

Taiwan Fair Trade Commission Fined Uni-President for Failing to File a Pri-Merger Notification

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The Taiwan Fair Trade Commission (TFTC) decided on 11 February 2009 to fine Uni-President Enterprises Corp. (Uni-President) NT\$500,000 for its failing to report the merger with Wei Lih Food Industrial Co., Ltd. (Wei Lih) to the TFTC. Both Uni-President and Wei Lih are well-known instant noodles manufacturers in Taiwan. Uni-President once attempted to effect an acquisition of Wei Lih by having one of its subsidiaries hold more than one-third of Wei Lih's shares indirectly, but the TFTC banned the proposed acquisition in September 2008.

Although Uni-President and Wei Lih did not implement the proposed acquisition, on 7 October 2008, Wei Lih held a shareholders' meeting to elect new directors and supervisors, among which three directors and one supervisor, representing half of the board seats, had the backing of Uni-President. In addition, the general manager of Uni-President was elected to be the chairman of Wei Lih. As a result, Uni-President would be able to indirectly control the business operations and the personnel management of Wei Lih, which meets the definition of a merger under the Taiwan Fair Trade Act, and hence a prior notification to the TFTC is required.

The TFTC took the initiative to investigate this case without receiving any report or complaint from a third party and conclude that Uni-President controls half of Wei Lih's directors and supervisors as well as the chairman of Wei Lih and has considerable influence over Wei Lih's key business decisions. Such arrangements would undermine market competition and meet the definition of a merger under Article 6 of the Taiwan Fair Trade Act, which defines a merger as where an enterprise directly or indirectly controls the business operations or the appointment or discharge of the personnel of another enterprise. Given such, Uni-President should report the merger to the TFTC, but it failed to do so.

When assessing fines in accordance with the Fair Trade Act, the TFTC takes the following situations into consideration: (i) whether the officers of Uni-President have taken corrective action by resigning as directors of Wei Lih; (ii) Uni-President's motivation for, purpose of, and expected improper gains from the merger; (iii) the degree of the harm to market order; (iv) the duration of the harm to market order; (v) gains derived on account of the unlawful merger; (vi) the scale, condition, sales revenue, and market position of the enterprise; (vii) whether the TFTC has issued warnings about the type of unlawful merger involved in the violation; (viii) types of, number of, and time interval between the current violation and past violations, and the penalties imposed for such violations; and (ix) the remorse shown for the merger and whether the violator cooperated with the investigation. In the end, the TFTC decided to

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impose a NT\$500,000 fine on Uni-President.