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Buyers should notice common areas that should be recorded before buying presale houses

Building developer W authorized sales agency V to sell its presale houses. The sales location did not provide the purchase contract and the individual household's full title holding chart. During the sales process, sales agent V did not provide these documents to the buyer before the buyer made a deposit or down payment; the buyer saw the contract for the first time during contract signing with the building developer. After the building was completed and before hand over, building developer W notified the buyer that due to an increase in land possession of each household, the buyer had to pay the price difference according to the contract before entering the hand over process. The buyers had no choice but to pay the price difference for fear of losing their deposit for contract breach. However, building developer W did not notify the buyers that the increased land possession related to their share of the common areas (e.g., area of the car lane) and not the main building.

Buyers of presale houses have very limited information during contract signing because the presale houses have not yet taken form. The purchase contract involves payment, the rights and obligations of both parties, and common areas and share principles, which involve land area and price calculation, and the individual household's full title holding chart is a basis for determining whether common areas are shared fairly. Therefore, the two documents are enough to affect whether or not buyers proceed with the purchase and are categorized as major trade information of housing presales.


Moreover, the documents are prepared and decided by the building developer alone; it is indisputable that the building developer has the advantage in terms of information. Therefore, if during the sales process of presale houses, the building developer demands that the buyer make a cash deposit before it provides the contract, or does not provide the individual household's full title holding chart, which is used to calculate how common areas are shared between individual houses, for public viewing, distribution and take-and-read, it will be suspected of deceptive or obviously unfair conduct as stated in Article 24 of the Fair Trade Act.

In this case, although building developer W authorized sales agency V to sell its presale houses, building developer W is still obligated to disclose information; building developer W can require sales agency V to place the purchase contract and individual household's full title holding chart on the table for buyers to read, so as to avoid violation of Article 24 of the Fair Trade Act in the event that sales agency V fails to provide them. If the building developer and sales agency can provide the two documents to buyers, it will help buyers make the correct decision and avoid unnecessary disputes in the future as a result of different perceptions.

Real estate is a type of durable consumer good, so buyers will carefully consider its potential for a rise in value and usage effectiveness. Common area items and their total size affect the ratio of public facilities, which is an important consideration of buyers, so the building developer should fully provide information

on common areas before selling presale houses. If the building developer changes share principles of common areas in the contract by itself, it will increase the ratio of public facilities of the buyer, but since the transaction was based on a lower ratio of public facilities as a result of incomplete information disclosed by the building developer, the building developer demanding buyers pay the price difference is obviously using its advantageous position to collect 2 payments from buyers. In this regard, if the building developer does not disclose common area items in the purchase contract, causing buyers to proceed with purchase via active deception and passive concealment of important information, it will violate Article 24 of the Fair Trade Act.

In the case although building developer W entrusted a land administrator with calculate the individual household's share of common areas, the building developer should have verified whether or not buyers were notified of the increased share before buying the house when attempting to collect the price difference from buyers. If the calculation of the individual household's share of common areas was wrong, the land administrator should have been notified to recalculate the area to avoid infringing the rights of the buyer, thereby enabling both parties to avoid unnecessary disputes and fatigue from litigation.

Finally, due to the apparent information asymmetry in presale house trading, the FTC reminds buyers to carefully take note of whether the trade information is sufficient and complete to avoid dispute. 

The Merger Between Chunghwa Telecom, EasyCard Corporation, and President Chain Store Corporation Not Prohibited but Additional Conditions Imposed

The FTC decided at its 1012th Commissioners' Meeting on March 30, 2011 that Chunghwa Telecom, EasyCard Corporation, and President Chain Store Corporation petitioned to jointly form a bonus consolidation and marketing company to merge their bonus points programs. The merger was not prohibited in accordance with Article 12(2) of the Fair Trade Act, but additional conditions were imposed.

The FTC indicated that the three participants of the proposed joint venture for the joint bonus points (a) face fierce competition from powerful competitors, (b) presently award extremely low percentages as bonus points, making the bonus points easily replaceable by other means of competition, and (c) bonus points represent no real obstacles to competitors to enter into their respective markets for telecommunications, convenience stores, and mechanisms for small payments. Therefore the proposed joint venture will not result in restricted competition in the short run. Furthermore, the three companies in question might via joint marketing campaigns achieve improved efficiency on the supply side and satisfy consumers on the demand side, achieving economies of scale on both sides and advancing the economic wellbeing of the whole society. Nonetheless, from the long-term point of view, because these three initial and other future participating companies may use the proposed joint bonus points program as a platform to

engage in activities—such as concerted campaigns, boycotts, differential treatments, or restrictions on vertical transactions—that restrict competition or result in unfair competition, there exists a concern that the proposed joint bonus program may result in nebulous restrictions on competition in the markets for telecommunications, convenience stores, and mechanisms for small payments. To ensure that the overall economic benefits of the joint venture outweigh its negative effects of restricted competition, the FTC ruled that the merger was not prohibited in accordance with Article 12(2) of the Fair Trade Act, but imposed the following nine conditions:

- 1.The three initial and future participating companies may not coerce their franchisees to inflict damage on specific companies and to refuse to supply to, purchase from, or otherwise transact with such companies.
- 2.The three initial and future participating companies may not illegally prevent the franchisees of such a future participating company from entering into exclusive transactions with their franchisor.
- 3.When engaging in joint marketing campaigns, the three initial and future participating companies and their franchisees may not illegally restrict the freedom of consumers to choose products to purchase.

4.The three initial companies may not obtain the personal and transactional data of the members of any future participating company.


5.A future participating company may not unduly refuse the participation of another company other than the three initial companies.

6.When providing services in connection with the joint bonus points program to another company other than the three initial companies, a future participating company may not unduly offer such a company discriminatory treatments or charge it unreasonable handling fees.

7.One month before starting to recruit members, a future participating company shall provide its operating procedures for safeguarding, collecting, handling, and utilizing the personal and transactional data of its members to the FTC, and

the company shall post such procedures on its website before the procedures go into effect.

8.One month before starting to recruit franchisees, a future participating company shall provide its operating procedures for promoting the joint bonus points program to the FTC, and the company shall post such procedures on its website before the procedures go into effect.

9.Before the end of March in each of the first five years of existence, a future participating company shall provide to the FTC the following information about the year before: a list of name changes to its stockholders, revenue, number of members, the conversion ratio between bonus points and cash, the number and names of franchisees, and new business items not listed in the application to join the joint bonus points program. 

The FTC Investigated Marketing Campaigns Giving out Free Glucose Machines

Diabetes is presently the chronic disease that consumes the most medical care resources. In 2010, an estimated 380 billion dollars was spent globally on the care of diabetics. All developed countries are actively engaged in activities for the prevention and self-health management of the disease. They hope that patients can monitor their blood glucose levels themselves at home in order to reduce the expenditures on their out- and in-patient care. The top four leading manufacturers of glucose machines are Roche, Johnson & Johnson, Bayer, and Abbott. Together, they capture 85% of the market worldwide. Domestically, ApexBio (transliteration: Wuding), TaiDoc (transliteration: Taibo), and Bionime (transliteration: Huaguang) are the primary publically-traded suppliers.

Diabetic patients self-checking their blood glucose levels need a glucose machine and some consumables like test strips, lancets, and alcohol swabs. Such consumable items must be discarded after each use; they cannot be reused.

Certain types of consumables fit and are usable on only a specific brand or model of a glucose machine, but not others. If you use a glucose machine from one manufacturer, you must often also buy consumable supplies from that manufacturer, creating a lock-in effect in consumers' purchase behavior.

Therefore, some manufacturers of glucose machines, in an effort to lock in the purchase of their consumables, might engage in marketing campaigns that give their glucose machines to consumers free of charge, or try to influence medical care providers to advocate for or sell their glucose machines.


The FTC in September 2010 initiated an investigation of companies engaging in activities that might have coerced, provided inducements with interest, or used other improper means to make the customers of their competitors switch and buy from them instead. The FTC sent questionnaires and conducted on-site investigations in drug store chains, medical supply stores, and pharmacists' associations in cities and counties. Investigators also interviewed major suppliers of glucose machines in Taiwan.

The investigation found out that presently there were between 1,200,000 and 1,400,000 diabetic patients in Taiwan, of which about 8,000 had type I diabetes. Because type I diabetics must self check their blood glucose several times a day, the Department of Health of the Executive Yuan granted approval for the National Health Insurance to start coverage on June 1, 2010 of up to four test strips per day per type I diabetic patient in order to lessen the financial burdens of such patients.

As to glucose machine manufacturers giving away free glucose machines, the FTC investigation's findings indicated that they did so in the public interest and out of care for type I diabetics who were poor, disadvantaged, seriously injured, or seriously ill, and that they gave out free glucose machines in response to applications from health education departments of hospitals in order to compete for the opportunity of getting this type of patient to continue using their brand of test strips. The manufacturers' donations of their machines had been for the wellbeing of the public. Furthermore, they did not stipulate that the patients had to purchase their test strips while

getting their free glucose machines, and they did not prevent the patients from accepting free glucose machines from other vendors. The patients had not been hindered from receiving free machines from multiple brands or from purchasing test strips in the open retail market. Furthermore, the national health insurance has already covered test strips for type I diabetics, who have been free to choose to obtain their insurance-covered test strips from any pharmacy under contract with the National Health Insurance. Therefore, the free gifts of glucose machines to patients do not run the risk of restricting competition nor do they interfere with fair competition in the marketplace.

For the consumers, the free glucose machines lower their cost only for the initial purchase or conversion of a glucose machine. They can still freely choose the brand of glucose machine and test strips for themselves. Furthermore, there are no significant functional differences between the blood glucose monitoring machines from various manufacturers. Through the free glucose machines or free trade-in of old glucose machines for new ones, consumers can switch to another brand of glucose machine nearly for free or at a very low cost. Therefore, in order to remain competitive for business, manufacturers eventually still have to differentiate their own products by their functionality, ease of use, and the price of their test strips.


Finally, according to the investigation conducted by the FTC, glucose machines can be obtained in the domestic market via “glucose machine combo kits”, “blood sugar test strips”, or “exchange old glucose machines for new ones”. Take kits that include a glucose machine, lancets, swabs, and test strips for example. International major brands like Roche, Johnson & Johnson, or Abbott offer the widest choices of models, and they charge the highest prices, between \$3,000 and \$4,000. Domestic brands mostly go for less than \$3,000, and some even for as low as \$1,500. As for test strips, for which many companies offer their products, the prices in Taiwan are between \$700 and \$1,200 for 50 strips, which are lower than those in neighboring countries. When manufacturers have phased out the production of test strips for older models of glucose machines, they primarily engage in campaigns to encourage the trading in of old glucose machines for new combo kits in order to help the users of the old machines transition to newer models. At present, most trade-in schemes on the market do not limit participation by the brands of the old machines, and they are priced between \$850 and \$2,450, which is a much lower price range than in the case of new combo kits. Therefore, if consumers have old glucose machines or if they are not satisfied with their current machines, they can utilize such trade-in programs offered by manufacturers to acquire new models of glucose machines from other manufacturers at preferential prices. 

Tainan City Gas Association Violated the Fair Trade Act for Preventing Competition from other Businesses

The FTC decided at its 1019th Commissioners' Meeting on May 18, 2011 that the decision of Tainan City Liquefied Gas Fuel Association (hereafter referred to as "Tainan City Gas Association") in its provisional board of supervisors meeting, which authorized the chairman to engage in actions to prevent competition from other businesses, was enough to affect the supply and demand functions of Tainan City's bottled gas distribution market, and was in violation of Article 14 (1) of the Fair Trade Act. In addition to ordering the association to immediately cease its illegal conduct in accordance with Article 41 of the Fair Trade Act, an administrative penalty of NT\$100,000 was imposed on the association.

According to the FTC, members of Tainan City Gas Association indicated that new dealers were conducting sales promotions in Li Xiang Community, Annan District. The association thus held the 2nd provisional meeting of the 15th board of supervisors

on May 16, 2009, during which it decided to authorize the chairman to handle matters associated with carving up the new dealers' customers. The chairman made notices claiming that the new dealers were not only uninsured, but also sold gas tanks under the standard weight; 10 thousand copies of each notice were sent out on May 26 and June 8, 2009.

The FTC also indicated that the contents of notices issued by Tainan City Gas Association were hard to claim as truthful. Due to information asymmetry, it was hard for consumers to determine the authenticity of the notice, thereby affecting their trade decisions. The association's conduct limited competitors from competing in the market and was enough to affect the supply and demand functions of Tainan City's bottled gas distribution market, violating Article 14(1) of the Fair Trade Act. The FTC thus imposed the above-mentioned penalties. 

Interush Inc. penalized by the FTC for violating Supervisory Regulations Governing Multi-Level Sales

The FTC resolved at its 951st Commissioners' Meeting on January 27, 2010 that as a multi-level sales business, Interush Inc., hereinafter referred to as "the company", deducted from its refund to each participant requesting to terminate participation and return merchandise NT\$900 for the setup and use of software, which was not a legally deductible item. In addition, the company established new places of business without filing the legally required change notification, it did not sign contracts with participants, and it recruited minor participants without obtaining prior written consent forms from their legal custodians. In violation of Article 23-3(2) in applying mutatis mutandis Article 23-2(2) of the Fair Trade Act, Articles 7(1), 12, and Article 16(1) of the Supervisory Regulations Governing Multi-Level Sales provided by Article 23-4 of the Fair Trade Act, the company was ordered to immediately cease the unlawful acts and an administrative fine of NT\$700,000 was imposed on it.

The FTC indicated that the merchandise being sold by the company consisted of online service kits for each unit for which it charged NT\$3,600 per month. The FTC dispatched investigators to the company's primary place of business to inspect its business operations, and the investigators found out that when the company processed a request from a participant to terminate its participation contract and return merchandise, the company bought back each unit at 90 percent of the original price of NT\$3,600,

deducted NT\$900 as software usage and setup costs, deducted the cost of actual usage during the last month at 10-day intervals, and then refunded the balance to the terminating participant.

The charge for an online service kit was a charge for a period of time, during which the participant could repeatedly use the company's service or continue to receive the offered intangible merchandise. Therefore, it was not prohibited by law that the company charged the participants at 10-day intervals for having used the company's services up to the time of the termination request.

However, the additional charge of NT\$900 for the use and setup of software was not a deductible item expressly specified in Article 23-2 of the Fair Trade Act. The act of deducting a "NT\$900 software setup and usage fee" from the refund to the participant was in violation of Article 23-3 (2) in applying mutatis mutandis Article 23-2 (2) of the Fair Trade Act.

The FTC also indicated that the company's original filing showed only one principal place of business which was in Taipei, and nowhere else. However, according to the company calendar for July 2009 that the company provided and on the company's website, the company held introductions in Taipei, Taichung, and Kaohsiung. The information packets distributed in the introductions proclaimed "Join INTERUSH, and the world is in your hands" and listed its various bonuses and "profit sharing plans". For

those introduction attendants who wished to join on the spot, the company also collected their completed application forms, which the company's speakers at the introduction took back to the company.

While inspecting the company at its principal place of business, FTC investigators found out that participation contracts from some participants had been marked as being "brought back from Taichung" or something similar. The company also admitted that those applications had been taken back from Taichung by its employees who had gone there to teach in introductions. Thus the company in fact engaged in recruiting participants in Taichung. The address of the venue in Taichung can be regarded as an additional place of business of the company. However the company in violation of Article 7(1) of

the Supervisory Regulations Governing Multi-Level Sales failed to file with the FTC for such additional place of business.

Furthermore, the FTC's investigators found out that some participants of the company had only signed up online and paid the fees to participate. They had not filled out written participation contracts. Such act was in violation of Article 12 of the Supervisory Regulations Governing Multi-Level Sales.

In addition, some participation contracts of minor participants either did not have consent forms from their legal custodians or the written consent forms were not obtained prior to participation. Such acts were in violation of Article 16(1) of the Supervisory Regulations Governing Multi-Level Sales.




Sunyi Company Violated the Fair Trade Act for not Preparing Financial Statements Certified by an Accountant in its Principal Place of Business

The FTC decided at its 1021st Commissioners' Meeting on June 1, 2011 that Sunyi International Co. (hereafter referred to as "Sunyi") did not sign a written contract containing legal items that should be recorded with participants of multi-level sales upon joining Sunyi's organization or project. Sunyi was found to be in violation of Article 12(1) and Article 15(1) of the Supervisory Regulations Governing Multi-Level Sales, which was established in accordance with Article 23-4 of the Fair Trade Act, for not preparing financial statements certified by an accountant in its principal place of business. The FTC thus ordered that Sunyi sign a written contract containing legal items that should be recorded with participants and prepare financial statements for the previous year certified by an accountant in its principal place of business within 30 days after the disciplinary citation was delivered. It was also served an administrative penalty of NT\$100,000.

The FTC indicated that multilevel sales (MLS) businesses should sign a written contract with participants upon joining their organization or project in accordance with Article 12(1) of the Supervisory Regulations Governing Multi-Level Sales; the contract

should contain legal items on the MLS system and the participant's obligations and liabilities. Furthermore, MLS businesses should prepare financial statements for the previous year certified by an accountant in its principal place of business in accordance with Article 15(1) of the Supervisory Regulations Governing Multi-Level Sales.

The FTC also indicated that it requested that Sunyi arrive at the FTC on March 29, 2011 for business inspection, during which it found that contracts Sunyi signed with participants did not contain legal items that should be recorded; the items were recorded in the company's handbook, but it did not give a handbook to the participant along with the contract. This was a violation of Article 12(1) of the Supervisory Regulations Governing Multi-Level Sales. After conducting a secondary inspection, Sunyi reported that it had been engaged in MLS since 2004, but was unable to provide financial statements for the previous year certified by an accountant, thereby violating Article 15(1) of the Supervisory Regulations Governing Multi-Level Sales. The FTC thus imposed the above-mentioned penalties. 

FTC Amends the “Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisers”

The FTC established in as early as 1999 the “Fair Trade Commission Disposal Directions (Guidelines) on the Disclosure of Information by Franchisers” with the intention to balance the access to information between franchisers and franchisees to ensure fair competition and prevent franchisers from taking advantage of information asymmetry and withholding important trading information during the franchising process and leading to a negative impact on trading order in the franchise market. Franchise businesses have boomed in recent years. Their operations involve a large number of industries and business disputes have not been uncommon. The FTC has collected related case examples, studied corresponding regulations from overseas, and analyzed and compiled patterns of franchisers’ conduct that might be in violation of the Fair Trade Act. At the same time, the FTC has also invited scholars and specialists, chain store and franchise associations, and franchise operators to attend seminars and contribute ideas. On June 7, 2011, the amendment to the “Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisers” was approved and adopted as the law enforcement criteria for the FTC and the norms for franchising practices (details of regulations are as attached.)

The key points of the updated regulations on the management conduct of franchisers include:

1. Exemplification of 8 major types of information to be disclosed: Franchisers who disclose information as regulated will not be considered to be withholding important information. The types of information to be disclosed are (1) the costs required before a franchisee begins operation (such as the franchise fee, training charges, and costs of products and capital equipment,) (2) operational expenses (such as licensing fee calculation and payment, and regular expenses for management assistance and purchases of products or raw materials,) (3) coverage of the intellectual property rights, (4) contents and approaches of management and technical assistance, (5) spread of businesses in the area and management plan, (6) spread of other franchisees and statistics on contract cancellation and termination, (7) restrictions entailed (such as terms on supply of products, raw materials, capital equipment and furnishing work, and items and quantities of products and raw materials to be purchased), and (8) conditions on change, termination and cancellation of contract and related matters.
2. Preliminary review and establishment of contract: in addition to the stipulated period allowed for review of the contract, it is set forth in the new regulation that the contract should be established in two copies for both parties to hold one copy each.

3. Competition restriction after establishment of contract: it is added in the new regulation that if a franchiser abuses its advantageous status or the dependence of its franchisee after establishing the contract to engage in differentiated treatment, tie-in sales, trading counterpart restrictions, compulsory purchase amounts, or other conduct that may lead to competition restriction or to the impediment of fair competition, it will be considered to be in violation of the Fair Trade Act.
4. The aforesaid 8 types of information to be disclosed are exemplary. If a franchiser fails to disclose other important information and such conduct is deemed likely to affect trading order, Article 24 of the Fair Trade Act will still be applied to determine whether such conduct is illegal.
5. It is also added that a franchiser's advertising and propaganda for franchisee recruitment and transactions with its franchisees should be in line with Articles 21 and 24 of the Fair Trade Act.

According to the FTC's statistics, so far the franchisers in 40 cases of illegal franchising have been sanctioned and fined NT\$8,670,000 in total. 70% of the dispositions have been administered after 2008. The FTC has particularly reminded franchise operators to study the amended contents. Besides information disclosure and the contract review period as prescribed in the original Guidelines, franchisers are also required to provide information regarding the franchise fee, supply terms, and amounts of products or raw materials to be purchased. They are required

to disclose the said information in writing, and their management conduct after the establishment of the contract, franchisee recruitment advertising and transaction behavior must remain in line with the Fair Trade Act. Meanwhile, people interested in joining a franchise to start a business are also advised to study the contract carefully before signing. They ought to request that franchisers provide complete written information so that they can thoroughly understand the rights and obligations entailed in the franchise relationship, carefully assess their capacity to join the franchise and engage in business management, and choose the right franchise system.

Attachment:

Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisers

Passed at the 359th Commission Meeting on Jun. 2 1999
 Amended at the 628th Commission Meeting on Nov. 20 2003
 Promulgated via Kung-Yi-Tzu Order No. 0920010929 on Nov. 25 2003
 Title and Point 1 amended at the 688th Commission Meeting on Jan. 13 2005
 Promulgated via Kung-Fa-Tzu Order No. 0940001302 on Feb. 24 2005
 Amended at the 894th Commission Meeting on Dec. 24 2008
 Promulgated via Kung-Yi-Tzu Order No. 0980000046 on Jan. 8 2009
 Amended at the 1019th Commission Meeting on May 18 2011
 Promulgated via Kung-Yi-Tzu Order No. 1001260594 on Jun. 7 2011

1. Background

In recent years, franchise businesses have grown very rapidly in the country and their operations involve a large number of industries. As chain store and franchising operations are built up, the numbers of competition restriction and unfair competition issues in the transactions between

franchisers and franchisees have also increased.

To maintain trading order in the franchise market and ensure fair competition between franchise businesses, the FTC has therefore analyzed and compiled patterns of conduct of franchisers that might be considered in violation of the Fair Trade Act and established this Exposition for franchisers.

2. Terminology

The terms in these Disposal Directions are defined as follows:

- A. The term “franchiser” refers to the party in a franchise operating relationship that licenses the trademark or managing approaches and assists or instructs the other party to manage the business and collects the corresponding costs for the said services.
- B. The term “franchisee” refers to the other party in the franchise operating relationship described in the preceding paragraph that uses the trademark or managing approaches licensed by the franchiser, accepts assistance or instruction from the franchiser, and pays the franchiser the corresponding costs for the said services.
- C. The term “franchise operating relationship” refers to a continuing relationship in which a franchiser licenses a franchisee through a contract to use its trademark or managing approaches and assists or instructs the franchisee to manage the business while the

franchisee pays the corresponding costs for the said services. However, purchases of products or services (hereinafter referred to as the products) at wholesale rates or lower for resale or leasing are not included.

- D. The term “corresponding costs” refers to the franchise fee, licensing fee, the training charges, as well as the expenses for the products and capital equipment a franchisee is required to pay the franchiser to establish and maintain the franchise operating relationship.

3. Disposal Directions on Disclosure of Information

Franchisers providing their trading counterparts with the important franchise information in writing within 10 days or within a reasonably determined timeframe before signing the contract shall not be considered to be withholding important information and therefore not in violation of Article 24 of the Fair Trade Act.

The important franchise information as stated in the preceding paragraph includes the following:

- A. Expenses before operation: such as the franchise fee, training charges, expenses for product purchases and capital equipment, etc., with the items, corresponding amounts and estimated total clearly listed.
- B. Expenses during operation: such as licensing fee calculation and payment, and expenses for management instruction, purchases of products and raw materials, with the items and

estimated amounts clearly listed.

- C. The trademark right, patent and copyright involved, their contents, validity periods, extent of authorization, and restrictive conditions.
- D. Contents and approaches of management assistance, training, and instruction.
- E. Plans for setting up other franchisees of the same franchise system in the franchisee's operating area.
- F. The total number and locations of franchisees of the same franchise system in the same county/ city and the statistics on the ratios of contract cancellation and termination in the previous year; the said locations may be presented in electronic documents.
- G. Restrictions entailed in the franchise operating relationship during the contract period:
 - (1) Terms on supply of products, raw materials, capital equipment and furnishing work and related matters (such as specifications and names of suppliers or contractors.)
 - (2) The items and quantities of products or raw materials to be purchased.
 - (3) Other restrictions with regard to the franchise relationship.
- H. Conditions on change, termination and termination of contract and handling approaches.

4. Contract Review and Establishment

Franchisers are required to allow at least 5 days or a reasonable timeframe determined in line with each case for their trading counterparts to review the contract before official establishment of the written contract.

The written contract shall be established in two copies for both parties to hold one copy each and the franchisers shall not refuse to comply with this regulation under any circumstances.

Franchisers who fail to comply with the regulations set forth in the two preceding paragraphs and where the conduct is regarded as likely to affect trading order can be considered to be in violation of Article 24 of the Fair Trade Act.

5. Conduct of Competition Restriction or Impediment to Fair Competition

Franchisers who abuse their relative advantageous status or the dependence of their franchisees and engage in any of the following conduct can be considered to be in violation of the Fair Trade Act:

A. Discriminative treatment

Franchisers engaging in discriminative treatment in prices, trading terms or transactions to various franchisees or other businesses at the same competition level without justifiable reasons and leading to competition restriction or impediment of fair competition can be considered to be in violation of Article 19 (2) of the Fair Trade Act.

B. Improper restrictions on franchisees

To protect their intellectual property rights, brand image and interests, or the overall business reputation of the franchise system, franchisers may impose on their franchisees necessary restrictions that are deemed reasonable in chain store and franchise operations. If franchisers abuse their relatively advantageous status or the dependence of their franchisees and impose on the business activities of their franchisees improper restrictions beyond what is deemed reasonable in chain store and franchise operations and such conduct leads to competition restriction or to the impediment of fair competition, such conduct can be considered to be in violation of Article 19 (6) of the Fair Trade Act. Likely patterns of such illegal conduct include the following:

(1) Tie-in sales

Franchisers demand that their franchisees without justifiable reasons purchase other products when purchasing certain products and the conduct is regarded likely to lead to competition restriction or to the impediment of fair competition.

(2) Trading counterpart restriction

Franchisers impose restrictions on their franchisees without justifiable reasons with regard to product sales, capital equipment,

raw materials, and furnishing work, such as the use of suppliers or contractors designated by franchisers, and such conduct is regarded likely to lead to competition restriction or to the impediment of fair competition. However, recommendation of suppliers or contractors without any binding effect is not included.

(3) Compulsory purchase amounts

Franchisers demand that their franchisees without justifiable reasons purchase specific quantities of products or raw materials and disallow returning of goods and such quantities exceed the quantities a franchisee is able to sell within a reasonable number of business days or surpass the stock quantities a franchisee requires and such conduct is regarded as being likely to lead to competition restriction or to the impediment of fair competition.

(4) Other improper restrictions that are regarded likely to lead to competition restriction or to the impediment of fair competition.

6. Deceptive or Obviously Unfair Conduct

Franchisers engaging in deceptive or obviously unfair conduct that is able to affect trading order can be considered to be in violation of Article 24 of the Fair Trade Act.

7. Other Regulations on Unfair Competition

Aiming at false and untrue advertising, comparative advertising and deceptive or obviously unfair conduct from franchisers, the FTC has also established the “Fair Trade Commission Disposal Directions (Guidelines) on Handling Cases Governed by Article 21 of the Fair Trade Act”, “Fair Trade Commission Disposal Directions (Guidelines) on Handling of Cases of Comparative Advertising”, and “Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 24 of the Fair Trade Act”. Franchisers are advised to study and abide by the related regulations.


8. Penalty Regulations for Violations against the Fair Trade Act and Legal Responsibilities

With enterprises that are in violation of the Fair Trade Act, the FTC may act in line with Article 41 of the same law to order such enterprises to cease or rectify the unlawful acts or take necessary corrective measures within a specified period and at the same time impose on such enterprises administrative fines no less than NT\$50,000 and no more than NT\$25,000,000. With those failing to cease, rectify the unlawful acts or take necessary corrective measures, the FTC may continue to order them to cease or rectify the unlawful acts or take necessary corrective measures within a specified period as well as impose administrative fines no less than NT\$100,000 and no more than

NT\$50,000,000 each time until such enterprises have ceased, rectified the unlawful acts or taken necessary corrective measures.

Those in violation of Article 19 of the Fair Trade Act and failing to cease, rectify the unlawful acts or take necessary corrective measures after the FTC has acted in line with Article 36 of the same law and ordered them to cease, rectify the unlawful acts or take necessary corrective measures or engaging in the same or similar unlawful acts again may be subject to a 2-year prison sentence or detention or administrative fines of up to NT\$50,000,000.

Franchisers in violation of the Fair Trade Act shall be held for the criminal or administrative responsibility. In addition, the franchisees in concern may also act in line with the regulations in Chapter 5 of the same law and request damage compensation.

9. These Disposal Directions(Policy Statements) only illustrate a number of types of important information that franchisers are required to disclose and certain patterns of conduct regarded in violation of the Fair Trade Act. The FTC shall make necessary supplementation or revision to rectify any deficiency found therein. When handling each case, the FTC will make its decision based on the concrete facts available. 

Overview of Multi-level Sales Business Operations and Development in 2010

Since the Fair Trade Act was enacted in 1992, we have surveyed multi-level sales (MLS) businesses on an annual basis, so as to understand the industry's current situation, provide guidance measures and satisfy requirements for making management decisions. Furthermore, in order to effectively utilize the Fair Trade Commission's (FTC) MLS business online reporting system, we have integrated existing management mechanisms of the FTC, developed innovative management concepts, and starting last year (2010) changed the annual "MLS business operation status survey" by letting businesses go online and report their status on the "MLS management system"; this was used as a basis for compiling the "2010 Report of the Online Survey on MLS Business Operations and Development." In what follows, we provide an overview of the operation and development of the MLS business in 2010.

The dynamic data used in this survey are based on figures collected throughout 2010, static data are based on figures collected at the end of 2010, and survey subjects are MLS businesses that have submitted reports before the end of 2010. Features of this survey include:

(1) Adopting a MLS management system for online reporting:

Businesses can modify their data any time during the survey period, making the data more accurate.

(2) Data are closer to the current situation of the MLS industry compared with past surveys:

Subjects of this survey not only include MLS businesses that have continued to operate at the end of 2010, but also MLS businesses that have withdrawn their reports, making the survey more consistent with the actual condition of the MLS industry throughout the year.

With regard to survey results:

(1) Number of companies that responded to the survey: This survey was conducted fully online; 392 of the 448 companies that were surveyed responded, of which 331 reported that they still implemented MLS. The number of companies (subjects that were surveyed and analyzed) that responded and still implemented MLS was the highest compared with past years.

(2) Changes in the number of participants: After a number of participants showed negative growth for the first time in 2008, it has followed an upward trend ever since. After eliminating the number of repeat participants, the number of participants at the end of 2010 was 4.57 million, and the participation rate (percentage of participants in the overall population) was roughly 19.73%.

(3) The work force of the MLS business is mainly female: The number of female participants in 2010 was 3.904 million, accounting for 68.18% of all participants. The chart below shows that the ratio of female participants has grown sequentially each year, indicating that the work force of the MLS market is mainly female.

(4) Total product of the MLS industry: The overall revenue of the industry in 2010 was NT\$60.895

billion, increasing by NT\$4.722 billion (an 8.41% growth rate) compared with the overall revenue of NT\$56.173 billion in 2009. This was the first time that the industry's revenue surpassed NT\$60 billion since 2005.

(5) Changes in business scale: A total of 10 businesses (11 businesses in 2009) had revenues of at least NT\$1 billion, totaling NT\$36.638

billion. Compared with 2009, the total revenue of each business and the average revenue of businesses with revenue of at least NT\$1 billion both increased. However, the percentage of the industry's overall revenue represented by these businesses of 60.17% was slightly lower than in 2009 (62.57%). The overall revenue of businesses with revenues between NT\$100 million and NT\$1

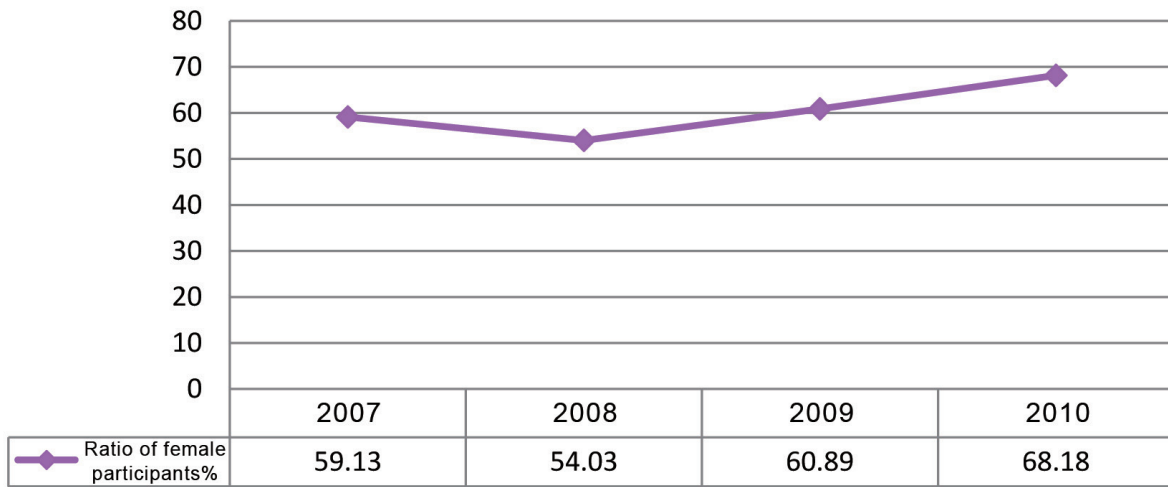


Chart 1 Ratio of female participants in 2007-2010 (The ratio of female participants has been a part of the survey since 2007)

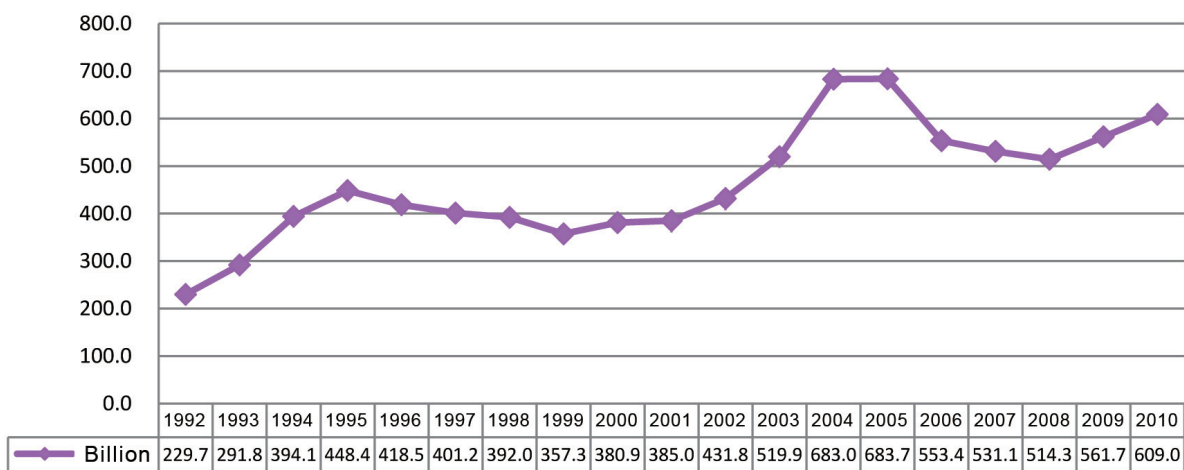


Chart 2 Revenue of the MLS industry over the years

billion increased by NT\$2.644 billion compared with 2009, and represented an additional 2.05% of the overall revenue compared with 2009. Furthermore, although only 20.24% of businesses had revenues of NT\$100 million and above, they represented 91.71% of the overall revenue. The revenues of relatively smaller businesses remained below 10% of the industry's overall revenue, and even though many MLM businesses joined the market in 2010, they were still unable to increase their market shares. This shows that the market structure of the MLS industry has not changed; the big get bigger.

(6) Number and ratio of participants who placed orders and collected bonuses (commission): The number of participants that placed orders in 2010 was 1.556 million, accounting for 27.17% of all participants; the number of participants that collected bonuses (commission) in 2010 was 819,000, accounting for 14.30% of all participants. Average commission (bonus) per participant was NT\$28,277, decreasing by NT\$1,542 compared

with the NT\$29,819 in 2009.

(7) Sales volume of MLS products by category: The majority of MLS products sold in 2010 were still health products at NT\$34.579 billion (56.78%), followed by cosmetic products at NT\$9.745 billion (16.00%), cleaning products at NT\$3.975 billion (6.53%), and other products (e.g., columbarium pagoda superior drinking water devices, which were number four in 2009) at NT\$3.163 billion (5.19%); the four categories combined represented 84.51% of the overall revenue.

(8) Outlook for future operations: The MLS industry forecasts a 55.89% growth in revenue in 2011 compared with 2010. With regard to potential issues of future operations, the effects of the economic slowdown on operations has dropped to third place, and rising competition from similar products and illegal MLS businesses to first and second place, respectively, showing that the MLS industry has freed itself from the effects of the economic slowdown and is optimistic regarding future operations and development.

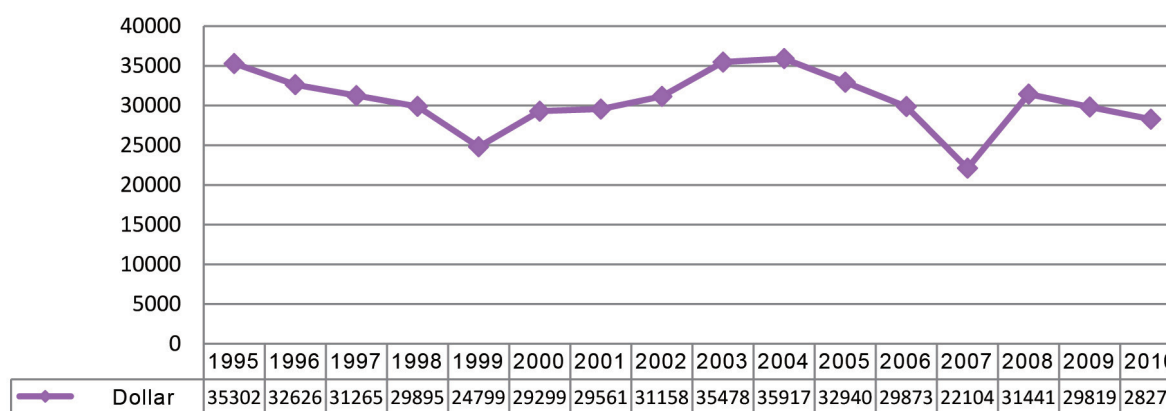


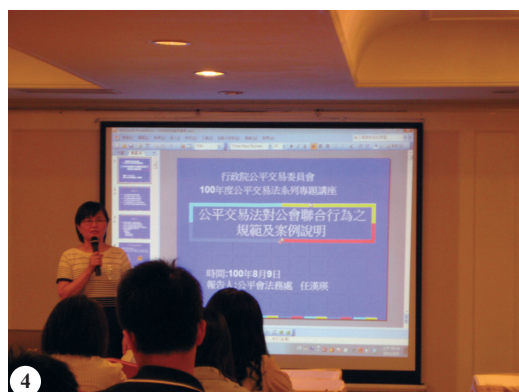
Chart 3 Average commission over the years (Note: No data exist from 1992 to 1994)

FTC Activities in July and August 2011

- ▲ On July 5, FTC Commissioner LEE Li-Chung gave the special topic lecture “Analysis of the Anti-monopoly Law of the People’s Republic of China – Using Centralized Operators as a Research Center.”
- ▲ On July 8, the FTC held the “Seminar on Establishing a Fair Competition Mechanism for Communications Media, Cable TV and Information Services” in Taipei City.
- ▲ On July 15, the FTC held the “Seminar on Establishing a Fair Competition Mechanism for Service Industry Associations” in Taipei City.
- ▲ On July 21, the FTC invited Wang Ying-Yu, Manager at the Communication Research Department, Industrial Economics and Knowledge Research Center to give a speech on “Smart Mobile Device Applications and Market Trends.”
- ▲ On July 25 and August 19, the FTC held the “Seminar on Establishing a Fair Competition Mechanism for the Financial Services Industry” in Taichung City and Taipei City.
- ▲ On July 25 and August 5, the FTC held the “Conference on Fair Trade Commission Disposal Directions (Policy Statement) on the Business Practices of Franchisers” in Taichung City and Taipei City.
- ▲ On July 26, the FTC held the “Conference on Network Advertising Behavior” in Taipei City.
- ▲ On July 26, August 1 and August 15, the FTC held the “Conference on Laws and Regulations on Multi-level Sales ” in Taipei City, Kaohsiung City and Taichung City.
- ▲ On July 28 and July 29, the FTC held the “Antitrust Law international development and case study training” in Taipei City.
- ▲ On August 2, the FTC invited Professor Ma Tai-Cheng of the Department of Economics, Chinese Culture University to give the special topic lecture “Defining Predatory Pricing.”
- ▲ On August 8, the FTC held the “Conference on Establishing a Fair Competition System for the Real Estate Services Industry” in Tainan City.
- ▲ On August 9, the FTC held the “Conference on Principles for Handling Online Advertisement Cases.”
- ▲ On August 9, the FTC held the “2011 Fair Trade Act Lecture Series – Regulations and Penalties of the Fair Trade Act on the Concerted Behavior of Associations” in Taichung City.
- ▲ On August 13 and August 18, the FTC held Fair Trade Act promotions in Tainan City and Penghu County.
- ▲ On August 19, the FTC held the “Promotion and Forum on Self-discipline of the Financial Services Industry and Fair Trade Act Related Issues” in Taipei City.

On August 23, FTC Commissioner TSAI Hwei-An gave the special topic lecture on “Market Definition of Digital Convergence Merger and Limitations of Cross-Industry Business.”

On August 29, the FTC held the “Conference on Regulations on Comparative Advertisement Cases” in Taipei City.



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FTC International exchanges in July and August 2011

- From July 6 to July 8, the FTC sent delegates to attend “The 15th International Workshop on Competition Policy” in Seoul, Korea.
- On July 6 and July 12, the FTC participated in the ICN Agency Effectiveness Working Group’s and Merger Working Group’s teleconferences.
- From July 18 to July 20, the FTC sent delegates to attend the “Workshop on Competitive Assessment and Competition Advocacy” on Jeju Island, Korea.
- On July 19, the FTC participated in the ICN Unilateral Conduct Working Group’s teleconference on the “Price-Cost Tests in Unilateral Conduct Cases.”
- From August 30 to August 31, FTC Commissioner Sun Lih-Chyun led a delegation to attend the “Seminar on the Role of Competition Authority in This Era of High Inflation” in Ho Chi Minh City.



Photo of Commissioner Sun Lih-Chyun (fourth from right) and FTC colleagues together with Mr. Trinh Anh Tuan (fifth from right), Director of the International Cooperation Board, Competition Administration Department, Ministry of Trade in Vietnam, and his colleagues at the seminar.

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