

Clearance Granted to Merger between Taiwan Mobile and Kbro with Ten Conditions

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Taipei, Taiwan
January 2010

At its December 2, 2009 Commissioners' meeting, the Fair Trade Commission ("FTC") conditionally permitted the proposed combination of Taiwan Mobile ("TWM"), Cheng Ting, Kbro and 12 cable system operators controlled by Cheng Ting and Kbro.

TWM is the second-largest mobile telephone and fixed-line telecom service provider, and it has invested in 4 cable system operators. Kbro is a Taiwanese company invested by Carlyle, and it has invested in 12 cable system operators. The subject transaction involves the acquisition of Kbro and 12 cable system operators by TWM. After the transaction, the number of subscribers owned by the cable system operators controlled by TWM will be close to 1/3 of the total number of subscribers nationwide. The FTC pointed out that the subject transaction would have a minor impact on the market of mobile telecom and fixed-line telecom service, while anti-competition concerns would still exist in the cable television service market and satellite broadcasting program supply market; but the combination would promote competition in the digital telecom connection service market (i.e., internet access market).

After considering various factors, including the current laws, regulations and legal framework, relevant market structure and competition, opinions from relevant industries, trends in technology development and the maintenance of market competition after the combination, the FTC believed that the overall economic benefit as a result of this transaction would outweigh the disadvantages of stifled competition. Consequently, it permitted the subject transaction in accordance with the Fair Trade Act, subject to the following conditions:

1. TWM shall dispose of all shares of one cable system operator it holds directly or indirectly within one year of receiving the FTC's decision.
2. TWM and its controlled and affiliated companies shall not appoint representatives to act as directors, supervisors or general manager in Mangrove (one of cable system operators) for three years after receiving the FTC's decision.
3. The total satellite broadcasting programs produced or distributed by TWM and its controlled and affiliated companies shall not exceed 21 for three years after receiving the FTC's decision.
4. TWM and its controlled and affiliated companies shall not refuse to license the satellite broadcasting programs produced or distributed by it to other cable system operators, direct satellite broadcasting operators, MOD operators or other service providers that have competing relationships and transmit signals via cable or wirelessly, and shall not give discriminatory treatment.

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5. TWM and its controlled and affiliated companies shall not charge different prices or impose additional conditions without justification for licensing the satellite broadcasting programs produced or distributed by it to other cable system operators, direct satellite broadcasting operators, MOD operators or other service providers that have competing relationships and transmit signals via cable or wirelessly.
6. TWM shall submit a list of the satellite broadcasting programs that it or its controlled and affiliated companies produce or distribute and the agency agreements thereof to the FTC before July 1 every year for three years after receiving the FTC's decision.
7. TWM shall submit to the FTC the information related to the offer prices, license prices, promotion plans, and counterparties of the satellite broadcasting programs that it or its controlled and affiliated companies produce or distribute before July 1 every year for three years after receiving the FTC's decision.
8. TWM shall submit the information related to the retail and wholesale price of internet service, and inter-connection fees with other major internet access service providers to the FTC before July 1 every year for three years after receiving the FTC's decision.
9. Regarding the interconnection fee applied to cable network system, which will be charged by TWM and its controlled and affiliated companies, the fee should be based on the connection volume or appropriate offset mechanism within six months of receiving the FTC's decision.
10. Within three years of receiving the FTC's decision, TWM and its controlled and affiliated companies shall implement the following matters at their cable network systems to maximize their economic benefits: (i) try to complete the digitalization of the cable television so as to improve the consumers' freedom to choose programs; (ii) establish an open platform that is advantageous for convergence; and (iii) provide a more favorable price, volume, quality, service or other trading terms in the cable modem service business than other ISP providers so as to participate in the competition.

According to the Cable Television Act, the number of subscribers of a system operator, its affiliates and system operators, directly or indirectly controlled, shall not exceed one-third of the total number of subscribers in Taiwan. As the total subscribers of system operators controlled by TWM will be close to one-third, one of the conditions that the FTC imposed on TWM is that TWM needs to dispose of all shares in one system operator that are directly or indirectly controlled by TWM within one year. This is the first case in which the FTC has imposed a condition of disposition of assets or shares as one of the conditions for clearance.