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**Cross-border Mergers – Contribution from Chinese Taipei**

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More documentation related to this discussion can be found at: [oe.cd/gfc24](https://oe.cd/gfc24).

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## *Cross-border Mergers*

### *- Contribution from Chinese Taipei –*

1. This paper outlines the current merger notification regime, review procedures and key assessment factors employed by the Chinese Taipei Fair Trade Commission (hereinafter referred to as the “CTFTC”) when reviewing cross-border mergers. It also includes case examples for more detailed explanation. Additionally, the paper discusses the CTFTC’s experiences with international cooperation in merger cases and challenges encountered in its enforcement activities.

## **1. Cross-border merger notification regime and its review procedures**

### **1.1. Recent reforms to merger regulations**

2. Under the Fair Trade Act (hereinafter referred to as the “FTA”), there are no specific provisions governing cross-border mergers. Any transaction that falls within the scope of merger definitions set forth in the FTA and meets notification thresholds must be notified to the CTFTC, unless it qualifies for an exemption.

3. In 2000 the CTFTC published the ‘Guidelines on Extraterritorial Mergers’, which was designed to provide guidance on mergers and acquisitions involving two or more foreign firms operating in foreign jurisdictions. More than two decades after implementing the Guidelines, data revealed that in accordance with Point 3, the CTFTC often declined to exercise jurisdiction over mergers that did not have a direct, substantial, and reasonably foreseeable effect on domestic markets. Given the absence of specific and measurable indicators to evaluate jurisdictional issues for foreign firms, the CTFTC repealed the Guidelines in 2023 to enhance the overall efficiency of its merger review processes.

4. Article 12 of the FTA enumerates the types of mergers that are exempt from notification obligations if they simply involve changes in internal control or subordinate relationships between affiliated businesses, which do not affect the market power of merging parties in relevant markets. The 2023 amendments to the FTA introduced a new category of non-notifiable transactions: a combination involving foreign enterprises that jointly establish or operate a joint venture outside of Chinese Taipei, where this joint venture does not engage in economic activities in any domestic markets. The CTFTC also revised the ‘Guidelines on Handling Merger Filings’ (hereinafter referred to as the “Merger Guidelines”). The Merger Guidelines state that an extraterritorial merger that does not reach any of the following thresholds will be reviewed under a simplified procedure: 1) the value of the extraterritorial transaction is below NT\$ 2.5 billion; 2) the combined domestic revenue of the parties to the proposed merger does not reach NT\$ 200 million; 3) the parties to be merged or acquired do not generate revenue in Chinese Taipei. These reforms indicate that domestic sales serve as a critical threshold in practice for the purpose of filtering notifiable cross-border mergers, thereby strengthening local nexus requirements. In other words, with the application of local nexus requirements, a transnational merger that does not significantly affect domestic market competition will either be exempt from notification or reviewed under the simplified procedure, which has a reduced review period.

## 1.2. Merger review procedures

5. Merging parties are required to file a notification with the CTFTC prior to the consummation of their proposed merger. The CTFTC typically has 30 working days to conduct its initial review once a submission is completely provided. This review period can be extended where it is necessary, but cannot exceed 60 working days. For cross-border mergers, there are no specific provisions with regards to the timing of notifications filed to competition authorities in different jurisdictions. However, notifying parties involved in a cross-border merger generally will inform the CTFTC of their separate notifications to foreign competition authorities, and will provide an update on the status of those filings throughout the review process. In practice, the review period is not interrupted while the same merger is subject to merger review by foreign competition authorities. However, it can be further extended under certain circumstances. An example is the 2021 proposed merger between two international insurance brokers, Aon plc and Willis Towers Watson Public Limited Company. In this case, the review period was extended beyond the statutory limit since both parties consented to a further extension under the Proviso 1, Subparagraph 9, Article 11 of the FTA.

6. In the context of a cross-border merger, multiple notifications are likely to be filed by the merging parties across different jurisdictions, and in some cases the CTFTC may be requested to share both confidential and non-confidential information with foreign competition authorities. However, due to variations in timelines and differences in review periods between enforcement agencies, it has been challenging for agencies to coordinate the timing of international cooperation and to request waivers of confidentiality from merging parties. For example, the CTFTC had completed its review on a merger between Advanced Micro Devices, Inc. and Xilinx, Inc. in May 2021, while this merger remained under review in other jurisdictions. As a result, no waiver of confidentiality could be obtained from the merging parties by the CTFTC, and it could only exchange views and share non-confidential information with foreign counterparts.

## 2. Assessment of cross-border mergers

### 2.1. Market definition

7. Point 3 of the ‘Principles regarding the Definition of Relevant Markets’ states that the Commission defines relevant markets through two dimensions, product and geographic area. Relevant geographic markets may extend beyond national borders; they can span multiple economies or be considered on a global level.

8. For example, geographic markets are often defined as global for mergers in industries such as opto-semiconductors, mechanic components and subcomponents. These products are often manufactured across multiple economies, and they are usually sold worldwide. The suppliers compete for customers on a global scale. In assessing mergers in these industries, the CTFTC remains focused on the effect of transnational mergers on domestic markets.

### 2.2. Merger assessment

9. Post-merger changes in market shares of the parties to a proposed merger serve as a starting point for the CTFTC in its competition analysis. Under the FTA, the CTFTC is required to assess both the overall economic benefit of a merger and disadvantages resulting from competition restraints. To determine whether a merger may have anti-

competitive effects, several key considerations are set out in the Merger Guidelines. They include unilateral effects, coordinated effects, market entry, countervailing power and factors with substantial effects on actual or potential competition.

### *2.2.1. Case examples – acquisitions of foreign firms by domestic firms*

10. In a case where a domestic firm intends to acquire more than one-third of the shares of a foreign firm, or to create and operate a joint venture with a foreign firm, the CTFTC's assessment will generally focus on two aspects: whether the market structures in the relevant markets will change following the proposed merger; whether the merger is likely to strengthen competitive advantages of related products or services, and promote technology transformation and innovation. In practice, most of these cases were reviewed under a simplified procedure as a result of their limited effect on market competition in domestic markets.

11. Between 2021 and 2023, Hong Hai Precision Industry Co., Ltd. established extraterritorial joint ventures separately with Zhejiang Geely Holding Group, Stellantis N.V. , and Arun Plus Company Limited. These mergers reflected Hong Hai Precision's active investment in the electric vehicles business, aiming to expand its OEM services and V2X (Vehicle-to-everything) products into markets outside of Chinese Taipei. From 2022 to 2024, Walsin Lihwa Corp. successively acquired several European stainless steel businesses to integrate its upstream and downstream supply chain within relevant European markets. Both are typical examples of cross-border mergers that foster competitive advantages of merging parties whilst not affecting market structures of relevant product markets in Chinese Taipei.

12. Two additional examples include the 2022 acquisition by Excelsior Medical Co., Ltd. of nearly half of the shares of Fresenius' subsidiary, and the 2024 acquisition of Line Taxi, a taxi-hailing platform operator, by Yulon Motor's subsidiary. Both mergers were designed to acquire advanced skills or facilitate entry into a new sector as a part of business transformation. These mergers were expected to search and locate niche markets globally and thereby increasing competitiveness, rather than expanding in domestic markets.

### *2.2.2. Case examples – acquisitions of domestic firms by foreign firms*

13. When assessing a cross-border merger in which a foreign firm acquires at least one-third of the shares of a domestic firm, or gains full control of a domestic firm including its business operation and/or appointment or discharge of personnel, the CTFTC generally looks into the following key aspects: the impact of the merger on relevant markets in Chinese Taipei; whether the merger is likely to lead to the delisting of the acquired domestic firm, and the effects on upstream and downstream markets. The CTFTC often seeks public opinions and consults with sector-specific regulatory agencies when reviewing such mergers.

14. For example, in reviewing the acquisition by Hitachi, Ltd. of Yungtay Engineering Co., Ltd., and the merger between Diodes Incorporated and Lite-On Semiconductor Corp., similar concerns arose that the proposed mergers would lead to the delisting of the domestic companies involved. Considering the significant consequence of these delistings, the CTFTC consulted with sector regulators and industry associations and took their opinions into account during the merger review process. The CTFTC then took a number of factors into account: whether there would be little or minor changes in post-merger market structures; the level of competition between rival firms in relevant markets (the number of

market participants); countervailing power of trading counterparts and the impact of the mergers on product quality and service technology. In the above merger cases, the CTFTC concluded that it would not file objections.

15. Another example is the establishment of an Asian service center by General Electric Company (GE) and Evergreen Aviation Technologies Corp (EGAT). Following the merger, the EGAT exited the market of aviation maintenance, repair and overhaul (MRO) service as it transferred its equipment and business to GE's subsidiary. Prior to the merger, GE's MRO service was outsourced to EGAT. The CTFTC concluded that it would not oppose the mergers based on the following findings: there was no change in the market share before and after the merger; the merger did not lead to an input foreclosure effect, and aerospace parts could be sourced from diverse sources. Furthermore, sector regulators and industry associations held the view that the merger would add value to the upstream and downstream supply chain and create employment opportunities in the aerospace industry.

### *2.2.3. Case examples – extraterritorial mergers*

16. Foreign-to-foreign mergers can trigger merger control obligations in Chinese Taipei if they meet notification thresholds. Data shows that merging parties to extraterritorial mergers are often world-renowned companies. Despite their global presence, the focus of the CTFTC's assessment remains on whether these mergers will substantially affect domestic markets.

17. GlaxoSmithKline plc (GSK) and Pfizer Inc announced a joint venture to combine each party's over-the-counter (OTC) consumer healthcare business. GSK's 'Panadol' held more than 50% of market share in Chinese Taipei, and the brand was widely recognized by and easily accessible to domestic consumers. Considering GSK's high market share and the importance of the relevant products to the general public, the CTFTC reviewed this joint venture under its general procedure and extended its review period. Based on the market data available in the IQVIA database, the market for non-opioid analgesics and antipyretics was highly concentrated prior to the merger. The merger led to an increase in HHI by 111, as Pfizer's market share was considered insignificant (less than 1%). This indicated a limited increase in post-merger market share of both parties in the relevant market. The CTFTC also found that a number of domestic and international market participants actively engaged in competition, and consumers were highly sensitive to price changes as they bear the full cost of OTC medication. As a result, the merging parties were unlikely to gain the ability to arbitrarily raise prices. The CTFTC thus concluded that it would not object to the merger.

18. Another example is the acquisition of Allergan plc by AbbVie Inc. The relevant products involved in the merger were prescription drugs, and their prices were regulated by the Health Insurance Reimbursement Scheme. There were no horizontal overlaps of the products supplied by both companies in Chinese Taipei, nor were there vertical relationships between them. The CTFTC found that the transaction would not affect market structure in the relevant product markets and did not object to it. In 2023, the CTFTC reviewed several high-profile merger cases, including the acquisition of VMware, Inc. by Broadcom Inc., the acquisition of Opticore Technologies, Inc., by Qualcomm Technologies, Inc., and the acquisition of Activision Blizzard, Inc. by Microsoft Corporation. The CTFTC concluded that it would not object to these foreign-to-foreign mergers and that the general merger review procedure was not applicable, given their minimal impact on market structures of relevant products in Chinese Taipei.

### 2.3. 2.3 International cooperation on cross-border mergers

19. The CTFTC has actively engaged in international cooperation with foreign competition enforcement agencies in cross-border merger cases. Where appropriate and applicable, the CTFTC may exchange both confidential and non-confidential information with its counterparts. This information may include market definitions, investigation findings in upstream and downstream markets, survey results from market participants and competition assessment outcomes. For example, to review the proposed acquisition of Altera Corporation by Intel Corporation, and the proposed transaction between Denali Holding Inc. and EMC Corporation, the CTFTC organized and participated in teleconferences and video calls with foreign competition authorities in Europe, the U.S. and Asia.

20. Through international cooperation and communication with competition law enforcers in other jurisdictions, their views on market definitions can provide valuable input for the CTFTC's assessment. This external information could help the CTFTC develop a comprehensive understanding of the nature of cross-border mergers and their market delineations. International cooperation also helps avoid duplicative investigations. For example, in the proposed acquisition of Altera Corporation by Intel Corporation, major foreign competition agencies interviewed key competitors in the relevant markets, and stakeholders in upstream and downstream markets. Their findings could then be used to inform the CTFTC's competition concerns. In brief, since the effect of cross-border mergers varies across countries, international cooperation can facilitate better enforcement coordination, and improve the overall efficiency of merger reviews.

## 3. Challenges faced in cross-border merger cases

### 3.1. Design of merger remedies – balancing monitoring periods with the effectiveness of preserving market competition

21. Until now, the CTFTC has not had any experience in cooperating with other competition authorities to design remedies for cross-border mergers. The CTFTC usually employs behavioral remedies when imposing conditions or requiring undertakings in its decisions. Before reaching a final decision, the CTFTC will inform merging parties of potential competition concerns and encourage them to propose undertakings that will effectively preserve competition.

22. Behavioral merger remedies require regular oversight and monitoring. The CTFTC often establishes a minimum three-year post-merger monitoring period with the following considerations: administrative oversight costs, the implementation period of undertakings proposed by merging parties, and the extent to which remedies can effectively minimize or resolve anti-competitive concerns. However, in cases where a proposed merger raises significant competition concerns in relevant product or service markets, the CTFTC may impose behavioral obligations without a defined time frame. For example, in 2022 the CTFTC imposed behavioral obligations onto two major retailers engaged in a proposed merger. Both merging parties were prohibited from employing their Most-Favored-Nation (MFN) policies after the merger was consummated, and they were directed to remove most-favored-customer clauses from all supply contracts.

23. Merger remedies used by competition authorities must effectively address and mitigate competition issues arising from a merger. Given that market structures may change rapidly in a post-merger environment, competition authorities have taken a cautious

approach to strike a balance between: a competition agency's resource constraints, the effectiveness of merger remedies in preserving market competition, and the potential adverse effects of remedies on merger parties. Adverse effects may include disproportionate burdens placed on merging parties and inadvertent impacts of remedies hindering merging parties' abilities to compete more efficiently.

### **3.2. The impact of a cross-border merger varies across different jurisdictions**

24. Every year the CTFTC receives approximately 40 to 50 cross-border merger cases. The impact of a cross-border merger can vary across jurisdictions, depending on the significance of specific jurisdictions to the merger and the characteristics of supply chains in each market. In a case where a cross-border merger is notified in multiple jurisdictions, competition authorities in jurisdictions where the merger does not significantly lessen domestic competition, may close their reviews relatively quickly. In other jurisdictions where their domestic markets are considered primary for the merger, competition authorities may arrive at different conclusions. For example, in the proposed merger case between Aon and WTW, in May 2021 the CTFTC decided not oppose to the merger based on its assessment around switching costs, the number of current aviation reinsurance brokers and industry opinions. However, the merger was later abandoned in July 2021 after the U.S. Department of Justice filed a civil lawsuit against it. Similarly, in the acquisition of Siltronic AG by GlobalWafers Co., Ltd., the CTFTC did not object to the merger in April 2021. However, in January 2022 the transaction did not go ahead after the merger was not approved by the German government within the statutory period.

### **3.3. The crucial role of qualitative non-price evidence in the context of the digital economy and ESG**

25. Multi-sided platforms are one of the core business models driving growth in the digital economy. The characteristics of multi-sided platforms pose a particular challenge to competition law enforcement agencies - conventional price-oriented economic analytical tools may not be applicable in these merger cases. This may further increase enforcement costs and require more innovative approaches with a specific focus on non-price factors. Another area that has attracted attention in recent years is Environmental, Social, and Governance (ESG) initiatives as part of sustainability advocacy. As a growing number of countries have announced commitments to achieve net-zero carbon emissions by 2050, international companies have been investing substantial resources into research and development of alternative energy solutions. These efforts aim to address the dual challenge of meeting the rise in energy demand while reducing carbon emissions.

26. Two merger cases illustrate the potential benefits resulting from mergers in this context: the proposed joint venture in 2023 between Musashi Auto Parts India Pvt. Ltd., Delta Electronics, Inc., and Toyota Tsusho Corporation, and the proposed joint venture in 2024 between Mitsui & Co., Kobe Steel, Ltd., and Iron Metallics Solutions Holdings. The first merger case was expected to manufacture electric drive systems for two-wheeled vehicles, in order to assist emerging economies in achieving carbon neutrality and build a circular economy in the transportation sector. The second case was intended to invest in the production of Direct Reduced Iron (DRI), which is a product designed to reduce carbon emissions in steelmaking. Since both transactions and the relevant markets were outside of Chinese Taipei, a simplified procedure was applied to the cases. With an increase in cross-border mergers involving emerging technologies or highly dynamic industries in the digital economy, competition authorities will face further enforcement challenges. In this context, international cooperation may offer an opportunity for competition authorities to include

its foreign counterpart's perspectives and thereby inform a more comprehensive competition assessment.

#### 4. Conclusion

27. The CTFTC recently revised its Merger Guidelines notification procedures to allow merging parties to apply for pre-merger consultation. This new change allows merging parties to prepare documents and assess whether a regular or a simplified procedure is applicable before they file a formal notification. This can increase transparency in the CTFTC's merger review. In terms of international cooperation, a large-scale cross-border merger may raise competition issues including relevant markets and anti-competitive effects, but the level of impact and concern of competition authorities can vary across different jurisdictions. Moreover, the required documents and the scope of information disclosure for a merger notification can also differ from country to country. These variations can make it difficult for competition authorities to coordinate the timing of international cooperation and request waivers of confidentiality obligations. Mega cross-border mergers may be subject to strict scrutiny, particularly when merging parties hold significant market shares in Chinese Taipei, or play a vital role in supply chains. In these cases, international cooperation is a useful tool to inform a robust competition assessment.