

The Taiwan Fair Trade Commission Fined Taiwan Digital Fiber for Failing to File a Pre-combination Notification

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On 25 March 2009, at a commissioners' meeting the Taiwan Fair Trade Commission ("TFTC") found that Taiwan Digital Fiber Technology Co., Ltd. ("TDFT") had failed to file a pre-combination notification with the TFTC for its acquisition of more than one-third of the issued shares in Peikang Cable TV Co., Ltd. ("Peikang"), Chia-Lien Cable Corp. ("Chia-Lien"), CNT CATV Co., Ltd. ("CNT"), Da-Tun Cable TV Co., Ltd. ("Da-Tun"), and Westcoast Cable TV Co., Ltd. ("Westcoast"), and directly and indirectly controlled the business operations and appointment/dismissal of personnel in these five cable TV companies. In addition to an order of correction for such violation, the TFTC imposed a fine in the amount of NT\$1 million on TDFT.

The TFTC pointed out that Peikang, Chia-Lien, CNT, Da-Tun and Westcoast are all cable television system operators based in central Taiwan, and each occupies more than 50% of the market in their franchise areas. Thus, TDFT should have filed a pre-combination notification with the TFTC before it directly and indirectly acquired more than one-third of the issued shares in those five companies at the end of 2007. However, it failed to meet such requirement, which is a violation of Paragraph 1, Article 11 of the Fair Trade Act. The TFTC noticed such violation and initiated the investigation ex officio.

The TFTC's sanction against TDFT was based on various factors, such as the motive and the object of the violation, anticipated improper gains, the extent of the damage to the trade order, the duration of violation, the business scale, status of operations, sales revenue and market position of the parties, and whether the relevant parties cooperated with the investigation. Furthermore, the sanction was imposed according to Paragraph 1, Article 13, and Paragraph 1, Article 40 of the Fair Trade Act. Compared with a case precedent of December 2008 in which four cable television operators in Kaohsiung, Taiwan, were fined a total of NT\$20.6 million for their failure to file a pre-combination notification with the TFTC for their joint operations since 2005, the TFTC seemed to believe that TDFT's violation was less severe.

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