International Comparative Legal Guides

Merger Control 2021

A practical cross-border insight into merger control issues

17th Edition

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The Taiwan Fair Trade Commission ("TFTC") is the competent authority under the Taiwan Fair Trade Act ("TFTA"). It is not only the regulatory body responsible for the execution of the TFTA, but also the agency of the authority which interprets the TFTA by rulings and stipulates the enforcement rules and relevant regulations of the TFTA.

1.2 What is the merger legislation?

The basic rule governing merger control in Taiwan is the TFTA, which was promulgated on 4 February 1991, became effective on 4 February 1992, and was last amended on 14 June 2017 with the newly amended Enforcement Rules of the TFTA ("Enforcement Rules") being announced on 2 July 2015. Moreover, the TFTC, as the enforcement authority of the TFTA, has stipulated several supplementary rules on merger control, including the Directions for Enterprises Filing for Mergers, the TFTC Disposal Directions (Guidelines) on Handling Merger Filings ("Merger Guidelines"), and the TFTC Disposal Directions (Guidelines) on Extraterritorial Mergers.

1.3 Is there any other relevant legislation for foreign mergers?

The TFTC Disposal Directions (Guidelines) on Extraterritorial Mergers are stipulated for the purpose of handling merger filings related to foreign mergers. Despite the guidelines, the filing requirements (thresholds, timeframe, documents, etc.) for foreign mergers are the same as those for domestic transactions, though the TFTC will take the local effect into account when determining whether it will exercise the jurisdiction.

1.4 Is there any other relevant legislation for mergers in particular sectors?

No. However, under several of the TFTC's guidelines on sectoral control of certain industries affecting public welfare, such as airlines, banking/finance, or 4C industries, the TFTC will take certain factors into consideration when reviewing a merger involving that particular industry.

1.5 Is there any other relevant legislation for mergers which might not be in the national interest?

No, there is no other relevant legislation.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

Under the TFTA, a "combination" that falls under the definition of combination, and which also meets certain thresholds as prescribed by the TFTA, requires prior notification to the TFTC. According to the TFTA, a "combination" is broadly defined to include: (i) mergers; (ii) holding or acquisition of one-third or more of the voting shares of, or interest in, another enterprise; (iii) a transfer or lease of the whole, or a substantial part of, an enterprise's business or assets; (iv) 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; and (v) a direct or indirect control over the business operation or personnel management of another enterprise. The term "control" is not further defined under the TFTA, and thus should be judged on a case-by-case basis.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Acquisition of a minority shareholding will constitute a combination only if it falls under the combination defined under (ii), (iv) or (v) as set forth in question 2.1.

2.3 Are joint ventures subject to merger control?

The term "joint venture" is not defined under the TFTA. However, the TFTC ruled in 2002 that the establishment of a joint venture, whether it is a newly incorporated enterprise or an existing enterprise, will be subject to merger control if it constitutes a combination defined under the TFTA. Note that the TFTA does not further categorise a joint venture into different types based on its function or corporate structure. Therefore, an establishment of a joint venture is likely to be covered by the merger control rules, as long as it is classed as a combination under the TFTA and the parties thereof meet the filing thresholds.

2.4 What are the jurisdictional thresholds for application of merger control?

According to Article 11 of the TFTA, a notification must be filed with the TFTC prior to the closing of the proposed transaction if:

(i) as a result of the combination, any of the enterprises will acquire at least one-third of the market share;

(ii) any of the enterprises participating in the combination holds a market share of at least one-quarter before the combination; or

(iii) the preceding fiscal year's turnover of an enterprise participating in the combination exceeded the amount set forth by the TFTC, i.e.:

- the aggregate global turnover of all the enterprises in a combination in the preceding fiscal year exceeded NTD 40 billion (approximately EUR 1.2 billion), and each of at least two of the enterprises had a turnover in Taiwan of at least NTD 2 billion (approximately EUR 60 million) in the preceding fiscal year;
- for a combination among non-financial enterprises, one of the enterprises generated a turnover in Taiwan of at least NTD 15 billion (approximately EUR 450 million) in the preceding fiscal year while the other enterprise generated a turnover in Taiwan of at least NTD 2 billion (approximately EUR 60 million) in the preceding fiscal year; or
- for a combination between financial enterprises, one of the enterprises generated an annual turnover of at least NTD 30 billion (approximately EUR 900 million), while the other enterprise generated an annual turnover of at least NTD 2 billion (approximately EUR 60 million).

When determining the turnover, Paragraph 2, Article 11 of the TFTA specifically stipulates that the turnover should be calculated on a "group/consolidated" basis, i.e., including the sales amount of an enterprise that is controlled by, controlling, or affiliated with the enterprise in the combination, and of an enterprise where both itself and the enterprise in the combination are controlled by the same enterprise or enterprises.

Article 6 of the Enforcement Rules further explains the "control/subordinate" relation under Article 11 Paragraph 2 of the TFTA above. To be specific:

(i) When enterprise A holds more than half of the shares in enterprise B, or if enterprise A directly/indirectly controls the business operation or the appointment or discharge of the personnel of enterprise B, enterprise A can be viewed as having control over enterprise B. Furthermore, in the event that the whole or the major part of the business or assets of enterprise B is assigned or leased to enterprise A, or where enterprise A operates jointly with enterprise B on a regular basis, or is entrusted by enterprise B to operate enterprise B's business which results in enterprise A having controlling power over enterprise B, this situation can also be seen as a type of "control/subordinate" relation.

(ii) If a person or an organisation and/or its related persons hold a majority of the total number of outstanding voting shares or the total capital of another enterprise, it should be concluded that the "control/subordinate" relation exists among the aforementioned entities.

(iii) The "control/subordinate" relation is presumed to exist if a majority of the executive shareholders or directors in a company are simultaneously acting as the executive shareholders or directors in another company, or if a majority of the total number of outstanding voting shares or the total amount of the capital interest of a company and another company is held by the same shareholders.

It should be noted that for foreign companies, only the sales in Taiwan are relevant to calculating the turnover thresholds, which include the sales made "in" Taiwan by the parties' affiliates, branch offices, or any entity defined by Paragraph 2, Article 11 of the TFTA, and "into" Taiwan by direct sales to Taiwanese customers.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes. This is because the TFTA does not limit the filing threshold assessment to the overlapping products only.

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

A foreign-to-foreign transaction will be subject to the Taiwan merger control regulations as long as it falls under the definition of a combination as stated in question 2.1 and it meets any of the filing thresholds as provided in question 2.4.

However, according to the Guidelines on Handling Extraterritorial Mergers, which were last amended in December 2016, the TFTC may decide to waive its jurisdiction over a pure foreign-to-foreign transaction after considering the following factors:

(a) whether there will be a direct, substantial, and reasonably foreseeable effect on the domestic market;

(b) the relative weight of the merger's effects on the relevant market of Taiwan and the foreign countries;

(c) the nationalities, locations, and principal places of business of the combining enterprises;

(d) the explicitness and foreseeability of the intent to affect market competition in Taiwan;

(e) the likelihood of creating conflicts with the laws or policies of the home countries of the combining enterprises;

(f) the feasibility of enforcing administrative dispositions;

(g) the effect of enforcement on the foreign enterprise(s);

(h) international conventions and treaties, or provisions of international organisations; and

(i) whether any party has any production or service facilities, distributors, agents, or other substantive sales channels within the territory of Taiwan.

Thus, theoretically, parties to an extraterritorial combination may, based on their own assessment of the factors above, conclude that no filing is required in Taiwan due to lack of local effect arising from the proposed transaction, though, legally speaking, it is the TFTC which has the final say on this matter.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

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

(1) where an enterprise or its 100% held subsidiary combines with another enterprise in which it already holds 50% or more of the voting shares or capital contribution;

(2) where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise combine;
(3) 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. Note that "substantial part" is not further defined under the TFTA and thus should be judged on a case-by-case basis;
(4) where an enterprise (a company limited by shares) 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; or
(5) where a single enterprise reinvests to establish a subsidiary and holds 100% of the shares or capital contribution of such subsidiary.

Meanwhile, on 18 July 2016, the TFTC published a ruling to exempt the following types of transactions from the requirement to make a filing:
(1) A company merging with another company that is under the control of the latter company or is its subordinate company.
(2) A company merging with another company where both are under the control of the same controlling company.
(3) A company transferring its part of (or entire) voting shares or capital contribution of a third company to another company that is under the control of the latter company or is its subordinate company.
(4) A company transferring its part of (or entire) voting shares or capital contribution of a third company to another company that is under the control of the same controlling company.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

As the TFTA is silent on this issue, whether a merger involving several stages should be subject to several or one combination notification should be reviewed and determined on a case-by-case basis.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

A notification is compulsory if the filing thresholds are met. There is no deadline for notification, but the parties cannot close the transaction before the TFTC grants clearance.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

For an extraterritorial transaction, the TFTC may not exercise its jurisdiction when such combination has no direct, substantial and reasonably foreseeable effect on the Taiwan market (local effect). However, it is the TFTC, not the parties, that has the discretion to determine whether the local effect exists in the proposed transaction. Therefore, the parties to an extraterritorial transaction can usually still make the notification even if the TFTC eventually determines not to exercise its jurisdiction over the transaction.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

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 of between NTD 200,000 (approximately EUR 6,000) and NTD 50 million (approximately EUR 1.5 million).

3.4 Is it possible to carve-out local completion of a merger to avoid delaying global completion?

An exception that allows parties to close the transaction prior to the TFTC's clearance is unavailable 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.

3.5 At what stage in the transaction timetable can the notification be filed?

There is no specific deadline for filing a notification. However, as the TFTC requests a definitive agreement or relevant board resolution to be submitted with the notification to evidence the parties' intention to conduct the transaction, the earliest time that the parties can make a filing is after the parties' board approves the proposed transaction or the signing of the definitive agreement.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

If the TFTC does not make any objection to the filing within 30 business 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 for up to 90 business days if it is deemed necessary. If the TFTC finds that the filing information or documents are incomplete, it may request the parties to make a supplemental filing, and the clock will not start to run until the supplemental filing is duly made and the information submitted is satisfactory to the TFTC.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

The sanctions for implementing a transaction prior to receiving clearance are the same as those applicable for the failure to file a notification (please see question 3.3).

3.8 Where notification is required, is there a prescribed format?

Yes, the parties need to fill in the application form and annexes prescribed by the TFTC. In a standard notification, the parties need to submit a combination notification form ("Application Form") with the required documents and information. The standard format for the Application Form (Chinese version only) can be found on the TFTC's official website: http://www.ftc.gov.tw/internet/main/doc/docList.aspx?uid=1112.

3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

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

(1) The enterprise files the notification for reaching the turnover threshold, but its respective market shares meet one of the following criteria:
   (i) In a horizontal merger, the combined market shares after the merger are less than 20%.
   (ii) In a horizontal merger, the combined market shares after the merger are less than 25% and the market share of one of the participating parties is less than 5%.
   (iii) In a vertical merger, the combined market shares in each individual market are less than 25%.

(2) In the case of a conglomerate merger, the factors below are considered, and it is established that the parties do not have any major potential for competition between each other:
   (i) the impact of an increase of regulation and control on the merging parties' cross-industry operation;
   (ii) the probability of cross-industry operation by the merging parties because of technological advancement; and
   (iii) the original cross-industry development plan of the merging parties besides the merger.

(3) One of the enterprises participating in the merger directly owns more than one-third and less than half of the voting shares or paid-up capital of the other merging party.

However, in certain situations, such as where the merger involves major public interest, or the entry barriers are high, the TFTC would still request the parties to follow the general procedure even if they have met the above-mentioned criteria for the simplified procedure.

There is no other informal way to speed up the clearance timetable.

3.10 Who is responsible for making the notification?

A combination notification should be filed by the following parties: (i) all the enterprises involved in the transaction, where an enterprise is merged into another enterprise, assigns or leases its operations or assets to another enterprise, regularly runs operations jointly with another enterprise, or is commissioned by another enterprise to run operations; (ii) the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and (iii) 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. Additionally, the Enforcement Rules provide that in a combination-type acquisition of shares or capital contributions of another enterprise, if a control/subordinate relation exists between the acquirers or the acquirers are under control of one or more entities, the filing party should be the ultimate parent company of the acquirers.

3.11 Are there any fees in relation to merger control?

No filing fee is required.

3.12 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

According to Article 18 of the Regulations Governing Public Tender Offers for Securities of Public Companies, the length of the public tender offer period cannot be fewer than 20 days or more than 50 days. However, the offeror may apply for an extension of the public tender offer period where there is legitimate justification. In that case, the extension period may not exceed a total of 30 days.

When the envisaged share acquisition is conducted by way of public tender offer, the public tender offer cannot be successfully closed without approvals from relevant competent governmental authorities, including the TFTC's clearance over the transaction, if applicable. Therefore, the parties will need to observe the requirements on the tender offer period as explained above, and subsequently try to obtain clearance from the TFTC during that period.

Furthermore, the newly added Paragraph 10, Article 11 of the TFTA stipulates that the TFTC has to provide necessary information to and seek opinions from the target in a hostile takeover so as to ensure the target's right to information and to express opinions. Adding this new requirement, it is foreseeable that the acquirer would be facing great time pressure to obtain the TFTC's clearance if the hostile takeover is conducted via a public tender offer.

3.13 Will the notification be published?

During the review of a notification, the TFTC may seek the public's opinion by publishing the basic information about the proposed transaction on its website if it decides to exercise its jurisdiction over the transaction. In that case, the parties' names, products or services involved and a general description of the transaction type will be disclosed. Furthermore, when the TFTC clears a transaction without imposing any condition, it will issue a news release summarising its decision. In addition to the basic information about the parties and transaction structure, the news release will include how the TFTC defines the market and its competition assessment. Nonetheless, if the clearance comes with conditions where the TFTC will render a formal decision letter, the TFTC will not only issue a news release, but will also publish the decision in full, which may cite paragraphs from the notification.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

The general principle is that, after all relevant factors are considered (please see below for further details) and there is no suspicion of obvious competition restraints, the TFTC can then 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 the overall economic benefits of the merger outweigh the disadvantages resulting from competition restraint.

4.2 To what extent are efficiency considerations taken into account?

Though the efficiency argument is certainly considered by the TFTC when determining whether the proposed transaction will benefit the economy overall, there is no case precedent on how the TFTC weighs this factor.

4.3 Are non-competition issues taken into account in assessing the merger?

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

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

As explained in question 3.13, if a combination notification is filed with the TFTC and the TFTC decides to exercise jurisdiction on the transaction, it will post a summary of the proposed transaction on its website for one week to seek comments from the public. In some cases where the TFTC considers that the transaction will have a great impact on the local market, it will hold a symposium or a public hearing to invite competitors, upstream and downstream enterprises, other competent authorities and scholars to provide their opinions.

4.5 What information gathering powers (and sanctions) does the merger authority enjoy in relation to the scrutiny of a merger?

According to the TFTA, while conducting investigations, the TFTC may proceed in accordance with the following procedures: (i) to require the parties and any related third parties to make statements; (ii) to notify relevant agencies, organisations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits; and (iii) to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organisation or enterprises.

If any person subject to an investigation refuses the investigation *without justifications*, or refuses to appear when called to answer queries before the TFTC or to submit books and records, documents, or exhibits upon request by the set time limit, an administrative penalty of no less than NTD 50,000 (approximately EUR 1,500), but no more than NTD 500,000 (approximately EUR 15,000) can be imposed on the person. If such person continues to withhold cooperation without justification upon another notice, the TFTC may continue to issue notices of investigations, and may successively assess an administrative penalty of no less than NTD 100,000 (approximately EUR 3,000), but no more than NTD 1 million (approximately EUR 30,000) each time that the person does not cooperate with the investigation, appear when called to answer queries, or submit books and records, documents, or exhibits upon request.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The parties may request that the TFTC handles combination notifications confidentially without disclosing to the public the confidential information identified by the enterprises. 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. However, the TFTC decides whether to agree with such application on a case-by-case basis. If the TFTC considers that the information about 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.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

The regulatory process ends with the TFTC's decision on the merger filing. The decision generally falls into four categories: (i) a waiver to the jurisdiction (for extraterritorial transactions where no local effect will arise therefrom); (ii) clearance without condition; (iii) clearance with conditions; and (iv) a prohibition on the combination.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Though the proposal of remedy mechanism is not provided in the TFTA, our experience suggests that the parties may present remedies at any time before the TFTC makes its decision. That is, during the waiting period of the TFTC's review process, 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 be reset only after the supplemental information is submitted. If the proposed remedies would not constitute 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. To be more specific, the TFTC will consider whether it would grant its clearance with conditions referring to such remedies.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

No case precedent suggests that the TFTC has ever imposed "structural" remedies (such as divestment of assets or disposal of shares) in foreign-to-foreign mergers. However, the TFTC has certainly attached behavioural remedies to only a few foreign-to-foreign mergers, most of which involve sensitive industries such as the semiconductor or technology licensing industries.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

The parties may submit a remedy proposal during the TFTC's review process, as long as it is within the waiting period. Please refer to question 5.2 for details.

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

Since the primary purpose for the remedies is that they must eliminate the anti-competition concerns, it is well-recognised by competition authorities of most jurisdictions that divestitures, which are a type of structural remedy, are the best way to achieve such a goal. In line with the above international practices, the TFTC seems to accept structural remedies for the divestitures (disposal of shares held by the party) and impose such remedies as conditions to its clearance. In fact, the public records suggest that the TFTC has indeed adopted the divestment approach in a transaction involving a cable television business.

In September 2012, the TFTC updated the Merger Guidelines to include its official standards for remedies. According to the Merger Guidelines, the remedies which the TFTC can impose as conditions are:

(1) Measures impacting the structural aspect: order the 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.
(2) Measures impacting the behavioural aspect: order the parties to continue to supply critical facilities or essential elements to businesses outside the merger, order the parties to license such businesses to use their intellectual property rights, and prohibit the parties from engaging in exclusive dealing, discriminatory treatment, and tie-in sales.

Despite the foregoing, the TFTC still reserves the right to impose other types of remedy on a case-by-case basis. Also, the Merger Guidelines point out that the TFTC may seek the parties' opinions on the possible remedy before it makes the final decision.

5.6 Can the parties complete the merger before the remedies have been complied with?

It is acceptable for the parties to complete the merger prior to their compliance with the remedies, depending on the nature of that remedy. The TFTC will review the parties' behaviour or divestment status periodically to ensure that the parties do not violate the conditions imposed by the TFTC.

5.7 How are any negotiated remedies enforced?

Since the remedies will serve as conditions to the TFTC's clearance, the parties will have to comply with the conditions. In cases of any violation discovered by the TFTC, 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. The TFTC also has the power to impose an administrative fine of between NTD 200,000 (approximately EUR 6,000) and NTD 50 million (approximately EUR 1.5 million).

5.8 Will a clearance decision cover ancillary restrictions?

It is unclear as to whether ancillary restrictions (such as non-competition agreement) will be covered by a clearance since no case precedent is available.

5.9 Can a decision on merger clearance be appealed?

The TFTC's decision is an administrative decision, which can be appealed by the parties or any interested parties to the High Administrative Court within two months of the receipt of said decision.

The procedure of administrative litigation is akin to the procedure of civil litigation. The court will hear the case and both parties, i.e., the TFTC as the defendant and the parties subject to the decision as the plaintiff, will be in front of judges 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.

5.10 What is the time limit for any appeal?

The TFTC's decision can be appealed by the parties or any interested parties to the court within two months of receipt of the decision.

5.11 Is there a time limit for enforcement of merger control legislation?

The statute of limitation for the TFTC to enforce merger control regulations is five years.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

For some cross-border transactions, the TFTC will indeed consult the agencies of the parties' home countries while reviewing the filing. Also, the TFTC has entered into certain cooperation agreements or memorandums with at least the following countries for the application of competition regulations: Australia; Canada; France; Hungary; Mongolia; and New Zealand. Communication between the TFTC and these countries can be anticipated.

6.2 What is the recent enforcement record of the merger control regime in your jurisdiction?

According to public information, the TFTC reviewed a total of 64 merger filing cases in 2019, and one case was prohibited.

6.3 Are there any proposals for reform of the merger control regime in your jurisdiction?

We are not aware of any proposal for reform of the merger control regime in Taiwan in the near future.

6.4 Please identify the date as at which your answers are up to date.

These answers are up to date as of 21 August 2020.

7 Is Merger Control Fit for Digital Services and Products?

7.1 Is there or has there been debate in your jurisdiction on the suitability of current merger control tools to address digital mergers?

In July 2019, the TFTC announced that it plans to proceed with eight research projects in 2020 regarding competition policy in the era of big data. One of the projects is related to merger control, and involves the study of comparative laws on how to handle extraterritorial combinations. However, as its title suggests, the focus of the aforesaid study seems to be on the evaluation of whether the jurisdiction should be exercised by a competition agency when the present transaction is conducted outside its presiding territory, but not on the discussion of applying the current merger control rules to digital mergers.

Meanwhile, the TFTC has established a digital economy competition policy group in 2017 to research the related topics arising from technology innovation and industry development for digital change and to do some precautionary preparation for new competition issues. Nevertheless, though the TFTC Chairperson Huang has also mentioned the TFTC's enforcement priority described above to the public several times, whether the update of the current competition law will include merger control regimes has not been specified in particular.

7.2 Have there been any changes to law, process or guidance in relation to digital mergers (or are any such changes being proposed or considered)?

No (from what is available as public information).

7.3 Have there been any cases that have highlighted the difficulties of dealing with digital mergers, and how have these been handled?

According to the public information, the TFTC has never indicated that it has difficulty in handling digital mergers based on the current merger control rules.

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