

**Rethink of Merger Remedies**  
**—Lessons of the United States Stance.**

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Abstract

Recently, the merger regulations topics from the United States primarily are focusing on merger remedies, more and more relieves are obtained through negotiation. In the beginning, the basic merger control statutes are the Sherman Act and Clayton Act, with certain exceptions for particular industries, there was no requirement to report to the government regarding the merger transactions. Until the Hart-Scott-Rodino Act (“HSR Act”) was enacted, merger remedies receive more concerns. Under the HSR Act, the merging parties are required to provide premerger notification to government and wait for a period of time before closing the transactions. Under this system, it allows the government to enjoy the power to hold the transactions and wherefrom prevent certain illegal merger from taking place.

There are three important official documents. One is “A Study of the Commission’s Divestiture Process”, another is “Negotiating Merger Remedies” and both are issued by the Federal Trade Competition. The other is “Antitrust Division Policy Guide to Merger Remedies” that is issued by the U.S Department of Justice. In these three documents, the government illustrates its modern merger policy, and it further reveals that the purpose of merger remedies is to restore competition and create effective reliefs. The government also notes on fashioning merger remedies, thereby it offers some adoptable rules during a negotiation in order to achieve these goals. Such as Up-Front buyer, Crown Jewel, Hold-

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Separate and Maintenance Requirement, Trustee Provision, these are the most common provisions.

Although Taiwan's Fair Trade Act doesn't have the concept of "Merger Remedies", the similar idea is practiced by Fair Trade Law § 12、§ 13. The authority achieve their goals by attaching condition or requiring undertakings in any of the decision, no pre-council or self-proposed merger remedies. Fair Trade Commission carry out these merger remedies mostly by conduct control, less structure remedies. Because merger remedies is still growing in Taiwan, how to use it in the future is a question. This article will think about the merger remedies experience of U.S. and try to propose some points for authority when they adopt merger remedies.

Keywords: Merger Remedies, HSR Act, Up-Front buyer, Crown Jewel, Hold-Separate & Maintenance Requirement, Trustee Provision