

## Merger Notification Form

According to Article 11 of the Fair Trade Act, enterprises filing merger notifications are required to submit the following documents:

- Documents are already uploaded to the “Merger Notification and Concerted Action Application Online Filing System”, Case No.: \_\_\_\_\_
- Documents are not yet uploaded to the “Merger Notification and Concerted Action Application Online Filing System”; they will be uploaded on MM DD YY

Name of Merging Party

Representative

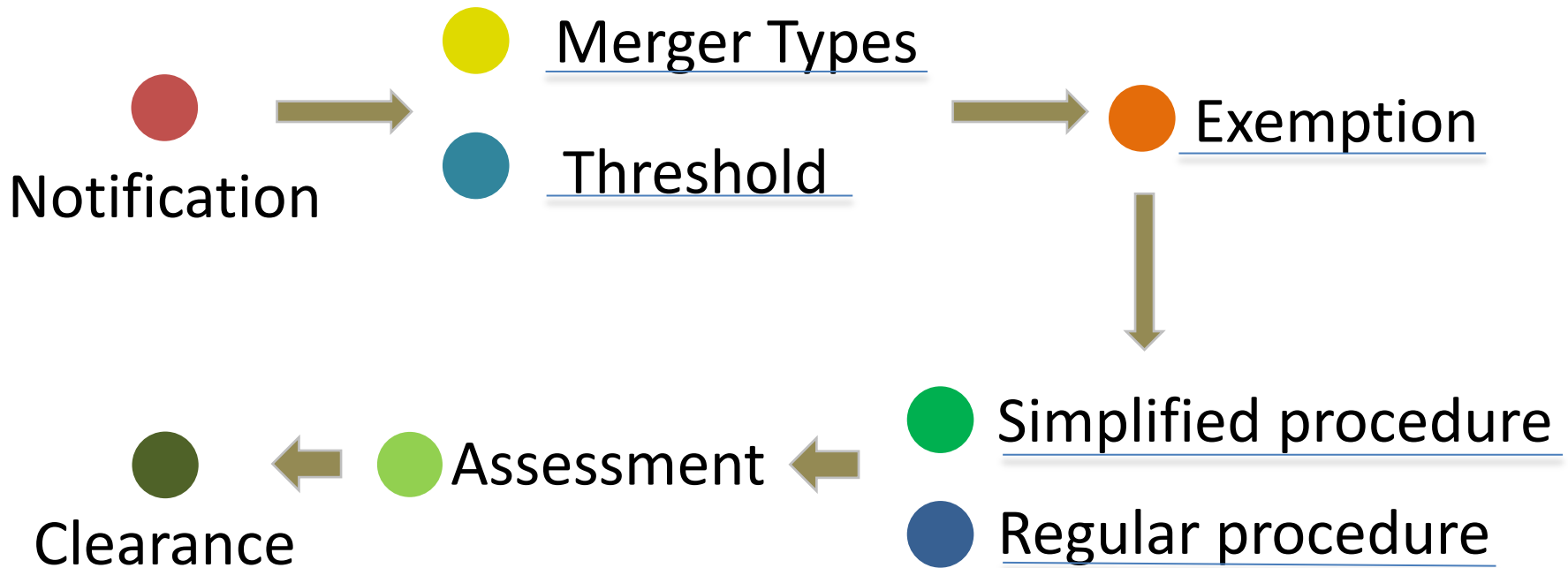
# Merger Control in Taiwan— Regulation and Assessment

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# MERGER REGIME



# MERGER NOTIFICATION

- Pre-merger Notification.

- Notification is compulsory.(§39)

- Penalty(violation) :

- 1.Prohibition of merger, divestiture, dispose of all or a part of the shares, to transfer a part of the operations, removal of personnel designated by the enterprises,

- 2.fines NT\$ 200,000 to 50 million(6.5 thousand to 1.6 million USD).

# MERGER NOTIFICATION

Waiting Period(review period) : **30 working days**



Merger parties have to wait for 30 working days after TFTC received the merger notification (with complete documents and information).

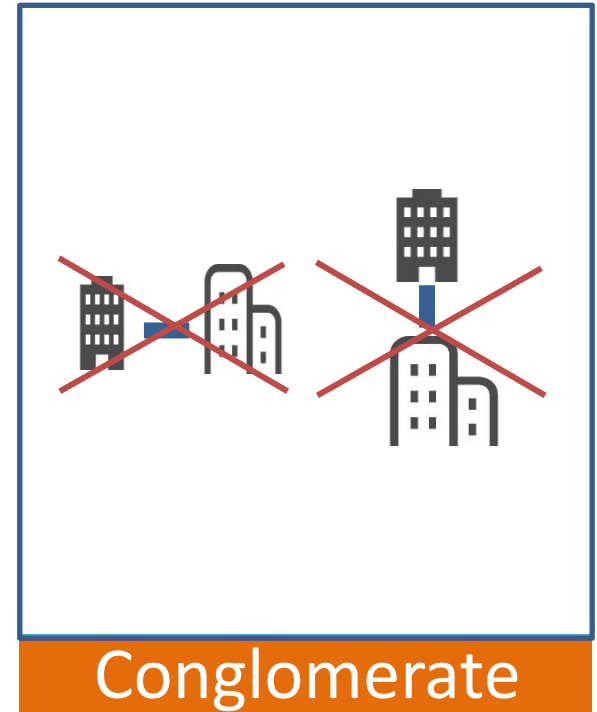
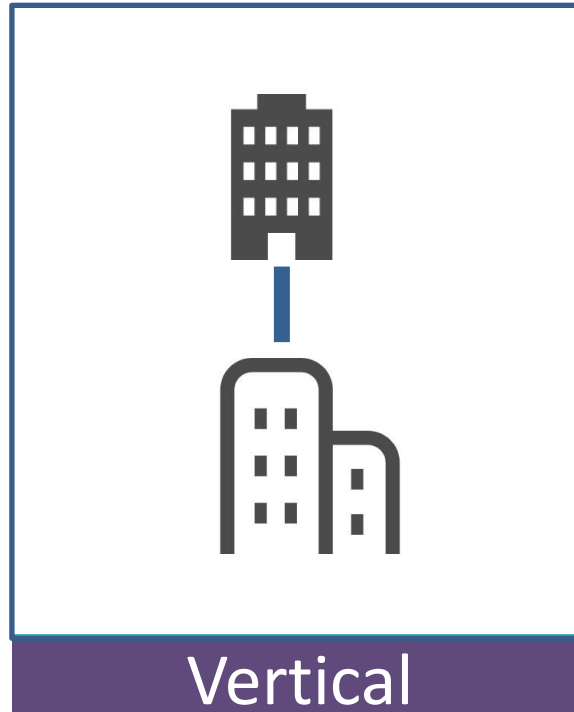
Extend : **60 working days**



TFTC may extend another 60 working days to scrutinize the notification. Thus the waiting period totally last for 90 working days.

# TYPES OF MERGER

## Nature of the Merger



# TYPES OF MERGER

- Horizontal Merger: a merger between businesses that have horizontal relationship by offering similar products or services
- Vertical Merger: a merger between businesses that have an upstream-downstream relationship in the same industry
- Conglomerate Merger: a merger between businesses that neither compete horizontally nor have an upstream-downstream relationship

# THRESHOLD



## Market share

1.  $A \text{ or } B > 1/4$

2.  $A + B > 1/3$



## Sales

Standard : Large company : NT\$15 billion

Small company : NT\$ 2 billion

Financial Sector : Large company : NT\$ 30 billion

Small company : NT\$ 2 billion

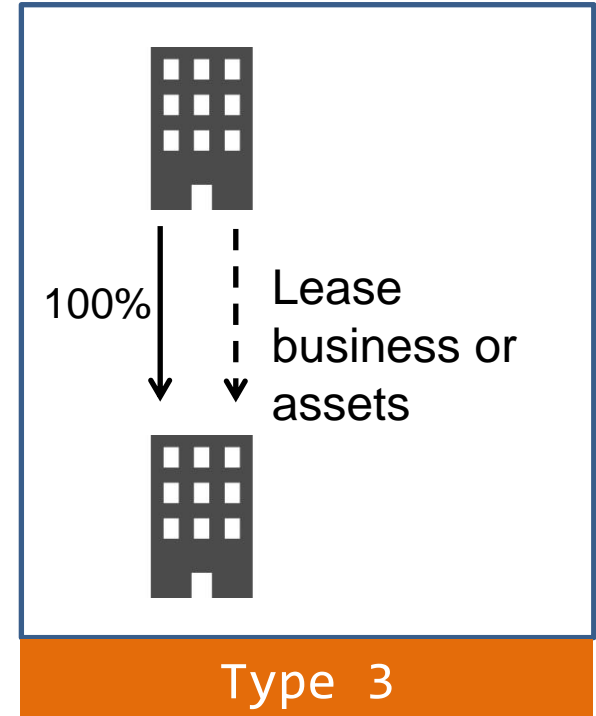
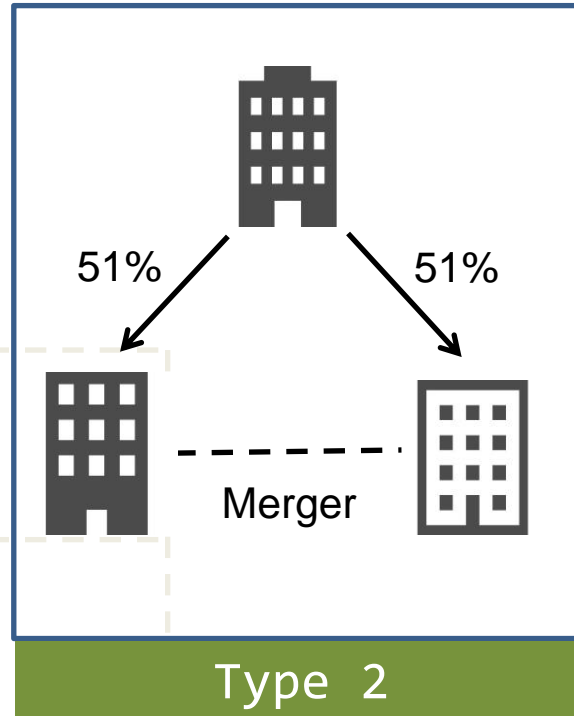
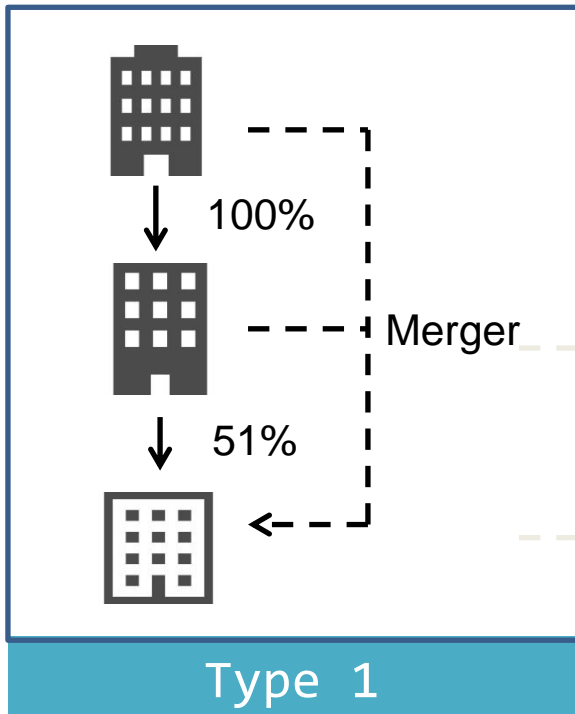


## Worldwide sales

$A + B > 40$  billion(worldwide sales)

$A \text{ or } B > 2$  billion(domestic sales)

# EXEMPTION



where any of the enterprises participating in a merger, or its 100% held subsidiary, already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise.

where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge

where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely



# EXEMPTION

4. where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Act or Article 28-2 of the Securities and Exchange Act, redeems its shares held by shareholders so that its original shareholders' shareholding falls within the circumstances provided for in Article 10, Paragraph 1, Subparagraph 2 herein
5. where a single enterprise reinvests to establish a subsidiary and holds 100% shares or capital contribution of such a subsidiary
6. any other designated type of merger promulgated by the competent authority

# ASSESSMENT

**Unilateral Effect:** The ability of the merging parties to raise price in post merger market.

- change of market concentration in pre and post merger market
- market share of the merging party
- market share and responded supply of the non-merging party
- response of supply and demand to the price change in pre-merger and post-merger market.

# ASSESSMENT

**Coordinated effects** :The merging parties and competitors consent or take concerted actions to restraint competition in post-merger market.

 Numbers of players

 Capacity

 Barrier to Entry

 Symmetry of Scale and Cost between the Competitors

 Homogeneous or Heterogeneous Product

 Transparency

 Business Model

 Concentration

# ASSESSMENT

## Barrier to Entry

- The possibility and accessibility for potential competitors to enter the relevant market
- Whether such entry by the potential competitor can increase competition in market.

## Countervailing Power

- The ability of the trading counterparts or potential trading counterparts to halt price increase by the merging parties.
- Other factors that have an effect on the result of competition restriction.

# ASSESSMENT

## Vertical Merger

- The opportunity for the competitors to choose the trading counterparts in post-merger market
- The difficulty for non merging parties to enter the relevant market
- The possibility of the merging parties to abuse their market power
- The possibility to raise rival's cost
- The possibility to carry out a cartel

# ASSESSMENT

## Conglomerate Merger

- The possibility of change of related regulation and its impact on the cross-industry operations of the merging parties
- The possibility of technological improvement to allow the merging parties to engage in cross-industry management
- The original cross-industry development plan of each of the merging parties

# CLEARANCE

## ● Public Interest Test

“ The competent authority may not prohibit any of mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.”

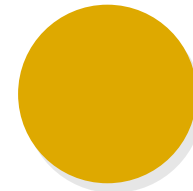
# CLEARANCE



Competition Restraints "Not"  
Outweighs Economic Benefits



Not Prohibit



Clearance with Remedy



Competition Restraints  
Outweighs Economic Benefits



Prohibit



# SIMPLIFIED PROCEDURE

## Simplified Procedure

- Merger deemed as economic benefits outweighed the competition restraints.

## Application :

- Horizontal
- Vertical
- Conglomerate

# SIMPLIFIED PROCEDURE

## ● Horizontal

1. The aggregate market share of parties  $< 20\%$ .
2. Aggregate market share  $< 25\%$ ; one of the merging parties  $< 5$ .

## ● Vertical

The aggregate market share of the parties in each relevant market  $< 25\%$ .

# SIMPLIFIED PROCEDURE

## ● Conglomerate

Conglomerate Market: The merging parties do not potentially have substantial competition.

- One of the merging parties directly holds more than 1/3 but less than 1/2 of the voting shares or capital contributions of another business and merges with the said business.

“Honest is the best policy”

Thank you.

# Further information

## **Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings**

<https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=656&docid=2719>

## **Merger Notification Form :**

<https://www.ftc.gov.tw/upload/1db87327-5c8b-4eb8-a1e1-4010765b6d1b.docx>

## **Thresholds and Calculation of Sales Amount which Enterprises of a Merger shall File with the Fair Trade Commission**

<https://www.ftc.gov.tw/upload/530fef1f-6053-4268-8219-4db5291c6cb1.pdf>

## **Fair Trade Act of 2017**

<https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1295&docid=15182>