

Taiwan Fair Trade Commission Granted Clearance for Vertical Combination of Programming Providers and Cable TV System Operators

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The Taiwan Fair Trade Commission (TFTC) decided on 17 December 2008 to grant clearance for the proposed acquisition of 100% of the shares in Gala Television Corporation ("Gala TV") by Trinity NL B.V. ("Trinity") through Trinity's subsidiary in Taiwan.

Gala TV, a national TV station, is one of the major cable TV programming providers in Taiwan, while Trinity's ultimate investor is a renowned private equity fund, MBK Partners. Trinity wished to purchase 100% of the shares in Gala TV through Trinity's subsidiary in Taiwan. Because the shares in Gala TV to be purchased exceed one-third of Gala TV's total voting shares, the acquisition qualifies for a notifiable combination, as stipulated in the Taiwan Fair Trade Act. Furthermore, MBK Partners has directly or indirectly controlled 10 cable TV system operators in Taiwan, and the market share of each cable TV system operator in its own franchise area (defined by the TFTC as the relevant geographic market) is over 38%, or even 100% in certain cases. Given the above, the proposed acquisition triggers the threshold for pre-combination notification under the Taiwan Fair Trade Act.

In deciding the case, the TFTC held that the overall economic benefits would outweigh the disadvantages to competition. Furthermore, in order to secure such overall economic benefits, the TFTC imposed some obligations on Trinity's ultimate investor, MBK Partners. That is, in granting the broadcasting rights to programs owned by Gala TV, MBK Partners and its affiliates cannot refuse to deal with other cable TV system operators or discriminate against them without justification. The clearance granted by the TFTC led many discussions. MBK Partners just successfully acquired the leading downstream cable TV network (also known as multiple system operators) in Taiwan, China Network Systems, in early 2008. This time, MBK Partners intends to extend its reach to upstream cable TV programming providers by acquiring Gala TV. The acquisition is a kind of vertical combination, and it might result in the concentration of market power in the cable TV industry. When contemplating approval for vertical combinations, the TFTC is mainly concerned about the possibility of competitors choosing trading counterparties after the proposed combination, the difficulty for potential competitors to enter the market, the possibility of combined enterprises abusing their market power, and the possibility of market monopoly, after the vertical combination. Hence, the TFTC decided to grant clearance with certain conditions.

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