

## **Taiwan Fair Trade Commission Bars Instant Noodle Combination**

**Yvonne Hsieh \***

Lee and Li, Attorneys-at-Law

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In a decision dated 10 September 2008, the Fair Trade Commission (FTC) ruled on a proposal by a leading instant noodle vendor (Company A) to indirectly acquire, through a subsidiary, more than one third of the shares in another leading instant noodle vendor (Company B). Finding that the proposed takeover was likely to significantly restrict competition, and considering the insignificance of the overall economic benefit of the proposed takeover, the FTC held that the overall economic benefit of the business combination would not outweigh the disbenefit of restraint of competition, and barred the takeover pursuant to Article 12 Paragraph 1 of the Fair Trade Act.

The FTC stated that to assist it in reviewing the above case, on 28 August 2008 it had held a public hearing to which it invited the Ministry of Economic Affairs, the Consumer Protection Commission, consumer groups, other major instant noodle suppliers, upstream raw materials suppliers and down-stream distribution enterprises in the instant noodle market, academics, and experts. It had taken the opinions expressed by these persons into account when considering the case.

The FTC stated that Companies A and B held first and second place respectively in terms of market share in Taiwan's instant noodle market, and each was the other's main competitor. After the proposed takeover, Company A would have held 49.75 % of Company B's stock. The two companies' power to constrain each other's actions would have been weakened, the competitive pressure on them would have been reduced, and their former concerns when unilaterally adjusting the prices of their goods would have been lessened. This would have damaged the competitive mechanism in the instant noodle manufacturing market, and consumers would have been unlikely to have sufficient power to counterbalance the market power of the post-combination group of companies. Furthermore, the marketing of instant noodles required the availability of distribution channels, and the expenditure of time and resources required in order to enter such distribution channels could not easily be achieved in a timely manner by new businesses wishing to enter the market. Moreover, the brand images established over long periods of time by Taiwanese instant noodle manufacturers had a significant influence on the orientation of consumer choice. Thus the opportunities for timely

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\* Counselor.

market entry by potential competitors were small. Accordingly, if the proposed combination were to be implemented, it would result in the disbenefit of significantly restraining competition.

The FTC further stated that if one of the participants had been a failing enterprise, and would have withdrawn from the market if the transaction were not completed, then allowing the combination to proceed might have been seen as offering an overall economic benefit. But Company B was not currently a failing enterprise. There was no pressing need for the deal to go ahead in order to assure its survival, and there was no evidence to show that if the deal were not approved, Company B would withdraw from the instant noodle market. Also, according to the information provided in the two companies' filings, their main purposes in undertaking the business combination were to exchange experience and to develop overseas markets. But it was not necessary, for either of these objectives to be achieved, to acquire an excess shareholding. Thus the proposed combination was not the only means open to the companies to achieve their stated goals. There was also no certainty that the outcomes of the proposed combination as predicted in the filings, of enhancing overall national competitiveness and promoting the interests of consumers, could be realized. Therefore, the overall benefit of the business combination was not obvious.

Company A had made various commitments, such as undertaking "not to take the lead in raising prices within a certain period," and "not to involve itself in the personnel decisions and business management of Company B, except in the event of specific circumstances as defined by contract." However, the FTC took the view that even if Company A did indeed honor such commitments, this would not restore the degree of competition to the level prior to the proposed combination. Thus the FTC could not consider such commitments to be sufficient to dispel concerns regarding the anti-competitive nature of the proposed combination.