



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 13

International Cooperation on Competition Law Enforcement

Purpose: Information
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International Cooperation on Competition Law Enforcement

MAN-TZU HSU
Specialist, Department of Planning
Chinese Taipei Fair Trade Commission
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OUTLINE

- ▶ Recent Amendment of the Fair Trade Act
- ▶ Impacts of the Amendments on International Cooperation
- ▶ Types of International Cooperation by TFTC
- ▶ Cooperation for Cartel Cases
- ▶ Cooperation for Merger Reviews
- ▶ Challenges on International Cooperation
- ▶ More International Cooperation Actions

Recent Amendment of the Fair Trade Act

November 23, 2011

- ◆ **Introduction of Leniency Program:(Article 35)**
 - Grant exemption from or reduction of fines for leniency Applicants

- ◆ **Increase in fines: (Paragraph 2, Article 40)**
 - up to 10% of the total sales income of an enterprise in the previous fiscal year for serious violation of abuse of dominant position and price fixing

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Recent Amendment of the Fair Trade Act

February 4, 2015

- ◆ **Investigation and Appealing Procedure**
 - appeal to Administrative Court against CTFTC's decisions without the preceding appealing procedure to Executive Yuan (Article 48)

- ◆ **Extension of Investigation Time Limitation**
 - extended merger review investigation period: from 30 days to 60 days (Article 11)
 - Administrative punishment prescription period: from 3 years to 5 years (Article 41)

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Recent Amendment of the Fair Trade Act

◆ Mergers Reaching Certain Market Share or Sales Amount Shall Be Reported in Advance (Article 11)

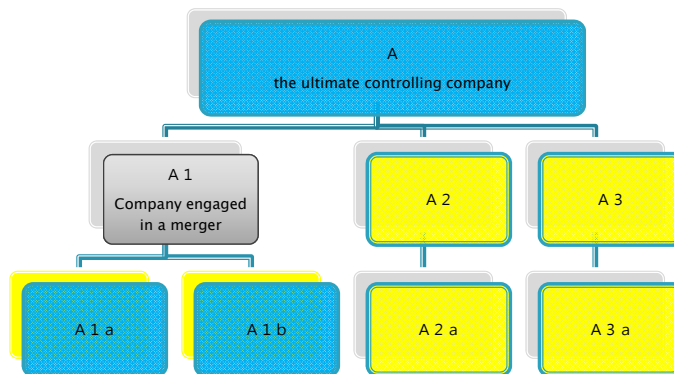
- The sales amount shall be announced separately in different industries
- when computing, the shares or threshold of affiliated enterprises shall be included
- A person or a group that has controlling interest in an enterprise is deemed as an enterprise with regards to merger

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Recent Amendment of the Fair Trade Act

➤ Mergers

the shares or threshold of affiliated enterprises shall be included when computing



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Recent Amendment of the Fair Trade Act

➤ Mergers

A person or a group that has controlling interest in an enterprise is deemed as an enterprise

The controlling interest means that the person, group, and their related persons, hold a majority of voting shares or the total capital of an enterprise.

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Recent Amendment of the Fair Trade Act

- ◆ Concerted Actions (cartel)
 - ▣ **the mutual understanding may be presumed by economic factors**
 - ◆ Ex.: market condition, characteristics of the good or service, cost and profit, economic rationalization of the conduct

- ◆ Vertical Restraints
 - ▣ **Price Restraint**
 - ◆ the enterprise must not restrict the trading counterpart's decision on the resale prices, **unless with a justifiable reason**

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Recent Amendment of the Fair Trade Act

▶ Procedures

▶ **Adopting of “investigation suspension” measure**

(EU: “commitment decision”)

- During investigation, if the enterprise makes commitments to take specific measures to cease and rectify its alleged illegal conduct, TFTA may suspend the investigation.
 - TFTA shall prescribe a certain period
 - TFTA must monitor whether the enterprise fulfills its commitments
- Certain circumstances result in the resuming of investigation:
 - The enterprise fails to fulfill its commitments
 - There is a significant change to the basic facts
 - The enterprise provided incomplete or misleading information
- If commitments is fulfilled, TFTA may decide to terminate the investigation

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Recent Amendment of the Fair Trade Act

June 24, 2015

◆ **Amendment Added Article 47-1**

◆ **Set Up an Antitrust Fund**

- **for rewards of reporting illegal concerted actions, promotion of international cooperation, maintenance of competition policy and law database, research and development of competition policy, as well as education and advocacy of competition policy**
- **“Regulations on Rewards for The Reporting of Illegal Concerted Actions”**

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Impacts of the Amendments on International Cooperation

- ◆ **Cases filed to FTC increase (both international merger and cartel cases)**
- ◆ **Leniency applications increase**
- ◆ **FTC is invited and joins the coordinated investigation actions**
- ◆ **Closer cooperative relations with other jurisdictions than before**

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Types of International Cooperation by TFTC

- ◆ **Notification of case initiation and decisions**
- ◆ **Information exchange**
 - **Entities and harmed businesses of a violation**
 - **Market definition and Conducts of a violation**
 - **Laws and procedures**
 - **Investigation techniques**
 - **Applications of data or Economic analysis**
- ◆ **Coordination on schedule and actions for investigations**
- ◆ **Assisting in seeking stakeholder's comments on cross border merger cases**

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Cooperation for Cartel Cases

◆ Information sharing

- CRT : Japan
- TFT-LCD : Korea, Canada, US, EU
- ODD : US, EU, Canada, Singapore

◆ Leniency Investigation Cases

- Capacitors: Canada, EU, Singapore, US

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Cooperation for Merger Reviews

◆ Media Tek & Mstar: Korea

◆ Rio Tinto & BHP: Japan

◆ ASML & Cymer: Japan

◆ Microsoft & Nokia: Korea

◆ Applied Materials and Tokyo Electronics: Korea, US

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Challenges on International Cooperation

- ◆ **Differences in legal systems: administrative, criminal and civil proceedings**
- ◆ **Differences in investigation measures and tools: dawn raid, collection of written evidences**
- ◆ **Waiver: should it be a requirement when filing leniency applications to more than one jurisdiction? Voluntary basis?**

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Challenges on International Cooperation

- ◆ **Information sharing and exchange: what can be shared under legal constraints? Confidential or non-confidential?**
- ◆ **Fair procedures to foreign violators: no offices or affiliations, subsidiaries in investigating jurisdictions? Sanction or not?**
- ◆ **Decisions: Do jurisdictions need to coordinate for making decisions? If decisions differ, any difficulties could be?**

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More International Cooperation Actions

- ◆ **International Organization: OECD/ICN**
- ◆ **Regional Economic/Trade Cooperation Forums (CPLG/APEC)**
- ◆ **Competition Chapter in Free Trade Agreements**
- ◆ **Bilateral Cooperation Agreements**
- ◆ **Communications between Agencies/Case Handlers**
- ◆ **Periodic Information Exchange, Consultation Meetings, International Workshops/Conferences**

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**Thank you
for your attention !**



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