

**A STUDY ON ADMINISTRATIVE LITIGATION SETTLEMENT
IN TAIWAN ON THE EXPERIENCE OF THE QUALCOMM V.
FAIR TRADE COMMISSION CASE**

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Abstract

Litigation settlement is one of the most applicable alternative dispute resolution mechanisms. Litigants need not exhaust their resources in order to solve their disputes. However, administrative settlement is comparatively rarer than it is in civil disputes. Major reasons for the rareness of administrative settlement are the consideration of public suspicion and difficulty of balancing private and public interests, either of which applies to settlement achieved during administrative trial proceeding. When settling administrative disputes, stipulated procedural requirements are to be satisfied before entering into substantial issues. For instance, whether litigants have power of disposition of the disputed issues, or should the relevant third parties be notified to intervene? Once procedural requirements are met, what factors should the government agency or the trial court consider in order to grant that settlement, for instance, the maintenance of the public interest? This article illustrates the administrative settlement procedure of Taiwan, particularly of that of administrative litigation settlement. For better understanding, this article will take the settlement between Qualcomm and Taiwan Fair Trade Commission for example. Through this example, one can better comprehend how settlement

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is processed from beginning to end. Along with the elucidation of the example, this article responds to the pro and con opinions regarding the Qualcomm case as well. The content of the settlement and the response enunciated in this article might not adequately satisfy every involved party or critic; however, they do provide valuable information for those who wish to continue their research in depth on this domain.

Keywords: Qualcomm, Litigation Settlement, Public Interests, Power of Disposition, Government Agency, Agency Action, Judicial Review

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I. PREFACE

In light of the doctrine of the separation of powers¹ and the principle of acting in accordance with the law, government agencies² are delegated by Congress³ with the authorities to formulate policies, to make rules⁴ that relate to its authority, and to provide services to

¹ The Executive, Legislative, and Judicial branches are supposed to form a check and balance system, through which each branch can practice its function as described by Chief Justice John Marshall in *Wayman v. Southard*, 23 U.S. 1, 46 (1825):

The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law; but the maker of the law may commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a Court will not enter unnecessarily.

Marshall's explanation of government branches properly depicts the nexus among them.

² Just like 5 U.S.C. § 551, Art. 3 ¶ 2 of the Taiwan Administrative Procedure Act (TAPA) exempts the following organizations from the law: (1) People's representative bodies at various levels; (2) Judicial authorities; and (3) Supervisory authorities. Unlike *Franklin v. Mass.*, 505 U.S. 788 (1992), which held that the United States president's statutorily required action is not a reviewable administrative procedure, the Supreme Administrative Court of Taiwan does not make it clear whether or not the president is excluded from the definition of an agency of the TAPA. Xingzheng Chengxu Fa (行政程序法) [Administrative Procedure Act] (promulgated by the Ministry of Justice, Feb. 3, 1999, amended Dec. 30, 2015) (Taiwan), Art. 3, ¶ 2, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030055> [<https://perma.cc/9H66-4D4N>] [hereinafter Administrative Procedure Act].

³ Take the United States Federal Trade Commission (FTC) for instance. Congress passed the Federal Trade Commission Act in 1914 and created the FTC with the authority to prohibit unfair competitive commercial activities. 15 U.S.C. §§ 41, 45.

⁴ For instance, in 2020 the Centers for Disease Control (CDC) of Taiwan announced several rules and policies particularly applicable for prevention and control of the COVID-19 pandemic, requiring people to follow the promulgated rules and penalizing those who disobeyed: "People must wear masks in eight types of public venues, and those who [refuse] to follow the rule after being advised to do so will be fined." TAIWAN CENTERS FOR DISEASE CONTROL (Dec. 2, 2020), <https://www.cdc.gov.tw/En/Bulletin/Detail/dBMqsXbksO-SbNf87zyfRA?typeid=158> [<https://perma.cc/75WA-MA59>]. The terminology of rules may vary; however, in accordance with their nature, rules can be divided into three categories as interpretive rules, procedural rules and substantive rules.

the people.⁵ In addition, government agencies can also issue orders in accordance with its governing statutes⁶ and adjudicate administrative disputes⁷ for the first instance⁸ and impose sanctions upon those who violate the rules promulgated by the agencies.⁹ Once the government agency has issued an order or imposed a sanction

See M. Elizabeth Magill, *Agency Choice of Policymaking Form*, 71 U. CHI. L. REV. 1383, 1386 (2004) (listing the variety of policymaking tools available to federal agencies).

⁵ For instance, government agencies provide postal services, maintain national parks for citizens' leisure purposes, etc. See WILLIAM F. FUNK & RICHARD H. SEAMON, ADMIN. LAW 12 (5th ed. 2016) (describing various agencies, including those that disburse entitlements and manage federal property).

⁶ These are sometimes considered the "organization acts" in Taiwan. For example, the Act of the Organization of Intellectual Property Office of Taiwan enumerates the authorities of that agency. Jingji Bu Zhihui Caichan Ju Zuzhi Tiaoli (經濟部智慧財產局組織條例) [Act of the Organization of Intellectual Property Office, Ministry of Economic Affairs] (promulgated by the Ministry of Economic Affairs, Nov. 4, 1998, amended Dec. 28, 2011) (Taiwan), FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0000061> [https://perma.cc/8D8F-CG2M].

⁷ Though administrative statutes in Taiwan do not explicitly detail that government agencies can "adjudicate" administrative controversies, government agencies are, same as that of Art. III, §1 of the United States Constitution, delegated by the legislature branch with the authority to take the first review of the actions made by their subordinates. See Suyuan Fa (訴願法) [Administrative Appeal Act] (promulgated by the Executive Yuan, Mar. 24, 1930, amended June 27, 2012) (Taiwan), Art. 1, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=GO400001> [https://perma.cc/AZ7S-VFTM] [hereinafter Administrative Appeal Act].

⁸ According to Art. 71 of the Patent Act of Taiwan, when the validity of a previously granted patent is challenged, the Specific Patent Agency will conduct a hearing in order to make its decision. Zhuanli Fa (專利法) [Patent Act] (promulgated by the Ministry of Economic Affairs, May 29, 1944, amended May 1, 2019) (Taiwan), Arts. 71, 74, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawHistory.aspx?pcode=J0070007> [https://perma.cc/XUM7-394S].

⁹ STEVEN J. CANN, ADMIN. LAW 14 (4th ed., 2006); see, e.g., *Pierce v. SEC*, 786 F.3d 1027, 1031 (D.C. Cir. 2015) (concerning an SEC investigation into a trading scheme).

upon a person,¹⁰ the dissatisfied person who directly receives the agency action¹¹ or those who are to be adversely affected or aggrieved by the action may have standing to seek judicial review¹² should they be able to prove that the government agency has legally erred in making the action.¹³ When reviewing, the court can either sustain or reverse the government agency's action, or issue a writ of mandamus¹⁴ compelling the agency that received the complaint to readdress its action in accordance with the judgment.¹⁵ Also after

¹⁰ Like the Administrative Procedure Act of the United States, a "person" normally includes an individual, partnership, corporation, association, or public or private organization other than an agency. *See* Taiwan Administrative Procedure Act Art. 96.

¹¹ A government agency's action sometimes may be referred to as "administrative action" or "administrative disposition" in Taiwan. 5 U.S.C. § 551(13) defines that agency action "includes the whole or a part of any agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act," whereas TAPA section 92 ¶ 1 defines "administrative disposition" as "a unilateral administrative act with direct external effects, rendered by an administrative authority in making a decision or taking other actions within its public authority, in respect to a specific matter in the area of public law." The similarity shared in these actions is that the government agency action is a unilateral administrative act which creates legal effect to public or specific persons.

¹² Judicial review is only available for what has been characterized as an "agency action" in substance. *See* *Pharm. Mfs. Ass'n v. Kennedy*, 471 F. Supp. 1224 (D. Md. 1971) (contemplating whether there was "agency action"); *Trucking Ass'n v. U.S.*, 755 F.2d 1292, 1293 (7th Cir. 1985) (dismissing the petition for review because the report did not constitute a "final agency action").

¹³ When proving relevance, one should explain the traceability or causality between the government agency action and the damages he has suffered or the rights that have been affected. *See, e.g.,* *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41 (1976) (holding that a federal court can only redress an injury that can be fairly traced to the challenged action of a government agency); *Bennett v. Spear*, 520 U.S. 154 (1997) (holding that judicial review turns on whether an administrative opinion constitutes "final agency action").

¹⁴ 5 U.S.C. § 706(1); Xingzheng Susong Fa (行政訴訟法) [Administrative Litigation Act] (promulgated by the Ministry of Justice, Nov. 17, 1932, amended Jan. 15, 2020) (Taiwan), Art. 5, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0030154> [<https://perma.cc/QA49-3T8W>] [hereinafter Administrative Litigation Act].

¹⁵ *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). Same as Germany, the court may specifically instruct the government agency to redress an action or decision which fully or partly meets the claims of the plaintiff. In

having inquired about litigants' willingness, the court may resort to alternative resolutions when appropriate and fair.

Since the actions of government agencies are closely related to the daily conduct of people,¹⁶ the administrative actions must conform to certain norms and not violate the fundamental principles of administrative law,¹⁷ such as the principle of proportionality,¹⁸ the principle of prohibition of arbitrary and capricious,¹⁹ and the principle of equality²⁰. And since the executive branch is originally

Germany, those legal actions are called "Verpflichtungsklage". See Verwaltungsgerichtsordnung [Administrative Court Code] § 42.

¹⁶ U.S. v. Spector, 343 U.S. 169, 179 (1952) (Jackson, J., dissenting).

Justice Jackson's dissenting opinion, joined by Justice Frankfurter, opined that:

It is not consistent which the theory of our government that the legislature should, after having defined an offense as an infamous crime, find the fact of guilt, and adjudge the punishment by one of its own agents . . . It must be remembered that the deportation proceeding is an exercise of adjudicative, not rule-making, power." This case properly illustrates how an agency action can affect citizens' lives and what attribute an agency action should be construed

¹⁷ Parts of those principles are explicitly stipulated in the law, and parts of them are inferred from the laws, mainly the Administrative Procedure Act. Administrative Procedure Act, *supra* note 2, Art. 7.

¹⁸ In the common law system, the term "principle of proportionality" is not a term that has an easily discernible meaning as it does in the civil law system. See George A. Bermann, *The Principle of Proportionality*, 26 AM. J. COMPAR. L., 415(1978). ("American law, in short, provides no easy answer to the question of proportionality in administrative action.").

¹⁹ 5 U.S.C. § 706(2)(A). A similar regulation is found in Art. 10 of the Taiwan Administrative Procedure Act, which states: "[in] exercising administrative discretion, an administrative authority shall not transgress the scope of its power of discretion set forth by law and shall comply with the purposes of the authority conferred by law or regulations." Administrative Procedure Act, Art. 10. See also *Motor Vehicle Mfrs.' Ass'n v. State Farm Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that an agency rule would be arbitrary and capricious if the agency relied on factors which Congress had not intended it to consider).

²⁰ "The so-called 'equality principle' means that unless the administrative agency has justifiable reason, it cannot commit administrative actions or treat the object differently." *Jian Nan Co. v. Intellectual Property Office, Zuigao Xinzheng Fayuan* (最高行政法院) [Supreme Administrative Court], 88 Pan Zi No. 3724 (88 年度判字第 3724 號判決) (1999) (Taiwan). The judgment fully illustrates that if people are situated in the same conditions, the government agency should, when taking any administrative action, treat every person equally unless otherwise permitted by law.

entrusted by the people as the major branch of the government to execute administrative activities,²¹ it must take into account the balance between the public interest and private rights when implementing its duties.²² As the actions of government agencies are supposed to balance both public and private interests, questions arise: should the punitive agency action continue to be executed if the involved parties' interests later change,²³ or should the agency settle the dispute with the party subject to the agency decision when circumstances surrounding the decision become unfavorable?²⁴ These questions turn into critical issues not only for the government agency who initiated the action but also for the trial court.

This article will enunciate the settlement procedure in an administrative litigation in Taiwan, and what factors shall the court consider in accordance with the law. For better understanding, this

²¹ In democratic states, the executive branches' authority is normally delegated by the legislative branch, whose members are elected by the people; therefore, the executive branches' authority is considered indirect delegation by the people. See RICHARD J. PIERCE, JR. ET AL., *ADMINISTRATIVE LAW AND PROCESS* 35 (5th ed. 2004).

²² See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970) (evaluating whether the termination of public assistance payments without an opportunity to be heard violated plaintiff's due process rights).

²³ The Taiwan Administrative Litigation Act Art. 203 ¶ 1 states that "When the situation changed unexpectedly after the public contract had been established, and the performance of that original contract is therefore considered unfair, the administrative court may, upon the request of the parties, replace the content of that contract by increasing, reducing the payment or changing, eliminating the original effect of that contract with a judgment," whereas ¶ 2 regulates that "The administrative agency, as one of the involving parties, for the sake of preventing public interests from suffering apparently significant harm, may also in accordance with the preceding paragraph petition to the court to replace the original contract with a judgment." Administrative Litigation Act, *supra* note 14, Art. 203, paras. 1–2. This stipulation is considered the "principle of situation variation."

²⁴ Whether government agencies are able to settle disputes with private counterparts has been a controversial issue in the administrative law domain. Negative opinion believes that government agencies can only process public affairs in accordance with the laws without sacrificing public interest, however, positive opinion considers that it is not as good as settlement when government agencies have to exhaust a great amount of public resources for a vague result of fact and legal disputes. See CHEN CHING-HSIU, *ADMINISTRATIVE LITIGATION LAW*, 567–568 (2013) (outlining the supporting and dissenting opinions for administrative litigation settlement).

article will also introduce the Fair Trade Commission of Taiwan (TFTC) sanction of Qualcomm Inc. for violating the Fair Trade Act between 2015 and 2017. This case ended with a court settlement, which precisely depicts how an administrative dispute can be settled through an alternative resolution procedure rather than through the courts.

II. SETTLEMENT IN AN ADMINISTRATIVE LITIGATION

Litigation settlements normally achieve dual effects.²⁵ One effect is the termination of the trial procedure,²⁶ and the other is the resolution of substantial disputes between litigants.²⁷ When litigants agree to settle their disputes, the content of the settlement will then supersede the original claims for which the plaintiff sued²⁸. In administrative litigation, the original agency actions will be replaced by the content of the settlement, which means the government agency bears the obligation to cancel or revoke the original actions and will be bound by the conditions of the settlement.²⁹ Since the content or conditions of the settlement will replace the original agency action, the content or conditions of the settlement should then tightly connect

²⁵ Chang Wun-Yu (張文郁), *Xingzheng Susong zhi Susong Hejie* (行政訴訟之訴訟和解) [Litigation Settlement in Administrative Litigation], 108 TAIWAN FAXUE ZAZHI (台灣法學雜誌) [Taiwan L.J.] 116, 116 (2008).

²⁶ WU GENG, THEORY AND PRACTICE OF ADMINISTRATIVE LAW, 707 (2008); TSAI CHI-FANG, NEW THEORY OF ADMINISTRATIVE RELIEF LAW, 338 (2007).

²⁷ TSAI, *supra* note 26, at 339.

²⁸ Chang, *supra* note 25, at 131.

²⁹ As regulated in Taiwan Administrative Litigation Act (TALA) Art. 222 that “If the settlement is established, its effect shall be governed by the provisions of Art. 223, Art. 214 and Art. 226.” Art. 214 ¶ 1 states “[i]n addition to the parties, the determination of the judgment is also effective for those who are the successors of the parties and those who occupy the subject matter of the request for the parties or their successors.” Additionally, Art. 216 ¶ 1 stipulates that “[a] judgment that revokes or changes the original sanction or decision shall have the effect of binding the relevant agencies in relation to the incident.” In accordance with the articles mentioned above, the conditions of the settlement shall have binding power to the involved litigants as well as various government agencies once the settlement has been completed. Administrative Litigation Act, *supra* note 14, Arts. 222, 214, 216. See also, CHEN MIN, GENERAL INTRODUCTION TO ADMINISTRATIVE LAW, 1560 (2007) (laying out the previously mentioned TALA articles).

to the subject matters of the litigation or the disputed issues.³⁰ In other words, any part of the content or conditions of the settlement which deviate from the disputed issues will not generate any adjudicative effect or substantial binding power between litigants in future judicial dispute anyway,³¹ except those who participated and negotiated in making the settlement³².

In fact, aside from litigation settlement, government agencies themselves may also settle disputes with people before the agency action or sanction is made. Taiwan Administrative Procedure Act (TAPA) article 136 states: “Where an administrative authority is unable to determine the facts or the legal relations as the basis for an administrative disposition notwithstanding an inquisition process having been conducted *ex officio*, it may enter into a compromise or an administrative contract with a citizen in lieu of administrative

³⁰ CHEN, *supra* note 29, at 1558. For instance, according to Art. 7 of TALA, “[w]hen an administrative lawsuit is filed, it is possible to combine claims for damage or other property payments in the same procedure.” Therefore, when negotiating for the contents of settlement, damages can be a negotiable issue along with the issues the plaintiff initially claimed for, even though the damages issue was not mentioned in beginning.

³¹ However, in German practice litigants may also settle any legal disputes that relate to the subject matters of the litigation. The Administrative Court Act of Germany Art. 106 states:

In order to completely or partly deal with the legal dispute, those concerned may reach a settlement for the record of the court, or of the commissioned, or requested judge insofar as they are able to dispose of the subject-matter of the settlement. A judicial settlement may also be concluded by those concerned accepting a proposal of the court, of the presiding judge or of the reporting judge issued in the form of an order, in writing *vis-a-vis* the court.

Similarly, some Taiwanese scholars believe that litigants are not bound to the disputed subject matters when negotiating for the content of the settlement. *See* LIU TZONG-DER & PENG FENG-ZHI, *ADMINISTRATIVE LAW* 496 (Weng Yueh-Sheng ed., 3d. ed. 2006) (stating that the content of settlements must be related to but does not need to be the same as the content of litigations); CHEN, *supra* note 24, at 570 (stating that the content of settlements are not limited to litigated matters).

³² *See* CHANG WUN-YU, *RIGHTS AND REMEDIES, INTERLEAVING OF SUBSTANTIALITY AND PROCEDURE* 270–271 (2014) (explaining that content or conditions exceeding the sorted disputes may still have binding power among participating parties in other civil litigation as a settlement made in private).

disposition in order to settle the dispute and to effectively achieve the purpose of administration.”³³ According to the article, the government agency may settle disputes with people either for the sake of insufficient information of the fact which it has been inquiring into, or for the uncertainty of the complexity of the legal issues.³⁴ In line with the conditions illustrated above, one can easily understand that cost is the major concern.³⁵ The above mentioned settlement, also known as the “administrative settlement,” as depicted by the plain meaning of the text of the article, can only be implemented when the government agency failed to acquire sufficient factual and legal information which is necessary for the agency to make its final actions accordingly. In other words, the government agency must have substantially engaged in the investigation of the fact and the collection of necessary evidence for the making of the final agency action and only when it was unable to complete that task can it then enter into a settlement with the citizen.³⁶ The government agency cannot simply choose to settle the dispute without first taking measures to deal with any current controversies related to the case. Settlement shall not be regarded as an alternative relief for the government agency’s inaction.³⁷

³³ Administrative Procedure Act, *supra* note 2, Art. 136.

³⁴ *Id.* The administrative settlement proceeding among government agencies and parties or persons is not mandatory in any form. Its purpose is to facilitate the ability to use the various forms of alternative dispute resolution, same as the Administrative Dispute Resolution Act, 5 U.S.C. §§ 571–584.

³⁵ Chang, *supra* note 25, at 125.

³⁶ See Lin Ming-Chiang (林明鏘), *Xingzheng Qiyue Falun—Yi Deguo Xingzheng Qiyuefa Wei Zhongxin Shipping Fawubu Xingzheng Chengxu Fa Minguo Bashisannian Siyue Caoan* (行政契約法論—以德國行政契約法為中心試評法務部行政程序法民國八十三年四月草案) [*The Theory of Administrative Contract Law—A Trial Review of the Draft of the Administrative Procedure Law of the Ministry of Justice of the Republic of China in April 1993 in Accordance with the Administrative Contract Law of Germany*], 24 (國立臺灣大學法學論叢) [NAT. TAIWAN UNI. L. J.], 143, 174 (1994) (discussing Certain types of administrative disputes that are not suitable for settlement due to specific attributes, for instance the approval of a physician license, test assessment, etc.).

³⁷ See PAUL STELKENS, HEINZ JOACHIM BONK & MICHAEL SACHS, VERWALTUNGSVERFAHRENGESETZ, 8. 2014, §55 Rn. 34 (discussing some German scholars’ belief that the government agency must have engaged in the fact finding procedure first, and only when insufficient evidence is collected can it enter into settlement with that specific person). See also Sheng Tzu-Lung (盛子龍), *Dangshiren Dui Susong Biaodi Zhi Chufenquan Zuowei Xingzheng Susong*

Compared with the administrative settlement, in litigation settlements the government agency does not have to prove that it has exhausted its ability yet is still unable to acquire sufficient factual or legal information in order to enter into a litigation settlement with the counterpart.³⁸ Litigation settlement only occurs during the time the disputes have been docketed at the court, where the legality and legitimacy of the agency action have become the subject matter waiting to be reviewed. In other words, to what extent the government agency tried to acquire the necessary information would not then be one of the issues that needs to be scrutinized.

Despite the differences between settlements made at the government agency investigation stage and those made before the court, there are still several common elements between them which will be discussed below.

The Timing of the Settlement

Article 219 paragraph 1 of the Administrative Litigation Act of Taiwan (TALA) states: “The litigation parties who have the right to dispose of the subject matter of the action, and when the settlement does not prejudice the maintenance of the public interest, the administrative court may, irrespective of the phase of the proceeding reached, try to settle at any time. A commissioned judge or an assigned judge is also authorized to do so.” According to the text of the TALA article, the settlement can be carried out at any time during the proceedings, regardless of the phases of the case.³⁹ Moreover,

Shang Hejie Zhi Rongxuxing Yaojian (當事人對訴訟標的之處分權作為行政訴訟上和解之容許性要件) [Litigants’ Disposition Rights over Subject Matters as an Admissible Element of Reconciliation in Administrative Litigation], XINGZHENG SUSONG ZHI YANTAO (YI) (行政訴訟之研討(一)) [COMPILATION OF ADMINISTRATIVE LITIGATION SEMINARS (VOL. 1)] 27-28, (Administrative Litigation Seminar ed., 2012) (arguing that settlements do not waive or lower the standard of the investigating duty of government agencies).

³⁸ Administrative Litigation Act Art. 219 does not contain the same conditions as enumerated in Administrative Procedure Act Art. 136.

³⁹ In Germany, it is also commonly believed that despite the jurisdiction and other procedural errors, litigants still can settle their disputes at a court where legitimacy is considered controversial. See MARTIN REDEKER, HANS-JOACHIM VON OERTZEN, VERWALTUNGSGERICHTSORDNUNG, 13 Aufl., 2000, §106 Rn. 5 (stating that the settlement process can be concluded at every stage of the procedure, and it is not necessary that the action be admissible); ERICH

even if the case has gone through the oral debate process, before the court has made its final decision, the settlement can still proceed.⁴⁰ However, the best timing for settlement would be at the beginning stage of the case, before the court investigates the substantive matters, and before the parties enter into the discovery stage requiring investigation of the physical matters or to debate over the sorted issues. The earlier the parties reach a settlement, the less time and cost both the court and involved parties may have to spend. If the parties express a willingness to settle after the final oral argument, the court must reopen the hearing process so that the case can be returned back to the trial stage again before the settlement proceedings can proceed. In German practice, the civil law system where Taiwan's legal system originated from, a settlement can still be advanced even if the court has made its final judgment. In this situation, the judgment will be lapsed by the settlement.⁴¹ However, such a situation may not exist in Taiwan's litigation practice, because once the court has made a final decision, the case would theoretically be considered completed and would not be possible to generate any room to establish a "litigation settlement."⁴²

As is done in litigation settlement, the government agency may compromise with the persons before the supposed government actions have been made⁴³. However, it is still not clear whether the government agency can settle amid the time the government agency has made its final action yet the dispute hasn't been docketed at the court. According to TAPA article 128, the government agency can revoke its finished action at any time if it is found to be imperfect later, therefore, once the government action is abolished by the

EYERMANN, HARALD GEIGER, VERWALTUNGSGERICHTSORDNUNG, 14. AUFL., 2000, §106 Rn. 3, 20. However, in Taiwan some scholars believe that the court that hears the case should transfer the case to the legitimate one instead of moving on to the settlement procedure. *See* CHANG, *supra* note 32, at 259 (stating that courts without jurisdiction to hear cases should transfer them to the appropriate venue rather than proceeding with settlement).

⁴⁰ Some scholars believe that even during appeal, litigants can still settle their disputes. *See generally* CHEN CHI-NAN, CODE OF CIVIL PROCEDURE, Vol. II. 297 (2001).

⁴¹ REDEKER, VON OERTZEN, *supra* note 39, at § 106 Rn. 11; EYERMANN, GEIGER, *supra* note 39, at § 106 Rn. 11.

⁴² Chang, *supra* note 25, at 117.

⁴³ LUO CHUAN XIAN (羅傳賢), XINGZHENG CHENGXU FALUN (行政程序法論) [TREATISE ON THE ADMINISTRATIVE PROCEDURE ACT] 245 (2017).

government agency itself, the situation for settlement may emerge regardless of whether the dispute has been filed at the court or not. However, for the prevention of unnecessary suspicion from the public, it is less likely the government agency would settle with persons in private before or after the dispute has been filed with the court.⁴⁴ The timing of the settlement is a complicated consideration of sensitivity and wisdom, especially more so for administrative disputes rather than for civil controversies.

Parties Involved in a Settlement

Since article 219 paragraph 1 of the TALA states that “the litigation parties . . . try to settle at any time,” all parties who are involved in the litigation can participate in the settlement process.⁴⁵ And according to article 23 of the TALA, the so-called litigation parties refer to the plaintiff, the defendant, and persons who are permitted by the court to intervene in the proceedings.⁴⁶ As a result, the persons who suffered from the agency action, normally the plaintiff, the government agency who initiated the agency action, normally the defendant, and those whose interests are affected by the agency action, normally the intervener, are allowed to participate in the proceedings of the settlement process.⁴⁷ As to the possibility of participation in the settlement proceedings of a third person who is not a plaintiff, defendant, nor intervener, in accordance with article 219 paragraph 2 of TALA, those who are not litigation parties may not be able to participate in the settlement proceedings unless it is deemed necessary by the court, and notifications are served to the

⁴⁴ Administrative Procedure Act, *supra* note 2, Art. 128. Since administrative settlement is conditioned on the basis regulated in TAPA Art. 136 that “[w]here an administrative authority is *unable to determine the facts or the legal relations* as the basis for an administrative disposition . . . , it may enter into a compromise or an administrative contract with a citizen in lieu of administrative disposition . . . ” (emphasis added) it would be pretty peculiar for the government agency to abolish its previous action which was made based on the determined facts and legal relations in exchange for entering into a settlement with the citizen before the administrative dispute is filed with the court. *Id.* Art. 136.

⁴⁵ *Id.* Art. 129.

⁴⁶ *Id.* Art. 23.

⁴⁷ See CHANG, *supra* note 32, at 254–57 (explaining how parties can participate in the settlement process to seek for remedies).

third party accordingly.⁴⁸ In addition, if the settlement proceedings are handled by the attorneys, a specific extra authorization of that power of the attorneys is required by law before they can actually handle the settlement proceedings on behalf of the parties.⁴⁹

Compared with litigation settlement, the government agency in accordance with the law does not have to notify any person who is not supposed to be issued an agency action, nor the persons whose rights might not be directly affected, in order to complete the administrative settlement.⁵⁰ One major reason for this is because an administrative settlement normally occurs early before the government agency has made its action. At this stage, the disputes only exist between the government agency and the person to which the agency action is likely to be issued. Since the agency action hasn't yet been issued, those who are going to be indirectly affected by the not yet existing agency action would then have no standing to participate in the administrative settlement, and the government agency does not have to notify any indirectly affected person to participate in the administrative settlement either.⁵¹

However, it is still unclear as to what is considered a relevant connection to the disputes a person should have in order to qualify them to intervene in litigation. No clear rule or standard of relevancy has the court expressed for persons to take a self-review of the possibility of participation of litigation in advance. It is subject to the court's discretion whether to permit any third party to intervene in litigation on a case by case basis.⁵² Depth of the involvement of the dispute or the scale of the influence to the third person constitutes the

⁴⁸ Administrative Litigation Act, *supra* note 14, Art. 219.

⁴⁹ Art. 51 ¶ 1 of TALA states that “[t]he trial attorney shall have the right to act in all litigation on the matter of their appointment. However, rejection, acceptance, withdrawal, settlement, counterclaim, appeal or retrial, and the appointment of an agent cannot be done without special authorization.” Administrative Procedure Act, *supra* note 2, Art. 51.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See, e.g., *Bo Kang Bao Co., v. New Taipei City Govern., Zuigao Xingzheng Fayuan* (最高行政法院) [Sup. Admin. Court], 108 Niandu Panzi No. 108 (108 年度判字第 108 號判決) (2019) (Taiwan) (“而所謂利害關係乃指法律上之利害關係，應就法律保護對象及規範目的等因素為綜合判斷” [the so-called “interest” [of a third party] refers to the legal interest, which should be integrally determined in accordance with factors such as the object of legal protection and the purpose of regulation]).

factors for the court to make its decision. Nevertheless, dissension over relevancy to the litigation between court and third parties isn't uncommon.

The Person Involved in the Settlement Must Have the Power of Disposition Over the Subject Matter

First of all, it must be clarified what is the “subject matter” of a litigation. The definition of the subject matter of litigation in Taiwan is widely divided,⁵³ but the so-called subject matter of the litigation settlement here refers to the content or condition of mutual concessions promised by the parties, or the content of the acts that the parties agree to do or not to do.⁵⁴ The parties involved in the settlement proceedings must have the final discretion ability over the conditions or content of the settlement, which is referred to as the power of disposition or right of disposal.⁵⁵ This rule applies to both administrative and litigation settlement.⁵⁶ If the final decision is up to another person who is not involved in the settlement proceedings, or the negotiating parties do not have right to dispose of the disputed matters, the content of the settlement then contains no binding power to the third persons and the outcome of the settlement will be of no adjudicative value.⁵⁷

⁵³ See Chang Wunyu (張文郁), *Xingzheng Susong Zhong Chexiao Susong Zhi Susong Biaodi Zhi Yanjiu* (行政訴訟中撤銷訴訟之訴訟標的之研究) [A Study on the Subject Matter of Action for Cassation], 32 FUREN FAXUE (輔仁法學) [FU JEN L. J.] 45 (2006) (illustrating diversified interpretations regarding “subject matter”).

⁵⁴ As to private persons, the right of disposition of subject matters refers to the personal right that can be resorted to administrative remedies. Rights obtained from the reflection of government agency action, policy, or those of public realm shall not be included. See Sheng, *supra* note 37, at 11 (explaining the meaning of “subject matter” in the context of mutual concessions).

⁵⁵ See CHEN, *supra* note 29, at 1559.

⁵⁶ *Id.*

⁵⁷ However, this kind of settlement can be considered a settlement outside the litigation, which still contains civil binding power among litigants. See *id.* at 21 (explaining an approach to settlement adopted in German jurisdiction).

*Settlement Must Be a Concession Among Litigants Involved*⁵⁸

The purpose of the settlement in an administrative litigation is to replace the original government agency action with the condition reached in the settlement, therefore, the content of the settlement theoretically should be more favorable or acceptable for the person who received the government agency action, and relatively, the government agency must to some extent waive part of the requirements or restrictions listed in the original agency action to a lighter degree for that person.⁵⁹ If the parties insist on their own views or interests and are unwilling to give in to each other, that is, there is no possibility of a settlement, at which situation the court will have to give its final decision instead of attempting to achieve a settlement.⁶⁰

The Outcome of Reconciliation Must Be Harmless to the Public Interest

As mentioned above, settlement can only be achieved by mutual concession from both parties; each side must to some extent waive part of his or her most favorable expectation in order to replace the original government agency action with a more favorable result. And, since government agencies are supposed to maintain and secure social order in every aspect, it may be controversial should government agencies retreat and compromise with a person who was supposed to be sanctioned or disciplined. In other words, can social order or public interest be sacrificed for or bargained away by authorities?

To answer that question, one should refer to the terminology of the law. The legal term stated in article 219 of the TALA is “no barrier to the maintenance of the public interest” instead of “good for the maintenance of the public interest.”⁶¹ Therefore, the plain interpretation of the legal language shall be that the settlement does not need to generate any benefits to the public interest, and as long as

⁵⁸ *Id.* at 33–34.

⁵⁹ See Chang, *supra* note 25, at 122 (elaborating on the purpose of settlement in an administrative litigation).

⁶⁰ See CHANG, *supra* note 32, at 262 (explaining the concept of “mutual concessions”).

⁶¹ Administrative Procedure Act, *supra* note 2, Art. 219.

the public interest can still be maintained, reconciliation proceedings may still be undergone.⁶² In addition, the interpretation of so-called “public interest” is based on the scale of overall benefits of the nation,⁶³ rather than on the interests of specific groups or industries⁶⁴. If the outcome of reconciliation is beneficial to the country as a whole, even if it is unfavorable to some groups or industries, it should still be considered unhindered to the maintenance of the public interest.⁶⁵ The court must conduct a judicial review of whether there is a conflict between the content of the settlement and the maintenance of the public interest, and if the conclusion of the review is that the settlement is detrimental to the maintenance of the public interest, then the court shall not grant it, or intervene to adjust the conditions of the settlement when necessary, even if the new conditions must slightly vary from the original.⁶⁶ However, if the conditions of settlement altered are conducive to the maintenance of the public interest, but one of the parties is unwilling to accept it, since settlement is a mutual concession agreed upon by the litigants involved, even if one of the parties expressed a desire to settle, the court still cannot force the party who disagreed to enter into the reconciliation proceedings. Therefore, at this time the reconciliation proceedings should be considered not feasible.

⁶² See LIOU & PENG, *supra* note 31 (arguing that settlements are not bound to addressing public interest).

⁶³ There is no clear definition of “public interest” either regulated by laws or interpreted by court rulings, and the term may vary in appearance as “reasonable,” “adequate,” “necessary,” “practicable,” “feasible,” or “suitable,” or combinations of them. See, e.g., WIS. STAT. ANN. §196.37(1) (West 1957) (illustrating that different terms are used to define “public interest”); Interstate Commerce Act, 49 U.S.C. §15(4) (1970) (using, but not defining, the term “public interest”).

⁶⁴ Qiu Congzhi (邱聰智), *Sifa shang Gonggong Liyi de Gainian yu Shiyong* (私法上公共利益的觀念與適用) [The Concept and Application of Public Interest in Private Law], 13 ZHONGHUA FAXUE (中華法學) [Chinese Soc’y L. J.] 9 (2009) (illustrating the attribution of “public interests”).

⁶⁵ *Id.* at 12.

⁶⁶ See LIOU & PENG, *supra* note 31, at 495 (explaining how the court can conduct a judicial review to check if a settlement is in compliance with public interest). In fact, it is quite difficult for the reviewing court to determine whether the government agency has properly balanced public interest with private benefits when the agency has decided to enter into the commitment to the settlement, especially when the conflicting interests are equally strong against each other.

The Outcome of Settlement is Equivalent to that of a Judgment

From a procedural point of view, when a settlement occurs, the case closes, and the parties are no longer in a litigation relationship. From a substantive point of view, once the parties have reached a settlement in litigation, the case's issues are generally resolved through judicial proceedings, and the settlement's effect is equivalent to a court decision.⁶⁷ Furthermore, the settlement's conditions will replace the original government action unless there are grounds for revocation, at which point the parties may request a continuation of the trial.⁶⁸ Otherwise, the settlement's outcome is akin to a court judgment.⁶⁹ In a latter case related to a settled case's subject matter, the court may not make a judgment that is different from the settlement outcome.⁷⁰ Further, any involved litigants cannot take another legal action against the other party for the same cause afterwards.⁷¹ However, the content of the settlement will only be effective between or among parties bound by settlement.⁷² The settlement does not bind those who did not participate.⁷³ If the settlement is later found to be null, void, or containing rescindable flaws, the parties may request that the court continue the trial within 30 days of the settlement date⁷⁴. If the court determines that the

⁶⁷ TALA Art. 213 regulates that “[the] subject matter of the litigation referred in the final judgment contains determined effectiveness.” According to Art. 222, Art. 213 is *mutatis mutandis* applicable to litigation settlement. Administrative Legislation Act, *supra* note 14, Arts. 213, 222.

⁶⁸ *Id.* Art. 223.

⁶⁹ See e.g., SHENG, *supra* note 37, at 34 (demonstrating that some scholars, however, consider litigation settlement an expedient measure that should not be an equivalent to court judgments).

⁷⁰ CHEN, *supra* note 24, at 575.

⁷¹ Administrative Litigation Act Art. 222 stipulates that: “Where the settlement is established, its effect shall be governed by Article 223, Article 214 and Article 226,” whereas Art. 214 ¶ 1 states: “In addition to the parties, a final judgment is also effective for those who are the successors of the parties in the litigation and those who occupy the subject matter of the request for the parties or their successors.”

⁷² Chang, *supra* note 25, at 131.

⁷³ *Id.*

⁷⁴ Administrative Litigation Act, *supra* note 14, at Art. 224 ¶ 1.

settlement proceedings indeed possess flaws, the settlement may be withdrawn and trial proceedings may continue.⁷⁵

One interesting question is whether the settlement proceedings can resume once the trial proceedings continue? The law accounts for the continuation of the trial proceedings but does not explicitly prohibit further settlement proceedings. It therefore follows that the court and the parties could once again resume settlement proceedings to obtain a new, valid settlement.

III. QUALCOMM V. TFTC

Qualcomm has a leading advantage in CDMA, WCDMA, and LTE technologies,⁷⁶ as well as a quasi-monopoly over chips for mobile devices in the Taiwanese market⁷⁷. Qualcomm possesses quite a few patents, some of which are recognized as Standard-Essential Patents (SEPs).⁷⁸ For seven consecutive years, Qualcomm operated unfairly in several ways, not only to its competitors but also to its business partners. Among other things, the company (1) refused to license its products to its competitors, with or without additional restrictions; (2) refused to provide chips to those who had not yet

⁷⁵ Administrative Litigation Act Art. 223 stipulates that: “If there are reasons for invalidity or revocation of the settlement, the parties may request that the trial be continued.” Administrative Litigation Act, *supra* note 14.

⁷⁶ *Cong Zhuanye Jishu Bujia Lai Kan Gaotong Tongxin Jingpian Shichang Duzhan Diwei* (從專利技術布局來看 高通通信晶片市場獨占地位) [Current Patent Distribution Landscape Highlights Qualcomm’s Sole Dominance in the Communication Chip Market], INNOVATION KNOWLEDGE (Apr. 12, 2017), <https://iknow.stpi.narl.org.tw/Post/Read.aspx?PostID=13321>.

⁷⁷ *Id.*

⁷⁸ A Standard-Essential Patent claims an invention which must be used to conform to a standard. As explained in *Microsoft Corp. v. Motorola Inc.*, No. C10-1823JLR, 2013 WL 2111217, ¶ 53 (W.D. Wash. Apr. 25, 2013), “A given patent is ‘essential’ to a standard if the use of the standard requires infringement of the patent, even if acceptable alternatives of that patent could have been written into the standard.” See also Mark A. Lemley, *Intell. Prop. Rights and Standard-Setting Orgs.*, 90 CALIF. L. REV. 1889 (2002) (detailing how standard-setting organizations, such as Qualcomm, respond to assertions of IP rights when licensing their patents).

licensed a Qualcomm patent; and (3) provided rebates that created exclusive supply arrangements.⁷⁹

The Taiwan Fair Trade Commission (TFTC), the sole competent authority of the Fair Trade Act, is responsible for maintaining free and fair market competition, safeguarding the interests of consumers, and promoting economic stability and prosperity.⁸⁰ The Commission possesses the authority to sanction businesses that violate the Fair Trade Act, such as concerted action or directly or indirectly prevent any other enterprises from competing by unfair means.⁸¹

Responding to public reports of trade violations,⁸² the TFTC initiated an investigation into Qualcomm in 2015, involving more than 20 domestic and foreign mobile phone manufacturers (including brand manufacturers and OEMs), along with chip suppliers and communications equipment operators.⁸³ In October 2017, the TFTC concluded that Qualcomm's restrictive patent licensing policy in the mobile device chip market constituted competition restrictions that

⁷⁹ Qualcomm conducted its business model similarly in many territories. For more details, see *District Court Decision in FTC v. Qualcomm Spawns Controversy: Four Issues to Watch on Appeal*, CROWELL MORING (Jun. 3, 2019), <https://www.crowell.com/NewsEvents/AlertsNewsletters/all/District-Court-Decision-in-FTC-v-Qualcomm-Spawns-Controversy-Four-Issues-to-Watch-on-Appeal> [<https://perma.cc/JN2P-RVMQ>].

⁸⁰ Gongping Jiaoyi Fa (公平交易法) [Fair Trade Act] (promulgated by Fair Trade Commission, Feb. 4, 1991, amended Jun. 14, 2017) (Taiwan), Art. 1, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0150002> [<https://perma.cc/F83E-DWRG>] [hereinafter Fair Trade Act].

⁸¹ *Organization and Duties*, FAIR TRADE COMM'N (Taiwan), <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=198&docid=12193> [<https://perma.cc/AUL7-PU82>] (Jan. 21, 2021, 3:28 PM).

⁸² There were two public reports in total, one of which was later withdrawn. See Gongping Jiaoyi Weiyuanhui Chufen Shu (公平交易委員會處分書) [Fair Trade Commission Sanctions], No. 106094, (2017) (Taiwan), <https://www.ftc.gov.tw/uploadDecision/561633e4-42bd-4a4f-a679-c5ae5226966b.pdf> [<https://perma.cc/NXN6-J4TJ>].

⁸³ *Id.*

violated Article 9, Section 1 of the Fair Trade Act.⁸⁴ Qualcomm subsequently faced a NT\$23.4 billion (\$733 million) fine, and was required to: (1) cease enforcing a contract clause, signed with chip competitors, that compelled them to provide sensitive distribution information such as chip price, sales counterparts, sale quantities, and product models; (2) cease its moratorium on providing chips to those who refused to license Qualcomm patents; (3) stop rebating specific companies in exchange for exclusive supply arrangements.⁸⁵ Qualcomm paid part of the fine and filed an administrative lawsuit with the Intellectual Property Court (“IP Court”) against the TFTC’s ruling⁸⁶.

Jurisdiction

According to Article 4, Paragraph 1 of TALA, “people whose legal rights or interests are infringed by illegal actions of the central or local authorities. . . may bring a lawsuit before the jurisdictional Administrative Court for a cassation judgment against the authorities who made the adverse actions.”⁸⁷ In addition, Article 48, Paragraph 1 of the Fair Trade Act also provides that “[where] disposition or decisions made by the competent authority pursuant to this Act are objected or challenged, the procedures for administrative litigation shall apply directly.”⁸⁸ The TFTC is an independent government agency⁸⁹ under the Executive Yuan (the highest executive branch in

⁸⁴ Fair Trade Act Art. 9 stipulates that Monopolistic enterprises shall not engage in any one of the following conducts: (1) directly or indirectly prevent any other enterprises from competing by unfair means; (2) improperly set, maintain or change the price for goods or the remuneration for services; (3) make a trading counterpart give preferential treatment without justification; or (4) other abusive conducts by its market power. Fair Trade Act, *supra* note 80.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Administrative Litigation Act, *supra* note 14, Art.4.

⁸⁸ Fair Trade Act, *supra* note 80, Art. 48.

⁸⁹ “Independent agency” means “a commission-type collegial organization that exercises its powers and functions independently without the supervision of other agencies, and operates autonomously unless otherwise stipulated.” Zhongyang Xingzheng Jiguan Zuzhi Jizhunfa (中央行政機關組織基準法) [Basic Code Governing Central Administrative Agencies Organizations], (promulgated by Directorate-General of Personnel Administration, Executive Yuan, June. 23, 2004, amended Feb. 3, 2010) (Taiwan), Art. 3.2, FAWUBU FAGUI

Taiwan), which, in accordance with Article 2 of the Fair Trade Act, has the authority to investigate and dispose of cases concerning Fair Trade Act violations.⁹⁰ Therefore, the sanction made by TFTC to Qualcomm is an agency action in nature, meaning any appeals undergo judicial review by the Taipei Administrative High Court.⁹¹ According to the reminders listed at the end of the TFTC's ruling, Qualcomm was informed to bring any appeals to the Taipei Administrative High Court. However, instead of suing in the Taipei Administrative High Court, Qualcomm sued the TFTC in the IP Court, a specialized court which has jurisdiction over intellectual property disputes, including relevant criminal, civil, and administrative disputes.⁹² Early in litigation, both parties had a minor dispute as to which court held jurisdiction.⁹³ The TFTC insisted that the Taipei Administrative High Court was the legitimate forum, and Qualcomm argued that the IP Court has an overlapping jurisdiction over the subject matter.⁹⁴

The IP Court was established in 2008 to respond to the urgent need of a specialized court for the vigorous development in the technology industries of Taiwan.⁹⁵ For decades, Taiwan has ranked as one of the most innovative countries in the world, especially in

ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010036> [<https://perma.cc/7MTB-HFK4>].

⁹⁰ Fair Trade Act, *supra* note 80, Art. 2.

⁹¹ See Administrative Litigation Act, *supra* note 14, Art.13 (stating that “The lawsuits of public legal persons shall be under the jurisdiction of the administrative court where the official office is located. When the organization of a public legal person is the defendant, it shall be under the jurisdiction of the administrative court where the organization is located.”). As the TFTC is located in Taipei City, any administrative complaint against the TFTC should be subject to the Taipei Administrative High Court's review.

⁹² Intellectual Property Court Organization Act, *infra* note 95, at Art. 3, ¶1.

⁹³ This information is confidential trial material and not publicly available.

⁹⁴ This information is confidential trial material and not publicly available.

⁹⁵ See *IPC—Creativity, Professionalism and Justice*, INTELL. PROP. CT. (Dec. 15, 2020) (Taiwan), <https://ipc.judicial.gov.tw/en/cp-677-4143-67051-092.html> [<https://perma.cc/K7W8-FPTU>] (describing the function and establishment of Intellectual Property Court in Taiwan).

technology.⁹⁶ Taiwan's quantity of patent applications in world major markets has long been standing in the first tier when compared with other competitors.⁹⁷ In order to meet the demand from technology industries, both domestic and overseas, the IP Court is designed to consist of well-trained senior judges and well experienced technical examination officers mainly borrowed from the Taiwan Intellectual Property Office on a three year tenure,⁹⁸ with which to ensure trials can be done with fewer technical errors through the cooperation of legal and technical experts.⁹⁹ According to the Intellectual Property Court Organization Act (the enabling act of the court) article 3 paragraph 1 subparagraph 3, the IP Court has the jurisdiction of "[f]irst instance over administrative actions and compulsory enforcement actions concerning intellectual property rights arising under the Patent Act, Trademark Act, Copyright Act, Optical Disk Act, Regulations Governing the Protection of Integrated Circuits Configuration, Species of Plants and Seedling Act, or Fair

⁹⁶ Kate Whiting, *These Are the World's 10 Most Innovative Economies*, WORLD ECON. F. (Oct. 18, 2019), <https://www.weforum.org/agenda/2019/10/these-are-the-worlds-10-most-innovative-economies>; *Taiwan's Economy Ranks 5th in Innovation Potential*, TAIWAN NEWS (Oct. 16, 2020), <https://www.taiwannews.com.tw/en/news/4031377>.

⁹⁷ See *World Intellectual Property Indicators*, WIKIPEDIA, https://en.wikipedia.org/wiki/World_Intellectual_Property_Indicators#Taiwanese_Patents (note that statistics about Taiwan are normally merged with that of China) (last accessed May 19, 2021).

⁹⁸ See *Zhihui Caichan Fayuan Zuzhi Fa* (智慧財產法院組織法) [Intellectual Property Court Organization Act] (promulgated by Presidential Order Hwa-Tzong-1-Yi-Tze No. 09600035701, Mar. 28, 2007, amended and promulgated June 4, 2014) (Taiwan), Art. 16, SIFA YUAN (司法院) [JUDICIAL YUAN], https://www.tiplo.com.tw/files/Intellectual_Property_Court_Organization_Act_2014-eng.pdf [<https://perma.cc/VSE7-J7S5>] [hereinafter Intellectual Property Court Organization Act] (stating that a Technical Examination Officer of the IP Court shall have at least master degree or above from a graduate school, and have served as a Patent Examiner or Trademark Examiner or Assistant Examiner for over six years in total with good track record, or have been a lecturer of a university for six years in total, or an assistant professor, associate professor, or professor for over three years in total, etc.).

⁹⁹ See *generally Related Laws & Regulations*, INTELL. PROP. CT. (Dec. 15, 2020) (Taiwan), <https://ipc.judicial.gov.tw/en/cp-688-4220-2a286-092.html> [<https://perma.cc/2TJQ-5X2Q>] (stating the laws and regulations regarding the technical examination officer).

Trade Act.”¹⁰⁰ As the TFTC imposition of penalty upon Qualcomm was for the improper patent licensing activities of Qualcomm, and as the patent is an intellectual property right, in theory the IP Court shall have jurisdiction over the TFTC disputed administrative agency action in this case. Since the IP Court Organization Act has so illustrated, the IP Court then agreed with Qualcomm’s argument that the Court has the jurisdiction over the case since it is an IP related fair trade dispute.¹⁰¹ The TFTC then withdrew its contrary argument.¹⁰²

Intervention in Litigation

After the case was docketed with the IP Court, a total of six companies, including Apple Inc., and Intel etc., requested to intervene on the lawsuit,¹⁰³ asserting that their legal rights or interests would have been affected by the result of the litigation. These companies all directly or indirectly have business with Qualcomm and claimed to have suffered from Qualcomm’s unfair licensing

¹⁰⁰ Intellectual Property Court Organization Act, *supra* note 98, Art. 3, ¶1.

¹⁰¹ *Id.*

¹⁰² See Minshi Susong Fa (民事訴訟法) [Taiwan Code of Civil Procedure] (promulgated by Presidential Order Hwa-Tzong-1-Yi-Tze No. 11000004871, Feb. 1, 1935, amended Nov. 28, 2018), Arts. 24, 25, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [LAWS AND REGULATIONS DATABASE OF THE REPUBLIC OF CHINA], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001> [<https://perma.cc/H9R8-T93F>] (stating in Art. 24 ¶ 1 that “[p]arties may, by agreement, designate a court of first instance to exercise jurisdiction, provided that such agreement relates to a particular legal relation[,]” and stating in Art. 25 that “[a] court obtains jurisdiction over an action where the defendant proceeds orally on the merits without contesting lack of jurisdiction[,]” which make it possible for a court to obtain jurisdiction that was previously considered absent. However, the above mentioned articles are not applicable *mutatis mutandis* in administrative litigation).

¹⁰³ See Petitioner Apple Inc., et al., Zhihui Caichan Fayuan (智慧財產法院) [Intell. Prop. Ct.], Xingzheng Caiding (行政裁定) [Admin. Ruling], 106 Xing Gongsu No. 1 (106 年度行公訴字第 1 號裁定) (2017) (Taiwan), at 1–3, <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=IPCA,106%2c%e8%a1%8c%e5%85%ac%e8%a8%b4%2c1%2c20180808%2c3> [<https://perma.cc/M78K-TR5D>] (showing that six companies, including Apple Inc. and Intel Corporation, petitioned to intervene on Qualcomm Inc.’s lawsuit with the Fair Trade Commission).

policy, from which has caused different scales of damages for each of these companies, and hence made them qualified to intervene in the litigation.¹⁰⁴ According to article 42 paragraph 1 of the TALA, if the Administrative Court finds that the outcome of the litigation proceedings may impair the rights or legal interests of a third party, the court may, ex officio, at the request of the third person, allow them to take part in the litigation proceedings independently.¹⁰⁵ Thus, any third party, even government agencies,¹⁰⁶ may apply to the court to participate in the litigation proceedings provided that they can prove to the court what interests they have in the proceedings and how their rights or legal interests may suffer, however, the court has the discretion of whether to grant it or not.¹⁰⁷ In similar situations, where the court considers that the rights or legal interests of a third party are likely to be affected by the outcome of the settlement proceedings, the court may, under its discretion, notify the third party to intervene in the settlement proceedings independently.¹⁰⁸ The purpose of the admission for a third party to participate in the proceedings is to resolve all disputes in one procedure in order to save the costs of litigation and avoid creating any contradiction among parallel or subsequent cases.¹⁰⁹

¹⁰⁴ Information based on the parties' petition to intervene and not publicly available.

¹⁰⁵ Administrative Litigation Act, *supra* note 14, Art. 42, ¶ 1.

¹⁰⁶ See Xingzheng Susong Fa (行政訴訟法) [Admin. Litig. Act] (promulgated by the Government, Nov. 17, 1932, amended Jan. 15, 2020) (Taiwan), Art. 44, FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [LAWS AND REGULATIONS DATABASE OF THE REPUBLIC OF CHINA], <https://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=a0030154> [perma.cc/748F-9XVT] (stipulating in ¶ 1 that “[i]f the administrative court believes that other administrative agencies are necessary to assist one of the parties, it may order them to participate in the litigation[,]” and stating in ¶ 2 that “[t]he administrative agencies or interested third parties in the preceding paragraph may also petition to participate”).

¹⁰⁷ CHANG WUN-YU (張文郁), *Quanli Yu Jiuji San, Shiti Yu Chengxu Zhi Jiaocuo* (權利與救濟(三)實體與程序之交錯) [*Rights and Remedies (III), Interleaving of Substantiality and Procedure*], at 257 (2014).

¹⁰⁸ Administrative Litigation Act, *supra* note 14, Art. 219 ¶ 2.

¹⁰⁹ See CHEN, *supra* note 29, at 1429 (stating that the legislative purpose of admitting a third party to intervene is mainly to protect such third party's interests, clarify the facts of the lawsuit, and save the costs of litigation by enhancing the effectiveness of the adjudication).

Another important reason for the notification of a third party to intervene on the litigation is to protect the rights of the affected third party,¹¹⁰ so that they would have the opportunity to state their opinions to the court. Once the third party has been notified to participate in the proceedings, with or without his attendance, the outcome of the judgment in accordance with the law will have binding power on the notified participants.¹¹¹ As mentioned above, the third party whose rights are affected, in accordance with the law, may apply to the court to participate not only in the trial proceedings, but also in the settlement proceedings.¹¹² The major difference between participation in settlement and participation in litigation is that in the trial proceedings, the court may ex officio actively notify a third party to participate, while in the settlement proceedings, the court will not ex officio actively notify the third party to participate, and the third party must acquire the court's permission to participate, on which the court has the final decision whether to allow or not.¹¹³ The main consideration in the court's decision on whether to allow a third party to participate in the conciliation proceedings is necessity.¹¹⁴ Since administrative litigation settlement is an alternative solution between the plaintiff and the defendant, the outcome of the settlement may eventually supersede the original adjudication made by the government agency, or even the court's judgment. Therefore, the willingness of the plaintiff and the defendant will be the major concern, and whether or not the

¹¹⁰ See *id.* at 1431 (stating that if a third party's rights or legal interests will be negatively impacted by the result of the lawsuit, the court shall ex officio order such third party to participate in the lawsuit independently, and permit such third party to participate in the lawsuit according to such third party's petition).

¹¹¹ See Administrative Litigation Act, *supra* note 14, Art. 47 (stating that "[i]n accordance with the provisions of articles 41 and 42, the judgment is valid not only to those who have been ordered by the administrative court to participate in the trial proceeding but also to those who received the order but failed to participate").

¹¹² Administrative Litigation Act, *supra* note 14, Art. 219 ¶ 2.

¹¹³ See CHEN, *supra* note 29, at 1429 (explaining that when the third persons or affected persons contain a co-party status in nature with one of the litigants, the notification to intervene in the litigation becomes mandatory).

¹¹⁴ See Chang, *supra* note 25, at 119 (explaining that the main reason why a third party is not considered necessary to intervene in a settlement proceeding is because the lack of disputed issues need to be adjudicated in a litigation together with litigants).

participation of a third party is helpful to the achievement of the settlement conditions will be the most important factor that the court has to consider. Thus, the law confers that the court has the discretion on the third party's request to participate in the settlement proceedings.¹¹⁵ Should the court find the third party's participation in the settlement is not necessary, or likely to create hurdles for the achievement of the settlement, the court may deny the application.

The IP Court ultimately refused Apple and others' request to participate in the proceedings.¹¹⁶ The main reason is that the imposition of the TFTC's sanction upon Qualcomm is based on the evidence collected from the independent investigation initiated by the TFTC for the purpose of securing competing market order, not for the benefit of Apple et al.¹¹⁷ Even though some of them reported Qualcomm's improper behavior to the TFTC, requesting it to initiate an investigation procedure, it still rested on the TFTC's discretion whether or not to investigate or even impose sanction upon Qualcomm. As the Supreme Administrative Court previously opined:

The petitioner is not the recipient of the government agency action. Though they did report the case, which only prompted the TFTC to initiate the investigation, the petitioner does not have any right to claim in accordance with public law. Petitioner stated that . . . if the agency sanction is revoked, it will enable Philips to continue to commit illegal acts, abuse patent rights, and expose the petitioner to long-term threats of litigation from Philips. However, the influenced part of petitioner is only the economic or other de facto benefits, which is not sufficient to prove that his rights or legal interests will be damaged by the result of this lawsuit. Therefore the petitioner's requisition to participate in this lawsuit is inconsistent with the

¹¹⁵ Administrative Litigation Act, *supra* note 14, Art. 219 ¶ 2.

¹¹⁶ See Petitioner Apple Inc., et al., *supra* note 103, at 3 (refusing petitioners' request to participate in the lawsuit).

¹¹⁷ *Id.*

above mentioned regulations and precedents. The petition is thus denied.¹¹⁸

Similarly, the agency action made by the TFTC should not in any way be considered a response to those who reported Qualcomm's improper behavior. As Qualcomm is the only one who suffered from TFTC's sanction directly, not Apple et al, and the benefits or detriments Apple et al enjoyed or suffered are only the reflection from the government agency action, so as to the related industries.¹¹⁹ Therefore, it is groundless for Apple and others to participate in the proceedings.¹²⁰

In response to the negative decision of the IP Court, Mediatek appealed to the Supreme Administrative Court, iterating that the sanction against Qualcomm substantially affected its competition ability in the market, hence qualified it to participate in the litigation.¹²¹ However, the appeal was ultimately rejected by the Supreme Administrative Court.¹²² The Supreme Administrative Court did not explain whether or not Mediatek would have been affected by TFTC's ruling, instead, the Supreme Administrative

¹¹⁸ Petitioner Princo Co., *Zuigao Xingzheng Fayuan* (最高行政法院) [Sup. Admin. Ct.], *Xingzheng Caiding* (行政裁定) [Admin. Ruling], 99 Cai Sheng No. 87 (99年裁聲字第87號裁定) (2010) (Taiwan), <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPAA,99%2c%e8%a3%81%e8%81%b2%2c87%2c20100909%2c1> [<https://perma.cc/C2FE-77KB>].

¹¹⁹ See Petitioner Apple Inc., et al., *supra* note 103.

¹²⁰ Regarding participation in litigation, one should prove to the court the interest sought to be protected is within the zone of interests guaranteed by the statute, and the causation and redressability between their adversely affected interest and the agency action. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992) (“[I]t becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury.”).

¹²¹ This information is based on the petitioner's paper and not available to public.

¹²² *Zuigao Xingzheng Fayuan* (最高行政法院) [Sup. Admin. Ct.], *Xingzheng Caiding* (行政裁定) [Admin. Ruling], 107 Cai No. 2040 (107年度裁字第2040號裁定) (2019) (Taiwan).

Court considered that there was no ground or necessity for Mediatek to participate in a case which has already been closed.¹²³

Willingness to Reconcile

After Qualcomm had filed a legal action against the TFTC, during the preliminary proceedings, the IP Court, in accordance with TALA article 219 paragraphs 1, inquired of Qualcomm and the TFTC about their willingness for settlement. Qualcomm expressed to the court its willingness to communicate further in depth with the TFTC,¹²⁴ and if possible, Qualcomm was willing to reach a settlement with the TFTC. Similarly, the TFTC attorney affirmed to convey Qualcomm's opinions to the TFTC committee for further discussion. Since Qualcomm and the TFTC both illustrated their willingness to communicate with each other, the court then requested that the two parties should negotiate with each other within a certain period of time and report the outcome of the communication to the court. After a period of four months of negotiation back and forth between the two sides, Qualcomm and the TFTC eventually reached an agreement and reported the conclusion of the negotiation to the court accordingly.

Conditions of Reconciliation

Qualcomm's settlement with the TFTC is divided into two parts, one of which is conditions both sides agreed to be disclosed to the public, and the other is to be kept confidential at the request of both parties.¹²⁵ In accordance with a press release issued by Qualcomm and the TFTC, Qualcomm committed to the following matters: (a) Qualcomm will renegotiate in good faith with domestic mobile phone manufacturers and chip suppliers, continue to provide

¹²³ Supreme Administrative Court states: "The existence of a trial case at the court premises the intervention of a third party, if the trial case has separated from the court, then there is no ground for any third party to intervene."

¹²⁴ According to the press release issued by TFTA, Qualcomm expressed its wiliness of settlement with TFTA to the Court. *See Gongping Jiaoyi Weiyuanhui Xinwen Ziliao* (公平交易委員會新聞資料) [TFTA Press Release Material], TFTA (Oct. 9, 2018), <https://www.ftc.gov.tw/upload/b5140eaa-99e4-46b3-a9f4-a65273bdcb67.pdf> [<https://perma.cc/L78T-7T84>].

¹²⁵ This information is confidential court file not available to public.

chips in accordance with FRAND¹²⁶ requirement during the time period of negotiation, and cease taking further legal actions or withdraw from all pending legal cases; (b) Qualcomm has an obligation to report to the TFTC not only the implementation situation of the agreement on a frequency of once every six months for a period of five years but also the situation of any newly signed or revised contracts with domestic mobile phone manufacturers or chip suppliers within 30 days whenever the contracts have been signed; (c) Qualcomm agreed not to dispute the \$88 million NTD fine it had paid and promised to undertake a five-year industrial investment program in Taiwan (investments including 5G cooperation, new market expansion, cooperation with start-ups and universities, and the establishment of a Taiwan based operations and manufacturing engineering center).¹²⁷

The above-mentioned settlement conditions rely on Qualcomm's sincerity and willingness to perform, in order to guarantee Qualcomm would realize the conditions in accordance with the terms of the settlement, one of the proposals suggested that Qualcomm should be required to submit a very substantial deposit, which will not be returned until Qualcomm has actually fulfilled its obligations in accordance with the settlement conditions.¹²⁸ In the end, however, this suggestion was not adopted, but alternatively, Qualcomm had to regularly report to the TFTC its progress in implementing the terms of the settlement.¹²⁹

¹²⁶ FRAND stands for fair, reasonable, and non-discriminatory licensing policy. It is a promise committed by the right holder (normally the patent right holders, especially those of SEPs) to industry standard-setting organizations ("SSOs") in exchange for the recognition of a universal standard of its innovation. SEP right holders may constitute patent right misuse or abuse if they violate the FRAND agreement in licensing business later. *See* Case C-170/13 Huawei Technologies Co. Ltd v. ZTE Corp., 2015 E.C.J., ECLI:EU:C:2015:477 (explaining the meaning of FRAND and how the term works).

¹²⁷ For details of the conditions, see *FTC News Release*, FAIR TRADE COMM'N (Aug. 10, 2019), <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=179&docid=15565> [<https://perma.cc/D9JD-5SEE>] (last visited May 28, 2021) (introducing the conditions Qualcomm agreed to undertake).

¹²⁸ TFTC commissioner opinions are recorded in TFTC file and not available for non-trial use.

¹²⁹ *Id.*

Factors Considered by the Court

In the settlement proceedings, Qualcomm agreed to renegotiate the terms of the license in good faith with the mobile phone manufacturers and to grant SEP license on a FRAND basis for mobile communications standards, while not supplying only chips during the renegotiation; for the chip supplier portion, Qualcomm undertook not to bring any action against the chip suppliers without first filing a license clause based on the principle of fairness, reasonableness, and non-discrimination clauses with the chip suppliers regarding the necessary patents for mobile communication standards.¹³⁰ And if Qualcomm signs an exhausted authorization of chips for the necessary patents for mobile communication standards or grants a third person non-claim of rights, Qualcomm will provide the same conditions to the chip suppliers.¹³¹ In addition to making these commitments and agreeing to end unfair competition in patent licensing, Qualcomm has also committed to establishing test centers in Taiwan,¹³² help improve 5G technology and product development, and assist Taiwan manufacturers to expand global markets.¹³³ The IP Court, after having considered all factors, listening to the statements from both sides, including the information of vigorous development of Taiwan's mobile communications technology, the momentum that could be generated through the cooperation of domestic and foreign experts and the benefits which could be created therefrom, granted Qualcomm's settlement with the TFTC to complete the litigation settlement process.¹³⁴ Aforementioned considerations helped encourage the court to make its final decision.

One should bear in mind that the promises Qualcomm committed in the settlement should in no way be deemed as an atonement for its past mistakes nor a free ticket for its future possible

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² The new building of the research and test center has broken ground in June 2019 in Xin Zhu. *Gaotong Xieshou Taichang Qianggong 5G, Xindalou Donggong* (高通携手台厂抢攻 5G, 新大楼动工) [Qualcomm Joins Hands with Taiwanese Factories to Break Ground on New 5G Building], LIBERTY TIMES NET (June 28, 2019), <https://ec.ltn.com.tw/article/paper/1299105> [https://perma.cc/J8HG-2JL3 (last visited Dec. 16, 2020)].

¹³³ See FTC News Release, *supra* note 127.

¹³⁴ *Id.*

fault, Qualcomm would be punished again should it fail to fulfill its duty in accordance with the conditions listed in the settlement or should it commit further improper activities in the future.¹³⁵

IV. CRITICISMS

The TFTC's Consent to Settlement Violates its Duty

Most of the criticism of the settlement agreement focused on the TFTC's end of the agreement.¹³⁶ An example of a criticism levied at the TFTC was why it believed that Qualcomm's commitment to future investments in Taiwan's 5G industries along with other promises would make up for damages caused by its improper licensing policy?¹³⁷

Before answering that question, one should understand that deciding whether to prosecute or enforce an agency's decision is entirely subjected to the agency's discretion.¹³⁸ When making a decision, each government agency, regardless of its dependency, must go through a formal procedure in order for it to reach a conclusion, regardless of whether the agency is a committee system or a purely single head system.¹³⁹ The totality of the procedure thus constitutes the mechanism of decision making, through which legitimacy and legality of government agency action will become primary issues for judicial review when dispute arise later. Throughout several rounds of negotiation during settlement

¹³⁵ *Id.* In according to the principle of res judicata, newly happened incident will not be precluded by the former judgment; therefore, Qualcomm will be subject to another punishment if it does commit another improper business activity after the settlement. *See* Administrative Litigation Act, *supra* note 14, Art. 107 ¶ 1 (9).

¹³⁶ *See* Liu Kung-Chung, *From Not Prepared to Handle, Unable to Handle, to Unwilling to Handle the Issue of Standard Essential Patent FRAND Authorization*, 296 TAIWAN L. REV. 173, 181–88 (2020) (criticizing the TFTC for reaching a settlement with Qualcomm).

¹³⁷ *Id.*

¹³⁸ *See* Heckler v. Chaney, 470 U.S. 821, 831 (1985) (“This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.”)

¹³⁹ *See* Taiwan Administrative Procedure Act, Arts. 102–09 (2002) (laying out the procedural rights the subject of an administrative disposition has to state a statement of opinion and hearing).

proceedings, Qualcomm proposed various sets of commitments it could possibly make.¹⁴⁰ Pros and cons of every proposed commitment was analyzed and debated in depth by both sides.¹⁴¹ Before the TFTC made its final decision, the contents of the settlement agreement were scrutinized by the committee members. While the TFTC committee's vote in favor of a settlement agreement was close,¹⁴² it does not imply that the TFTC's approval of the settlement was reckless or arbitrary.

One criticism of the TFTC argues that, as an independent organization,¹⁴³ the TFTC is supposed to protect the domestic market, secure the interests of consumers and ensure free and fair competition.¹⁴⁴ Therefore, if it had been proven that Qualcomm committed improper activities that hampered the domestic competition environment, the sanction imposed upon Qualcomm should have been upheld. Any factor outside the scope of ensuring fair competition, such as economic factors, should not have been taken into consideration by the TFTC. The TFTC's agreement to settle with Qualcomm weakens its authority and purpose.¹⁴⁵

¹⁴⁰ The details of the proposed commitment is confidential and therefore not publicly available.

¹⁴¹ The details of the proposed commitment is confidential and therefore not publicly available.

¹⁴² Two dissented commissioners believed to have been betrayed by their colleague and resigned after the TFTC had signed the settlement agreement with Qualcomm. See [*The TFTC*] *Agreed to Qualcomm Investment Instead of Fines—2 Fair Trade Commissioners Resigned Angrily and Criticized [the TFTC for] "Putting the Cart Before the Horse"*, UP MEDIA (Aug. 11, 2018), https://www.upmedia.mg/news_info.php?SerialNo=46061 [<https://perma.cc/Q43V-NYZQ>].

¹⁴³ Besides for the TFTC, there are five independent agencies in Taiwan. They include the National Communications Commission, the Central Bank, the Financial Supervisory Commission, the Transportation Safety Board and the Central Election Commission. These independent agencies are required to faithfully implement their duties without tilting toward any specific person, political parties, or interest groups.

¹⁴⁴ See Ceng, *infra* note 145.

¹⁴⁵ See Yan Ting-Dong & Zhang Hong Hao, *Can Qualcomm's Settlement Really Work?* HOUSEFUN [NEWS] (Aug. 11, 2018), <https://news.housefun.com.tw/news/article/100599203933.html> [<https://perma.cc/YF8V-GWCR>] (arguing that by agreeing to settle with Qualcomm, the TFTC is weakening its authority and not doing its job); Ceng Zhi-Chao, *Complexity of the Qualcomm Settlement Case*, NAT'L POL'Y FOUND. (July 3, 2019), <https://www.npf.org.tw/3/20981> [<https://perma.cc/Q6V7-YPHY>] ("The

This criticism is only partially correct. The Fair Trade Act article 1 states that “[t]his Act is enacted for the purposes of maintaining trading order, protecting consumers interests, ensuring free and fair competition, and promoting economic stability and prosperity.”¹⁴⁶ As described by the plain meaning of the Act, “economic stability and prosperity” are also factors that the TFTC must consider when executing the law.¹⁴⁷ In the Qualcomm case, the primary concern was to punish Qualcomm for its improper licensing and restrictive claims to others in the past and prohibit it from doing the same in the future.¹⁴⁸ A secondary concern was to ensure that domestic communication industries are not hampered by the agency’s actions. The first concern was achieved by imposing a large fine on Qualcomm.¹⁴⁹ As to the second concern, it could be argued that the large fine originally imposed on Qualcomm was enough to deter it from further improper activities, and that the sanctions could even help promote the domestic competitive environment. However, that argument only holds true with respect to Qualcomm’s horizontal competition. As noted earlier, Qualcomm owns many patents in CDMA, WCDMA and LTE related technologies, some of which overlap with what some Taiwan-based competitors have been

first thing that was injured was the prestige of the law enforcement of the fair as an independent agency!”).

¹⁴⁶ Fair Trade Act, *supra* note 80, Art. 1.

¹⁴⁷ See Xu You-Ning, *The Development Trend of the Qualcomm Case—The Judgment of the U.S. Federal District Court and Taiwan Fair Trade Commission’s Settlement with Qualcomm*, SCIENCE & TECHNOLOGY LAW INSTITUTE (Sept. 10, 2019), <https://stli.iii.org.tw/article-detail.aspx?no=64&tp=1&d=8322> [<https://perma.cc/Q7LB-JJFV>] (countering criticism of the TFTC’s economic development motivation in the Qualcomm settlement with the Fair Trade Law’s requirement that the legal system promote economic stability).

¹⁴⁸ See *Gaotong Longduan Shichang Xingwei, Woguo Gongpinghui Zhongfa 234 yi* (高通壟斷市場行為，我國公平會重罰234億) [Heavy Fine for Qualcomm by the Fair Trade Commission for Monopoly Practices], INNOVATION KNOWLEDGE (Oct. 12, 2017), <https://iknow.stpi.narl.org.tw/Post/Read.aspx?PostID=13852> [<https://perma.cc/DS2Z-HQXZ>].

¹⁴⁹ See *Taishang dui Gaotong de Aihenjiuge* (台廠對高通的愛恨糾葛) [Taiwanese Manufacturers’ Love-hate Relationship with Qualcomm], TECH ORANGE (Oct. 12, 2017), <https://buzzorange.com/techorange/2017/10/12/qualcomm-23billion-in-taiwan/> [<https://perma.cc/6F5E-6LMT>].

researching for a while. MediaTek,¹⁵⁰ for example, is a non-factory semiconductor company that provides system chip solutions for wireless communications, high-quality televisions, DVDs and Blu-ray discs, and also considered a horizontal competitor of Qualcomm. Companies like MediaTek think that the TFTC's sanctions against Qualcomm definitely promote a more competitive environment.¹⁵¹

However, companies that rely heavily on Qualcomm's advanced technologies would simply hope to build a firm relationship with Qualcomm and get the support they need at a reasonable price, rather than drive Qualcomm out of the Taiwan market. These companies, which have a quasi-vertical relationship with Qualcomm,¹⁵² worry that the TFTC's sanction against Qualcomm may frustrate further cooperation in many ways.¹⁵³ While allowing

¹⁵⁰ MediaTek provided a brief of amicus curiae at the United States Court of Appeals for the Ninth Circuit in support of the appellee in *FTC v. Qualcomm*. Brief for Mediatek Inc. as Amici Curiae Supporting Petitioner, Fed. Trade Comm'n v. Qualcomm Inc., 969 F.3d 974 (9th Cir. 2020) (No. 19-16122), 2019 WL 3502777.

¹⁵¹ MediaTek has being insisted that TFTC should implement its sanction against Qualcomm. Analyst considers MediaTek would be the one suffered most from the settlement. See *Gongpinghui yu Gaotong Hejie wei Changye Bandaoti ye bu Maidan* (公平會與高通和解為產業 半導體業不買單) [Fair Trade Commission Settles with Qualcomm to Help the Industry, Yet the Semiconductor Industry Doesn't Buy It], CTR. NEWS AGENCY (Aug. 10, 2018), <https://tw.news.yahoo.com/公平會與高通和解為產業-半導體業不買單-105928194.html> [<https://perma.cc/8Z85-ZR88>].

¹⁵² TSMC is one of the companies which has vertical cooperation relationship with Qualcomm, according to analysis, TFTC 's settlement with Qualcomm may further advance the domestic related industries in the future. See *Gaotong Dacheng Hejie Xuezhe: Chuangzao san Ying Jumian* (高通達成和解 學者：創造三贏局面) [Qualcomm Settles, Scholar: Win-Win for Three Parties], CTR. NEWS AGENCY (Aug. 10, 2018), <https://tw.news.yahoo.com/高通達成和解-學者-創造三贏局面-065417357.html> [<https://perma.cc/WJQ3-ESK3>].

¹⁵³ See *The Industrial Technology Research Institute Confirms that Qualcomm's 5G Cooperation Case has been Suspended*, UP MEDIA (Oct. 25, 2017), https://www.upmedia.mg/news_info.php?SerialNo=27528 [<https://perma.cc/73R9-TFWN>]. See also *Jingjibu, Gongpinghui wei Gaotong An Chaofantian* (經濟部、公平會為高通案吵翻天) [The Ministry of Economic Affairs and the Fair Trade Commission in Heated Argument Over the Qualcomm Case], CREDERE MEDIA (Oct. 26, 2017), <https://www.cmmedia.com.tw/home/articles/6354> [<https://perma.cc/AR2W-P9GH>].

Qualcomm to continue its improper licensing activities would violate Taiwan's Fair Trade Act, and is a reason for sanctioning Qualcomm, nevertheless, these sanctions would not solve the conundrum that domestic companies would encounter. Sanctions alone would not be helpful for the advancement of technology.¹⁵⁴ Voices for a peaceful multilateral beneficiary solution were equally as loud as those advocating for punishment. After thorough evaluation, the TFTC considered litigation settlement the better solution, which on the one hand can direct the once distorted and unfair competition back on track but on the other hand, it could help improve the development of local communication technology.¹⁵⁵ The TFTC's decision did not exceed the power it is delegated nor violate the purpose the Fair Trade Act is expected to achieve.¹⁵⁶ Besides, the TFTC's decision still falls

¹⁵⁴ Apple's settlement with Qualcomm in the United States somehow reflects the desperate need of cooperation for companies who have a quasi-vertical partner style relationship with Qualcomm in CDMA, WCDMA, and LTE technologies. See David Faber & Kif Leswing, *Qualcomm Surges After Announcing a Settlement with Apple over Patent Royalties*, CNBC (Updated Apr. 17, 2019, 5:49 AM), <https://www.cnbc.com/2019/04/16/apple-qualcomm-settlement-royalty-dispute-sources-say.html> [<https://perma.cc/6EQD-KPPQ>]; *Pingguo yu Gaotong Dacheng Hejie* (蘋果與高通達成和解) [Apple and Qualcomm Reaches Settlement], BUS. NEXT (Apr. 17, 2019), <https://www.bnext.com.tw/article/52952/apple-and-qualcomm-to-drop-all-litigation> [<https://perma.cc/85W8-B3NS>]. Apple case implied that cooperation, not sanction, is the better solution for the development of that specific industry.

¹⁵⁵ In a May 21, 2019 press release, the TFTC stated that after considering the benefits of the competition mechanism under the regular operation and the promotion of industrial economic benefits, it believes that settling the case, instead of taking action, will promote the public interest in addition to rapidly solving the administrative dispute. Press Release, Taiwan Fair Trade Com'n, The [Taiwan] Fair Trade Commission and Qualcomm's Litigation Settlement, <https://www.ftc.gov.tw/upload/14f21b11-a9b0-4119-b575-d475db2a93f9.pdf> [<https://perma.cc/XK3F-ZXEN>].

¹⁵⁶ Since economic stability and prosperity are explicit factors that the TFTC should consider when implementing its authority, the TFTC's settlement which was partially based on national economic benefit considerations are not arbitrary or capricious. See, e.g., *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 458 (2001) (indicating that the Environmental Protection Agency has the power to consider implementation costs with national air quality standards when making rules).

within its realm of discretion of a specialized authority, a territory in which other government branches should defer.¹⁵⁷

Transparency

Another critique for the Qualcomm settlement was the transparency of the conditions both parties agreed upon and the denial of petition for participation of concerning companies. The criticism in fact focuses on one single issue, the openness of the procedure.¹⁵⁸ Since Qualcomm and the TFTC both expressed their willingness to reach a litigation settlement at the beginning of the trial, the court had to assess the necessity of intervention of concerning companies for the achievement of the settlement respectively. As explained above, Qualcomm was the only company who directly suffered the sanction imposed by the TFTC, which thus qualified it to file a complaint against the TFTC in accordance with the law. Those who were unfairly licensed by Qualcomm, though benefited from the TFTC's agency action against Qualcomm, did not have any standing to participate in the settlement. They can only urge Qualcomm to license based on the TFTC's requirement of FRAND condition, which is purely a benefit reflected from that agency action. The reflected benefits cannot be considered a "legal right" to participate in the settlement.¹⁵⁹

Besides, part of the settlement conditions involving Qualcomm's future deployment and management worldwide, for the sake of fair competition, were considered not suitable to be released to the public.¹⁶⁰ Should those concerning companies be allowed to

¹⁵⁷ See, e.g., *Chevron U.S.A. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 866 (1984) (stating that when a challenge to an agency construction of a statutory provision centers on the wisdom of the agency's policy, the challenge will fail).

¹⁵⁸ See Liu Kung-Chung, *On the Practice and Jurisprudence of the Administrative Reconciliation of the Fair Trade Commission*, 235 TAIPEI BAR J. 68, 68 (1999) (explaining the belief shared by some scholars that the details of litigation settlement should be made public for review in order to prevent improper bargains between government agencies and private persons).

¹⁵⁹ Chang, *supra* note 25, at 119.

¹⁶⁰ Unlike the Administrative Dispute Resolution Act, 5 U.S.C. § 574, TAPA does not provide any regulation or guideline relating to the confidentiality of the dispute resolution proceedings, nor does TALA, IP Court hence referred to Intellectual Property Case Adjudication Act Art. 9 and decided not to release details of the settlement.

participate in the settlement procedure, the confidentiality of the content of the settlement would not likely be secured as expected. Therefore, the content of the settlement and the process of making the settlement possible, to some extent, will have to be kept opaque instead of transparent.

Does Qualcomm Deserve a Settlement?

Some argue that Qualcomm not only licensed with unreasonable conditions to vertical and horizontal counterparts in Taiwan, but it also behaved the same way in every major market in the world, causing it to be sanctioned by government agencies in many different jurisdictions.¹⁶¹ From a comparative perspective, the TFTC should not be the first national authority to spare Qualcomm's fault and retrieve the sanction it has imposed. The TFTC's retreat implied its inaccuracy of making the first agency action.

Qualcomm did violate many regulations and deserve harsh punishment. The TFTC's sanction not only punishes Qualcomm for its past improper activities, but also deters Qualcomm from committing further violations of the law. As punishment and deterrence are the major issues that draw public concerns, therefore, any measures that can achieve similar effects should be considered feasible options.

According to the conditions consented in the settlement, Qualcomm has agreed to not dispute the \$88 million NTD fine it has

¹⁶¹ Qualcomm was sanctioned in almost every major jurisdiction, including the US, the EU, South Korea, China, and Japan. *See JFTC Revokes Order, Finds Qualcomm Licensing Program Lawful*, QUALCOMM (Mar. 14, 2019), <https://www.qualcomm.com/news/releases/2019/03/14/jftc-revokes-order-finds-qualcomm-licensing-program-lawful> [<https://perma.cc/296G-TGEF>] (describing that the Japan Fair Trade Commission (JFTC) issued a cease-and-desist order to Qualcomm in the year 2009 confining Qualcomm from improper cross-licensing activities. Following a nine-year evidentiary proceeding, JFTC reversed the order itself). *See also Korea Fair Trade Commission defeats Qualcomm's antitrust appeal in court, but Qualcomm will appeal—and violate—further*, FOSS PATENTS (Dec. 7, 2019), <http://www.fosspatents.com/2019/12/korea-fair-trade-commission-defeats.html> [<https://perma.cc/N7AW-FSCY>] (describing the sanctioning of Qualcomm in Korea); *Qualcomm, Inc.*, FEDERAL TRADE COMMISSION (Nov. 25, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc> [<https://perma.cc/JJP6-VMCL>] (describing the sanctioning of Qualcomm in the U.S.).

paid, has promised that it will renegotiate in good faith with domestic mobile phone manufacturers and chip suppliers, has agreed to continue to provide chips in accordance with FRAND requirement during the time period of negotiation, and has agreed to cease taking further legal actions or withdraw all pending legal cases, etc., all of which seem to meet the “punishment and prevention” purpose the advocates of harsh punishment called for.¹⁶² As the TFTC never agreed to excuse Qualcomm’s future improper activities, Qualcomm might still be sanctioned should it commit any further inappropriate deeds. One might still argue that the settlement heavily relies on Qualcomm’s good will, and that an insurance which lacks any legal policy is meaningless. As pros and cons do always exist in almost every social policy and public concerns in every aspect, it is likely impossible to achieve a perfect solution and satisfy every interest group for every controversy. And, since Qualcomm is already deeply rooted in Taiwan, it seems still too early to anticipate whether Qualcomm will risk its reputation in the domestic market, and worldwide as well. Therefore, it is simply too early to conclude whether or not Qualcomm will dishonor its promises or should it deserve the settlement this far.

V. CONCLUSIONS

Government agencies, delegated by Taiwan’s Legislative Yuan (equivalent to the Congress in the U.S.), have the power to make rules, enforce policies, and punish those who violate the regulations promulgated by them; however they must still comply with legal norms when executing their duties. When making decisions, government agencies must give consideration to both the public good and private interests. When different interests are in conflict, public interests should normally prevail. However, when interpretations of public interests vary, the Legislative Yuan did not explain who will be the most suitable authority to give the final definition. The confusion can only be clarified by referring to the designer's blueprint of democracy. According to the principles of

¹⁶² See FTC News Release, *supra* note 127.

“checks and balances”¹⁶³ and “separation of powers”,¹⁶⁴ the judiciary should be the one to oversee duties or responsibility through the mechanism of judicial review of government agencies actions.¹⁶⁵ When reviewing, there are still some domains where the judicial branch is not allowed to lay its hand, such as the decision made in accordance with the expertise of a government agency.¹⁶⁶ Should the government agency action be proven not arbitrary or capricious, the judicial branch normally defers.¹⁶⁷

As explained above, government agencies are supposed to evaluate and balance contradictory interests before making decisions. In other words, any government agency made decision is supposed to have considered every relevant interest.¹⁶⁸ The court can only review the agency's actions after they have been made. And, due to the lack of resources of expertise, and for the sake of the principle of the separation of powers¹⁶⁹ and the deference to the expertise of the

¹⁶³ See Jonathan L. Entin, *Separation of Powers, the Political Branches, and the Limits of Judicial Review*, 51 OHIO L. REV. 175, 183 (1990) (detailing the principle of checks and balances and how it would be carried out).

¹⁶⁴ *Id.* at 182–186. See also KEITH WERHAN, PRINCIPLES OF ADMINISTRATIVE LAW 38–40 (2nd ed. 2014); *Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919, 958 (1983) (explaining the principle of separation of powers).

¹⁶⁵ 5 U.S.C. §§ 701–706. See also *Bowen v. Michigan Acad. Fam. Physician*, 476 U.S. 667, 670 (1986)

¹⁶⁶ See *Hearst Radio, Inc. v. FCC*, 167 F.2d 225, 227 (D.C. Cir. 1948) (describing that, other than the discretionary realm of the government agency, the agency's conduct must fall within the definition of “agency action” in order to qualify for judicial review).

¹⁶⁷ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843–44 (1984).

¹⁶⁸ In fact, TFTC formulates an internal guideline called “Principles for handling Administrative Settlement for the Fair Trade Commission,” providing the factors which should be considered when committing to administrative settlement. According to the Art. 2 of the guideline, the factors are: (1) legitimacy and appropriateness of the concession; (2) the maintenance of public interest; and (3) damages that the interested party may suffer as a result of the settlement. TFTC, <https://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=175&docid=288> [<https://perma.cc/K78B-5JC5>] (last visited May 28, 2021).

¹⁶⁹ For a better understanding of the system and function, see Keith Werhan, *Normalizing the Separation of Powers*, 70 TUL. L. REV. 2681, 2682–83 (1996) (describing the powers granted to the federal government and the separation of powers).

administrative agency, the judicial branch should not make decisions on behalf of the government agency. Unless the agency's action is inconsistent with its prior precedents or rules,¹⁷⁰ otherwise courts normally defer, even to that of the discretionary decision of distribution of regulatory benefits.¹⁷¹ As the Supreme Court of United States explained in *Heckler v. Chaney*¹⁷² that administrative decision making “often involves a complicated balancing of a number of factors which are peculiarly within [the agency’s] expertise.” However, if the interest gained from the execution of the agency action upon people is lesser than the national interest for which the action is supposed to achieve, whether to continue the agency action should then be prudently reconsidered.

Figure 1: Settlement Rate

Settlement Rate*						
High Court(Civil)				Adminis. High Court		
year	case quantity	settled**	ratio	case quantity	settled	ratio
2009	14,754	1,067	7.23%	5,983	144	2.41%
2010	14,788	1,266	8.56%	5,810	114	1.96%
2011	15,481	1,318	8.51%	4,919	89	1.81%
2012	16,311	1,183	7.25%	4,727	70	1.48%
2013	15,594	1,334	8.55%	3,252	51	1.57%
2014	17,195	1,460	8.49%	3,214	39	1.21%
2015	19,240	1,655	8.60%	3,036	67	2.21%
2016	19,023	1,698	8.93%	3,177	37	1.16%
2017	18,162	1,830	10.07%	2,928	26	0.89%

*<https://www.judicial.gov.tw/tw/lp-1820-1-xCat-08.html>(last visit:2020/6/22)
 **including successfully mediated cases

¹⁷⁰ See, e.g., *Clifford v. Peña*, 77 F.3d 1414, 1418 (D.C. Cir. 1996) (explaining that the federal agency acted consistently with prior precedents and rules); *Cardoza v. Commodity Futures Trading Comm’n*, 768 F.2d 1542, 1556 (7th Cir. 1985) (finding that CFTC need only comply and enforce its own rules).

¹⁷¹ See, e.g., *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571 (1972) (holding that a non-tenured professor is not entitled to review his dismissal even if no reasons were provided); *Berkovitz v. United States*, 486 U.S. 531, 536 (1988) (“[T]he discretionary function exception will not apply when a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow.”).

¹⁷² *Heckler v. Chaney* 470 U.S. 821, 831 (1985).

In Taiwan, it is rare to settle administrative disputes in trial proceedings, and it is even rarer to settle large monetary value administrative disputes, such as Qualcomm's case. According to the statistics (see chart above), the settlement rate of the Taiwan High Court civil cases is almost 5 to 6 times higher than the cases of the Taiwan Administrative High Court in the time period from 2009 to 2017. In the year 2017 the gap between total cases and cases settled surprisingly reached almost 10 times. One major reason for the rareness of achieving a settlement in administrative trial proceeding is the anxiety of the executive authorities' consideration for the unnecessary public suspicion a settlement may cause.¹⁷³ For example, whether or not there is any improper exchange of interests between the executive authorities and the punished persons. Unlike civil cases, administrative cases usually involve public interests or fundamental administrative principles that are applicable to all pending or future cases, sometimes even to government agencies' decision making. Therefore, compared with their colleagues in civil court, administrative court judges are more reluctant to risk the unnecessary suspicion from the public to convince the involving parties to settle the case.¹⁷⁴

Taking Qualcomm and the TFTC litigation settlement for example, after the settlement was achieved by the two parties; the involved industries have different opinions, the Control Yuan¹⁷⁵ has

¹⁷³ Other considerations like budget control from the supervisory authority and administrative supervision from superior authority etc. always make government agencies reluctant to commit to settlement in litigation. LIU & PENG, *supra* note 31, at 493.

¹⁷⁴ For details of the critiques of court dominated settlement procedure, see WU GENG & CHANG WUN-YU, ADMINISTRATIVE DISPUTE LAW 473–474 (2018) (criticizing judges for pushing parties to settle for the sole purpose of avoiding the trouble of litigating and writing court opinions).

¹⁷⁵ The Control Yuan is the highest supervision branch of the state which has the power to supervise the government and censure all public servants, including the judicial branch. According to Art. 24 of the Control Act stipulates that the Control Yuan, after investigating the work and facilities of the Executive Yuan and its subordinate organizations, shall propose corrective measures to the Executive Yuan or its subordinate organs for improvement after these measures have been deliberated and approved by the relevant committee meetings. After receiving the proposal, the Executive Yuan or related organizations shall make improvements or take other actions immediately and reply to the Control Yuan in writing. The Control Yuan can also impeach all civil servants, those in the judicial branch included. The aforementioned system was designed in accordance

proposed a correction to the TFTC,¹⁷⁶ and the Legislative Yuan¹⁷⁷ requires the Chairman of the TFTC to report to the Legislative Council,¹⁷⁸ all of which are sufficient to illustrate the challenges that may arise from the litigation settlement.

As in any trial case, the considerations or interests of both sides are always contradicted, and the outcome of the proceedings is unlikely to satisfy everyone involved. Similarly, the outcome of the settlement is unlikely to satisfy everyone whose rights or interests are affected. Reconciliation, after all, is the second-best option for both sides. From the perspective of saving litigation costs, speeding up

with the concept of Dr. Sun Yet-Sen, the founding father of the Republic of China (Taiwan). According to Dr. Sun's concept, the impeachment power of the legislative branch was separated and transferred to the Control Yuan, which constitutes a major difference between Taiwan and the Constitution of U.S. Art. 1, §§ 6-7. For more information about the political system of Taiwan, please refer to GOVERNMENT PORTAL OF THE REPUBLIC OF CHINA (TAIWAN), <https://taiwan.gov.tw/3866.php> (last visited Dec. 17, 2020).

¹⁷⁶ The Control Yuan considered that TFTC's settlement with Qualcomm, agreeing on Qualcomm's promises to sign a "no mutual complaint" contract with competitors in the industry, as well as to expand investment in exchange for fines, not only has excessively intervened in the market mechanism, but also violated the principle of prohibition of improper connection. The settlement negotiation was completed in only 4 months, and the process was hasty, the procedure was not open and transparent. The Supervisory Office of the Control Yuan therefore proposed to correct the Fair Trade Commission. See *generally Gongpinghui yu Gaotong Gongsi Dacheng Hejie* (公平會與高通公司達成和解) [Fair Trade Commission and Qualcomm Reaches Settlement], CONTROL YUAN (May 21, 2019), https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=13429 [https://perma.cc/CC2U-DVU2] (last visited Dec. 17, 2020).

¹⁷⁷ The Legislative Yuan of Taiwan has the power to decide by resolution upon statutory or budgetary (final accounts) bills, or bills concerning martial law, amnesties, declarations of war or peace, treaties, and other important affairs of the state. For details, please refer to LEGISLATIVE YUAN, REPUBLIC OF CHINA (TAIWAN) <https://www.ly.gov.tw/EngPages/List.aspx?nodeid=345> [https://perma.cc/3DEP-T8WS] (last visited Dec. 23, 2020) (describing functions of different entities in Taiwanese government).

¹⁷⁸ Zhonghua Minguo Lifa Yuan (中華民國立法院) [The Legislature Yuan of R.O.C.], *Djiujie Diqi Huiqi Jingji Weiyuanhui Dishisi Ci Quanti Weiyuan Huiyi* (第九屆第七會期經濟委員會第十四次全體委員會會議) [The Fourteenth Committee Meeting of the Seventh Session of the Ninth Term of the Economic Committee] available at <https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=33132&pid=183194> [https://perma.cc/E3DH-THVL] (Chinese version, last visited Jun. 17, 2020).

dispute resolution, and seeking the best interests of the litigants as a whole, litigation settlement still has its value. In order to reduce suspicion, the administrative court must ensure that the public interest will not be sacrificed and that the overall interests of the state can be secured. Although sometimes the benefit of litigation settlement to public interests may not emerge immediately, the efficacy of litigation settlement still cannot be ignored.

Through Qualcomm's litigation settlement with the TFTC, this paper explains the relevant provisions of Taiwan's Administrative Litigation Act on litigation settlement, as well as the role and reasoning of the court in the litigation settlement process. From a result-oriented theory, Qualcomm's case is a successful example. However, this does not mean that all administrative disputes are suitable for litigation settlement; the court still has to be cautious and prudent when handling each and every case.