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The views expressed are those of the presenter and do not necessarily reflect those of the Taiwan Fair Trade Commission.

Outline

- Legislation : Law and Regulation
- Application of Merger Notification
 - What types of the proposed transaction should be notified
 - When to notify
 - Who should notify
 - How to notify
- Flow Chart of Conducting a Merger Case
 - Simplified Procedure
 - Regular Procedure

Legislation : Fair Trade Act

- §10 Types of Transaction Caught by Merger Control
- §11 Notifying Threshold and Waiting Period
- §12 Merger Exemption
- §13 Assessment and Remedy

Legislation : Enforcement Rules of Fair Trade Act

- §6 Definition of Sales
- §7 Notifying parties
- §8 Form and Documents
- §9 Supplement or Revision of Merger Notification
- §10 Definition of Financial Sector
- §11 Beginning of the Waiting Period
- §12 Merger Publication

Legislation: Supplementary Rules

- Directions for Enterprises Filing for Merger
- Guidelines on Handling Merger Filings
- Guidelines on Extraterritorial Mergers

Amendment of Merger Regulation

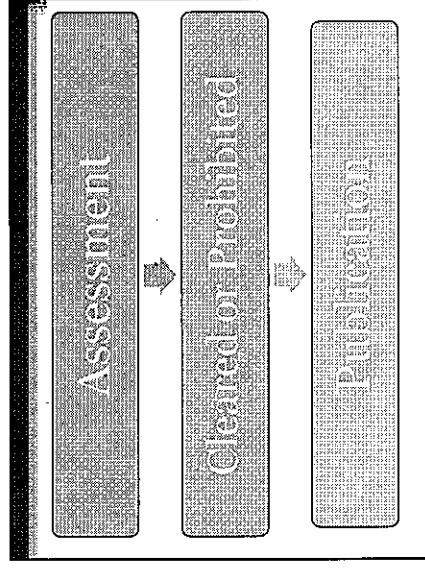
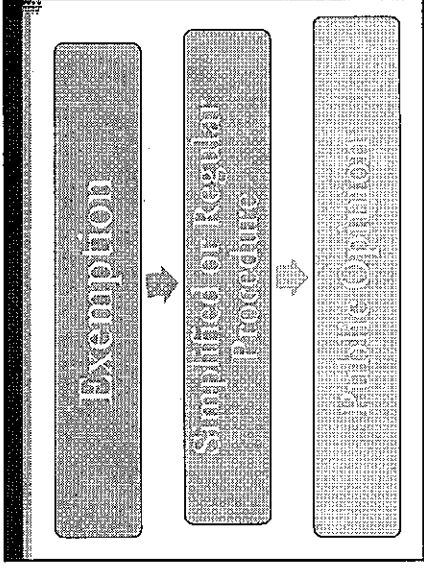
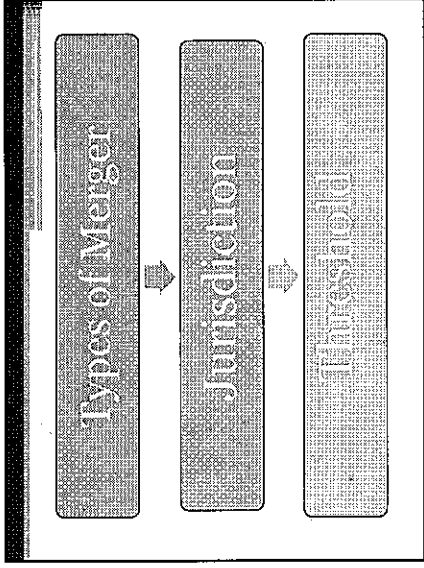
- In 2002
 - Prior Approval System changed to Pre-Merger Notification System
 - Exemption
 - Clearance with Conditions
- In 2015
 - The sales amount of Merging Party includes Merging Party itself and its holding or subsidiary company and its affiliates.
 - Merging Parties or Notifying Parties referred to the final Controlling Parties.

unit: case

Year	Classrooms with or without Exclusions	Prohibition	Termination of Exclusion	From
1992-1998	2,515	0	17	
1999	1,032	0	9	
2000	1,117	3	18	
2001	1,087	0	29	
2002-2012	497	7	275	6,710
2013	30	0	19	
2014	53	0	33	
2015 Jan.- Mar.	10	0	9	

Motives of a Merger

- Cost Savings**
 - External growth may be cheaper than internal growth – acquiring an underperforming or young firm may represent a cost effective method of growth
 - Managerial Rewards**
 - External growth may satisfy managerial objectives – power, influence, status
 - Efficiency**
 - Improve technical, productive or allocative efficiency
 - Synergy**
 - The whole is more efficient than the sum of the parts (2 + 2 = 5)
- Shareholder Value**
 - Improve the value of the overall business for shareholders
 - Asset Stripping**
 - Selling off valuable parts of the business
 - Economies of Scale(Scope)**
 - The advantages of large scale production that lead to lower unit costs
 - Risk Bearing**
 - Diversification to spread risks
 - Control of Markets**
 - power
 - Control supply
 - Gain some form of monopoly
 - Secure outlets



What Types of Transaction should be Notified

Fair Trade Act Article 10 (Definition of merger)

"The term "merger" as used in this Act means any one of the following conditions:

- (1) where an enterprise and another enterprise are merged into one;
- (2) where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise;
- (3) where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise;
- (4) where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or
- (5) where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

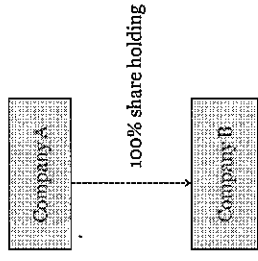
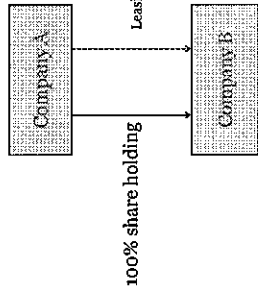
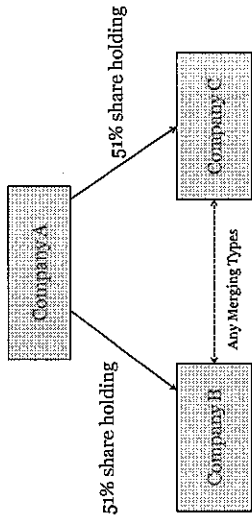
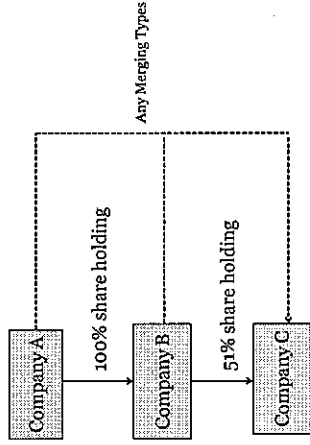
In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions held or acquired by an enterprise that is controlled by, controlling, or affiliated with the acquiring enterprise, and by an enterprise where both it and the acquiring enterprise are controlled by the same enterprise or enterprises shall be included."

Types of Transaction Caught by Merger Control

- Merging
- Holding or Acquired more than 1/3 of Voting Shares or Interest
- Transferring or Leasing All or Major Parts of the Business or Assets
- Joint Operation
- Direct or Indirect Control of the Business or Personnel

Exemption of Notification

Fair Trade Act §12
 The provisions of Paragraph 1 of the preceding Article shall not apply to any of the following circumstances:
 (1) Where any of the enterprises participating in a merger, or its 100% held subsidiary, already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise.
 (2) Where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge.
 (3) Where an enterprise assigns all or a principal part of its business or assets, or its 100% held subsidiary, to another enterprise, or another enterprise newly established by the former enterprise solely.
 (4) Where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Act or Article 26-2 of the Securities and Exchange Act, redeems its shares held by shareholders so that the original shareholders' shareholding falls within the circumstances provided for in Article 10, Paragraph 1, Subparagraph 2 herein.
 (5) Where a single enterprise requests to establish a subsidiary and holds 100% of the capital contribution of such a subsidiary.
 (6) Any other designated type of merger promulgated by the competent authority.



Foreign to Foreign Merger Transaction

- Pure Foreign Merger Transaction: Whereas all of the merging parties are foreign companies and the merger transaction took place overseas, the transaction does not subject to FTA.
- Unless the merger transaction would cause a **direct, substantial and reasonably foreseeable effect** on the Taiwan market. As long as there is an effect on the domestic market, the transaction would subject to FTA merger regulation.

When to Notify

Fair Trade Act §11 V.

*"Enterprises shall not proceed to merge within a period of 30 days starting from the date the competent authority accepts the complete filing materials, provided that the competent authority may shorten or extend the period as it deems necessary and notifies in writing the filing party the day of such extension. Where the competent authority extends the period in accordance with the provisions of the preceding paragraph, such extension may not exceed 60 days; for cases of extensions, decisions on the filing shall be made in accordance with the provisions of Article 13. Where the competent authority fails to notify of the extension as referred to in the preceding paragraph before the period expires, the enterprises may proceed to merge provided that the merger may not proceed under any of the following circumstances:
(1) Where the filing enterprises consent to a further extension of the period.
(2) Where the filing contains any false or misleading item."*

When to Notify

- At what stage in the transaction can the notification be filed?
 - No specific deadline or timetable to notify. However, the TFIC may extend the merger review, so the waiting period may last to 90 calendar days.
 - Notifying parties submit notification after parties' board approves the proposed transaction or signing a definitive agreement.

When to Notify

- Adapted Pre-merger Notification
- Notification is compulsory.
 - Penalty (Violation) : Prohibition of merger, divestiture, dispose of all or a part of the shares, to transfer a part of the operations, removal of personnel designated by the enterprises, and impose administrative fines of NT\$ 200,000 to 50 million (\$6,667 to 1.6 million)

When to Notify

- Waiting Period
 - 30 calendar days (review period) : Following the TFIC received the merger notification (with complete documents and information), the merging parties have to wait for 30 calendar days. If the TFIC does not prohibit the proposed merger within that time, the merger is deemed cleared and the notifying parties can proceed to close the transaction.
 - Shorten waiting period : If the proposed merger can adapt the Simplified Procedure, the TFIC will shorten the waiting period (15-20 calendar days).

When to Notify

- Extend Waiting Period : While dealing with complex case, the TFIC may extend another 60 calendar days to scrutinize the notification. Thus the waiting period totally last for 90 calendar days.
- Fail to Wait : Penalty is the same as those applicable for the failure to submit a notification.

When to Notify

- End of Waiting Period
 - The merger is cleared.
 - Clearance with Remedy
 - Decision of Prohibition
- If the TFIC has not extended waiting period or extended waiting period without reaching to make a decision, the merging parties can proceed the merger transaction. Unless:
 - The merging parties agree to postpone waiting period.
 - Notification has false information.

Who Should Notify

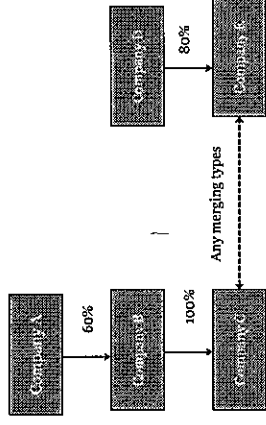
Types of Mergers	Merging Parties	Notifying Parties
Mergers	All Involving Companies	All Involving Companies
Holding or Acquisition	All Involving Companies	Holding or Acquiring Company
Transfer or lease of business or assets	All Involving Companies	All Involving Companies
Joint Operation	All Involving Companies	All Involving Companies
Direct or Indirect Control of Business or Personnel	All Involving Companies	Controlling Companies

Who Should Notify

- Notifying party does not referred to merging parties.
- Notifying Party
 - Holding Company
 - Existing Company
 - Final Controlling Company

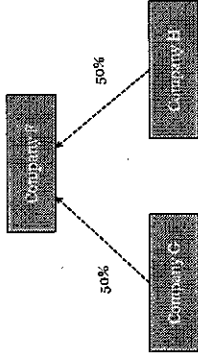
Who Should Notify

Holding or Controlling Firm: Company A, Company D



Who Should Notify

- Existing Company: Company G and Company H



What are the Jurisdictional Thresholds

Fair Trade Act §11.1-V
 "Any merger that falls within any of the following circumstances shall be filed with the competent authority in advance:
 (1) as a result of the merger the enterprise(s) will have one third of the market share;
 (2) one of the enterprises in the merger has one fourth of the market share; or
 (3) sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the competent authority.
 The threshold amount of the sales referred to in Subparagraph 3. of the preceding paragraph shall include the sales amount of an enterprise that is controlled by, controlling, or affiliated with the enterprise in the merger, and of an enterprise where both it and the enterprise in the merger are controlled by the same enterprise or enterprises. The calculation method shall be publically announced by the competent authority.
 A person or a group that has controlling interest in an enterprise is deemed as an enterprise pertinent to the provisions of this Act with regards to merger.
 The controlling interest as referred to in the preceding paragraph means ..."

Jurisdictional Threshold

- Dual Threshold Mechanism
- Market Share
- Turnover
- High Threshold of Sales
- Low Threshold of Sales

Jurisdictional Threshold

- Market Share
 - The combination of the merging parties reach 1/3 of the market share (post-merger)
 - One of the merging parties reached 1/4 of the market share (pre-merger)
- Sales
- Standard Threshold
 - large company: NT\$ 15 billion (\$ 500 million)
 - small company : NT\$ 2 billion (\$ 67 million)
- Financial Sector Threshold
 - large company : NT\$ 30 billion (\$ 1 billion)
 - small company : NT\$ 2 billion (\$ 67 million.)

How to Notify

Main Content of Notification:

- Basic Data of Merging Parties
- Basic Data of the Relevant Market
- Reason of Engaging the Proposed Merger
- Content of the Proposed Merger
- The Effect of the Proposed Merger

How to Notify

- Notification Format : The merging parties should notify with the Merger Notification Form.
- Basic Content of the Merger Notification Form
 - Names of the Merging Party and Notifying Party: A merging party (involving party) is the one engages the merger transaction.
Merging party ≠ Notifying party

Merger Notification Form

- Applicable Procedure:
 - Regular Procedure
 - Simplified Procedure
- Nature of the Merger:
 - Horizontal Merger
 - Vertical Merger
 - Conglomerate Merger
- Types of the Merger Transaction:
 - FTA § 10
- Threshold:
 - Market Share
 - Sales

Merger Notification Form

- Description of the Merging Party
 - capitals
 - number of the employees
 - last fiscal year turnover (income or sales)
 - business: products and services
 - prospective business plan
 - reinvestment
 - controlling or controlled firms and its affiliates

Merger Notification Form

- Combined Sales Amount of the Merging Party
 - Total combined sales of each of the merging party including its holding company, controlling company and affiliates.
 - Provided with Organization Chart

Merger Notification Form

- Details of the Merger:
 - date of the transaction taken into effect
 - reason to engage the merger
 - content of the merger transaction (ex. name of the acquired and acquiring firms, percentage of the acquiring share, the leasing business etc.)
 - cost of the transaction

Merger Notification Form

- Details of the Merger:
 - outcome of the merger (ex. total share holding)
 - pre-merger and post-merger organization chart
 - chart relating to the horizontal and vertical market of the relevant market
 - viewpoint of other competent authority

Merger Notification Form

- Overview of the Relevant Market:
 - cost, price, quantity and sales of the products or service in the relevant market
 - information related to horizontal market of the merging party, such as numbers of the competitor, market share etc.
 - information related to vertical market of the merging party, such as numbers of the competitor, market share etc.

Merger Notification Form

- Barriers of the Market Entry:
 - minimum required capital and operational funds or investment
 - legal restrictions concerning market entry
 - patent or other intellectual property in concern
 - sources of the materials

Merger Notification Form

- Barriers of the Market Entry:
 - tariff and non-tariff barriers
 - ratio of the fixed cost over to the total cost ratio
 - the impact to the market share of the competitors in the post-merger market
 - the impact to the competitors relating to technology
 - the impact to the competitors relating to upstream and downstream market.

Merger Notification Form

- Description of the overall economic benefits and the disadvantages of competition restriction resulting from the merger:
 - The increase of the economic efficiency, cost saving and consumer welfare
 - The effect to the merging parties and domestic economy if the proposed merger is prohibited.

Merger Notification Form

- Basic Appendix of the Notification Form :
 - Product or Service Sales Data:
 - name of the product or service
 - brand name
 - sales volume
 - price
 - percentage in total business sales
 - domestic market share
 - horizontal market structure data
 - upstream and downstream business partners of the merging parties

Requested Information

- Merging Parties: Modest informational demands
- Public Opinion: The TTFC Official Website
- Written Inquest or Symposium
 - Competent Authority : Financial Supervisory Commission, National Communications Commission, Ministry of Economics, Ministry of Transportation and Communications etc.
 - Scholar
 - Research Institution
 - Trade Association
 - Competitor
 - Upstream or Downstream Firm etc.

Assessment and Remedy

Fair Trade Act §13

“The competent authority may not prohibit any of mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

The competent authority may impose conditions or undertakings in any of the decisions it makes on the filing cases referred to in Article 11, Paragraph 8 herein in order to ensure that the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.”

Outcome of Merger Assessment

- Merger is Cleared
- Prohibition of Proposed Merger
- Remedy
 - Pre-merger review is a process of predicting competitive effects from merger; errors are inevitable
 - Merger remedy reduces the error costs from improperly approving or prohibiting a merger, diminishing the risk of rendering the reviewing process into a zero-sum game

Outcome of Merger Assessment

- Remedy
 - Structural Remedy
 - tools: divestiture, discharging shares or personnel etc.
 - one-off remedy usually requires no subsequent long-term monitoring
 - Irreversible change
 - Behavioral Remedy
 - Avoid disruption of customer relationship
 - Requiring long-term oversight

Outcome of Merger Assessment

- Remedy
 - Behavioral Remedy
 - Tools (ICN classification)
 - IP-related: compulsory licensing, mandatory IP access
 - Facilitating horizontal rivalry: prohibiting tying or predatory pricing, licensing of essential technology, provision or required information
 - Controlling outcome: price caps, supply commitments

Merger Publication

- During the review of a notification, the TFIC should seek a public opinion unless the review adapts Simplified Procedure or the merging party has a sound reason to conceal the information.
- In case of prohibited the proposed merger or imposed a remedy, the TFIC will release news.

Reviewing Route

- Simplified Reviewing Route
- Regular Reviewing Route

*Thank You For
Your Attention*

Stella Yang
 Fair Trade Commission, Taiwan
 May 21, 2015 (Thailand)

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Outline

- Merger Analysis
 - Simplified or Regular Procedure
 - Horizontal Merger
 - Vertical Merger
 - Conglomerate Merger
- Remedy
- Case Studies

What is the Substantive Test

- Public Interest Test: Taiwan
- Substantial Lessening Competition Test : US, UK, Australia etc.
- Significantly Impede Effective Competition Test : EU




What is the Substantive Test

Public Interest Test

- FIA §13

"The competent authority may not prohibit any of mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint."

Public Interest Test

- Competition Restraints < Economic Benefits 
- Competition Restraints = Economic Benefits 
- Clearance with Remedy
- Competition Restraints < Economic Benefits
 - Clearance with Remedy 
 - Prohibition of Merger

What is the Substantive Test

EU: SLET Test

"A concentration which would significantly impede effective competition, in particular by the creation or strengthening of a dominant position, in the common market or in a substantial part of it shall be declared incompatible with the common market."

SLC TEST

Whether the effect of the transaction "may be substantially to lessen competition, or to tend to create a monopoly"

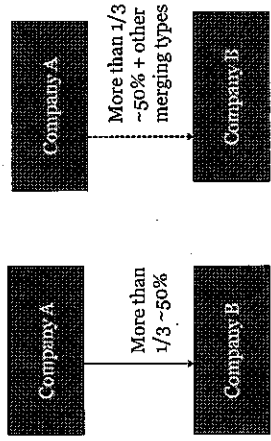
Merger Review Criteria

- Simplified Procedure
- Merger deemed as economic benefits outweighed the competition restraints.
- The TFIC cannot oppose the merger.
- Regular Procedure
- No Substantial Anticompetitive Concern: No need to check the economic benefits
- Substantial Anticompetitive Concern: Necessary to illustrate the economic benefits.

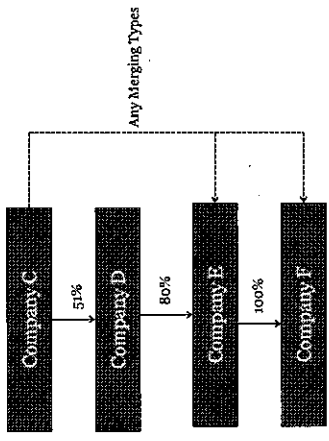
Applicable to Simplified Procedure

- Horizontal Market: The merging parties have less than 20% of cumulative market share.
- Horizontal Market: The merging parties have less than 25% of cumulative market share while one of the merging parties has less than 5% of market share.
- Vertical Market: Each of the merging parties has less than 25% of market share in respective relevant market.
- Conglomerate Market: The merging parties do not potentially have substantial competition.

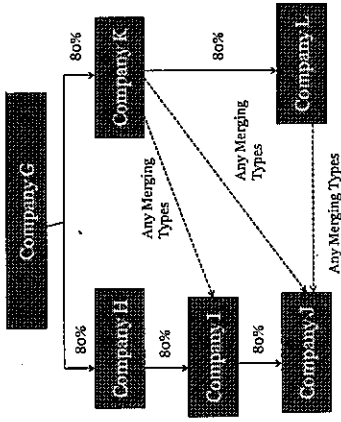
Applicable to Simplified Procedure



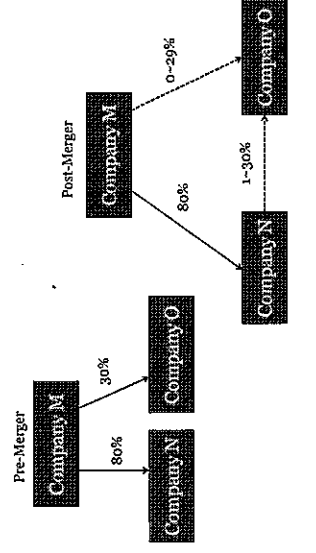
Applicable to Simplified Procedure

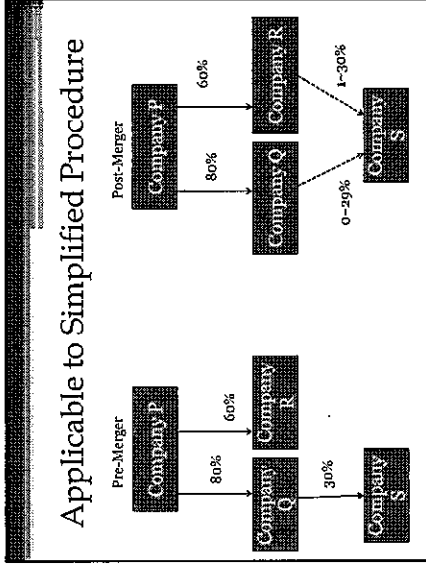


Applicable to Simplified Procedure



Applicable to Simplified Procedure





Exception to Simplified Procedure

- The aggregated market share of the top 2 or 3 companies has reached respectively 2/3 or 3/4 market share in the horizontal market.
- Exception: The merging parties have less than 10% of aggregated market share.
- Significant Public Interest Concern
- One of the merging parties is a financial holding company or a holding company referring to Stock Exchange Rules.

Exception to Simplified Procedure

- Difficult to define the relevant market
- Difficult to calculate the market share of the merging parties.
- High Barrier to Entry, High Concentration, and Any Other Substantial Anticompetitive Concerns

Outcome: Alter to Regular Procedure

Assessment of Horizontal Market

Considerations of horizontal merger applying to Regular Procedure

- Unilateral Effect: The ability of the merging parties to raise price in post merger market.
- change of market concentration in pre and post merger market
- market share of the merging party
- market share and responded supply of the non-merging party
- response of supply and demand to the price change in pre-merger and post-merger market.

Assessment of Horizontal Market

- Differentiated product or service: Substitutability of the product or service alternative ?
- Are customers highly overlapped? Are customers switching between the merging parties?
- Product Positioning
- Price Variation
- Is the product or service provided through the same channels?

Assessment of Horizontal Market

Coordinated effects :The merging parties and competitors consent or take concerted actions to restrain competition in post-merger market.

- Numbers of players
- Concentration
- Barrier to Entry
- Homogeneous or Heterogeneous Product
- Symmetry of Scale and Cost between the Competitors
- Transparency
- Business Model
- Capacity
- Maverick Firm

Assessment of Horizontal Market

- **Entry**
 - The possibility and accessibility for potential competitors to enter the relevant market
 - The entry by the potential competitor can increase competition in market.
- **Countervailing Power:** The ability of the trading counterparts or potential trading counterparts to halt price increase by the merging parties.

Assessment of Horizontal Market

- Other factors that have an effect on the result of competition restriction.

Outcome

- No competition restraint effect: The merger is cleared.
- Significant competition restraint effect: Evaluate Public Interest

Substantial Impeding Competition

Presumed Concerns of Substantial Competition Restraint in Horizontal Market

- The merging parties have 50% of aggregative market share.
- The top 2 companies have 2/3 of aggregative market share along with the merging parties accounted at least 20% of aggregative market share.
- The top 3 companies have 3/4 of aggregative market share along with the merging parties accounted at least 20% of aggregative market share.

Outcome: evaluate public interest

Assessment of Vertical Market

Considerations of vertical merger applying to Regular Procedure

- The opportunity for the competitors to choose the trading counterparts in post-merger market
- The difficulty for non merging parties to enter the relevant market
- The possibility of the merging parties to abuse their market power
- The possibility to raise rival's cost

Assessment of Vertical Market

- The possibility to carry out a cartel
- Other factors that are likely to lead to market foreclosure.

Outcome

- No competition restraint effect: The merger is cleared.
- Significant competition restraint effect: Evaluate Public Interest

Assessment of Conglomerate

Considerations of conglomerate merger applying to Regular Procedure

- The possibility of change of related regulation and its impact on the cross-industry operations of the merging parties;
- The possibility of technological improvement to allow the merging parties to engage in cross-industry management;
- The original cross-industry development plan of each of the merging parties;
- Other factors that have an effect on the market competition.

Assessment of Conglomerate

While the proposed conglomerate merger potentially has the possibility of substantial competition effect as the result similar to horizontal or vertical market, it should apply to the rules of horizontal or vertical market Outcome

- No competition restraint effect: The merger is cleared.
- Significant competition restraint effect: Evaluate Public Interest

Assessment of Economic Benefits

- Economic Efficiency
 - Could be proved and realized in short time
 - Hard to be achieved by other means beside merger
 - Reflect to consumer benefit
 - Consumer Benefit/Interests
- One of the merging parties is originally in a weaker market position in the transaction.

Assessment of Economic Benefits

- One of the merging parties is a failing firm.
 - Unable to pay up its debts within a short time
 - Unable to continue to operate in the relevant market by a less restrictive competition means apart from merger
 - The failing firm definitely will be withdrawn from the relevant market if it cannot proceed the merger.
 - Other concrete evidence that is expected to produce overall economic benefits.

Remedy

The TFTC poses the remedy to ensure the economic benefits off sets the disadvantages resulted from competition restriction.

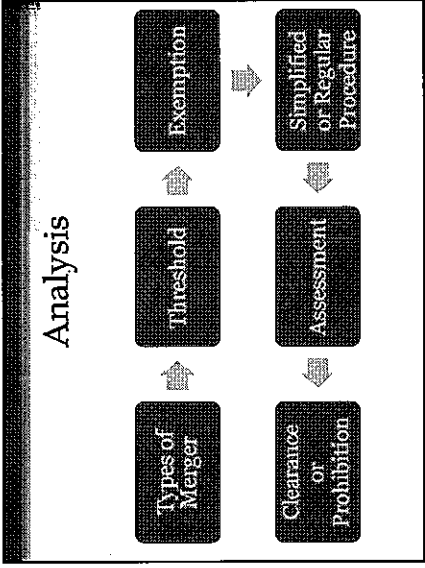
- Structural Measures
 - Dispose shares or assets
 - Transfer part of their operations
 - Discharge personnel from certain positions.

Remedy

- Behavioral Measures:
 - Continue to supply critical facilities or essential elements to businesses to non-merger party
 - License intellectual property rights
 - Not to engage in exclusive dealing
 - Not to conduct discriminatory treatment
 - Not to impose tie-in sales.
 - Before posing remedy, the TFTC may inquire the opinions of the concerned merging parties toward the remedy to be attached.

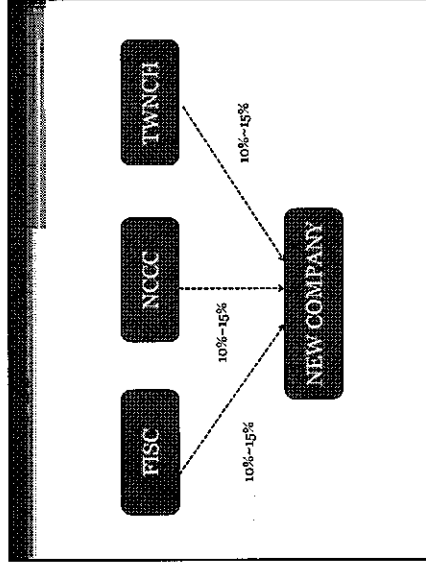
Some Key Principles

- Very few mergers are anticompetitive
 - Mergers almost always create efficiencies
 - Be ware of the high market share mergers
- Transparency with parties almost always wins their cooperation to offer useful information.
- Standard is to protect competition, not the competitors
 - Be skeptical of competitor complaints especially in vertical and conglomerate mergers
 - Counterparts won't complain if they can pass on price increase.



Case : PSP TSM (2014)

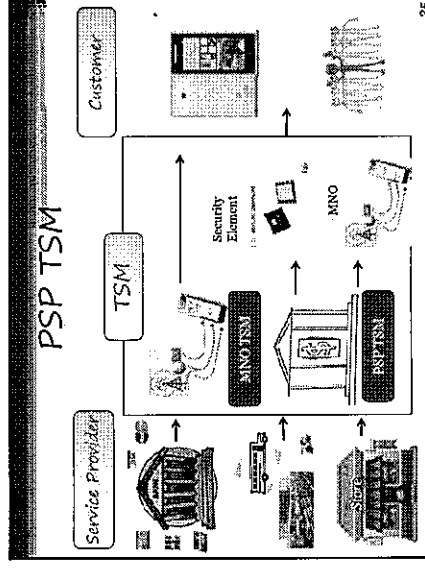
- Merging Parties
 - Financial Information Service Co., Ltd. (FISC)
 - National Credit Card Center (NCCC)
 - Taiwan Clearing House (TWNCH)
- Types of Merger
 - Each Merging Parties holds 10%~15% share of New Company.
 - §10 ④ : Merging Parties proposed to jointly run a new business by founding New Company (known as Taiwan Mobile Payment Co., Ltd., TMPC)



Case : PSP TSM

Jurisdiction: All Merging Parties are domestic firms.

- Threshold
 - FISC holds 100% market share in the Interbank Payment Clearing Market.
 - NCCC holds 100% market share in the Interbank Credit Card Clearing Market.
 - TWNCH holds 100% market share in the Check Clearing Market.
- Merging Parties reach the notifying threshold (1/4 market share in the relevant market)
- No Exemption : Merging Parties have to notify the merger.



Case : PSP TSM

Trusted Service Manager (TSM): A platform for downloading payment instrument (credit card, debit card etc.) and cards (membership card etc.) over the air. TSM is a basic infrastructure for developing mobile payment industry.

- MNO TSM: Form by Mobile Network Operator.
- PSP TSM: Form by Payment Service Provider, such as bank, clearing institution etc.
- New Company will run PSP TSM.

Case: PSP TSM

- Supplement to Notification
- The relevant market related to Merging Parties and New Company
- Elaborate details pertaining to PSP TSM: Counterpart, Product or Service, Income, Competitor, Dealing Conditions of New Company.
- Relationship between PSP TSM and MNO TSM (compete or collaborate)

Case: PSP TSM

- Does any Merging Party intent to found PSP TSM? The reason to jointly found PSP TSM?
- Will New Company carry out clearing or settlement business?
- Does New Company require supplier to join its membership in exchange of providing the PSP TSM service? Any condition to join or retreat?
- Could the member of PSP TSM simultaneously participate other TSM?

Case: PSP TSM

- Do the counterparts of Merging Parties have to join PSP TSM? Does it affect their original deal whether by joining PSP TSM or MNO TSM?
- How will the member of PSP TSM charge the customer?
- The effect to consumer benefit
- Opinion of competent authorities: Financial Supervisory Committee, Central Bank, Ministry of Economics, Department of Consumer Protection
- Symposium

Case: PSP TSM

- The Relevant Market
- Interbank Payment Clearing Market: FISC (100%)
- Interbank Credit Card Clearing Market: NCCC (100%)
- Check Clearing Market: TWNCH (100%)
- TSM Market:
 - Chungghwa Telecom Company run TSM business in June 2013.
 - Smart Catch run business in September 2013.
 - Alliance Digital Tech (MNO TSM) found in December 2013 and hasn't run business in 2014.

Case: PSP TSM

- Assessment of Competition Restraint
- Conglomerate Merger
 - New Company operates PSP TSM platform, whereas Merging Parties respectively engage in clearing and settlement business. There would be no horizontal overlaps.
 - Merging Parties does not provide any secure elements which are required for PSP TSM platform to operate. There would be no vertical relationship between Merging Parties and New Company.

Case: PSP TSM

- The merger has not diminish potential competition between Merging Parties
- Neither law, regulation nor technology impede merging parties to operate PSP TSM.
- Prior to merger, Merging Parties have no intention to operate PSP TSM besides founding New Company.
- The merger does not eliminate potential possible competition.

Case: PSP TSM

- New Company does not operate clearing or settlement business, thus the merger will not cause unfair competition to other TSM platforms.
- Exclusion Issue: The counterparts of Merging Parties are banks who are also the main supplier of the TSM platform. If New Company bans its member banks to join other TSM platform, it will cause foreclosure to the TSM market.

Case: PSP TSM

- Third-Line Forcing: If Merging Parties force its counterparts to join New Company, it will promptly expand the market share of New Company which may lessen competition in TSM Market.
- Assessment of Economic Benefit
 - New Company is a new entrant who increases service variety and price competition, as well as lowers market concentration. Thus the merger enhances consumer benefit.
 - Competent Authorities favor the merger.

Case: PSP TSM

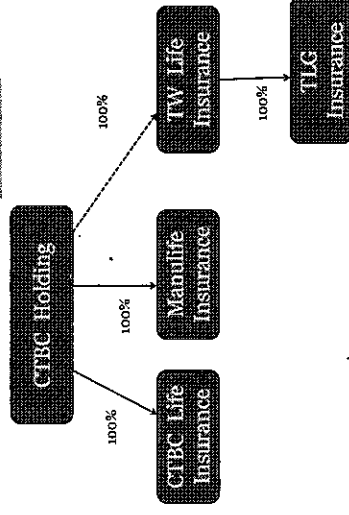
- Outcome: Clearance with Remedy
 - New Firm may not restrict any of its service providers from joining other TSM platforms or using the service of other TSM platforms.
 - Merging Parties may not demand that their trading counterparts join the TSM platform operated by New Firm or use its service.

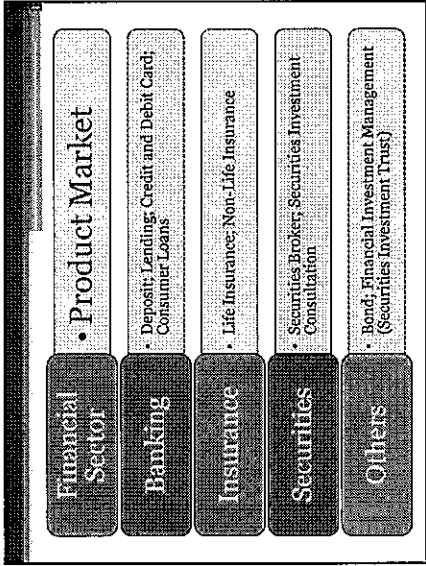
Case: PSP TSM

- Clearance with Remedy:
 - Before starting operation, New Firm shall provide the TFTC with templates of contracts and related documents to be signed with service providers and also present the following to the TFTC before the end of March each year for 5 years after it is set up:
 - the list of shareholders;
 - the sales of the previous year;
 - the number and names of service providers; and
 - new business items not listed in the Merger Notification

Case: Insurance Merger (2014)

- Merging Parties
 - CTBC Holding
 - TW Life Insurance
 - TLG Insurance
- Types of Merger
 - CTBC Holding acquired 100% share of TW Life Insurance
 - §10 ② : Acquired or Hold 1/3 of other firm's share.





Case: Insurance Merger

- Threshold
- CTBC Holding has affiliates which are Banking, Insurance, Securities and Securities Investment Trust.
- CTBC Life Insurance and Manulife totally accounts less than 5% of the market share in Life Insurance Market.
- TW Life Insurance holds less than 5% of the market share in Life Insurance Market.
- TLG Insurance holds less than 1% market share in the Non-Life Insurance Market.
- Turnover of the Merging Parties reached the notifying threshold.
- No Exemption : Merging Parties have to notify the merger.

Case: Insurance Merger

- Supplement to Notification
- Data of life, accident, health and annuity insurance (Insurance Law §13)
- Effect to upstream (reinsurance market) and downstream (insurance broker or agency)
- The market share of merging parties' affiliates in the insurance broker or agency markets.
- Competent Authority: Effect to the insurance market or supervisory policy.

Case: Insurance Merger

	Life	Accident	Health	Annuity
CTBC Holding	<5%	<1%	<1%	<5%
TW Life Insurance	<5%	=5%	<5%	=5%
Post-Merger	=5%	=5%	<5%	=10%

Case: Insurance Merger

- The Relevant Market
- Non-Life Insurance Market
- Total: 23 firms.
- TLG Insurance accounts less than 1%.
- Life Insurance Market
- Total: 30 Firms.
- Top 5: Cathay (= 25%), Fubon (<20%), Nan Shan (<15%), Chungwa Post (<10%) and Shin Kong (=5%).
- Post-Merger: CTBC Holding less than 5% +TW Life Insurance less than 5%=slightly over 5%

Case: Insurance Merger

- The Relevant Market
- Life Insurance Market
- Pre-Merger
- HHI Index: 1228.12
- CR4:61.96% (market share below 5%: 24 firms)
- Medium Concentration Market
- Post-Merger
- HHI Index: 1250.33
- Δ HHI:22.21
- No Significant Effect

Case: Insurance Merger

- Assessment of Competition Restraint
- Horizontal Merger
 - Unilateral Effect:
 - The post-merger market share of Merging Parties hold slightly over 5%.
 - Insurance Industry is highly regulated and supervised by the competent authority.
 - Thus it is unlikely Merging Parties can raise price in post-merger market.

Case: Insurance Merger

- Assessment of Competition Restraint
- Horizontal Merger
 - Coordinated Effect:
 - CR4 doesn't change
 - Δ HHI increases 22.21 in post-merger market.
 - In addition, each scale of the insurance firms widely differed thus difficult to conduct a concerted action.
 - Barrier to Entry: The insurance firm has to be permitted and licensed by the competent authority before running business.

Case: Insurance Merger

- Assessment of Competition Restraint
- Horizontal Merger
 - Countervailing Power:
 - Insurance Market is highly competed.
 - This proposed merger does not constrain the ability of the counterpart to choose product nor dealer. Thus, the power of the counterpart to restrain Merging Parties raising price has not altered.

Case: Insurance Merger

- Assessment of Competition Restraint
- Conglomerate Merger
 - Does the change of law or technology advance facilitate cross business?
 - Nor the current law or technology forbids the financial holding firm to provide banking, insurance or securities business.
 - CTBC Holding can provide insurance service, thus the merging parties potentially compete.
 - The deregulation or change of law or even advance technology make no effect to the market competition.

Case: Insurance Merger

- Assessment of Competition Restraint
- Conglomerate Merger
 - Prior to the proposed merger, has the CTBC Holding Firm ever arranged to set up its owned insurance company?
 - The CTBC Holding Firm has no intention to found an insurance company other than purchasing an existing insurance company. Thus the merger does not diminish possible competition between Merging Parties.

Case: Insurance Merger

- Assessment of Vertical Merger
 - CTBC Insurance Broker Co. (the subsidiary firm of the CTBC Holding) has > 20% market share in Broker and Agent Insurance Market.
 - Insurance is usually sold by insurance company itself.
 - Since the non-merger insurance companies have sufficient channels to sell insurance, and CTBC Holding will only account slightly over 5% market share in Life Insurance Market and less than 1% in Non-Life Insurance Market, CTBC Insurance Broker Co. lacks the incentive to block the market.

Case: Insurance Merger

- **Assessment of Vertical Merger**
 - Even if CTBC Insurance Broker Co. refuses to sell non-merger company's insurance, it will not cause foreclosure to the market.

Outcome: The merger is cleared

Case: Instant Noodle Merger(2010)

- **Merging Parties:**
 - Uni-President Enterprises Corporation (Uni-President)
 - Weilih Food Industrial Co., Ltd. (Weilih Food)
- **Types of Merger:**
 - Uni-President already accounted 33.3% shares of Weilih Food.
 - Uni-President will acquire another 17.45% shares of Weilih Food, thus Uni-President will totally hold more than 1/2 shares of Weilih Food (50.75%).

Case: Instant Noodle Merger

- **Threshold(turnover)+No Exemption: Merging Parties have to notify the merger.**
- **The Relevant Market**
 - Beverage Market
 - Uni-President: > 30%
 - Weilih Food: > 1%
 - Cooking Oils Market
 - Uni-President: > 20%
 - Weilih Food: > 1%

Case: Instant Noodle Merger

- **The Relevant Market**
 - Instant Noodle Market
 - Highly Concentrated Market
 - Top 5: Uni-President (< 50%), Weilih Food (< 20%), Vedan (> 20%), Ye Wang (> 10%), Weichuan (> 10%)
 - CR4:95.09%
 - Pre-Merger HHI=3443
 - Post-Merger
 - Uni-President will grasp over 70% market share
 - Post-Merger HHI=5712 Δ HHI=2269

Case: Instant Noodle Merger

- **Unilateral and Coordinated Effect: As Δ HHI reaches 2269 and the Merging Parties will hold over 70% market share in post-merger market, the Merging Parties are very likely to exercise their ability to raise price. It also facilitates the Merging Parties to engage a collusion.**
- **Barrier Entry: Instant noodle heavily depended on advertisement, and Uni-President has sufficient market share in the upstream(cooking oils, flour) and downstream(convenience store and hypermarket) markets.**

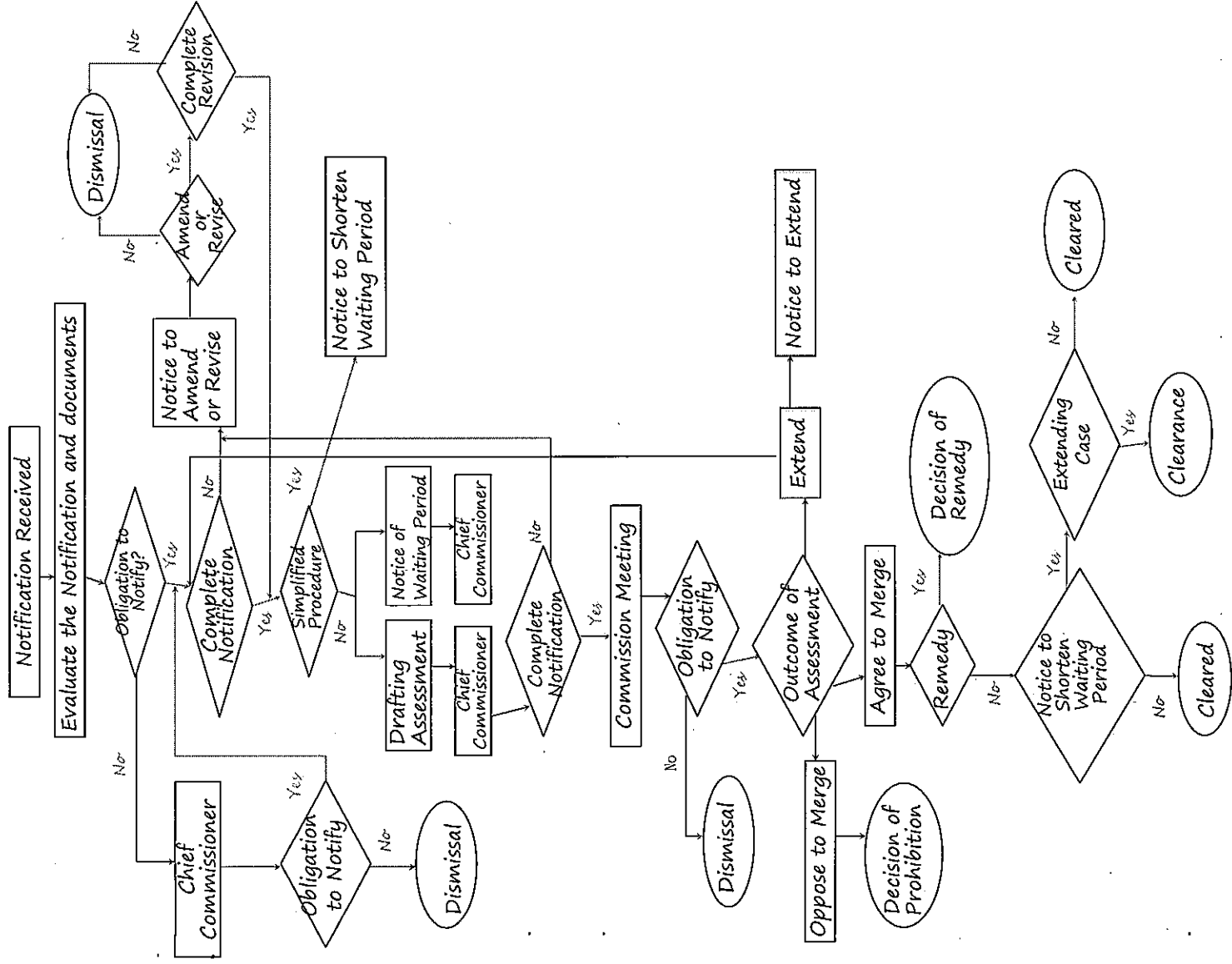
Case: Instant Noodle Merger

- **Countervailing Power: Since the Merging Parties will hold over 70% market share as a dominant firm, the counterparts in the upstream and downstream firms are small firms compared to the Merging Parties and lack the market power to cope with the price increase resulted by the Merging Parties.**
- **Public Interest: Weilih Food is not a failing firm and the consumer benefits resulted from the merger cannot offset its competition restraint.**

Outcome: The merger is prohibited.

*Thank You For
Your Attention*

Regular Procedure Route



Simplified Procedure Route

