

**Rethinking the Filing Obligations of the Premerger Notification Process in Taiwan:
A Comparative Analysis of the Regulations and Practices in Taiwan and the U.S.**

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Abstract

The blurriness of the statutory filing obligations which are imposed on entities involved in mergers has always been a concern not only for scholars, but also for practitioners in Taiwan. This can be inferred from the fact that more than half of the merger lawsuits in Taiwan are based on disputes over filing obligations. Besides, there are more than ten articles that discuss just a single case concerned with the merger between WPG Holding Limited and WT Microelectronics. In observing the key issues in those disputes, we may find that two categories of provisions are the most controversial: the requirements that may constitute a “merger”, and the thresholds for filing. Among those requirements constituting a merger, the definition of “directly or indirectly controls the business operation” mentioned in Article 10, Paragraph 1, Subparagraph 5 of the Fair Trade Act of 2017 is the most contentious. As for the thresholds for filing, the definition of “market share” mentioned in Article 11, Paragraph 1, Subparagraphs 1 and 2 in the same Act is also unclear.

However, if we make comparisons with the merger procedure in the United States, we may find that it is much less controversial. Even though disputes still occur, the disputes at stake do not usually focus on the requirements constituting a merger and the threshold for filing. Hence, in this article, I try to determine the main differences between the regulations in the two countries since they lead to different stability regarding the merger procedure. The primary objective of this article is to suggest to the Taiwan authorities a possible direction for revising the current regulations. In this article, I would like to make two preliminary suggestions. First of all, I argue that the way we have been used to distinguishing between a merger and an ordinary transaction should be changed. The shares of control may not be the only consideration when making the distinction. Instead, multiple values should be considered in order to strike a balance between

effectiveness and substantial justice. Secondly, the standard of “market share” should no longer be adopted as one of the filing thresholds.

Keywords: Hart-Scott-Rodino Antitrust Improvements Act, Filing Obligations, Filing Thresholds, Exemptions, UniPresident/Wei Lih, WPG/WT Microelectronics.