

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## Fair Trade Commission, Taiwan, R.O.C.

November 2014

Website: <http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=1077>

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

PART 1: LEGISLATION, GUIDELINES AND JURISDICTION (Questions 1 – 4)

PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION (Questions 5 – 14)

PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION (Questions 15 – 17)

PART 4: SANCTIONS (Question 18)

PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW (Questions 19 – 23)

QUICK LOOK SUMMARY	
<b>Mandatory or voluntary regime?</b>	<input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Voluntary
<b>Power to review non-notifiable transactions?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>What are the time limits for review?</b>	Initial review / Phase I: <input type="text" value="30 days"/> Extended review / Phase II: <input type="text" value="30 days"/>
<b>Substantive merger test?</b>	<input type="checkbox"/> Dominance <input type="checkbox"/> Significant impediment to effective competition <input type="checkbox"/> Substantial lessening of competition <input checked="" type="checkbox"/> Other <input type="text" value="resulting from the merger is the basis of the substantive test."/>

## PART 1: LEGISLATION, GUIDELINES AND JURISDICTION

### 1. Legal authority and guidance: Merger notification and review

(please provide title(s), popular name(s), effective date and citation(s)/web address)

#### Statutory law

##### A. Notification provisions

In 2002, the Fair Trade Act was amended, and the merger control regime was adjusted. The new system has adopted a pre-merger notification system to replace the previous application system.

For any merger that falls within one of the merger types in Article 6 of the Fair Trade Act and meets 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 Articles 6, 11-13 of the Fair Trade Act:  
<http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&docid=12106>

##### B. Substantive merger review provisions

According to Article 12 of the Fair Trade Act, the TFTC 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. Thus, the net effect between the economic benefit and the disadvantages of competition restraint resulting from the merger is the basis of the substantive test. The test for merger review is not specifically defined in the Fair Trade Act, but TFTC applies the new merger guidelines that are more in line with the “substantial lessening of competition” test (the SLC test) when reviewing mergers.

Please refer to Article 12 of the Fair trade Act:  
<http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&docid=12106>

Please refer to Point 6 of Guidelines on Handling Merger Filings:  
<http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&docid=2719>

##### C. Implementing regulations

Please refer to Articles 4, 6, 7-12 of the Enforcement Rules of Fair Trade Act of 2014:  
<http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&docid=13507>

<p><b>D. Notification forms or information requirements</b></p>	<p>Pursuant to Article 8 of the Enforcement Rules of the Fair Trade Act of 2014, the TFTC requires the following information in a notification of an merger:</p> <ol style="list-style-type: none"> <li>1) a report describing type and substance of the merger, the contact information and domicile of the merging enterprises, the scheduled date of merger, the name of the attorney-in-fact, if any, and the supporting document, and other required information;</li> <li>2) basic information on each participating enterprise, including the name and residence or domicile of the responsible person or administrator, the capital and business items, the turnover in the preceding fiscal year and any enterprise with which it has a relationship of control or subordination, the number of employees, certificates of incorporation or establishment;</li> <li>3) the financial statement and operating report for the preceding fiscal year of each participating enterprise;</li> <li>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;</li> <li>5) an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;</li> <li>6) major future operating plans of the participating enterprises</li> <li>7) overview of the long-term investments by the participating enterprises in other enterprises;</li> <li>8) if a participating enterprise's stock is listed on the stock exchange or traded on over-the-counter markets, the most recent prospectus or annual report;</li> <li>9) information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;</li> <li>10) other documents as specified by the Central Competent Authority.</li> </ol> <p>The requirements for information and notification forms are detailed in the Directions for Enterprises Filing for Merger issued by the TFTC.</p> <p>Please refer to Directions for Enterprises Filing for Merger and see notification forms :  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p>
<p><b>Agency guidance</b></p>	
<p><b>E. Guidance on merger notification process (e.g., regarding the calculation of thresholds, etc.)</b></p>	<p>If a merger filing falls within one of the merger types in Article 6 of the Fair Trade Act and meets the notification thresholds including market shares and turnover prescribed in Article 11 of the Fair Trade Act, the merging parties are required to notify the TFTC before implementing a merger.</p> <p>The turnover threshold, as set by the TFTC and applied for all industries, was given to the TFTC discretion to set different amounts for financial enterprises and non-financial enterprises based on practical situations. With regard to the calculation of total sales for financial enterprises, please refer to Explanatory Letter Kung Fu Tzu No. 10212611652 on December 23, 2013 (only in Chinese version).</p>

	<p>If none of the merging enterprises in an extraterritorial merger case has production facilities or facilities that provide service, distributors, agents, or other substantive sales channels within the territorial domain of Taiwan, jurisdiction shall not be exercised. In addition, in accordance with Point 4 (2) of the Guidelines on Extraterritorial Mergers, 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 Articles 6, 11, 11-1 of the Fair Trade Act of 2011 :  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p> <p>Please refer to Articles 6, 7, 10, of Enforcement Rules of Fair Trade Act of 2014:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</a></p> <p>Please refer to Directions for Enterprises Filing for Merger:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p> <p>Please refer to Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p> <p>Please refer to Guidelines on Extraterritorial Mergers:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2720">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2720</a></p> <p>Please refer to Explanatory Letter Kung Fu Tzu No. 10212611652 on December 23, 2013:  <a href="http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=218&amp;docid=13321">http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=218&amp;docid=13321</a></p>
<p><b>F. Guidance on substantive assessment in merger review</b></p>	<p>Please refer to answer of question 1B, Part1.</p> <p>Please also refer to Points 6, 9, 10, 11, 12, 13 of Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>G. Guidance on merger remedies</b></p>	<p>Please refer to Article 12 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p> <p>Please refer to Point 14 of Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>H. Guidance on the submission of information, especially regarding economic evidence or data, or</b></p>	<p>Please refer to answer of question 1D, Part 1.</p> <p>Please refer to Articles 8, 9, 11 of Enforcement Rules of Fair Trade Act of 2014:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</a></p>

<p><b>electronic information</b></p>	<p>Please refer to Directions for Enterprises Filing for Merger:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p> <p>Please refer to Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>I. Guidance or statements regarding the treatment of confidential information and/or domestic laws/regulations on third-party or public access to information provided during the review process (e.g., transparency regulations or freedom of information provisions)</b></p>	<p>The matters related to information disclosure and confidentiality are provided for in the Administrative Procedure Act, the Freedom of Government Information Act, and the Personal Information Protection Act, which are general laws. If otherwise provided in other special laws, the provisions in such special laws shall prevail over the general laws.</p> <p>The TFTC additionally stipulated “Regulation Governing Access to Materials and Files of the Fair Trade Commission,” which provides that the materials and files available for access are limited to what has been expressly approved by the TFTC. A party or a related person has the right to apply to the TFTC for reading, transcribing, copying or taking photographs of relevant materials or files. Third parties providing information to the TFTC may require that their information be kept confidential and not be read, transcribed, photocopied, or photographed by a party or a related person. The TFTC has to consider whether there is a justifiable reason to do so. As only partial data or records are kept confidential, the TFTC shall remove that part or seal it appropriately and make the rest accessible.</p> <p>Please refer to Article 46 of Administrative Procedure Act:  <a href="http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030055">http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030055</a></p> <p>Please refer to Articles 18, 21 of Freedom of Government information Act:  <a href="http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0020026">http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0020026</a></p> <p>Please refer to Articles 15, 16, 17, 18 of Personal Information Protection Act:  <a href="http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0050021">http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0050021</a></p> <p>Please refer to Regulation Governing Access to Materials and Files of the Fair Trade Commission:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1304&amp;docid=1570">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1304&amp;docid=1570</a></p>
<p><b>J. Guidance on pre-notification consultations</b></p>	<p>There is no specific guidance on pre-notification consultations. The merging parties, however, can consult the TFTC confidentially before they notify the merger in informal way.</p>
<p><b>K. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the</b></p>	<p>During its investigation, the TFTC should comply with Articles 36, 39, 102, and 103 of the Administrative Procedure Act, Article 27 of the Fair Trade Act, and Articles 31 to 34 of the Enforcement Rules of the Fair Trade Act. More detailed rules are provided in the “Guidelines for Case Investigations made by the TFTC.”</p>

<b>agency's decision-making process</b>	With regard to merger review cases, the TFTC's Commissioners shall take turns to serve as the reviewing Commissioner of individual cases. Additional reviewing Commissioner(s) may be assigned to jointly review cases if necessary. The Commissioners' Meeting is the highest policy-making body, and decisions can only be passed with over half of all Commissioners in attendance and an affirmative vote from over half of those in attendance.
<b>L. If available, please provide a link to statistics on annual notifications received, clearances, prohibitions etc.</b>	Please refer to TFTC's official website: <a href="http://www.ftc.gov.tw/upload/da5381d6-8e71-44f8-93ab-2ab4ccbfdbad.pdf">http://www.ftc.gov.tw/upload/da5381d6-8e71-44f8-93ab-2ab4ccbfdbad.pdf</a>

## 2. Agency or agencies responsible for merger enforcement

<b>A. Name of agency. If there is more than one agency, please describe allocation of responsibilities.</b>	Fair Trade Commission, Taiwan, R.O.C. (TFTC)
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	Address: 12-14 F., No. 2-2 Jinan Rd., Sec. 1, Taipei city 100, Taiwan (R.O.C.) Tel: +886 2 2351 7588 or +886 2 23975019 Fax: +886 2 2397 4997 or +886 2 2397 5075 Service mail: <a href="http://www.ftc.gov.tw/internet/main/mailbox/mailbox.aspx">http://www.ftc.gov.tw/internet/main/mailbox/mailbox.aspx</a> Website address: <a href="http://www.ftc.gov.tw">http://www.ftc.gov.tw</a> Languages available: Chinese and English languages
<b>C. Agency contact information for jurisdiction/filing guidance (including possible pre-notification consultations).</b>	For any questions related to the Fair Trade Act, please reach the above contacting points.

## 3. Jurisdiction: Covered transactions

<b>A. Definitions of potentially covered transactions (i.e., share acquisitions, asset acquisitions, mergers, de-mergers and combinations such as consolidations,</b>	As defined in Paragraph 1, Article 6 of the Fair Trade Act, the transactions related to the "merger" refers to a situation where: <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> </ol>
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<b>amalgamations and joint ventures)</b>	<p>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;</p> <p>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</p> <p>5. an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.</p>
<b>B. If change of control is a determining factor, how is control defined and interpreted in practice?</b>	Please refer to answer of question 3A, Part 1 (Subparagraph 5, Paragraph 1, Article 6 of the Fair Trade Act).
<b>C. Are partial (less than 100%) interests/minority shareholdings covered? At what levels?</b>	According to Subparagraph 2, Paragraph 1, Article 6, 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.
<b>D. If the notification requirements cover joint ventures, what types of joint venture are covered (e.g., production joint ventures)?</b>	According to Subparagraph 4, Paragraph 1, Article 6, 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.

## 4. Jurisdiction: Thresholds for notification

Key threshold information	
<b>A. What are the thresholds for notification? If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)</b>	<p>TFTC uses both market share and sales (or turnover) as its notification thresholds.</p> <p>According to Article 11 of the Fair Trade Act, any one of which triggers a requirement to notify the TFTC prior to realization of a transaction: 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 central competent authority.</p> <p>The turnover threshold, as set by the TFTC and applied for all sectors, was given to the TFTC discretion to set different amounts for financial enterprises and non-financial enterprises based on practical situations. The amount announced at present are as follows: 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 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.</p>



	<p>The time base of the thresholds is fiscal year. In addition, TFTC will review the notification thresholds non-periodically. As for turnover base, it has been adjusted in 1999 and 2002. The latest draft amendments to the Fair Trade Act articulates that the threshold amounts of sales shall also include sales for one of the merging parties and other companies having controlling and subordinate relation between them. Once the amendment is issued by the Congress, the TFTC will issue additional guidance on calculation of thresholds.</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/internet/english/doc/docList.aspx?uid=1294">http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=1294</a></p>
<p><b>B. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)?</b></p> <p><b>If based on an “effects doctrine,” please describe how this is applied in practice.</b></p>	<p>If none of the merging enterprises in an extraterritorial merger case has production facilities or facilities that provide service, distributors, agents, or other substantive sales channels within the territorial domain of Taiwan, jurisdiction shall not be exercised. In addition, in accordance with Point 4 (2) of the Guidelines on Extraterritorial Mergers, 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>All mergers that conform to the merger types and thresholds described in the Fair Trade Act shall be filed with the TFTC. The TFTC has enacted the “Guidelines on Extraterritorial Mergers” for dealing with mergers involving two or more foreign enterprises merging outside Taiwan’s territory. Whether or not mergers with foreign enterprises fall under the jurisdiction of the TFTC primarily depends on whether the merger would have a direct, substantial and reasonably foreseeable effect on the domestic market.</p> <p>The TFTC will weigh the following factors based on international comity in determining whether to exercise jurisdiction in extraterritorial merger cases:</p> <ol style="list-style-type: none"> <li>1. the relative importance of the merger's effects on Taiwan and foreign markets;</li> <li>2. the nationalities, locations and principal places of business of the combining enterprises;</li> <li>3. the explicitness of the intent to affect market competition in Taiwan and the foresee ability of effects on market competition;</li> <li>4. the degree of conflicts with the laws or policies of the country of the combining enterprises;</li> <li>5. the feasibility of enforcing administrative sanctions;</li> <li>6. the effect of compulsory execution on the foreign enterprises;</li> <li>7. rules of international conventions and treaties, or, provisions of international organizations;</li> <li>8. other factors deemed important by the TFTC.</li> </ol>
<p><b>C. Can a single party trigger the notification threshold (e.g., one party’s sales,</b></p>	<p>According to Subparagraph 2, Paragraph1, Article 11 of the Fair Trade Act, one of the enterprises in the merger has one fourth of the market share, such enterprises shall notify the TFTC in advance.</p>



assets, or market share)?	
<b>D. Are any sectors excluded from notification requirements? If so, which sectors?</b>	Notification requirements apply to all sectors.
<b>E. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)?</b>	No special rules regarding jurisdictional threshold for extraterritorial mergers.
<b>F. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so what is the procedure to initiate a review?</b>	No.

#### Calculation guidance and related issues

<b>G. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</b>	<p>TFTC uses both market share and sales (or turnover) as its notification thresholds.</p> <p>The turnover-base threshold applies to domestic sales. The national sales are calculated from location of seller.</p> <p>According to Article 4 of the Enforcement Rules of the Fair Trade Act of 2014, 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>According to Article 6 of the Enforcement Rules of the Fair Trade Act, "Sales amount" in Subparagraph 3, Paragraph 1, Article 11 of the Act means the total sale or operating revenue of an enterprise. Calculation of the total sale or operating revenue referred to in the preceding paragraph may be based on data obtained through investigation by the central competent authority or recorded by other government agencies.</p>
<p>(i) the value of the transaction</p> <p>(ii) the relevant sales or turnover</p> <p>(iii) the relevant assets</p> <p>(iv) market shares</p> <p>(v) other (please describe)</p>	
<b>H. Which entities are included in determining relevant undertakings/firms for</b>	<p>Please refer to answer of question 3A.</p> <p>Both the acquiring and acquired parties of the merger shall be considered for the sales (or turnover) threshold purposes.</p> <p>The sales of a financial holding company shall be determined by</p>

<p><b>threshold purposes?</b></p> <p><b>If based on control, how is control determined for notification purposes?</b></p>	<p>calculating the combined sales of all of its subsidiaries in which it has controlling shareholdings.</p>
<p><b>I. 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)? If yes, for which sectors and types of transactions?</b></p>	<p>The TFTC sets different sales amounts for financial enterprises and non-financial enterprises based on practical situations. 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. With regard to the calculation of total sales for financial enterprises, the TFTC has issued Explanatory Letter Kung Fu Tzu No. 10212611652 on December 23, 2013 (only in Chinese version).</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/internet/english/doc/docList.aspx?uid=1294">http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=1294</a></p> <p>Please refer to Explanatory Letter Kung Fu Tzu No. 10212611652 on December 23, 2013:  <a href="http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=218&amp;docid=13321">http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=218&amp;docid=13321</a></p>
<p><b>J. Describe the methodology for calculating exchange rates.</b></p>	<p>There is no such regulation on this issue.</p>

## PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION

### 5. Pre-notification

<p><b>A. If applicable, please describe the pre-notification procedure (e.g., time limits, type of guidance given etc.)</b></p>	<p>There is no specific regulation on pre-notification procedure. Merging parties can consult the TFTC confidentially before they notify the merger in informal way.</p>
<p><b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b></p>	<p>N/A</p>

## 6. Notification requirements and timing of notification

<p><b>A. Is notification...</b></p>	<p><input checked="" type="checkbox"/> Mandatory pre-merger      <input type="checkbox"/> Mandatory post-merger  <input type="checkbox"/> Voluntary</p>
<p><b>B. If parties can make a voluntary merger filing when may they do so?</b></p>	<p>N/A</p>
<p><b>C. 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></p>	<p>There is no such regulation related to when is a transaction agreement considered definitive. But the merging parties may file with TFTC documents to certify their intent to consummate a merger, such as the proof of the merger decision by the board of directors of each merging party or the merger contract or agreement signed by the merging parties.</p>
<p><b>D. When must notification be made? If there is a triggering event, 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></p>	<p>There is no such regulation. However, notification must be filed at least 30 days prior to consummation of the merger.</p>
<p><b>E. If there is a notification deadline, 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 extension.</b></p>	<p>TFTC does not have filing deadline. Enterprises of a merger shall file with the TFTC in advance.</p>
<p><b>F. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</b></p>	<p>Taiwan's pre-merger notification system is mandatory. The requirements for information are detailed in the Directions for Enterprises Filing for Merger issued by the TFTC. The TFTC expects the merging parties to provide all necessary information with their notification so as to avoid undesirable supplemental requests and to assess the effects on competition of transaction resulting from the merger.</p>

## 7. Simplified procedures

**A. 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 information requirements, etc.).**

With regard to the types of merger with no suspicion of obvious competition restraints, the TFTC 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 2 years instead of the most recent 3 years.

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

1. The aggregate market share of the parties involved in a horizontal merger is less than 20% of the total market.
2. The aggregate market share of the parties involved in a horizontal merger is less than 25% of the total market, and one of the parties in the merger is less than 5% of the market share.
3. The aggregate market share of the parties in a vertical merger in each relevant market is less than 25% of the total market.
4. After examining the considerations specified in Article 12 of the Guidelines on Handling Merge Filings, the TFTC confirms that the potential competition between the parties involved in a conglomerate merger is insignificant.
5. Following merger between a controlling enterprise and its subordinate enterprise that changes the manners of their relations:
  - (1) One of the merging parties directly holds more than one-third and less than half of the voting shares or capital contribution of another business and merges with the business.
  - (2) The merger is a consolidation between businesses that already have a parent company-subsidary company relationship and Subparagraph 1, Article 11-1 of the Fair Trade Act does not apply.
  - (3) The merging parties are all subsidiary companies of the same parent company and Subparagraph 2, Article 11-1 of the Fair Trade Act does not apply.
  - (4) A business surrenders its part or entire voting shares or capital contribution of a third company to a business with which it has a parent company-subsidary company.
  - (5) A business surrenders its part or entire voting shares or capital contribution of a third company to a business that is also a subsidiary company of the same parent company.

In addition, if the market structure of the merging parties involved is highly concentration, but the aggregate market share of the parties involved in a horizontal merger is less than 10% of the total market, such a merger will also apply to simplified procedures.

Please refer to Points 7 and 8 of the Guidelines on Handling Merger Filings:

<http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&docid=2719>

## 8. Information and documents to be submitted with a notification

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</b></p>	<p>Pursuant to Article 8 of the Enforcement Rules of the Fair Trade Act of 2014, the TFTC requires the following information in a notification of an enterprise merger</p> <ol style="list-style-type: none"> <li>1. a report form specifying the following information:             <ol style="list-style-type: none"> <li>(1) type and substance of the merger;</li> <li>(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;</li> <li>(3) the scheduled date of merger;</li> <li>(4) the name of the attorney-in-fact, if any, and the supporting document therefore;</li> <li>(5) other required information;</li> </ol> </li> <li>2. basic data on each participating enterprise:             <ol style="list-style-type: none"> <li>(1) the name and residence or domicile of the responsible person or administrator, if any, of each enterprise;</li> <li>(2) the capital and business items of each participating enterprise;</li> <li>(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;</li> <li>(4) the number of employees of each participating enterprise;</li> <li>(5) certificates of incorporation or establishment of each participating enterprise.</li> </ol> </li> <li>3. the financial statement and operating report for the preceding fiscal year of each participating enterprise;</li> <li>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;</li> <li>5. an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;</li> <li>6. major future operating plans of the participating enterprises;</li> <li>7. overview of the long-term investments by the participating enterprises in other enterprises;</li> <li>8. if a participating enterprise's stock is listed on the stock exchange or traded on over-the-counter markets, the most recent prospectus or annual report;</li> <li>9. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;</li> <li>10. other documents as specified by the TFTC.</li> </ol> <p>The requirements for information and notification forms are detailed in the Directions for Enterprises Filing for Merger issued by the TFTC.</p> <p>Please refer to Directions for Enterprises Filing for Merger:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p>
<p><b>B. Is there a procedure for obtaining information from target companies in the case of hostile/unsolicited bids?</b></p>	<p>TFTC set the same procedures for obtaining information from target companies in the case of hostile situations. There are few hostile merger cases in Taiwan which information is available for the public in the case of acquisition between public companies.</p>

<p><b>C. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalised?</b></p>	<p>Documents are required for notification as stated in Article 8 of the Enforcement Rules of Fair Trade Act of 2014:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</a></p> <p>The merging parties can provide documents without notarization or apostille certification.</p>
<p><b>D. What is the agency's practice regarding exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</b></p>	<p>For a 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 Point 2 of the Directions for Enterprises Filing for Merger:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p>
<p><b>E. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</b></p>	<p>In practice, when reviewing the merger cases, the TFTC may ask for the public opinions and request for opinions from industrial competent authority, other governmental agencies, competitors or upstream and downstream enterprises in writing, or hold consultation meetings.</p> <p>Any merger report filed with the TFTC will be publicised on the TFTC's website with a request for opinions from the public on the merger. Therefore, the third parties can submit their opinions to the TFTC through website or may be invited by the TFTC to attend the consultation meetings to express opinions or respond to the TFTC in writing.</p>

## 9. 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:</b></p> <p><b>(i) with the initial notification; and</b></p> <p><b>(ii) later in response to requests for information.</b></p> <p><b>In addition:</b></p> <p><b>(iii) what are the categories</b></p>	<p>If any information provided in the Pre-merger Notification Form is produced in foreign language, a translation of the outline of such information into Chinese shall be required. TFTC did not require extensive translation of supporting documents.</p> <p>Please refer to Point 5 of the Directions for Enterprises Filing for Merger:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p>

<p>or types of documents for which translation is required;</p> <p>(iv) what are the requirements for certification of the translation;</p> <p>(v) which language(s) is/are accepted; and</p> <p>(vi) are summaries or excerpts allowed in lieu of complete translations and in which languages are summaries accepted?</p>	
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## 10. Review periods

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>Enterprises shall not proceed to merge within 30-day waiting period from the date the TFTC accepts the complete filing materials. In other words, the TFTC will not review the merger until the merging parties file and provide the complete information materials. Whenever TFTC confirms the notification documents is sufficient, it will notify the 30-day deadline to the merging parties. TFTC may shorten or extend the period as it deems necessary and notify the filing enterprise of such change in writing. Such extension may not exceed 30 days.</p> <p>Please refer to Paragraphs 3 and 4, Article 11 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>
<p><b>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</b></p>	<p>No different rules.</p>
<p><b>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</b></p>	<p>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. Such extension may not exceed 30 days. The TFTC expects the merging parties to provide all necessary information with their notification so as to avoid undesirable supplemental requests and to assess the effects on competition of transaction resulting from the merger.</p> <p>Please refer to Paragraph 3, Article 11 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>



	<p>Please refer to Articles 6, 13 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>D. Is there a statutory or other maximum duration for extensions?</b></p>	<p>Where the TFTC extends the review periods, such extension may not exceed 30 days.</p> <p>Please refer to Paragraph 4, Article 11 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>
<p><b>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</b></p>	<p>Please refer to answer of question 10A.</p> <p>Please refer to Article 11 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p> <p>Please refer to Article 11 of the Enforcement Rules of Fair Trade Act of 2014:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</a></p>
<p><b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b></p>	<p>If the merger filing meets the requirements of simplified procedures under Article 7 of the Guidelines on Handling Merger Filings, it is applicable for accelerated review with abbreviated waiting period. As for general filing, if there is no suspicion of obvious competition restraints in the merger filing, the TFTC usually clears a merger during the preliminary review period.</p> <p>Please refer to Point 7 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>G. What is the procedure for offering and assessing remedies and how does this impact the timing of the review?</b></p>	<p>The TFTC is empowered to set conditions or require undertakings in its decision to the notified merger if it is satisfied that the measure taken can produce enough economic benefits to outweigh the disadvantages resulting from competition restraints.</p> <p>Before concluding its decision upon a merger filing, the TFTC may inquire the opinions of the concerned merging parties toward the conditions or required undertakings to be attached.</p> <p>Please refer to Point 14 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>

## 11. Waiting periods / suspension obligations

<p><b>A. Describe any waiting periods/suspension obligations following notification (e.g., full</b></p>	<p>According to Article 13 of the Fair Trade Act, where any enterprise(s) proceeding the merger before the deadline of the waiting or extension period, the TFTC has the power to 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</p>
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<p><b>suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</b></p>	<p>any other necessary dispositions.</p> <p>Please refer to Article 13 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</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)?</b></p> <p><b>If not, to what extent can the parties implement the transaction outside the jurisdiction prior to clearance (e.g., derogation from suspension, hold separate arrangements)?</b></p>	<p>The waiting periods are both applicable for the merger within and outside of the jurisdiction.</p>
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<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 Paragraph 5, Article 11 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>
<p><b>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<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 Paragraph 3, Article 11 and Article 12 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>
<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting</b></p>	<p>If the merger filing meets the requirements in Point 7 of the Guidelines on Handling Merger Filings (may not substantially affect competition), it is reviewed by a simplified procedure with abbreviated waiting period. The merging parties shall fill the simplified report forms and notify the TFTC.</p>

<p><b>period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>Please refer to Point 7 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<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>	<p>There is no such regulation.</p>

## 12. Responsibility for notification / representation

<p><b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b></p>	<p>The responsible enterprises of the merger to file the pre-merger notification are as followings:</p> <ol style="list-style-type: none"> <li>1. all enterprises participating in a combination where the combination consists of a merger, transfer or lease of the operations or assets of another enterprise or enterprises, regular joint operation of enterprises, or operation of another enterprise by agreement;</li> <li>2. the holding or acquiring enterprise, where it holds or acquires at least one-third of the shares of capital of another enterprise; and;</li> <li>3. the controlling enterprise, where it directly or indirectly controls the operations or employment and termination of personnel of another enterprise.</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 report instead.</p> <p>When a financial holding company or other holding company or its subsidiary company participates in a business merger, the financial holding company or the holding company shall file the pre-merger notification with the TFTC if the merger meets one of the descriptions provided in the Subparagraphs of Paragraph 1, Article 11 of the Fair Trade Act.</p> <p>Please refer to Article 7 of the Enforcement Rules of Fair Trade Act of 2014:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</a></p> <p>Please refer to Point 6 (3) of the Directions for Enterprises Filing for Merger:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2712</a></p>
<p><b>B. Do different rules apply to public tenders (e.g., open</b></p>	<p>No.</p>

market stock purchases or hostile bids)?	
<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>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 of the Enforcement Rules of Fair Trade Act of 2014:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</a></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>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 document.</p>

### 13. Filing fees

<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>There are no filing fees.</p>
<b>B. Who is responsible for payment?</b>	<p>N/A</p>
<b>C. When is payment required?</b>	<p>N/A</p>
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	<p>N/A</p>

## 14. Process for substantive analysis and decisions

<p><b>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</b></p>	<p>In merger cases that are important and complicated, the TFTC will properly conduct research on the relevant economic and legal issues. In addition, upon its consideration of the complexity and necessity of the case, the TFTC will hold meetings to consult with third parties, including scholars, experts, government agencies, trade associations, and related enterprises. Therefore, the TFTC is able to gather valuable insights and useful market information as well as economic analyses as reference in reviewing the case.</p>
<p><b>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</b></p>	<p>The TFTC's standard for merger review depends on whether the overall economic benefit of the merger outweighs the disadvantages resulted from its restraint on competition. Thus, the net effect between the economic benefit and the disadvantages of competition restraint resulting from the merger is the basis of the substantive test. TFTA applies the new merger guidelines that are more in line with the "substantial lessening of competition" test when reviewing mergers. If there is no suspicion of obvious competition restraints in the merger filing, then the overall economic benefits of the merger can be considered to 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.</p> <p>According to the Guidelines on Handling Merger Filings, the TFTA shall consider specific factors when assessing the competition restraints resulted from a horizontal or vertical merger, and conglomerate merger review.</p> <p>Please refer to Points 6, 9, 10, 11, 12 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>C. What theories of harm does the agency consider in practice?</b></p>	<p>In practice, when reviewing different types of mergers, the TFTA considers different factors in weighting the "disadvantages resulted from competition restraints." (theory of harm)</p> <p>In its investigation of horizontal mergers, the TFTA will evaluate unilateral and coordinated effects, degree of entry, countervailing power of proposed mergers.</p> <p>As for vertical mergers, the TFTA will examine the factors as the followings:</p> <ol style="list-style-type: none"> <li>1. The probability that other competitors could choose their trading counterparts after the merger.</li> <li>2. The degree of difficulty for an enterprise not participating in the merger to enter the relevant market.</li> <li>3. The possibility of merging parties abusing their market power in the relevant market.</li> <li>4. The probability of raising rivals' costs.</li> <li>5. The probability of resulting in concerted actions.</li> <li>6. Other factors that may result in market foreclosure</li> </ol> <p>With regard to conglomerate mergers, the TFTA will take the</p>

	<p>following factors into consideration:</p> <ol style="list-style-type: none"> <li>1. The impact of regulation and control being lifted on the merging parties' cross-industry operations.</li> <li>2. The probability of cross-industry operations by the merging parties because of technology advancements.</li> <li>3. The original cross-industry development plan of the merging parties besides the merger.</li> <li>4. Other factors that affect the likelihood of material potential competition.</li> </ol> <p>Please refer to Points 9, 10, 11, 12 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
<p><b>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</b></p>	<p>As the TFTC reviews a merger proposal, the first step is to define the relevant market and calculate the market share or market concentration ratio. Next, the anti-competitive effect will be measured. If the proposed merger will not cause substantial harm to the relevant market, then there is no need to review the effects on the overall economic benefit. On the other hand, for merger applications with a significant concern of causing competition restraints, the enterprises filing the application may provide the overall economic benefit factors for the TFTC's reference.</p>
<p><b>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</b></p>	<p>Yes. With regard to the merger filing that raises suspicion of obvious competition restraints, the filing enterprises shall submit information on the following factors regarding the overall economic benefits to the TFTC for deliberation:</p> <ol style="list-style-type: none"> <li>1. Economic efficiency.</li> <li>2. Consumer interests.</li> <li>3. The merging parties are originally in a weaker position when trading.</li> <li>4. One of the merging parties is a failing enterprise.</li> <li>5. Other concrete results related to overall economic benefits.</li> </ol>
<p><b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b></p>	<p>The possible outcomes of the merger review are as followings:</p> <ol style="list-style-type: none"> <li>1.non-prohibition (clearance)</li> <li>2.conditional clearance</li> <li>3.prohibition</li> </ol>
<p><b>G. What types of remedies does the agency accept in practice? How is the process initiated and conducted in practice?</b></p>	<p>The Fair Trade Act does not require that merging parties have the obligation to propose remedies. However, in order to eliminate the suspicion of competition restraint in the merger filing and ensure the realization of the overall economic benefit of the merger, the merging parties automatically provide proposed remedies to the TFTC.</p> <p>Before concluding its decision upon a merger filing, the TFTC may inquire the opinions of the concerned merging parties toward the conditions or required undertakings to be attached. The TFTC may hold consultation meetings or sending official letters to obtain the opinions from other government entities, industrial sectors and academicians to serve as reference for the decision as to whether the conditions attached are necessary and what type of conditions should be attached.</p>

	<p>TFTC's practice regarding the treatment of merger remedies includes structural and behavioral remedies. The TFTC usually imposes behavioral remedies on parties to a merger when it attaches conditions or requires undertakings in its decisions. The TFTC has never imposed the divestiture remedy in merger control. All the structural remedies have been to dispose of all or a part of the shares or remove certain persons from positions of directors and supervisors.</p> <p>In order to supervise the enforcement of the behavioral remedies, the TFTC has required undertakings in its decision to require the merging parties to periodically submit reports and related documents within a specified period of time.</p> <p>Please refer to Point 14 of the Guidelines on Handling Merger Filings:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&amp;docid=2719</a></p>
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**PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION**

**15. Confidentiality**

<p><b>A. To what extent, if any, does the agency make public the fact that a pre-merger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</b></p>	<p>If the merger filing cannot 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.</p>
<p><b>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>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." Thus, notifying parties or related parties might apply to review the data of the files before the case brought to the Commissioners' meeting of the TFTC for deliberation.</p> <p>Please refer to Regulation Governing Access to Materials and Files of the Fair Trade Commission  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1304&amp;docid=1570">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1304&amp;docid=1570</a></p>



<p><b>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)?</b></p> <p><b>If so, under what circumstances?</b></p>	<p>The third party can obtain access to partial notification materials when it falls under the category of “related person” stipulated by the Regulation Governing Access to Materials and Files. The TFTC may also provide information to other government agencies upon their requests in a manner consistent with current laws.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>If the documents and data provided by the merging parties are materials protected as trade secret and not to be made public, indicate accordingly. For merger cases, the related parties have not requested to access the TFTC confidential materials in practice.</p>
<p><b>E. Can the agency deny a party’s claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</b></p>	<p>The TFTC has discretion to decide whether the information in notification materials shall be kept in confidential. The definition of such confidential information shall be limited to the enforcement of competition laws. If the party is dissatisfied with the TFTC’s decision, such party may only file a joint statement when the party is also dissatisfied with the substantive decision and will file a statement pursuant to Article 174 of the Administrative Procedure Act.</p> <p>Please refer to Article 174 of the Administrative Procedure Act:  <a href="http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030055">http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030055</a></p>
<p><b>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</b></p>	<p>The TFTC publishes separate public and non-public or redact versions of its decisions or orders, or files separate versions of complaints or other filings in court proceedings, to protect confidentiality.</p> <p>The TFTC compiles relevant case materials and files into File A with information available for reviewing and File B with information not available for reviewing. In addition to the drafts, the signing of memos and other preparatory works by the internal units of the TFTC, File B also includes statements and interview records of the investigated enterprises and their trading counterparties, which contain personal identities, production and sales information and trade secrets that is information subject to confidential pursuant to Paragraph 1, Article 2 of the Personal Information Protection Act and Paragraph 1, Article 18 of the Freedom of Government Information Law.</p>

## 16. Transparency

<p><b>A. Does the agency publish an annual report with information about</b></p>	<p>Statistical Yearbook of the TFTC in Chinese and English has been published annually since 1993 and are available at:  <a href="http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=374">http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=374</a></p>
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<p>mergers? Please provide the web address if available.</p>	
<p><b>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</b></p>	<p>The TFTC will publish press releases related to merger policy or investigations/reviews on its official website each month. Please refer to :  <a href="http://www.ftc.gov.tw/internet/english/index.aspx">http://www.ftc.gov.tw/internet/english/index.aspx</a></p>
<p><b>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</b></p>	<p>The final decisions of the TFTC on merger cases which are prohibited or imposed remedies are announced publicly and posted on the FTC website (only available in Chinese). Some major cases will be selected onto the website. You can link to newsletter information at:  <a href="http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=654">http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=654</a></p>

## 17. Interagency Merger Cooperation

<p><b>A. Is the agency able to exchange information or documents with foreign competition authorities?</b></p>	<p>Yes, if such information exchange is not prohibited by existing laws..</p>
<p><b>B. 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>The TFTC has arrangements or MOU or agreements for cooperation vis-à-vis competition laws with competition enforcement agencies in Australia, New Zealand, France, Mongolia, Canada, Hungary and Republic of Panama to permit the exchange of information and to ensure that enforcement activities can be undertaken in an even more effective, far-reaching manner.</p> <p>Those arrangements or MOU or agreements are publicly available at:  <a href="http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=1075">http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=1075</a></p>
<p><b>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it</b></p>	<p>The disclosure of confidential information to foreign competition authorities not allowed without consent from the parties who submitted confidential information. In addition, the TFTC does not have waivers system.</p>

here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	
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**PART 4: SANCTIONS**

**18. Sanctions/penalties**

<p><b>A. What are the sanctions/penalties for:</b></p> <p>(i) failure to file a notification</p> <p>(ii) incorrect/misleading information in a notification</p> <p>(iii) failure to observe a waiting period/suspension obligation</p> <p>(iv) failure to observe or delay in implementation of remedies</p> <p>(v) implementation of transaction despite the prohibition from the agency?</p>	<p>For the types of illegal mergers as (i), (iii), (iv), (v), TFTC will prohibit the merger, and it may prescribe a period for such enterprise(s) to split, to dispose of all or a part of its shares, to transfer a part of its operations, to remove certain persons from position, or to make any other necessary disposition. In the case of such enterprise(s) violating the aforesaid disposition made by the TFTC, TFTC may order the dissolution of such enterprise(s), or the suspension or termination of its operations. The TFTC can also impose an administrative fine ranging from NT\$100,000 to 50 million for the above types.</p> <p>As for type (ii), TFTC can impose an administrative fine of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars on enterprise(s).</p> <p>Please refer to Articles 13 and 40 of the Fair Trade Act of 2011:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>
<p><b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(v)?</b></p>	<p>The party who has the obligation to notify the merger according to Article 7 of the Enforcement Rules of Fair Trade Act.</p> <p>Please refer to:  <a href="http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1298&amp;docid=13507</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</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/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106">http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&amp;docid=12106</a></p>

this procedure can take.	
<b>D. Are there any recent or significant fining decisions?</b>	The recent decisions on merger cases are included in the newsletter and posted on the TFTC's website at: <a href="http://www.ftc.gov.tw/upload/6ab50b4c-8a57-47f9-9ec5-4038268c1997.pdf">http://www.ftc.gov.tw/upload/6ab50b4c-8a57-47f9-9ec5-4038268c1997.pdf</a>

**PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW**

**19. Ministerial intervention**

<b>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</b>	No.
<b>B. What are the grounds for such ministerial intervention? Other policy goals? Are they defined? What guidance is available regarding such grounds?</b>	N/A
<b>C. Describe the main elements of the ministerial intervention process and procedures, and indicate any guidance available</b>	N/A

**20. Administrative and judicial processes/review**

<b>A. Describe the timetable for judicial and administrative review related to merger</b>	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.
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<p>transactions.</p>	
<p><b>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</b></p>	<p>In administrative appeal procedures, an administrative appellant, a party, who has the same interest as an administrative appellant, or an administrative appeal representative may file an application to the agency with jurisdiction of administrative appeal to view, cite, photocopy, or photograph documents in a file pursuant to Articles 49 and 50 of the Administrative Appeal Act. In the event of any of the circumstances set forth in Article 51 of the Administrative Appeal Act, the agency with jurisdiction of administrative appeal shall reject the application. During administrative litigation procedures, the matters related to the access to materials and files are governed by Articles 95 to 97 of the Administrative Litigation Act.</p> <p>As stated in answer of question 15F, Part 3, for the materials in File B that were related to the confidential information of each enterprise are not available for reviewing. In practice, in order to balance the benefits of public disclosure of investigations with the need to respect the confidentiality of targets of proceedings, the materials in File B will be re-examined by the TFTC in judicial proceedings as a judge request. The FTC shall remove that part or seal it appropriately and make the rest accessible. Thus, the parties could review it and better proceed with their respective arguments.</p>
<p><b>C. Are there any limitations on the time during which an appeal may be filed?</b></p>	<p>If the parties or interested parties are dissatisfied with the merger decision of the TFTC, 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.</p>

## 21. Additional filings

<p><b>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</b></p>	<p>Yes. There are additional filings required for review by sectoral regulators, such as banking, telecommunications, cable TV sectors and foreign investment.</p> <p>For taking an example, pursuant to the Financial Institutions Merger Act and the Financial Holding Company Act, the financial competent authority (Financial Supervisory Commission, FSC) reviews mergers involving two or more financial institutions, including the establishment of financial holding companies. The FSC shall take into consideration the impact of mergers on the degree of competition in the financial market and on the public interest. If such a merger meets the definition of a merger under Article 6 of the Fair Trade Act, the applicants for a merger shall be filed with the TFTC, before submitting their application to the FSC.</p> <p>In addition, the Taiwanese currency, the New Taiwan dollars, is not freely convertible. If a combination were to involve the inward remittance of more than US\$50 million or its equivalent by any company involved in the transaction, that company would be required to seek approval from Taiwan's central bank, on this and</p>
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	other currency-related issue.
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## 22. Closing deadlines

<p><b>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</b></p>	<p>No.</p>
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## 23. Post merger review of transactions

<p><b>A. 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></p>	<p>In principle, the TFTC will not reopen the investigation while make the decision of no objection. Where the filing contains any false or misleading item, the enterprises may not proceed to merge even after waiting period expires.</p>
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