

The Taiwan Fair Trade Commission Blocks Merger of Stainless Steel Enterprises

Stephen C. Wu^{*} / Yvonne Y. Hsieh^{}**

Lee and Li, Attorneys-at-Law

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In a decision dated 6 May 2009, the Fair Trade Commission ("FTC") determined that the adverse consequences of restraining competition arising from the proposed acquisition of more than 34% of the issued shares of Tang-Eng Iron Works Co., Ltd. ("Tang-Eng") by Yieh United Steel Corporation ("Yieh United") would outweigh the overall economic benefit from the transaction. Thus the FTC prohibited the proposed combination in accordance with Paragraph 1, Article 12 of the Fair Trade Act ("FTA").

The FTC advised that although the stainless steel industry is a globalized market and the sales prices of the products change according to the global market condition, the geographic market of the subject transaction still cannot be defined to cover the entire world given that it is still a major concern the FTC had about importation of the relevant products. Meanwhile, considering the extended delivery time, volatility of the international raw-material market price, currency-exchange exposure, instability of raw-material supply from offshore, and difficulties in controlling quality in the industry, the FTC believes that it would be more appropriate to define the geographic market as Taiwan.

As the combined market share of Yieh United and Tang-Eng will exceed 50% after the proposed combination, the competition between the two entities will lessen and they will have more power to hike up the sales price, resulting in coordinated action, whereby the parties can set uniform prices or jointly raise the prices. Furthermore, if the downstream enterprises in the stainless steel industry face obstacles in importing products, the centralization of the domestic market and the two parties' market share will increase, which will have a negative impact on domestic downstream enterprises and undermine healthy competition in the domestic market. Although the production techniques in the industry are quite mature, the time for building a plant and the cost of building hot rolling machines and cold rolling machines are considerable, so the thresholds for entering the market are rather high.

Furthermore, Yieh United and Tang-Eng are major competitors with the largest and

^{*} Partner.

^{**} Counselor.

second-largest market shares. If their merger is approved, one company is expected to have less power to keep the other in check, and the competition between the two companies will probably diminish. Thus, the proposed combination will thwart healthy competition in the market, and the repercussions of stifling competition arising from the proposed combination would outweigh the overall economic benefit from the transaction. After considering the unilateral effect, coordinated action, high thresholds for entering the market, countervailing power and other factors that would curb competition, the FTC decided to block the proposed transaction.

Mr. Yi-Sou Lin, the Chairman of Yieh United, expressed his objection to the FTC's decision by arguing that the government should just nationalize Tang-Eng instead of standing by and watching it sink deeper into debt. He added that merging steel enterprises to promote operational efficiency and competition is a global trend, and the government should encourage such activity so as to enhance industrial competition, not stand in the way of it. Mr. Lin also objected to the concern the FTC had about the creation of a monopoly since it would be cheaper and very fast to import steel from China, not to mention the fact that the steel imported would be tariff free and there is no price control or monopoly concerns associated with this case.

Yieh United further said that the subject transaction is similar to the combination between China Steel and Chung Hung Steel in terms of the combination method, market share, industry, domestic and global competition and downstream/upstream conditions. The FTC did not block the latter transaction because carbon steel hot rolling and cold rolling are products that are facing strong competition from international companies, and are tariff-free for companies from WTO member states, and thus it deemed that the subject transaction would not create entry barriers even though the combined market share would be 80% after the combination. However, the FTC blocked the proposed combination between Yieh United and Tang-Eng because the parties' combined market share would exceed 50% and impede fair competition. Disagreeing with the FTC's decision and reasoning, Yieh United has filed an appeal with the Executive Yuan.