

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Fair Trade Commission, Executive Yuan, Taiwan, R.O.C.

May 2007

**IMPORTANT NOTE:** This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

## 1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

### A. Notification provisions

In 2002, the Fair Trade Act was amended, and the merger control regime was adjusted. The new system has adopted a notification system to replace the previous application system. For any merger that falls within any of the following circumstances, a notification shall be made to the TFTC prior to the realization of the merger:

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 exceed the threshold amount publicly announced by the central competent authority.

Please refer to Article 11 of the Fair Trade Act:

<http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm>

### B. Notification forms or information requirements

Please refer to Article 8 of the of the Implementing Rules to the Fair Trade Act:

<http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm>

Please refer to Directions for Enterprises Filing for Merger:

<http://www.ftc.gov.tw/EnglishWeb/20000101299912311120.htm>

<p><b>C. Substantive merger review provisions</b></p>	<p>According to Article 12 of the Fair Trade Act, the FTC may not prohibit any merger filed if the overall economic benefits of the merger outweigh the disadvantages resulting from the competition restraints that this would cause. Therefore, in reviewing merger proposals, the test identified in the Fair Trade Act is neither the typical substantially lessening competition test (the SLC test) nor purely the market dominance test (the Dominance test).</p> <p>Please refer to Article 12 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<p><b>D. Implementing regulations</b></p>	<p>Please refer to Article 4, 6, 7, 8, 9, 10, 11, 12 of the Implementing Rules to the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<p><b>E. Interpretive guidelines and notices</b></p>	<p>Please refer to:</p> <ol style="list-style-type: none"> <li>Guidelines on Handling Merger Filings  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm</a></li> <li>Procedures for Handling Applications for Merger of Enterprises  <a href="http://www.ftc.gov.tw/EnglishWeb/eimage/merger.gif">http://www.ftc.gov.tw/EnglishWeb/eimage/merger.gif</a></li> <li>Procedures for Pre-Merger Notification by Enterprises:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311127.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311127.htm</a></li> </ol>

## 2. Authority or authorities responsible for merger enforcement.

<p><b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b></p>	<p>Fair Trade Commission, Executive Yuan, Taiwan, R.O.C. (TFTC)</p>
<p><b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b></p>	<p>Fair Trade Commission, Executive Yuan, Taiwan, R.O.C  Address: 14 F, 2-2 Ji-Nan Rd. Sec. 1, Taipei 100, Taiwan, R.O.C  Tel: 886-2-2351-7588 or 886-2-2397-5019  Fax: 886-2-2397-4997 or 886-2-2397-5075  E-mail: <a href="mailto:ftcpub@ftc.gov.tw">ftcpub@ftc.gov.tw</a></p>
<p><b>C. Is agency staff available for pre-notification consultation? If yes,</b></p>	<p>There is no specific regulation on pre-notification consultation process, but for any questions related to the Fair Trade Act, please reach the above contacting points.</p>

<p><b>please provide contact points for questions on merger filing requirements and/or consultations.</b></p>	
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### 3. Covered transactions

<p><b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b></p>	<p>As defined in Article 6 of the Fair Trade Act, the transactions related the “merger” covered a situation where:</p> <ol style="list-style-type: none"> <li>1. an enterprise and another enterprise are merged into one;</li> <li>2. an enterprise holds or acquires the shares or capital contributions of another enterprise to the extent of more than one-third of the total voting shares or total capital of such other enterprise;</li> <li>3. an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;</li> <li>4. an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or</li> <li>5. an enterprise directly or indirectly control the business operations or the appointment or discharge of personnel of another enterprise.</li> </ol>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>Article 6-2 explains how to calculate the shares of control in Article 6-1-2. In computing the shares or capital contributions referred to Article 6-1-2, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise under Article 6-1-2 shall be included. Furthermore, Article 6-1-5 of the Fair Trade Act defines any directly or indirectly controls the business operations or the appointment or discharge of personnel from an enterprise to other enterprises shall be considered as a situation of merger.</p>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>According to Article 6-1-2, an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise shall be considered as a situation of a merger.</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>According to Article 6-1-4, where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business shall be considered as a situation of merger.</p>

## 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>Referred to in Article 11-1of the Fair Trade Act, general thresholds for notification determined as:</p> <ol style="list-style-type: none"> <li>1. the market share threshold: as a result of the merger will have the enterprise(s) one third of the market share; or, one of the enterprises in the merger has one fourth of the market share; or</li> <li>2. the sales amount threshold related to the total sales or operating revenues for financial enterprises and non-financial enterprises announced separately by the TFTC. The amount announced at present are as follows:             <ol style="list-style-type: none"> <li>1. where an enterprise in a merger is a non-financial one, its sales for the preceding fiscal year exceed NTD 10 billion, and the enterprise it merges with has a sales amount exceeding NTD 1 billion; and</li> <li>2. where an enterprise in a merger is a financial enterprise, its sales for the preceding fiscal year exceed NTD 20 billion, and the enterprise it merges with has a sales amount exceeding NTD 1 billion. The sales of a financial holding company shall be determined by calculating the combined sales of all of its subsidiaries in which it has controlling shareholdings.</li> </ol> </li> </ol> <p>(US\$1 approximately equals to NTD34)</p> <p>Please refer to “Thresholds of Sales Monetary Amount Which Enterprises of a Merger Shall file With the Commission”  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311076Out0.doc">http://www.ftc.gov.tw/EnglishWeb/20000101299912311076Out0.doc</a></p>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<p>Both the acquiring and acquired parties of the merger shall be considered for the sales amount threshold purposes.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>The thresholds are fixed at the time of the announcement after 2002’s amendment of the Fair Trade Act.</p>
<p><b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal</b></p>	<p>The time base of the thresholds is the most recent fiscal year.</p>

year-end, other)?	
<b>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</b>	<p>According to Article 4 of the Enforcement Rule to the Fair Trade Act, the measurement of the market share shall take into account of the production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market. "Sales amount" in Article 11-1-3 of the Fair Trade Act means the total sale of an enterprise. The values of sales and market shares necessary to determine if the notification is required usually originated from the income statement provided by the merging parties in practice. Calculation of the market share and sales revenue may be based on data obtained through investigation by the TFTC or recorded by other government agencies.</p> <p>Please refer to Article 4 and 6 of the Implementing Rules to the Fair Trade Act 2002:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<b>F. Describe methodology for calculating exchange rates.</b>	<p>There is no such regulation on this issue.</p>
<b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b>	<p>Only for the sales volume of a foreign enterprise participating in a merger shall be assessed by the monetary amount of that foreign enterprise's sales within the territorial domain of Taiwan and the monetary amount of products or services imported from that foreign enterprise by domestic enterprises.</p> <p>Please refer to Guidelines on Extraterritorial Mergers:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311091.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311091.htm</a></p>
<b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b>	<p>According to Article 11-1-2, one of the enterprises in the merger has one fourth of the market share, such enterprises shall notify the TFTC in advance.</p>
<b>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an</b>	<p>An extraterritorial merger means a merger of two or more foreign enterprises outside of the territorial domain of Taiwan under any of the circumstances enumerated in Article 6(1) of the Fair Trade Act, and where the merger will have a direct, substantial, and reasonably foreseeable effect on the domestic market. A local presence of the foreign enterprise is not a necessary requirement to determine jurisdiction.</p> <p>Please refer to Guidelines on Extraterritorial Mergers:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311091.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311091.htm</a></p>

<b>“effects” test?</b>	
<b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	Location of seller.
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	<p>According to Article 4 of the Implementing Rules to the Fair Trade Act, the measurement of the market share shall take into account of the production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market. Data necessary for the calculation of the market share may be based on that obtained upon investigation by the TFTC or that recorded by other government agencies.</p> <p>Please refer to the Implementing Rules to the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b>	<p>The TFTC has announced the sales amount threshold related for financial enterprises and non-financial enterprises separately. Where an enterprise in a merger is a financial enterprise, its sales for the preceding fiscal year exceed NTD 20 billion, and the enterprise it merges with has a sales amount exceeding NTD 1 billion. The sales of a financial holding company shall be determined by calculating the combined sales of all of its subsidiaries in which it has controlling shareholdings (US\$1 approximately equals to NTD34).</p> <p>Please refer to Thresholds of Sales Monetary Amount Where Enterprises of a Merger shall file with the TFTC:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311076Out0.doc">http://www.ftc.gov.tw/EnglishWeb/20000101299912311076Out0.doc</a></p>
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	No sector exclusion.
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	No such rules.
<b>O. Does the agency have the authority to review transactions that fall</b>	No.

below the thresholds?	
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## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	<p>According to Article 11-1 of the Fair Trade Act, the enterprises of a merger shall file with the TFTC in advance.</p> <p>Please refer to Article 11-1 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<b>B. Is notification mandatory post-merger?</b>	No.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	No.
<b>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</b>	There is no such regulation related to when is a transaction agreement considered definitive.
<b>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b>	There is no such regulation.
<b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the</b>	Enterprises of a merger shall file with the TFTC in advance; an extension of the notification deadline is not applicable.

extension.

## 6. Simplified procedures

**Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).**

With regard to the types of merger with no suspicion of obvious competition restraints, the Commission may shorten the waiting period of the merger notification. For the merging parties who consider the merger meet the requirement of the shorter waiting period of notifying, the parties may file their production, sale, and inventory documents in the most recent 3 years instead of the most recent 5 years.

The types of merges which meet the requirements of the simplified procedures are as followings:

1. The enterprises that file the merger with the Commission according to Article 11.1.3 of the Fair Trade Act, and their respective market shares meet one of the following circumstances:

(1) The combined market shares of a horizontal merger is less than 15 percent, except for such market shares of enterprises in the merger reach the level prescribed in Paragraph 1-2 and 1-3 of Article 5-1 of the Fair Trade Act.

(2) In a vertical merger, the combined market share in each individual market is less than 25%.

2. In the case of conglomerate merger, the merge does not have any potential significant competition restraints after considering the factors stated in Article 12 of the Guidelines on Handling Merge Filings.

3. Following merger between a controlling enterprise and its subordinate enterprise that changes the manners of their relations:

(1) 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.

(2) The parent company merges with the subsidiary company. The above-mentioned subsidiary company refers to a company in which the parent company holds fifty percent or more of its voting shares or paid-up capital.

(3) A company merges with a subsidiary company of another company and both companies are subsidiary companies of the same company.

Please refer to Article 7 of the Guidelines on Handling Merger Filings:

<http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm>

## 7. Documents to be submitted

### **A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).**

According to Article 8 of the Implementing Rules of the Fair Trade Act, the filing documents include as followings:

1.a report form specifying the following information:

- (1) Type and substance of the merger;
- (2) The name and the place of office of each participating enterprise, or the name and the place of the office or business of each participating company, sole proprietorship, partnership, or association;
- (3) The scheduled date of merger;
- (4) The name of the attorney-in-fact, if any, and the supporting document therefore,
- (5) Other required information;

2.basic data on each participating enterprise:

- (1) The name and residence or domicile of the responsible person or administrator, if any, of each enterprise;
- (2) The capital and business items of each participating enterprise;
- (3) The turnover in the preceding fiscal year of each participating enterprise and any enterprise with which it has a relationship of control or subordination;
- (4) The number of employees of each participating enterprise.
- (5) Certificate s of incorporation or establishment of each participating enterprise.

3.the financial statement and operating report for the preceding fiscal year of each participating enterprise;

4.data such as the production or operating costs, sales prices, and production and sales values (volumes) of the participating enterprises' goods or services related to the combination applied for;

5.an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;

6.major future operating plans of the participating enterprises;

7.overview of the long-term investments by the participating enterprises in other enterprises;

8.if a participating enterprise's stock is listed on the stock

	<p>exchange or traded on over-the-counter markets, the most recent prospectus or annual report;</p> <p>9.information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;</p> <p>10.other documents as specified by the TFTC.</p> <p>Please refer to Article 8 of the Implementing Rules to the Fair Trade Act:</p> <p><a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<p><b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b></p>	<p>As stated in Article 8 of the Implementing Rules of the Fair Trade Act:</p> <p><a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<p><b>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</b></p>	<p>For an extraterritorial merger case, if difficulties do exist for obtaining the signing/sealing of the participating enterprise(s), submitting other documents sufficient to prove the agreement to merge is acceptable.</p> <p>Please refer to Article 2 of the Directions for Enterprises Filing for Merger:</p> <p><a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311120.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311120.htm</a></p>

## 8. Translation

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>The notification forms shall be submitted in the official language.</p>
<p><b>B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s)</b></p>	<p>If an enterprise merger report contains materials in foreign languages, a Chinese summary of the major content related to the report shall be included.</p> <p>Please refer to Article 5 of the Directions for Enterprises Filing for Merger:</p> <p><a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311120.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311120.htm</a></p>

accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	
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## 9. Review periods

<b>A. Describe any applicable review periods following notification.</b>	<p>Enterprises shall not proceed to merge within a period of 30 days from the date the TFTC accepts the complete filing materials, provided that the TFTC may shorten or extend the period as it deems necessary and notifies the filing enterprise of such change in writing. Where the TFTC extends the period, such extension may not exceed 30 days.</p> <p>Please refer to Article 11-3 and 11-4 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b>	No different rules.
<b>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</b>	<p>In the general procedure of merger review, the TFTC shall assess the competition restraints resulted from the merger. If the merger filing that has suspicion of significant competition restraints, the TFTC may extend the waiting period as it deems necessary and notifies the filing enterprise of such change in writing. The merging parties shall submit the factors that the merger will result in overall economic benefits to the TFTC for deliberation.</p> <p>Please refer to Article 11-3 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p> <p>And Article 10 and 13 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm</a></p>
<b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b>	<p>Types of merger filing as stated in Article 7 of the Guidelines on Handling Merger Filings are applicable for accelerated review.</p> <p>Article 7 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm</a></p>

## 10. Waiting periods / suspension obligations

<p><b>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</b></p>	<p>According to Article 13 of the Fair Trade Act, where any enterprise(s) proceeding the merger before the clearance the waiting or extension period, the TFTC may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary dispositions.</p> <p>Please refer to Article 13 of the Fair Trade Act:</p> <p><a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>There is no such regulation.</p>
<p><b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local</b></p>	<p>The waiting periods are both applicable for the merger within or outside of the jurisdiction; however, there is no further regulation on the suspension obligations for foreign enterprises.</p>

<b>business operations, escrow agents.)</b>	
<b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b>	<p>After the waiting period, generally 30 days from the TFTC receiving the notification of the merging parties, if the TFTC make no objection to the transaction, the enterprises of the merger may close the transaction.</p> <p>Please refer to Article 11-3 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b>	<p>For cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 12 of the Fair Trade Act to assure the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.</p> <p>Please refer to Article 11-3 and Article 12 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b>	<p>Types of merger filing as stated in Article 7 of the Guidelines on Handling Merger Filings are applicable for shorter waiting period. For the merging parties who meet the requirements of the simplified procedures, shall fill the simplified report forms and notify the TFTC voluntarily.</p> <p>Article 7 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011760.htm</a></p>
<b>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b>	<p>There is no such regulation.</p>

## 11. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make</b>	<p>The responsible enterprises of the merger to make the notification are as followings:</p> <ol style="list-style-type: none"> <li>1.the related enterprises in a merger;</li> <li>2.the holding or acquiring enterprise in a merger;</li> <li>3.the controlling enterprise in a merger.</li> </ol> <p>If an enterprise required to file a report has not yet been established, the existing enterprises in the merger shall file the</p>
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<p><b>its own filing?</b></p>	<p>report instead.</p> <p>Please refer to Article 7 of the Implementing Rules to the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<p><b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No.</p>
<p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>	<p>The merging parties may file with the TFTC by themselves; but for those who report to the TFTC by legal representatives, shall specify the name of the attorney-in-fact, if any, and the supporting documents.</p> <p>Please refer to Article 8-1-1-4 of the Implementing Rules to the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b></p>	<p>There is no such regulation.</p>

## 12. Filing fees

<p><b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</b></p>	<p>No</p>
<p><b>B. Who is responsible for</b></p>	<p>N/A</p>

payment?	
<b>C. When is payment required?</b>	N/A
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	N/A

### 13. Confidentiality

<b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</b>	For the merger case which can not meet the requirements of the simplified procedures, the TFTC will post the following information on its website to gather the public comments: names of merging parties and their related markets, the type of the merger, the period of outside comments on the merger, and the way to make comments to the TFTC on the merger case.
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	Article 27-1 of the Fair Trade Act states that a party or a related person has the right to apply to read, transcribe, photocopy or photograph relevant materials or files in order to claim or defend his or her legal rights and interests. To this effect, the qualifications of the applicant, the time, the method and scope of access and other information are required, and this is outlined in the "Regulation Governing Access to Materials and Files of the Fair Trade Commission."(which is only available in Chinese). Thus, case related parties might apply to review the data of the files before the case brought to the commissioners' meeting of the TFTC for deliberation. However, for merger cases, the related parties have not requested to access the TFTC files in practice.
<b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b>	No.
<b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If</b>	The TFTC will request the information provider for assure the confidentiality of the materials during its investigation. For merger cases, the related parties have not requested to access the TFTC confidential materials in practice.

<b>so, please describe.</b>	
<p><b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>Please refer to:</p> <ol style="list-style-type: none"> <li>1. Cooperation and Coordination Arrangement Between the Taipei Economic and Cultural Office and the Australian Commerce and Industry Office Regarding the Application of the Competition and Fair Trading Laws <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311392.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311392.htm</a></li> <li>2. Cooperation Arrangement Between the Taiwan Fair Trade Commission, the Australian Competition and Consumer Commission, and the New Zealand Commerce Regarding the application of Competition and Fair Trade Laws: <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311390.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311390.htm</a></li> <li>3. Cooperation Arrangement Between the Taiwan Fair Trade Commission and the French Competition Council Regarding the Application of their Competition Rules: <a href="http://www.ftc.gov.tw/EnglishWeb/">http://www.ftc.gov.tw/EnglishWeb/</a></li> <li>4. Memorandum of Understanding Regarding the Cooperation of Competition Law Implementation Between the Fair Trade Commission of Taiwan and the Unfair Competition Regulatory Authority of Mongolia <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311389Out2.pdf">http://www.ftc.gov.tw/EnglishWeb/20000101299912311389Out2.pdf</a></li> </ol>
<p><b>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</b></p>	<p>The TFTC still need the experience of exchanging documents or information with other reviewing agencies.</p>

## 14. Transparency

<p><b>A. Does the agency publish an annual report? Please provide the web address if available.</b></p>	<p>Statistical Yearbook of the TFTC has been published annually since 1993. English summaries of 2001, 2005, 2006 are available at: <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311142.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311142.htm</a></p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations?</b></p>	<p>Please refer to: <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311172.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311172.htm</a></p>

<p><b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b></p>	<p>The decisions of the TFTC will be collected to the electronic database (only available in Chinese), but some major cases will be selected onto the website at:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299912311172.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299912311172.htm</a></p>
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## 15. Sanctions/penalties

<p><b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b></p>	<p>If a merger is pursued without prior notification, regardless of the TFTC's decision to allow or prohibit such merger, or if the merger fails to perform the undertakings required by the TFTC, the TFTC may prohibit such merger, and if so, it may prescribe a period for such enterprises to split, to dispose of all or a part of their shares, to transfer a part of their operations, to remove certain persons from position, or make any other necessary disposition.</p> <p>For enterprises violating the disposition made by the TFTC in the above case, the TFTC may order the dissolution of such enterprises or the suspension or termination of their operations.</p> <p>Please refer to Article 13 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>
<p><b>B. Which party/ies are potentially liable?</b></p>	<p>The party who has the obligation to notify the merger according to Article 7 of the Implementing Rules to the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011510.htm</a></p>
<p><b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b></p>	<p>According to Article 41 of the Fair Trade Act, the TFTC can impose the above sanctions directly.</p> <p>Please refer to Article 41 of the Fair Trade Act:  <a href="http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm">http://www.ftc.gov.tw/EnglishWeb/20000101299901011508.htm</a></p>

## 16. Judicial review

<p><b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger</b></p>	<p>Article 11 of the Fair Trade Act states that the TFTC must decide whether to raise an objection within 30 days of the acceptance of the completed filing materials, but it may shorten or extend the period as it deems necessary and notify the filing enterprise of such change in writing.</p> <p>Should the parties be dissatisfied with the decision of the TFTC,</p>
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<b>notification and review.</b>	they have the right to petition to the Appeal and Petition Committee under the Cabinet within 30 days after receiving the disposition letter or the day after the decision. If they are still dissatisfied with the decision of the Committee, they have the right to bring the suit to the administrative court within two months of the day after receiving the disposition letter.
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## 17. Additional filings

<b>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</b>	No
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## 18. Closing deadlines

<b>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</b>	No
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## 19. Post merger review of transactions

<b>Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b>	The TFTC will not reopen the investigation while make the decision of no objection. For the merger case, which has been prohibited by the TFTC, the enterprises of the merger have the right to petition to the Appeal and Petition Committee under the Cabinet.
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