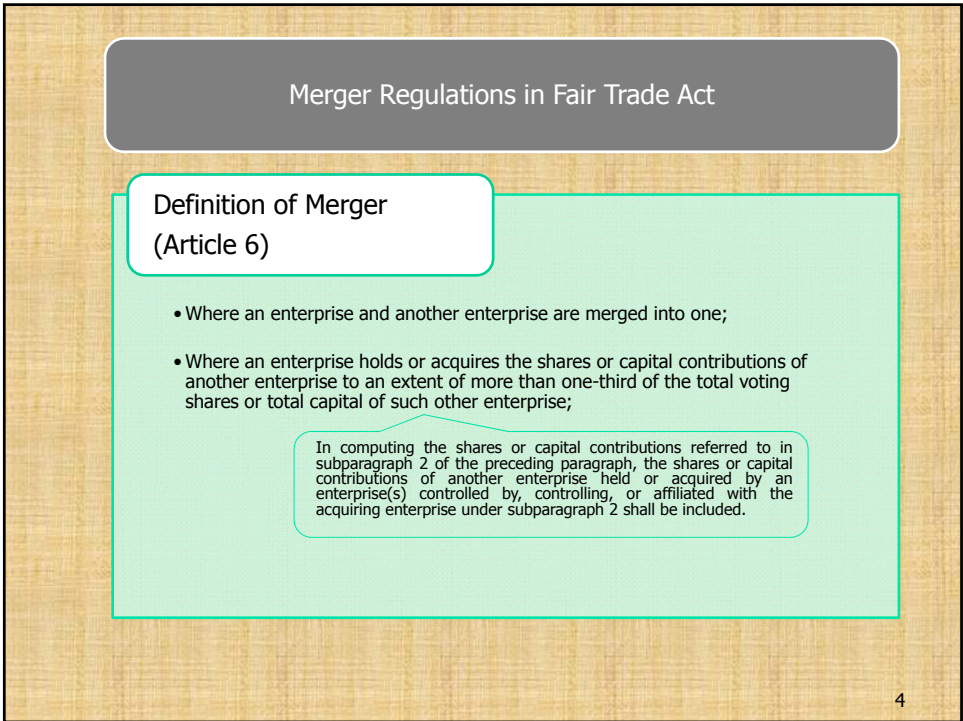
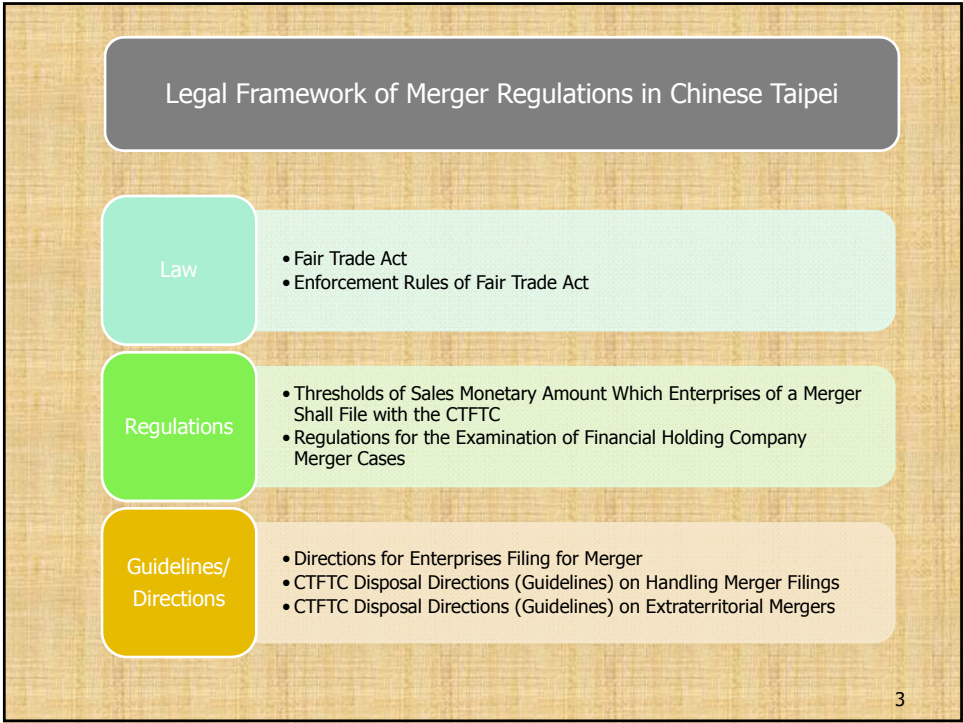
Legislative History of Fair Trade Act

- Promulgated in February 1991
- Came in force in February 1992
- Amended in 1999, 2000, 2002, and 2010

Merger Control Authority: Fair Trade Commission (CTFTC)

- 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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Merger Regulations in Fair Trade Act

Definition of Merger (Article 6)

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

- 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;
- 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

- Where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

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Merger Regulations in Fair Trade Act

Thresholds for Notification, Waiting Period, and Exclusion (Article 11)

Thresholds

Market Share

- A & B \geq 1/3
- A or B \geq 1/4

Turnover

- Financial Enterprises:
A > NTD\$20 billion & B > NTD\$1 billion
- Non-financial Enterprises:
A > NTD\$10 billion & B > NTD\$1 billion

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Merger Regulations in Fair Trade Act

Thresholds for Notification, Waiting Period, and Exclusion (Article 11)

Notification & Waiting Period

Merging parties file an application to the CFTFC

If they do not receive the CFTFC'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 CFTFC 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 CFTFC prohibit the merger.

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Merger Regulations in Fair Trade Act

Thresholds for Notification, Waiting Period, and Exclusion (Article 11)

Waiting Period & Exclusion

Waiting period

- 30 days
- CFTFC 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:

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

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Merger Regulations in Fair Trade Act

Thresholds for Notification, Waiting Period, and Exclusion (Article 11)

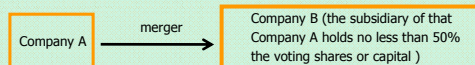
Documents required to be submitted with the filing

- 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

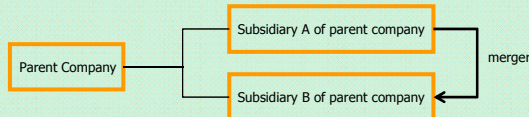
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Merger Regulations in Fair Trade Act

Exception of Merger (Article 11-1)



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



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Merger Regulations in Fair Trade Act

Exception of Merger (Article 11-1)

- 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.

- 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.

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Merger Regulations in Fair Trade Act

Review Standard (Article 12)

- CFTFC may not prohibit any of the mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

IF Economic Benefit > The disadvantages resulted from competition Restraint,
THEN CFTFC will not prohibit the merger

- CFTFC 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.

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Merger Regulations in Fair Trade Act

Punishment

(Article 13 & 40)

- **The following types of mergers will be disposed by 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

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Merger Review

Methods for Merger Test

- **SLC Test:** entry barriers, substitute and complement on relevant markets, competitors, concentration level, economy of scale and scope, and etc.
- Dominance Test
- Public Interest Test
- **The merger test which CTFTC adopts are closer to SLC Test**

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

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Merger Review

In the general procedure of merger review, CTFTC 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

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Merger Review

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.

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Merger Review

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 CTFTC 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.

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Merger Review

Factors Affecting Competition Restraint in Vertical Merger

- The probability of other competitors selects their trading counterparts after the merger.
- The degree of difficulty for an enterprise not participating in the merger enters the relevant market.
- The possibility of merging parties abuses its market power in the relevant market.
- Other factors that may result market foreclosure.

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Conclusions

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 amendments), and is keen to coordinate with other competition agencies for reduction of cost in multinational merger reviews.

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Thank you for your attention!

Chinese Taipei Fair Trade Commission
Website

<http://www.ftc.gov.tw/internet/english/index.aspx>

The screenshot displays the website's interface. At the top, there is a decorative banner for the Lantern Festival (元宵佳節愉快) with the text '猜燈謎' (Guess the riddles). Below the banner, a sidebar menu on the left lists various categories: About FTC, Laws, Regulations, Guidelines, Business Guidances, Statistics, Publications, Merger Control, Decisions of Administrative or Quasi-Judicial Agencies, and Judicial Cases. The main content area features a 'News' section with a list of recent updates:

Date	Content
2011/01/17	December, 2010 [Decisions]
2011/01/17	December, 2010 [Merger Notifications or Applications for Concerted Actions]
2011/01/17	December, 2011 [Additional Administrative Procedures and Other Matters]
2010/12/27	November, 2010 [Decisions]
2010/12/27	November, 2010 [Merger Notifications or Applications for Concerted Actions]
2010/12/13	October, 2010 [Decisions]
2010/12/13	October, 2010 [Merger Notifications or Applications for Concerted Actions]

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