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Conglomerate effects of mergers – Note by Chinese Taipei

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More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm>

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This paper outlines regulations concerning conglomerate mergers in Chinese Taipei, and clarifies specific considerations and approaches to assess such mergers.

1. Provisions relating to conglomerate mergers under the Fair Trade Act

1. An ex-ante merger control regime requiring pre-merger notification has been established under the Fair Trade Act (hereinafter referred to as the “FTA”). It is designed to prevent excessive market concentration arising from a notifiable merger, which could otherwise facilitate potential anti-competitive conduct, result in lessening competition and harm consumer interests.
2. To increase transparency of merger review standards and promote businesses in legal compliance, the Fair Trade Commission (hereinafter referred to as the “FTC”) enacted the “Guidelines on Handling Merger Filings” (hereinafter referred to as the “Merger Guidelines”). With the exception of mergers applying a simplified procedure, the FTC suggests a non-exhaustive list of factors that can be considered when assessing the overall economic benefits and the effect of restricting competition of horizontal, vertical and conglomerate mergers under the general procedures of merger review.
3. In accordance with the Merger Guidelines, the FTC may consider the following factors when reviewing conglomerate mergers:
 - The possibility of regulatory changes and its impact on business operations of the merging parties across different industries;
 - The likelihood of technological advancement enabling the merging parties to engage in cross-industry operations;
 - Respective cross-industry development projects that the merging parties have prior to the proposed merger;
 - Other factors substantially impacting on the likelihood of potential competition.
4. After considering these factors, a simplified procedure can be applied to a conglomerate merger if the FTC concludes the likelihood of potential competition between the merging parties is insignificant. Unless stated otherwise in the Merger Guidelines, the FTC in principle will not object to such merger cases. However, where the likelihood of potential competition between the merging parties is substantial, further analysis of the adverse effects on competition is required. The assessment criteria depend on the post-merger status, which is viewed as similar to horizontal or vertical mergers.
5. Between 2010 and 2019, the FTC received 570 merger notifications, of which 43 cases were conglomerate mergers subject to general review procedures. An average of 4.3 conglomerate merger cases were reviewed by the FTC each year, which accounted for an average of 7.54 per cent of notified mergers each year. Among these conglomerate mergers, 37 mergers were cleared unconditionally and 6 mergers were cleared conditionally. The details are set out in Table 1 below.

Table 1. Number of Conglomerate Mergers And their Proportion of the Total Number of Merger Notifications

Year	Number of Conglomerate Mergers	Total Merger Notifications	Proportion of Conglomerate Mergers
2010	1	44	2.27%
2011	5	60	8.33%
2012	2	47	4.26%
2013	1	50	2.00%
2014	6	66	9.09%
2015	3	63	4.76%
2016	7	69	10.14%
2017	2	44	4.55%
2018	10	67	14.93%
2019	6	60	10.00%
Total	43	570	7.54%

6. In terms of the number of conglomerate mergers, the annual number of conglomerate mergers prior to 2015 was less than 6 cases, which accounted for less than 10 per cent of total merger notifications. After 2016, most of the annual ratios of the number of conglomerate mergers to the total merger notifications were higher than 10 per cent with an upward trend (as shown in Figures 1 and 2 below).

Figure 1. Trend in Conglomerate Mergers Subject to General Procedures Reviewed by the FTC

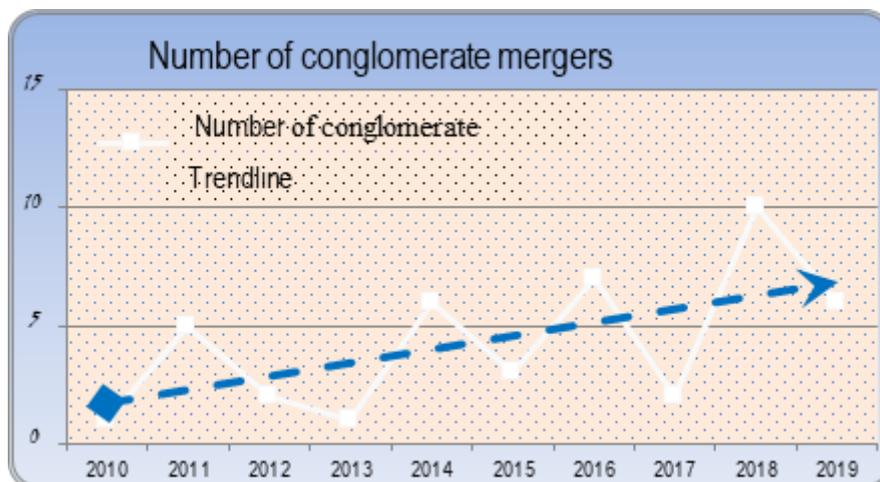
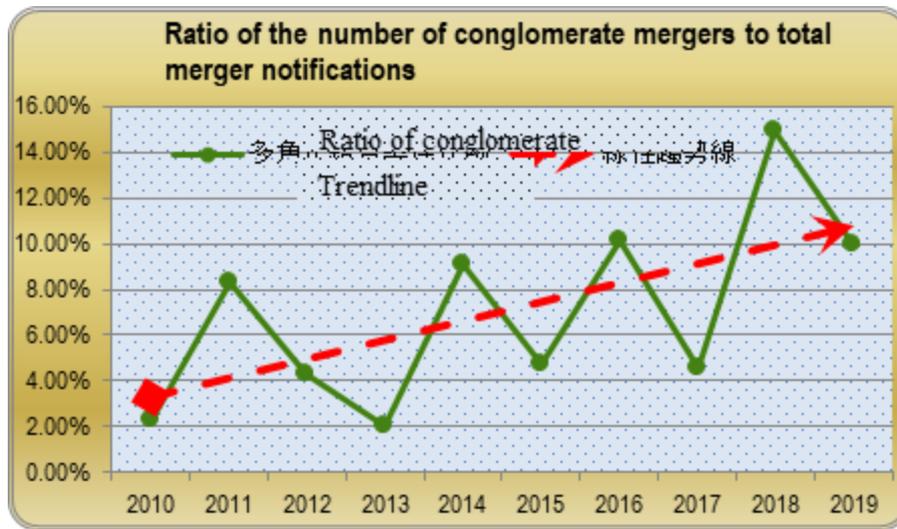


Figure 2. Trend in the Ratio of the Number of Conglomerate Mergers Reviewed by the FTC under the General Procedure



7. With regard to industries involving conglomerate mergers, of the 43 cases reviewed by the FTC under general procedures from 2010 to 2019, 13 mergers occurred in the financial services sector, 7 mergers in the Cable TV industry, 7 mergers in the energy sector and 6 mergers in the semiconductor industry. Table 2 lists all industries subject to conglomerate merger review. Analysis of industries with the highest numbers of conglomerate mergers is outlined below.

Table 2. Industries involving conglomerate mergers

Industries	Case number
Financial (Banking, Insurance, Securities, Payment Settlement, Electronic Stored-Value Card and Bonus Points)	13
Cable TV	7
Energy (Natural Gas, Wind Power)	7
Semiconductor (IC design, semiconductor equipment and distribution)	6
Mobile Communication	2
Food	2
Other	6
Total	43

8. There were 13 reviewed conglomerate mergers in the financial sector, comprising various services such as online banking, insurance, securities, payment settlement, and

electronic stored-value card and bonus points. This sector represented the largest proportion of total conglomerate mergers. The underlying reasons may include changes in consumer payment habits in recent years and continued consolidation in the financial sector. For example, firms chose to provide emerging services including “payment settlement, electronic stored-value card and online banking” through conglomerate mergers in response to consumer payment trends, i.e. the declining use of cash and increasing use of electronic stored-value card or mobile payments. In addition, as complementary financial services, banking, securities and insurance are usually provided by firms in a form of package deal or one stop shop. Conglomerate mergers and acquisitions in the financial sector continue to increase to enable businesses to achieve synergies to the greatest extent possible. For example, where a financial holding company seeks to acquire securities or insurance companies.

9. There were 7 conglomerate mergers in the Cable TV industry, which has been developed in Chinese Taipei since 1998. Initially the regulatory agency set up 51 service zones for licensed operators, that were allowed to conduct business in their designated areas and prohibited them from providing services to customers in different zones. As a result, each of the 39 zones was monopolized by a single operator. In 2013, to promote effective competition, the regulatory agency amended relevant regulations and reclassified the operating zones down from 51 to 22, and allowed operators to provide services across different zones. These regulatory amendments aimed to introduce competition into those monopolistic zones and expand consumer choice. Since that time competition in the cable TV industry has been more intense with a growing number of new entrants, operators providing services in multiple areas as well as conglomerate mergers.

10. There were also 7 conglomerate mergers in the energy sector, represented the equal-second largest proportion of the total conglomerate mergers by sector. This can be ascribed to three reasons – changes in energy policies, promotion of renewable energy (wind power) and transfer of shareholdings from natural gas distributors. As for the semiconductor industry, given the number and scale of firms in the semiconductor supply chain from upstream, midstream to downstream (IC design, chip manufacturing, packaging and testing as well as distribution) in Chinese Taipei, it was unsurprising to see the occurrence of conglomerate mergers in response to global trends towards semiconductor consolidation.

11. In the following section, the FTC illustrates relevant assessment guidelines applied to conglomerate mergers and empirical experience with two cases in the financial sector and the Cable TV industry where conglomerate mergers commonly occurred over the past ten years.

2. Case examples

2.1. Assessment guidelines of conglomerate mergers

12. When assessing conglomerate mergers, in addition to the FTA, the FTC mainly follows the Merger Guidelines along with theories suggested by the US and EU Commission, i.e. potential competition and portfolio effects.

13. The FTC considers the following factors when reviewing conglomerate mergers:

1. The possibility of regulatory changes and its impact on business operations of the merging parties across different industries;
2. The likelihood of technological advancement enabling the merging parties to engage in cross-industry operations;

3. Respective cross-industry development projects that the merging parties have prior to the proposed merger; and
4. Other factors substantially impacting on the likelihood of potential competition.

14. In the US, the assessment standard for conglomerate mergers set out in Section 7 of the Clayton Act is whether the effect of the proposed merger may substantially lessen competition. The non-horizontal merger guidelines issued by the USFTC and USDOJ indicates that conglomerate mergers, relative to horizontal mergers, may be less likely to raise completion concerns, although they are not innocuous. Conglomerate mergers may lead to adverse effects of horizontal competition by inhibiting “potential competition”.

15. In the EU, the guidelines on the assessment of non-horizontal mergers enacted in 2008 notes that unlike horizontal mergers, non-horizontal mergers do not conventionally raise competition concerns. However, the proposed mergers may result in welfare loss and market foreclosure if the merging parties engage in tying and bundling. In other words, coordinated or non-coordinated effects need to be taken in account when a conglomerate merger involving a “portfolio effect” may give rise to harm to competition.

2.2. A conglomerate merger in the financial sector

16. The government in Chinese Taipei has been actively implementing digital financial sector projects over recent years. Digital financial services are currently available in most domestic banks. With the development of fintech, some trends can be seen, which include the increasing use of mobile devices in young generations to receive financial services, and emerging online-only banking services around the world. Accordingly the government relaxed the regulatory barriers for the establishment of online-only banks in 2018. In 2019, 7 firms filed a proposed joint venture of Line Bank to the FTC. These firms were Line Financial, Taipei Fubon Bank, Union Bank, CTBC Bank, Standard Chartered Bank, Taiwan Mobile and FArEasTone Telecommunication. Line Bank planned to operate as an online-only financial institution. The FTC viewed part of the joint venture as a conglomerate merger where two of the participating firms, Taiwan Mobile and FArEasTone Telecommunication did not compete with the other four participating banks and Line Bank, nor had overlapping businesses.

17. A Bank in Chinese Taipei needed to obtain bank licenses and approvals from the regulatory agency (the Financial Supervisory Commission, FSC) before its establishment. To ensure financial management competence of an online-only bank and its compliance with relevant financial regulations, the regulatory rules state that 40 per cent of the paid-in capital of an internet-only bank shall be subscribed by professional promoters and shareholders of financial institutions. Except for joint operations with financial institutions, such regulations prohibit the standalone entry of non-financial institutions or corporates to operate internet-only banks. Moreover, the FSC did not plan to draft or submit any amendments to lift restrictions concerning market entry requirements in the foreseeable future. Due to the existing regulatory barriers of market entry for non-financial entities, the FTC concluded that this proposed joint venture was unlikely to eliminate potential competition.

18. While the portfolio effect of a conglomerate merger can be pro-competitive due to its advantages of scale economies, scope economies and synergies, they also provide incentives to merging parties to develop business strategies such as tying, which are likely to reduce the demand for competitors’ services or products, or even lead to market foreclosure. Considering that the Line App owned by the Line Group had a penetration rate of nearly 90 per cent in Chinese Taipei, and one of the merging parties, Line Financial was an affiliated enterprise of the Line Group, the FTC further looked at “whether the joint

venture would be able to leverage the Line ecosystem by using the Line App to engage in anti-competitive practices including coordination and tying”. The FTC’s investigative findings and conclusions are summarized as follows:

- The filing from the merging parties revealed that the merger parties planned to install Line Bank as one of the built-in features in the Line App so that the Line users could choose to connect with the web interface of Line Bank. The merger parties stressed that the Line Group would not only grant access to products and services provided by Line Bank for customers with Line accounts. Instead of the Line App, customers could directly access the web interface of Line Bank through the app developed by Line Bank.
- Even though the Line Group could connect with various needs of the Line users by leveraging the Line ecosystem in the future, and further offered discounted services by tying Line Bank and other services available in the Line ecosystem, the other services available in the Line ecosystem including online shopping, travel, online booking, music streaming and electronic payment, still faced intense competition from a number of providers and suppliers. In short, users of the Line App did have choices of alternative services outside of those in the Line ecosystem.
- As a result of increasing media coverage and user convenience, the FTC found that Line Bank might be able to enhance the chance of connections with internet-only banking services through the Line App. However, in the scenario where Line Bank could benefit from connections with the Line ecosystem and the Line customer base, this business strategy would be constrained by competitive forces of supply and demand sides. Users of the Line App could make ultimate decisions on whether they access Line Bank through the Line App or not. It was unlikely that Line Bank would compel the use of its internet-only banking services with the Line App.
- Regardless of the high penetration rate of the Line App, the FTC determined that there were other messaging apps (Facebook messenger and WeChat) in the relevant market and users of mobile communication apps tended to be “multi-homing”. The Line App was not a bottleneck for other competitors in the online-only banking sector to approach users of the Line App. Competitors could choose to cooperate with other messaging service providers to enable customers to connect with their online bank accounts through their messaging app partners.
- Other than messaging apps, competitors in the online-only banking sector could also collaborate with other non-messaging app developers or develop apps on their own. By doing so, competitors could deliver services to mobile device users, including users of the Line App.
- The FTC therefore concluded that in case where the Line Group had “incentives” to extend its business to meet various needs of the Line users through the Line ecosystem, and further promote tying selling of services provided by Line Bank and services available in the Line ecosystem under more favorable terms, the merging parties were unable to coercively engage in tying selling with online-only banking services to exclude competitors from relevant markets or result in market foreclosure. Users of the Line App were not required to have accounts of Line Bank, and vice versa. Moreover, the Line App and Line Bank faced strong competition in markets regarding online messaging apps, online shopping and banking services.

19. In terms of bundling sales of telecommunication and internet-only banking services, the merging parties clarified that Taiwan Mobile and FArEasTone

Telecommunication did not have any marketing plans which targeted the prospective customers of Line Bank, for example, tying or discount offers to telecommunication subscribers if they would pay phone bills through Line Bank. Even if Taiwan Mobile and FArEasTone Telecommunication would be able to take advantage of their subscriber base to jointly promote businesses with Line Bank, Chunghwa Telecom (another large telecommunications company in Chinese Taipei) was capable of adopting similar strategies to compete effectively through Next Bank, which was a joint venture created with other financial institutions to operate internet-only banking services.

2.3. A conglomerate merger in the Cable TV industry

20. In 2018, Hung-Tse Venture Capital Co. (transliteration) planned to set up Hung-Sheng Company (transliteration) and Hung-Shun Company (transliteration). Through multi-level indirect shareholdings, Hung-Tse VC proposed to acquire 100 per cent of the shares of An-Shun Company (transliteration) and Bo Kang Company (transliteration) respectively owned by Evergreen Jade SDN BHD (a Malaysian based company), Goodwill Tower SDN BHDM and Sheng-Kai company (a domestic shareholder), and consequently indirectly hold nearly 100 per cent of shares of 12 multiple system operators (hereinafter referred to as “MSO”). These included China Network Systems Co., Ltd (hereinafter referred to as the “CNS”), Global Digital and Jilong, which were directly and indirectly controlled by An-Shun Company and Bo Kang Company. Hung-Tse VC therefore filed a merger notification to the FTC.

21. The FTC found that the acquisition at issue was a conglomerate merger. None of the merging parties and their ultimate shareholders held or acquired shares of other Cable TV operators and engaged in business operations in the Cable TV industry (both upstream and downstream) and fixed-line broadband internet services. Each of the 11 Cable TV system operators controlled by the CNS and an independent system operator, Twinstars Cable TV, operated in different designated zones, and such system operators were not granted licenses of type II telecommunications business to provide fixed-line broadband internet services. They only delivered the leased-circuit business to the CNS Broadband Company and Bau Dau Company (transliteration) to enable them to provide fixed-line broadband internet services. These companies involved in the proposed acquisition did not compete with each other in the relevant markets.

22. After considering the following factors set out in the Merger Guidelines, the FTC cleared this acquisition conditionally:

1. The possibility of regulatory changes and its impact on business operations of the merging parties across different industries

The operation of Cable Radio and Television Systems was required to obtain approval from the regulatory agency, which denoted the existence of regulatory barriers to enter into this market. Regardless of amending these regulations or not, the proposed acquisition simply reflected changes in the ultimate shareholder structure as opposed to raising existing entry barriers, which consequently had no impact on competition in the relevant markets.

2. The likelihood of technological advancement enabling the merging parties to engage in cross-industry operations

The services provided by the merging parties were governed by relevant regulations. Because the merging parties were required to apply for approval for various services, they were unlikely to carry out operations across different industries despite development of technologies.

3. Respective cross-industry development projects of the merging parties prior to the proposed merger

The acquiring parties did not develop their own business plans in relation to the Cable TV system. In addition, as mentioned above, the proposed merger represented changes in the ultimate shareholder structure, where the businesses operated by those Cable TV system operators involved indirectly in this acquisition remained unchanged.

4. Other factors substantially impacting on the likelihood of potential competition:

This proposed acquisition only changed the ultimate shareholder structure of the CNS Group and transferred control power to the merging parties, but did not alter the market structures and competitive environments where the merger parties, including the Cable TV system operators, channel agents and fixed-line broadband internet providers operated businesses.

23. While the FTC did not prohibit the proposed acquisition, to prevent coercive bundling of channels and discriminatory licensing terms potentially imposed by the CNS Group on its affiliated system operators and competitors in the same operational zones, the FTC attached conditions to its decision, which requested the merger parties to submit information to the FTC annually for 3 years, starting from the date of the acquisition. This information comprised internal sales guidance, licensing terms of channels, and sales data including the names and quantities of channels sold.

3. Conclusion

24. The FTC reviews merger cases under an ex-ante framework. It aims to prevent mergers resulting in excessive concentration of economic power or distorting market competition. In practice, there have been relatively few conglomerate cases reviewed by the FTC under the general procedure of merger review, but an upward trend has been observed over recent years. The general considerations for anti-competitive effects of conglomerate mergers in the Merger Guidelines are typically assessed through qualitative analysis. So far, no quantitative methods have been used in conglomerate merger evaluation.

25. The substantive criteria used to assess conglomerate mergers are explicitly set out in the Merger Guidelines. In addition, the FTC may consider “potential competition” and “portfolio” proposed by the US and EU competition authorities when evaluating ex-post potential anti-competitive practices, including tying and bundling. In the joint venture of Line Bank, the FTC also analyzed and assessed the product ecosystem and the correlation between relevant products and services.

26. Between 2010 and 2019, the FTC reviewed 43 conglomerate mergers under general procedures, of which all cases were not prohibited, and 6 cases were cleared conditionally with behavioral remedies, mostly in industries relating to Cable TV, payment settlement and bonus point. These industries are characterized by high market concentrations that may contribute to the occurrence of a natural monopoly. Conglomerate mergers in such industries are likely to encourage tying and bundling carried out by merging parties. To minimize potential anti-competitive impacts and monitor relevant markets, the FTC therefore imposed behavioral remedies on merging parties, for example, regular submission of sales guidance and sales data.