

THIRD EDITION

MERGER CONTROL

INTERNATIONAL SERIES

General Editors: Jean-François Bellis & Porter Elliott, *Van Bael & Bellis*



E006832

理律法律事務所

TAIWAN

**Stephen C Wu, Yvonne Y Hsieh and Wei-Han Wu | Lee and Li,
Attorneys-at-Law**

LEGISLATION AND JURISDICTION

1. What is the relevant merger control legislation? Is there any pending legislation that would affect or amend the current merger control rules described below?

The primary law governing merger control in Taiwan is the Taiwan Fair Trade Act (TFTA), which was promulgated on 4 February 1991, became effective on 4 February 1992 and was last amended on 24 June 2015. Moreover, the enforcement authority of the TFTA, the Taiwan Fair Trade Commission (TFTC), has stipulated several supplementary rules on the merger control, including Directions for Enterprises Filing for Merger, TFTC Disposal Directions (Guidelines) on Handling Merger Filings and TFTC Disposal Directions (Guidelines) on Extraterritorial Mergers.

All relevant Taiwan merger control rules are available on the website of the TFTC (www.ftc.gov.tw/internet/english/index.aspx).

2. What are the relevant enforcement authorities, and what are their contact details?

The TFTC is the competent authority under the TFTA. It not only is the regulatory body responsible for the execution of the TFTA, but also has the authority to interpret the TFTA by rulings and to stipulate the enforcement rules and relevant regulations of the TFTA.

The contact information of the TFTC is as follows:

TFTC
12th–14th Floors
No 2-2 Jinan Road Section 1
Zhongzheng District
Taipei City 100
Taiwan (ROC)
t 886-2-23517588
e ftcpub@ftc.gov.tw
w www.ftc.gov.tw/Internet/english/index.aspx

3. What types of transactions are potentially caught by the relevant legislation?

In general, a combination affecting Taiwan is subject to the jurisdiction of the TFTC, even though it is a foreign-to-foreign transaction. Under the TFTA, a combination that falls under the definition of combination and also meets certain thresholds as prescribed by the TFTA would require a prior notification to the TFTC. According to the TFTA, a combination is broadly defined as including:

- Mergers.
- Holding or acquisition of one-third or more of the voting shares of or interest in another enterprise.
- A transfer or lease of the whole or a substantial part of an enterprise's business or assets.

TAIWAN

- A contractual arrangement with another enterprise for joint operation on a regular and ongoing basis, or the management of another enterprise's business on a contract of entrustment.
- A direct or indirect control over the business operation or personnel management of another enterprise.

4. Are joint ventures caught, and if so, in what circumstances?

The term "joint venture" is not defined under the TFTA. Therefore, it was previously arguable as to whether incorporation of a joint venture should be subject to merger control. However, the TFTC stated in its ruling in 2002 that the impact of a joint venture on competition is essentially the same as an acquisition regardless of whether an enterprise invests in an existing enterprise or incorporates a new enterprise. In other words, the establishment of a joint venture, whether it is a newly incorporated enterprise or an existing enterprise, will be subject to merger control review if it constitutes a combination under Article 10 of the TFTA.

Therefore, the establishment of a joint venture will be caught by the TFTA as a combination if it falls under any type of combination defined under the TFTA. For example, if a joint venture will be established by way of acquisition of one-third or more voting shares or major part of business or assets, such joint venture will be subject to the prior notification requirement. Furthermore, if the joint venture partners will jointly control the joint venture company by entering into certain definitive agreement, such joint operation will also fall within definition of the notifiable combination.

5. What are the jurisdictional thresholds?

If any or all of the parties to a combination meet any of the following thresholds, a notification must be filed with the TFTC prior to the closing of the proposed transaction:

- As a result of the combination, the enterprises will jointly acquire at least one-third of the market share.
- Any of the enterprises participating in the combination holds a market share of at least one-quarter before the combination.
- The preceding fiscal year's turnover of an enterprise participating in
- The combination exceeded the following turnover amount set forth by the TFTC:
 - the aggregate global turnover of all the enterprises to a combination in the preceding fiscal year exceeded NT\$40 billion, and each of at least two of the enterprises had a turnover in Taiwan of at least NT\$2 billion in the preceding fiscal year;
 - for a combination of non-financial enterprises, one of the enterprises generated a turnover in Taiwan of at least NT\$15 billion in the preceding fiscal year while the other enterprise generated a turnover in Taiwan of at least NT\$2 billion in the preceding fiscal year; or
 - for a combination of financial enterprises, one of the enterprises generated a turnover in Taiwan of at least NT\$30 billion in the preceding fiscal year, while the other enterprise generated a turnover in Taiwan of at least NT\$2 billion in the preceding fiscal year.

When determining the turnover, the sales made "in" Taiwan by the parties' affiliates and branch offices and "into" Taiwan by direct sales to customers in Taiwan should be included.

6. Are these thresholds subject to regular adjustment?

The filing thresholds in market shares have not been amended since 2002. The TFTC amended the filing thresholds in turnover on 2 December 2016.

7. Are there any sector-specific thresholds?

There is no sector-specific threshold except the special turnover filing threshold for a combination involving financial enterprises.

8. In the event the relevant thresholds are met, is a filing mandatory or voluntary?

Filing is mandatory if the relevant thresholds are met.

9. Can a notification be avoided even where the thresholds are met, based on a "lack of effects" argument?

According to TFTC Disposal Directions (Guidelines) on Extraterritorial Mergers, for an extraterritorial transaction, the TFTC will exercise its discretion on whether to exercise its jurisdiction, taking into account several factors, including whether such combination has a direct, substantial and reasonably foreseeable effect on the Taiwan market, the relative importance of such combination to the domestic and foreign relevant markets, and the specificity and predictability that such combination may affect the competition in the domestic market. Therefore, theoretically, a foreign-to-foreign combination that meets filing threshold can avoid filing a notification based on a lack of effects argument. However, it is for the TFTC, not the participating parties, to have the discretion to determine whether the local effect exists in relation to the proposed transaction.

The following circumstances can be exempted from filing a notification even if the filing thresholds are met:

- Where an enterprise combines with another enterprise in which it or its wholly owned subsidiary already holds 50% or more of the voting shares or capital contribution.
- Where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise combine.
- Where an enterprise assigns all or a substantial part of its business or assets, or all or a substantial part of its business that could be separately operated, to another enterprise to be newly established and wholly owned by the former enterprise.
- Where an enterprise redeems its outstanding shares in order to convert them into treasury stock or because of minority shareholders' exercise of appraisal rights, causing the other shareholders' shareholdings to be increased to one-third or more of the voting shares in the enterprise.
- Where a single enterprise reinvests to establish a subsidiary and holds 100% of the shares or capital contribution of such subsidiary.

TAIWAN

- Any other designated type of merger promulgated by the competent authority.

Further, the TFTC issued a ruling in July 2016 indicating that the following types of transactions are exempted from a filing:

- A company merging with another company that it is under control of the latter company or is subordinated to the latter company.
- A company merging with another company that are both are under the control of the same controlling company.
- A company transferring its part of or the entire voting shares or capital contribution of a third company to another company that it is under the control of or is subordinated to.
- A company transferring its part of or the entire voting shares or capital contribution of a third company to another company that is under the control of the same controlling company.

10. Are there special rules by which a notification of a “foreign-to-foreign” transaction can be avoided even where the thresholds are met?

As explained above, a foreign-to-foreign transaction is subject to the TFTC’s jurisdiction only when such transaction has direct, substantial and reasonably foreseeable effect on the Taiwan market. However, the TFTC has the final say to determine whether it will exercise the jurisdiction over a foreign-to-foreign transaction based on such local effect test.

11. Does the relevant authority have jurisdiction to initiate a review of transactions which do not meet the thresholds for a notification?

No, the TFTC will not initiate a review of transactions which do not meet the thresholds for a notification. However, under a general rule, the TFTC can investigate and handle, upon complaints or *ex officio*, any alleged violation of the provisions of the TFTA.

NOTIFICATION REQUIREMENTS, TIMING AND POTENTIAL PENALTIES

12. Is there a specified deadline by which a notification must be made?

No, there is no specific deadline for filing a notification, but the parties cannot close the deal before the clearance is obtained.

13. Can a notification be made prior to signing a definitive agreement?

The TFTA does not specifically prohibit a notification to be made prior to the signing of a definitive agreement. However, in practice, the TFTC will request a definitive agreement or relevant board resolution to be submitted with the notification to evidence the parties’ intention to conduct the transaction.

14. Who is responsible for notifying?

A combination notification should be filed by the following parties:

- All the enterprises involved in the transaction, where an enterprise is merged into another, assigned by or leases from another enterprise(s) of the operations or assets, regularly runs operation jointly with another, or is commissioned by another enterprise to run operation.
- The holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise.
- The controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise. If an enterprise required to file has not yet been established, the existing enterprises in the merger shall file the notification.

15. What are the filing fees, if any?

There is no filing fee.

16. Where a notification is necessary, is approval needed before the transaction is closed/implemented (is there a waiting period or a suspension requirement)?

Yes, a clearance is required before the closing of the transaction. The waiting period is 30 days following the filing date (with complete documents and information). However, if the TFTC deems it appropriate, the 30-day waiting period may be shortened or be extended. When it does so, the TFTC must notify the filing parties in writing. If the TFTC decides to extend the period, it is entitled to do so only once up to a total of 90 days.

17. If there is a suspension requirement, is it possible to apply for a derogation in order to close before approval is granted? If so, under what circumstances?

Such mechanism is not provided under the TFTA and it is unclear whether the TFTC will accept the parties' proposal to temporarily carve out transactions related to Taiwan since no case precedent is available.

18. Are any other exceptions (for example, carve-outs) available to allow parties to close/ implement prior to approval?

No exception which allows parties to close the transaction prior to the TFTC's clearance is available under the TFTA. Also, it is not clear whether the TFTC will accept the parties' proposal to temporarily carve-out transactions related to Taiwan since no case precedent is available.

19. What are the possible sanctions for failing to notify a transaction?

If a combination that meets a filing threshold is not notified, the TFTC may impose penalties including the prohibition of the combination, divestiture, transfer of the business acquired and/or removal of personnel designated by the enterprises if the TFTC discovers such violation. The TFTC also has the power to impose an administrative fine between NT\$200,000 and NT\$50 million.

20. What are the possible sanctions for implementing a transaction prior to receiving approval (so-called "gun-jumping")?

The sanctions for implementing a transaction prior to receiving clearance are the same as those applicable for the failure to file a notification (*see question 19*).

21. What are the possible sanctions for implementing a transaction despite a prohibition decision or in breach of a condition/obligation imposed by a conditional clearance decision?

The sanctions for implementing a transaction despite a prohibition decision or in breach of a condition/obligation imposed by a conditional clearance decision are the same as those applicable for the failure to file a notification (see question 19).

22. What are the different phases of a review? Is there any way to speed up the review process?

A transaction involving Taiwan is subject to the jurisdiction of the TFTC, even if the transaction is extraterritorial (that is, foreign-to-foreign). Under the TFTA, a transaction that falls under the definition of a combination, as well as meeting certain prescribed thresholds, requires a pre-merger notification to be filed with the TFTC. For the notification of extraterritorial transactions, the TFTC will first determine whether it will exercise its jurisdiction or not based on its evaluation on the local effect. That is, the TFTC will determine whether the proposed transaction would have a direct, substantial and reasonably foreseeable impact on the Taiwan market.

If a filing is required and submitted, the TFTC will make its decision based on an economic cost-benefit analysis. If the combination's advantages to the national economy outweigh its disadvantages, the TFTC will not make an objection. If the TFTC does not make any objection to the filing within 30 calendar days following the filing date (with complete documents and information), the parties to the proposed transaction are free to proceed with the merger. The TFTC may shorten the 30-day waiting period or extend the period up to 90 calendar days if deemed necessary.

The TFTC may include conditions or undertakings in any of its decisions on pre-merger notifications to ensure that the overall economic benefit of the merger outweighs any disadvantages resulting from competition restraints.

23. Is there a possibility for a "simplified" procedure or shorter notification form and, if so, under what conditions would this apply?

A simplified procedure in which the waiting period can be shortened is available for below circumstances:

- The enterprises file the notification for reaching the turnover threshold, but their respective market shares meet one of the following circumstances: (i) in a horizontal merger, the combined market shares after the merger is less than 20%, or the combined market shares after the merger is less than 25% and the market shares of one of the participating enterprises is less than 5%; or (ii) in a vertical merger, the combined market share in each individual market is less than 25%.
- In the case of conglomerate merger, if the following factors of consideration are deliberated to conclude that the parties do not have any major potential competition possibility between each other:
 - the possibility of changes in regulation and the impact of regulation and control on the merging parties' cross-industry operation;
 - the probability of cross-industry operation by the merging parties because of technological advancement;

- the original cross-industry development plan of the merging parties besides the merger; and
- any other factors that may affect material potential competitions.
- One of the enterprises participating in the merger directly owns more than one-third but less than half of the voting shares or paid-up capital of the other merging party.

However, in the merger filings that meet the above-mentioned criteria for the simplified procedure, the general procedure is still applicable in cases where the TFTC deems the merger has any of the following conditions:

- The market shares of the top two enterprises account for two-thirds of the relevant market, or the market shares of the top three enterprises accounts for three-quarters of the relevant market that a horizontal merger involves. However, this regulation does not apply if the aggregate market share of the merging parties is less than 10% of the total market.
- The merger involves major public interest.
- One of the merging parties is a holding company as defined by the Taiwan Stock Exchange Corporation Regulations for the Review of Stock Exchange Listings Applications by Investment Holding Companies or Financial Holding Company Act.
- There is a difficulty in delineating the scope of the relevant market or the calculation of market shares of enterprises participating in the merger.
- The relevant market for enterprises participating in the merger has high entry barriers, market concentration or other unfavourable and questionable circumstances that severely limit competition.

24. What types of data and what level of detail is required for a notification?

In a standard notification where the simplified procedure does not apply, the parties need to submit a combination notification form (Application Form) with required documents and information. In the Application Form, the parties are required to provide the following information:

- General introduction (including listing status, shareholding structure, major business and future plan, and offices and major business locations) and basic information of the parties.
- Description of the transaction, including:
 - the background of the transaction;
 - the deal structure;
 - the estimate time frame and closing date;
 - the consideration; and
 - the result of the transaction (that is, post-closing structure).
- Description of the relevant market, including:

TAIWAN

- the product market;
 - the geographic market; and
 - horizontal and vertical competition status (including major competitors).
- Information relating to the possible obstacles in entering the relevant market, including the minimum capital, legal restriction, patents, intellectual property rights, material supply sources, ratio of fixed cost and tariff barrier and so on.
 - An economic analysis of the advantages that the proposed transaction would create to the benefit of each of the parties and overall economy in Taiwan.
 - The investment status of the parties in Taiwan, such as subsidiaries and branches.
 - The information as to the cost of production or other operational cost, selling prices, quantity and value of production, and sales of the major or related products and/or services of each party for the last three years.
 - The horizontal competition information in connection with structure of the relevant market involving the parties.
 - The market information in connection with the downstream and upstream industries.

25. In which language(s) may notifications be submitted?

The notification should be submitted in Chinese. Also, any documents in a foreign language should be translated (excerpt or full) into Chinese.

26. Which documents must be submitted along with a notification?

In addition to the information indicated in the responses to *question 24*, the following documents are also required:

- Annual report of each of the parties of the preceding year (financial reports will be sufficient if no annual reports are available).
- Power of attorney executed by the notifying parties (authorising outside legal counsel to file the combination notification on behalf of them).
- Certificate of incorporation of each of the parties.
- A copy of the definite agreement of the proposed transaction.
- Resolutions adopted by the board meetings approving the proposed transaction.

27. What are the possible sanctions for providing incorrect, misleading or incomplete information in a notification?

If the TFTC finds the documents submitted to be incorrect or misleading, it may prohibit on the combination. Meanwhile, for any incomplete information, the TFTC may issue notice to require supplementation or correction within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction

is not made within the specified time period or is so made but the submitted materials remain deficient, the filing will be rejected by the TFTC.

28. To what extent is the relevant authority available for pre-notification discussions? Are pre-notification consultations customary?

No pre-notification discussion is provided under the TFTA. However, the evidence suggests that parties in some cases indeed first consulted the TFTC for their informal and non-binding opinions on the transaction, such as what information the TFTC wishes to be provided in the notification. Note that such consultation is not customary because the TFTC is not always willing to discuss with the parties before a notification is actually made.

29. Where pre-notification consultations are possible, what measures does the relevant authority take to ensure that such discussions are treated confidentially?

If any informal pre-notification consultation is held, it is unclear whether the TFTC owes confidentiality obligation to the parties, though in our view the risk of the TFTC leaking any confidential information is minimal.

30. At what point and in what forum does the relevant authority make public the fact that a notification has been made?

Once the TFTC decides to exercise jurisdiction and has made its decision on the transaction, it will publish its decision letter on its website. Also, if deemed necessary, prior to the decision being made, the TFTC may seek a third-party's opinion on the proposed transaction, by either posting a notice on its website or conducting a public hearing. In this connection, the TFTC will at least disclose the names of the filing parties, the structure of the transaction and industry involved in its public notice.

The parties may request the TFTC to handle combination notifications confidentially without disclosing the confidential information identified by the enterprises to the public. If the enterprises have any special concerns regarding the public announcement made by the TFTC, they can also apply and provide reasons to the TFTC for not disclosing certain information regarding the combination transaction. The TFTC decides whether to grant the application on a case-by-case basis. If the TFTC considers that the information on the transaction has an impact on the Taiwanese market, it will reject the non-disclosure request and make the announcement soliciting the public's comments.

31. Once the authority has issued its decision, what information about the transaction and the decision is made publicly available?

While the TFTC publishes its decision, generally the following information will be mentioned in its decision letter:

- Name of the filing parties.
- Structure of the transactions.
- The TFTC's decision and its conditions (if any).
- The TFTC's reasons for the decision, which may include the definition of the product/geographic market, type of combination, market shares of each parties, competition analysis of the transaction.

However, as explained above, the parties may request the TFTC not to disclose certain confidential information regarding the transaction.

SUBSTANTIVE ASSESSMENT OF THE MERGER, ROLE OF THIRD PARTIES AND REMEDIES

32. What is the substantive test for assessing the legality of a notified transaction?

The general principle is that, after all relevant factors have been considered (*see question 33*) and there is no suspicion of obvious competition restraints, the TFTC can conclude that the overall economic benefits of the merger outweigh the disadvantages resulting from competition restraint. Otherwise, the overall economic benefits shall be further examined to determine whether they outweigh the disadvantages resulting from competition restraint.

33. What theories of harm are considered by the authority in assessing the transaction? How concerned are the authorities with non-horizontal (for example, vertical or conglomerate) effects, and are any other theories of harm analysed (for example, coordination in the case of joint ventures)?

The TFTC will consider the following factors when assessing the competition restraints resulted from the different types of merger:

Horizontal merger

- **Unilateral effects:** the capacity of the merging parties to increase their product or service prices may increase when there is no more market competition pressure after the merger. Under such circumstances, assessment can be conducted in accordance with the market concentration before and after the merger, the market share of each of the merging party, the market share and supply-demand developments of businesses outside the merger and the reaction of buyers to price changes. If the merger involves a differentiated product or service, further assessment can be conducted to evaluate the level of substitutability of the product or service in question (whether a merging party is the next-best alternative of another for consumers, whether the clienteles are highly overlapped or the difference between the merging parties is merely a matter of choice, product positioning or price variation for consumers, or whether the merging parties market through the same channels) and the profit margin made before the merger.
- **Coordinated interaction:** after the merger, the merging parties and its competitors restrict business activities among themselves or, even without mutually restricting one another from competition, take concerted actions to render competition in the relevant market non-existent. The evaluation of whether the market condition is conducive for the enterprises to form concerted actions, the ease of monitoring acts of violation and the effectiveness of punishments is conducted to determine the coordinated effects.
- **Extent of entry:** the likelihood and timeliness of entry by potential competitors, and whether such entry would exert competitive pressures on the existing enterprises in the market shall be examined.
- **Countervailing power:** refers to the ability of trading counterparts or potential trading counterparts to restrict the merging parties from raising the price of goods or the remuneration of services.

- **Other factors affecting the result of competition restraints:** the overall economic benefits shall be examined further if a horizontal merger is suspected of competition restraints for meeting any of the following circumstances:

- (i) the combined market share of the merging enterprises reaches 50%;
- (ii) the market share of the two largest enterprises of the relevant market reaches two-thirds; or
- (iii) the market share of the three largest enterprises of the relevant market reaches three-quarters.

For the circumstances stated in (ii) or (iii), the merger in which the combined market shares of enterprises participating in the merger have to reach to 20%.

Vertical merger

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

Conglomerate merger review

- The impact on the merging parties' cross-industry operation if the applicable regulatory rules change afterwards.
- The probability of cross-industry operation by the merging parties because of technology advancement.
- The original cross-industry development plan of the merging parties besides the merger.
- Other factors that affect the likelihood of material potential competition.

If there is a likelihood of material potential competition in the relevant market of a conglomerate merger and this merger will have the same effect as a horizontal or vertical merger, the factors affecting competition restraints in horizontal or vertical mergers should also be applicable.

34. Are non-competition issues, such as industrial policy or labour policy, commonly taken into account in the assessment of the transaction?

It is unclear as to whether non-competition issues will play a role in the TFTC's assessment since no case precedent is available.

35. Are economic efficiencies considered as a mitigating factor in the substantive assessment?

Some factors such as consumer interests; that the merging parties are originally in the weaker position in trading; one of the merging parties is a failing enterprise; or other concrete results related to overall economic benefits may also be taken into account by the TFTC.

36. Does the relevant authority typically cooperate/share information with authorities in other jurisdictions?

The TFTC has entered into certain cooperation agreements or memorandums with the following countries for the application of competition regulations: Australia, Canada, France, Hungary, Mongolia and New Zealand. We are also aware that, in certain cross-border transactions, the TFTC has consulted with the competition authorities of the parties' home countries in its review of the Taiwan filing.

37. To what extent are third parties involved in the review process?

When a combination notification is filed with the TFTC, the TFTC will post a summary of the proposed transaction on its website for one week to seek comments from the public if it decides to exercise jurisdiction on the transaction.

38. Is it possible for the parties to propose remedies for potential competition issues?

Although the proposal of remedy mechanism is not provided in the TFTA, our experience suggests that the parties may present remedies any time before the TFTC makes its decision. That is, during the TFTC's review process within the waiting period, the parties may propose remedies to the TFTC for its consideration on evaluating the economic cost and benefit of the proposed merger.

If the proposed remedies would constitute a material change to the notification, and hence the TFTC would require additional information for its review, the TFTC may stop the clock and the waiting period will restart running only after the supplemental information is submitted. If the proposed remedies would not be a material change to the notification, the TFTC will take into account such remedies when rendering its decision on the merger notification before the expiration of the waiting period. More specifically, the TFTC will consider whether to grant its clearance with conditions referring to such remedies.

39. What types of remedies are likely to be accepted by the authority (for example, divestment remedies, other structural remedies, behavioural remedies)?

The TFTC may attach conditions to its decisions on merger filings with the purpose of eliminating any likely competition restriction that would result from a merger so that the overall economic benefits are greater than the disadvantages from competition restriction. The types of conditions or required undertakings are as follows:

- **Measures regarding the structural aspect:** requesting the merging parties to take measures to dispose of the shares or assets in their holding, transfer part of their operations or remove personnel from certain positions.
- **Measures regarding the behavioural aspect:** requesting the merging parties to continue to supply critical facilities or essential elements to businesses outside the merger, to license such businesses to use their intellectual property rights, not to engage in exclusive dealing, not to conduct discriminatory treatment or not to impose tie-in sales.

Depending on the specifics of each case, the TFTC may determine to attach other conditions or required undertakings that it sees fit without being subject to the regulation of the preceding paragraph. Also, before concluding its

decision upon a merger filing, the TFTC may inquire the opinions of the merging parties regarding the conditions and undertakings to be attached.

40. What power does the relevant authority have to enforce a prohibition decision?

The power to enforce a prohibition decision is the same as the sanctions applicable for the failure to file a notification (see question 19).

JUDICIAL REVIEW

41. Is it possible to challenge decisions approving or prohibiting transactions? If so, before which court or tribunal?

The parties may file for administrative litigation with the High Administrative Court against the TFTC's decision within two months after receipt of the TFTC's decision. The procedure for administrative litigation is akin to the procedure for civil litigation. The court will hear the case and both parties, that is, the TFTC as defendant and the merging parties as plaintiff, will be in front of a judge in a formal legal proceeding.

The decision of the High Administrative Court can be appealed to the Supreme Administrative Court for legal review. The Supreme Administrative Court will not hold any hearing and will reverse the High Administrative Court's judgment only when the judgment is legally flawed.

42. What is the typical duration of a review on appeal?

As mentioned in question 41, it is possible for the parties to a combination to challenge the TFTC's decisions approving or prohibiting transactions by filing an administrative litigation to the High Administrative Court and then to the Supreme Administrative Court for a final judgment. Such administrative litigations may last for years, depending on the complexity of the case.

43. Have there been any successful appeals?

So far, the courts have never overruled the TFTC's decisions approving or prohibiting a combination. However, the Executive Yuan has twice revoked the TFTC's decision to prohibit combinations. These two revocations are related to the merger filing between two KTV companies: Cashbox Party World Ltd and Holiday KTV Ltd.

STATISTICS

44. Approximately how many notifications does the authority receive per year?

In 2015, the TFTA concluded 63 notified combination cases:

- Twenty-six of these cases were granted clearance.
- No case was prohibited.
- Thirty-five cases were withdrawn by applicants or the TFTC decided that it would not exercise jurisdiction over the transactions. The TFTC imposed sanctions in two case for the parties' violation of merger control rules under the TFTA.

TAIWAN

45. Has the authority ever prohibited a transaction? How many prohibition decisions has the authority issued in the past five years?

Yes, the TFTC has indeed prohibited some transactions, although no transactions were prohibited from 2011 to 2015.

46. Over the past five years, in what percentage of cases have binding commitments been required in order to obtain clearance for a transaction?

No public data is available to calculate such a percentage.

47. How frequently has the authority imposed fines in the past five years?

From 2011 to 2015, the TFTC imposed sanctions in 15 cases for the violation of merger control rules.