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Efficiencies in Merger Control – Note by Chinese Taipei

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1. This report outlines the merger notification process and key assessment points employed by the Chinese Taipei Fair Trade Commission (hereinafter “the CTFTC”) when reviewing merger cases featuring “efficiencies in merger control,” illustrated with case studies. It also demonstrates the factors considered in determining efficiencies in merger control when the CTFTC reviews merger cases.

1.1. Background

2. Merger control, as a core instrument of competition law, aims to prevent a substantial lessening of market competition from mergers. However, efficiencies are often considered an important justification for mergers.

3. According to Article 13 of the Fair Trade Act (hereinafter “the FTA”), when reviewing a merger, the CTFTC shall consider the “overall economic benefits” and the “disadvantages resulting from competition restraint.” If the overall economic benefits outweigh the disadvantages resulting from competition restraint, the merger shall not be prohibited. If the overall economic benefits are obviously outweighed by the disadvantages resulting from competition restraint, the merger shall be prohibited.

2. Efficiency Considerations under the Fair Trade Act

2.1. The Scope of Overall Economic Benefits

4. Mergers cause long-term changes in market structure. To prevent substantial lessening of competition and consumers’ interests due to excessive market concentration resulting from a merger, Paragraph 1, Article 11 of the FTA stipulates that a merger meeting the notification threshold shall be filed with the CTFTC in advance. The CTFTC would then, pursuant to Paragraph 1, Article 13 of the FTA, assess whether the “overall economic benefits” of the merger outweigh the “disadvantages resulting from competition restraint,” and decide accordingly on whether to prohibit the merger, impose conditions or obligations, or raise no objection. Furthermore, to clarify the standards for reviewing merger notifications, the CTFTC has promulgated the *Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings* (hereinafter “the Merger Guidelines”), detailing various factors for considering “overall economic benefits” and “disadvantages resulting from competition restraint” as benchmarks for merger review.

5. The scope of overall economic benefits: To facilitate the assessment of the CTFTC, the notifying party shall demonstrate the factors to be considered such as economic efficiencies, consumers’ interests, whether the merging parties were previously in weaker market positions, and whether one of the merging parties is a failing firm. Economic efficiencies must satisfy the following criteria: (1) They can be proved to be realizable in the short term; (2) They are unattainable by any means other than the merger; and (3) They can be reflected in consumers’ interests.

6. According to Point 6(2) of the Merger Guidelines, if a merger is assessed to have no significant competitive concerns, the “overall economic benefits” of the merger may be deemed to outweigh the “disadvantages resulting from competition restraint.” Where

significant concerns of competition restraint exist, the “overall economic benefits” are further assessed to evaluate whether they outweigh the “disadvantages resulting from competition restraint.” Therefore, for merger cases without significant competitive concerns, the CTFTC, in principle, does not need to assess further the “overall economic benefits.” As for the factors to be considered in determining the “overall economic benefits,” according to Point 13 of the Merger Guidelines, these include economic efficiencies, consumers’ interests, whether the merging parties were previously in inferior market positions, whether one of the merging parties is a failing firm, and other specific positive effects on overall economic benefits.

2.2. Assessing the Economic Efficiency of the merger

7. Paragraph 1, Article 11 of the FTA stipulates that a merger meeting the notification threshold shall be filed with the CTFTC in advance. The CTFTC would then, pursuant to Paragraph 1, Article 13 of the FTA, assess whether the “overall economic benefits” of the merger outweigh the “disadvantages resulting from competition restraint” and decide accordingly.

8. Reviewing the merger, the way in which the CTFTC assesses anticompetitive effects depends on the type of merger. For horizontal mergers, according to Point 9 of the Merger Guidelines, the CTFTC considers factors such as unilateral effects, coordinated effects, market entry, and countervailing power. For vertical mergers, according to Point 11 of the Merger Guidelines, the CTFTC considers factors such as input and customer foreclosure to assess anticompetitive effects of the merger. If the aforementioned assessment indicates significant competitive concerns, further evaluation is to be made on whether the overall economic benefits outweigh the disadvantages resulting from competition restraint.

9. Public interest covers a broader scope than overall economic benefits, including issues of labor rights, employment culture, and sustainability. Merger review by the CTFTC still considers the balance between overall economic benefits and the disadvantages resulting from competition restraint. The following three scenarios are presented with case illustrations:

2.3. Presence of Overall Economic Benefits and Positive Public Interest:

10. Overall economic benefits outweigh the disadvantages resulting from competition restraint; approval conditioned on obligations. Examples include the Far EasTone/Asia Pacific merger and the President/Carrefour merger.

2.3.1. *Far EasTone/Asia Pacific Telecom Merger:*

11. The case was a horizontal merger between telecommunications companies. The domestic mobile broadband market consisted of three major operators (Chunghwa Telecom, Taiwan Mobile, and Far EasTone) and two smaller operators (Asia Pacific and Taiwan Star). If Taiwan Mobile merged with Taiwan Star and Far EasTone merged with Asia Pacific, the domestic market would become an oligopoly of three major operators, which are Chunghwa Telecom, Taiwan Mobile, and Far EasTone. The existing rate plans of Asia Pacific faced significant upward pricing pressure. After the merger between Far EasTone and Asia Pacific and even the one between Taiwan Mobile and Taiwan Star, the incentive for the three major domestic telecom operators to engage in price competition would decrease. Additionally, it was foreseeable that market prices for mobile broadband services would rise, and it would be more likely that the tariffs converge for 4G and 5G

services of the three major operators, raising concerns over reduced price competition in the domestic mobile broadband service market. New entry had been difficult for potential competitors due to high entry costs and market saturation, which made it difficult to achieve economies of scale. Mobile Virtual Network Operators (MVNOs) face higher service costs than incumbent operators as they need to lease network access from them, which makes it difficult to enter the market and exert competitive pressure on the incumbent operators. Consumers would lack sufficient countervailing power if the 4G and 5G tariffs of the three major operators converged. Therefore, only if necessary behavioral remedies are imposed, the concerns of competition restraint arising from the merger could be mitigated, and it would be ensured that the overall economic benefits outweigh the disadvantages resulting from competition restraint.

12. After deliberation, the CTFTC decided not to prohibit the merger but imposed obligations on Far EasTone regarding the protection of subscriber rights, improvement of service and network quality, and promotion of market competition. Regarding rate plans, Far EasTone was required to assume existing subscription contracts of Asia Pacific, ensuring that subscribers could use the service under the agreed tariffs, content, and conditions until December 31, 2025. Regarding service and network quality improvement, Far EasTone committed to enhancing service and network quality and investing in hardware and software, where the CTFTC also required annual submissions for five years post-merger detailing specific implementation outcomes of, *inter alia*, the improvement of network performance and service quality, such as the integration and optimization of the mobile broadband network.

2.3.2. Commitment by the merging parties to facilitate realization of the Net-Zero Emissions in 2050 policy:

13. As the sites of the merging parties had high overlap, to avoid co-channel interference that could degrade service quality, approximately 6,000 mobile base stations were planned for decommissioning, which would result in energy-saving and carbon-reduction benefits of saving 70 million kWh of electricity annually and reducing carbon emissions by about 36,000 metric tons (approximately 90 times the carbon absorption of the Daan Forest Park). Additionally, Far EasTone would introduce environmental recycling mechanisms, aligning with the “Net-Zero Emissions in 2050” policy. Post-merger, Far EasTone also planned to invest over NT\$700 million by 2028 for replacement of energy-efficient equipment and introduction of renewable energy.

2.3.3. The Uni-President/Carrefour Merger:

14. Uni-President is a food manufacturer, while Carrefour provides retail channel services. Subsidiaries of Uni-President also operate retail channels, competing horizontally with Carrefour. Additionally, Uni-President, as a food manufacturer, produces various goods sold through Carrefour's retail channels, there was also a vertical relationship between the parties. To alleviate concerns of competition restraint raised by the merger, the CTFTC imposed obligations on the merging enterprises. For example, to prevent the merged entity from leveraging prevalence of the channel to forcefully promote own brands or engage in unjustified differential treatment of suppliers, and to protect the interests of small and medium-sized suppliers, Carrefour is required to provide uniform commercial terms, where suppliers in a comparable position may not be treated obviously more favorably or with unjustified differential treatment. To prevent potential buyer power concentration arising from the rapid integration of online and offline omnichannel development and cross-industry strategies of the channel conglomerate, which could lead to joint purchasing and marketing strategies, increased bargaining power against suppliers,

or even competition restraint of the downstream channel market, Carrefour and Uni-President were prohibited from negotiating joint purchasing with individual suppliers for three years following implementation of the merger. The aforementioned remedies ensured that the overall economic benefits outweighed the disadvantages resulting from competition restraint.

15. In addition, the merging parties proposed commitments, mostly encompassing public interest aspects. For example, Uni-President committed that post-merger, it would stabilize Carrefour's operations, maintain its corporate culture, protect employee and consumer rights, continue injecting high-quality services and low-priced, high-quality goods, apply rigorous food safety control mechanisms and sustainability policies in order to enhance consumer rights. Within 3 years, through Uni-President and its public welfare foundation mechanisms, at least NT\$300 million per year would be invested in social benefits, emergency relief, empowerment programs (for disadvantaged students, orphans, disabled individuals, etc.), preventive medicine and nutritional health, and cultural, artistic, and sports activities.

2.4. Presence of Overall Economic Benefits and no Positive Public Interest:

16. The notifying party argued for positive effects on the overall domestic economy, but during the review, public opinion or feedback indicated concerns over layoffs upon the merger which would harm labor rights or interests. However, after assessment, prioritized the consideration of overall economic benefits over public interest and cleared the merger. Examples include the ASE/SPIL merger.

17. The merging parties, ASE and SPIL, were horizontal competitors in the Integrated Circuit (IC) packaging and testing industry. The merger involved an acquisition of shares through open-market tender offer and sparked controversies regarding potential order diversion effects, technological innovation, industry offshoring, talent outflow, and labor rights/employment, where consideration was made concerning the impact on competition restraint and overall economic benefits.

18. Being consulted on the merger, the Industrial Development Bureau (IDB) of the Ministry of Economic Affairs, the competent authority for the industry indicated that due to the maturing and intensifying global competition of the semiconductor market, the threat of international M&A to the domestic packaging and testing industry was increasing; the merger was expected to enable effective integration of resources such as capital, talent, and technology and to generate economies of scale and synergies arising from resource complementarity, thereby widening the technological lead over competitors and providing benefits for the overall economy.

19. Other competitors and upstream/downstream trading partners mostly held positive views on the merger, citing potential reductions in R&D and operational costs for the merging parties and enhanced competitiveness against major international enterprises, which should benefit the overall domestic economy. There were opposing views arguing that 75% of the outsourced packaging orders from the top 14 domestic logic IC design enterprises were concentrated with ASE and SPIL, and their combined market share in specific markets such as high-end logic ICs exceeded 80%, indicating significant competitive concerns. After comprehensively considering factors related to competition restraint and overall economic benefits, and referencing the opinion of the competent authority, the CTFTC recognized that the overall economic benefits outweighed the disadvantages resulting from competition restraint and did not prohibit the merger.

2.5. Absence of Overall Economic Benefits, despite Public Interest Claims by the Notifying Party:

20. The merger raised concerns of competition restraint. Although the notifying party claimed public interest of reviving land assets and contribution to the domestic economy, the CTFTC, after consulting various parties, rejected these claims and prohibited the merger. Examples include the Yieh United/Tang Eng merger.

21. The merging parties, Yieh United and Tang Eng, were both manufacturers of stainless-steel flat plates and horizontal competitors. Although the notifying party stated that the merger could integrate resources through equipment complementarity and special customer bases and introduce abundant experience of Yieh United management capabilities in the stainless-steel industry and practical achievements in reviving land assets, which should benefit the overall domestic economy. Opinions gathered by the CTFTC from industry authorities, experts, scholars, research institutions, and industry players during consultations indicated that, however, due to overlapping production lines and the fact that their main products were mostly common commodity items, synergies of resource integration were unlikely. They opined that the merger would not substantially enhance the overall industry.

22. The notifying party argued that the combined market share of the merging enterprises in the domestic market of “stainless steel flat plates” was less than one-fourth, that imports account for 50% of total market sales, and that downstream enterprises could easily substitute for foreign suppliers. However, after the CTFTC consolidating opinions and data from the competent authority, competitors, and the downstream, separate assessment with regard to “hot-rolled” and “cold-rolled” stainless steel flat plates was deemed necessary. After deducting semi-finished products from hot-rolled import values, the post-merger market share of Yieh United in hot-rolled stainless-steel flat plates as a whole was calculated to be approximately 50%. Based on assessments of unilateral effects, coordinated effects, countervailing power, and entry analyses, the merger indeed indicated significant competitive disadvantages. Therefore, the merger was prohibited.

3. Greater emphasis on consumers’ interests in industries closest to end-users

3.1. The President/Carrefour Merger: Commitment to retain Carrefour's existing feature of diverse range of imported goods

23. Uni-President voluntarily offered commitments, such as post-merger stabilization of Carrefour's operations, maintaining corporate culture, protecting employee and consumer rights, leveraging vertical and conglomerate integration benefits to continuously provide high-quality services and low-priced, high-quality goods, applying strict food safety control mechanisms and sustainability policies to enhance consumer rights.

24. Specific measures included, for three years following merger implementation, retaining the existing Carrefour business feature of offering diverse imported goods, maintaining the existing “Imported Goods Section” in Carrefour-branded supermarkets and hypermarkets, with annual sales of imported goods reaching at least NT\$600 million, so that diversity in goods remains for consumers; the incorporation of Carrefour into Uni-President's food safety inspection and guidance mechanism, safeguarding food safety for consumers.

3.2. The PX Mart/RT-Mart Merger: updating equipment and improving the overall store environment for a better consumer experience.

25. The merging parties, PX Mart and RT-Mart, are both retail channel operators with multiple chain stores. Post-merger, PX Mart could increase its product variety and efficiently utilize resources by using 22 RT-Mart outlets as satellite warehouses to improve product allocation efficiency, reduce stock-out rates, increase inventory turnover, enhance customer demand satisfaction, and thereby promote competition in the supermarket/hypermarket sector and generate positive economic benefits. For consumers, PX Mart would renovate existing RT-Mart outlets, update equipment, and improve the overall store environment, creating a better shopping experience.

3.3. The Far EasTone/Asia Pacific Telecom Merger and the Taiwan Mobile/Taiwan Star Merger: Commitment to enhance subscriber service quality.

26. **The Far EasTone/Asia Pacific Telecom Merger:** Regarding fixed communication network services, the merger could strengthen fixed network coverage and density, as well as reduce redundant construction of fixed network resources, and promote energy savings. After Far EasTone merged with Asia Pacific, network integration between the parties would be completed so that services would be provided via a single system, where overlapping parts serve as a backup resiliency mechanism and the backbone has greater capacity with improved response and dispatch capabilities during outages, and a more stable fixed network service quality is provided. Regarding mobile broadband network services, as assessed by the National Communications Commission (NCC), the planned decommissioning 6,000 co-channel base stations after the Far EasTone/Asia Pacific merger would not degrade service quality, and the remaining stations would be sufficient to serve both Far EasTone and former Asia Pacific subscribers. Furthermore, the increased continuous bandwidth in the 700MHz frequency band post-merger was expected to maintain the coverage rate of over 99.8% and the 97% coverage in rural areas.

4. Conclusion

27. Mergers can enhance resources, combine the strengths of the merging parties, and increase competitiveness. The purpose of merger control is to prevent mergers from leading to excessive market concentration or the formation of monopolies, which could subsequently harm market competition and consumers' interests. According to the Merger Guidelines of the CTFTC, merging parties can first provide evidence of economic efficiencies. The CTFTC can also question the parties' efficiency claims, for instance, regarding the evidential strength of the submitted documents, whether the efficiencies could be achieved through less restrictive means that do not raise competitive concerns (such as internal expansion, restructuring, or less restrictive transactions), and whether the parties' historical operational records demonstrate a past practice of passing efficiencies onto consumers. The notifying parties bear the burden of proof to demonstrate that the overall economic benefits outweigh the disadvantages resulting from competition restraint. While other claims and factors related to public interest are taken into consideration, they are not the decisive factors as to whether the merger cases are finally cleared or blocked.