

Fair Trade Commission Disposal Directions (Guidelines) on Extraterritorial Mergers

Passed by the 457th Commissioners' Meeting on August 3, 2000
Promulgated by Order (89) Kung Fa Tzu No.02838 on August 18, 2000
Passed by the 555th Commissioners' Meeting on June 27, 2002
Promulgated by Order Kung Fa Tzu No. 0910006094 on July 1, 2002
Passed by the 688th Commissioners' Meeting on January 13, 2005
Promulgated by Letter Kung Fa Tzu No.094001281 on February 24, 2005
Amended by the 1057th Commissioners' Meeting on February 8, 2012
Promulgated by Order Kung Fa Tzu No. 1011560331 on March 13, 2012,
and made retroactive to February 6, 2012
Amended by the 1213rd Commissioners' Meeting on February 4, 2015
Promulgated by Order Kung Fa Tzu No.1041560119 on February 13, 2015
Amended by the 1307th Commissioners' Meeting on November 23, 2016
Promulgated by Order Kung Fa Tzu No.10515608631 on December 1, 2016

1. The Guidelines are adopted by the Fair Trade Commission to help guide the handling of extraterritorial merger cases.
2. An "extraterritorial merger case" as referred to in the Guidelines means a merger of two or more foreign enterprises outside of the territory of the Republic of China under any of the circumstances enumerated in Paragraph 1, Article 10 of the Fair Trade Law (hereinafter referred to as "the Law").
3. The following factors shall be taken into account while determining the Fair Trade Commission's jurisdiction over extraterritorial merger cases:
 - (1) whether the merger will have a direct, substantial, and reasonably foreseeable effect on the domestic market;
 - (2) the relative importance of the merger's effects on the relevant domestic and foreign markets;
 - (3) the residence and main business places of the combining enterprises;
 - (4) the degree of explicitness and the possibility of a foreseeable consequence on the impact of the market competition in the Republic of China;

- (5) the likelihood of creating conflicts with the laws or policies of the home countries of the combining enterprises;
- (6) the feasibility of enforcing administrative dispositions;
- (7) the impact of enforcement on the foreign enterprises;
- (8) what the rules of international conventions and treaties, or, the regulations of international organizations say;
- (9) whether any of the combining enterprises has production or service facilities, distributors, agents, or other substantive sales channels within the territorial of the Republic of China;
- (10) other factors deemed important by the Fair Trade Commission.

4. A report of merger shall be filed with the Fair Trade Commission prior to merger in extraterritorial merger cases where any of the circumstances enumerated under Paragraph 1, Article 11 of the Law exists.

5. Where a report of merger must be filed with the Fair Trade Commission under Point 4 of the Guidelines, such a report shall be filed by the following enterprises:

- (1) the enterprises participating in the merger that involves a merger or consolidation of enterprises, transfer or leasing of the operations or assets of one enterprise by another, regular joint operations of enterprises, or outsourcing of one enterprise's operations by another;
- (2) the holding or acquiring enterprise where an enterprise holds or acquires the shares or capital contributions of another enterprise. If there are control or affiliation relation between the holding or acquiring enterprises, or the holding or acquiring enterprises are controlled by the same enterprise or a group of enterprises, it shall be filed by the enterprise with the ultimate control position;
- (3) the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the power over personnel appointment and discharge of another enterprise.

If the person who files the report under the preceding paragraph is a foreign enterprise, the report shall be filed with the Fair Trade Commission by the ultimate controlling foreign parent company. Provided that such parent company has an affiliated enterprise, branch, or office in the Republic of China, the affiliated enterprise,

branch, or office may file the report, adding its own name thereto, with the Fair Trade Commission on behalf of such parent company. The Fair Trade Commission may still order the ultimate controlling parent company to submit the relevant materials when necessary.

If an enterprise required to file a report has not yet been established, the report shall be filed by the existing enterprise(s) participating in the merger.

6. The provisions of the preceding two Points shall apply *mutatis mutandis* in the following situations:

- (1) where the combining enterprises are located respectively in the Republic of China and another country, and any of the circumstances enumerated in Paragraph 1, Article 10 of the Law exists;
- (2) where a merger of foreign enterprises outside of the territory of the Chinese Taipei results in any of the circumstances enumerated in Paragraph 1, Article 10 of the Law among affiliated enterprises or branch companies within the territory of the Chinese Taipei.