Recent Developments in Taiwan, Republic of China

– REJECTION OF COMBINATION BETWEEN UNI-PRESIDENT AND WEILIH

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At its September 1, 2010 commissioners' meeting, the Fair Trade Commission ("FTC") rejected the proposed combination between Uni-president Enterprises Corporation Co., Ltd. ("Uni-President") and Weilih Food Company ("Weilih") by which Uni-President would indirectly acquire more than half of the shares in Weilih. This is the second time the FTC rejected the proposed combination between Uni-President and Weilih. The FTC rejected the combination because the economic benefits to the overall market or consumers arising from the combination were not clear and might not materialize eventually. Therefore, the FTC could not conclude that the overall economic benefit of the merger would outweigh the disadvantages resulting from the competition restraints.

In order to review the proposed combination, the FTC canvassed the opinions of several parties and analyzed the sales data of downstream enterprises such as wholesales stores and convenience stores. According to the FTC, the relevant market in the proposed transaction is sales and manufacture of instant noodles, drinks, and edible oils. It reached the conclusion because the use, characteristics, period for expiration date, and purchase pattern of and relating to instant noodles, and how they are eaten, are different from those of and relating to cookies, sandwiches, frozen dumplings and other instant food. Consequently, instant noodles and other instant food are not substitutable for each other, and such non-substitutability can be evidenced by the sales data of those downstream businesses. Given the above, the relevant market of the proposed transaction should be defined as the "instant noodles, drinks, and edible-oil market."

In the FTC's opinion, Uni-President and Weilih each holds the largest and second-largest shares of the market. Since the combined market shares of the participating parties are almost 70 percent, the concentration ratio is high in the relevant market, which would give the participating parties the ability to raise the price of instant noodles after the combination. Also, the risk of concerted action between the two parties cannot be totally ruled out. In reality, the instant noodles market is so saturated that no new comers will enter the said market for the market is not likely to grow. Additionally, brand loyalty among consumers makes it a challenge to promote a new brand name or repositioning an existing product. Consequently, the entry barrier to the relevant market is high. If the combination were consummated, the bargaining power of the upstream material supplier and downstream chain distribution channels would be undermined. Moreover, the traditional resale stores and consumers would be powerless to thwart the participating parties' price hike. In light of the foregoing, the proposed transaction would be detrimental to market competition.

On the overall economic benefit, the FTC stated that the participating parties are not expected

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to continue to compete with each other after the consummation of the combination, so such combination would result in less competition in the instant noodles industry. Even if such combination could bring about certain economies of scale for the participating parties, it is still unclear whether such benefit will be enjoyed by consumers as well. Therefore, the FTC rejected the combination according to Paragraph 1, Article 12 of the Fair Trade Act, because the overall economic benefit of the merger does not outweigh the disadvantages resulting from the competition restraints.