The FTC decided at the 1178th Commissioners’ Meeting on Jun. 4, 2014 that the acting chairperson of Jhongpu Township Betel Nut Suppliers Association had violated Subparagraph 4 of Article 19 of the Fair Trade Act for setting betel nut prices on his own and then instructing the staff of the association to notify the members to do business accordingly. It was an inappropriate practice to force others not to engage in price competition and competition could be restricted as a consequence. The FTC therefore determined the association had to cease the unlawful act immediately and also imposed on it an administrative fine of NT$300,000.

On Aug. 17, 2013, around the beginning of the betel nut production season in Jhongpu Township, Chiayi County, the acting chairperson of the Jhongpu Betel Nut Suppliers Association convened a routine meeting attended by the vice chairperson and supervisors representing various villages. During the meeting, the purchasing and selling prices of betel nuts were decided and the members were notified to do business accordingly. Although opinions differed with regard to whether changes should be made to current betel nut purchase approaches and the meeting was dismissed without any conclusion, the acting chairperson continued to collect betel nut supply-demand information at the request of wholesalers and betel nut farmers and eventually decided the prices on his own. The staff of the association then notified the members to buy and sell accordingly.
The acting chairperson of Jhongpu Township Betel Nut Suppliers Association decided the purchasing prices and selling prices according to the quality and sizes of betel nuts. The purpose was to set the guidelines for association members when they did business with betel nut farmers and retailers, so that retailers could not ask around, make comparisons and suppress prices, and price cuts by wholesalers to promote sales could also be prevented. This was why the association’s acting chairperson set the prices by himself after gathering enough supply-demand information and instructed the staff to notify the members to keep them from engaging in price competition. Such a practice could jeopardize the trading order of a market where competition should take place in accordance with quality, price and service. The culpable conduct against the ethics of business competition was an inappropriate measure to prevent other businesses from engaging in price competition in violation of Subparagraph 4 of Article 19 of the Fair Trade Act.
Taiwan Taxis, Longxing Taxis, Longdian Taxis, Huangxing Taxis and Fanya Taxis in Violation of Fair Trade Act for Failing to File Merger Notification before Merger

The FTC decided at the 1179th Commissioners’ Meeting on Jun. 11, 2014 that Taiwan Taxis, Longxing Taxis, Longdian Taxis, Huangxing Taxis and Fanya Taxis had violated Article 11 (1) of the Fair Trade Act for failing to file a merger notification with the FTC as required by law. The FTC therefore imposed administrative fines of NT$1.5 million on Taiwan Taxis, NT$200,000 on Longxing Taxis, NT$150,000 on Longdian Taxis, NT$100,000 on Huangxing Taxis and NT$100,000 on Fanya Taxis.

The findings of the FTC after investigation revealed that Taiwan Taxis had invested in Longxing Taxis, a new company, and gained direct control of its management and personnel appointment and dismissal by holding 70% of its shares. The situation complied with the merger types specified in Subparagraphs 2 and 5 of Article 6 (1) of the Fair Trade Act. Meanwhile, through Longxing Taxis, Taiwan Taxis had signed an agreement with Longdian Taxis that managed the Life-to-Be Taxi Fleet and Huangxing Taxis that managed the Fuxie Taxi Fleet. According to the agreement, Longdian Taxis and Huangxing Taxis were to turn over their business and assets (Life-to-Be Taxi Fleet and Fuxie Taxi Fleet) to Longxing Taxis for five years. Taiwan Taxis’ indirect control of the operations of Longdian Taxis and Huangxing Taxis through Longxing Taxis complied with the merger types specified in Subparagraphs 3 and 5 of Article 6 (1) of the Fair Trade Act. At the same time, Taiwan Taxis had also signed with Fanya Taxis an agreement according to which Fanya Taxis was to turn over its business and assets (Fanya Taxi Fleet) to Taiwan Taxis for five years and the situation also met the merger types defined in Subparagraphs 3 and 5 of Article 6 (1) of the Fair Trade Act. Moreover, Taiwan Taxis already accounted for one fourth of the taxi dispatch service market and therefore achieved the merger filing threshold prescribed in Subparagraph 2 of Article 11 (1) of the same act while none of the exemption provisions in the subparagraphs of Article 11-1 applied. Under such circumstances, Taiwan Taxis and the others had violated Article 11 (1) of the Fair Trade Act for not filing a merger notification with the FTC as required by law.

After considering the duration of the violation, the sales and market share of Taiwan Taxis and the others, the violation being the first time and taxi businesses being more disadvantaged competitors in the public transportation market, the FTC acted according to Articles 13 (1) and 40 (1) of the Fair Trade Act, imposed administrative fines of NT$1.5 million on Taiwan Taxis, NT$200,000 on Longxing Taxis, NT$150,000 on Longdian Taxis, NT$100,000 on Huangxing Taxis and NT$100,000 on Fanya Taxis, and also ordered the said companies to make necessary corrections within three months after receiving the disposition.
Taiwan Sakura in Violation of Fair Trade Act for Restricting Distributors’ Resale Prices

The FTC decided at the 1169th Commissioners’ Meeting on Apr. 2, 2014 that Taiwan Sakura Corporation (hereinafter referred to as Taiwan Sakura) had violated Article 18 of the Fair Trade Act for restricting the resale prices of its distributors. The practice deprived the retailers of their freedom to determine product prices according to the competition they faced and their management strategies and would eventually weaken intra-brand price competition between different sales channels.

In addition to ordering the company to immediately cease the unlawful act, the FTC also imposed on it an administrative fine of NT$1 million.

Taiwan Sakura sold its products through regional general distributors and their distributors who bought off the products and were responsible for corresponding business risks. Taiwan Sakura had signed a “general distributor contract” with each regional general distributor as well as an online sales agreement with each distributor engaging in online marketing. Sakura Taiwan admitted that most of those marketing online also had a physical outlet operated under a regional general distributor and both sides had signed an incentive contract.

Product pricing principles and corresponding punitive measures against violators were stipulated in the aforementioned general distributor contract and online sales agreement. As such provisions existed in the form of a contract, they definitely had their binding power and apparently restricted the freedom of the distributors to make their own pricing decisions.

Those engaging in online marketing had to sign the agreement with Taiwan Sakura in order to acquire the authorization to use the company’s trademark and related texts and images. According to general licensing regulations, such agreements should only define matters in relation to the authorization of distributorship and the licensees should have the liberty to make their price decisions. However, the said contract contained not only principles for pricing by distributors but also provisions on penalties to be imposed on distributors violating the pricing stipulations. It was obvious that Taiwan Sakura had used intellectual property right licensing as an excuse to restrict resale prices. Moreover, a large percentage of online sellers who were reported and forced to remove Sakura products had not used Taiwan Sakura’s trademark or texts and images but those selling at prices lower than the prices on Taiwan Sakura’s official website were reported as “committing infringement by using similar-looking logos” and were forced to remove such items.

Distributors failing to comply with distribution contract regulations could have their distributorship terminated, their web pages removed or their authorization revoked. Such possible results could easily turn into mental pressure and the freedom of distributors to determine prices was thus restricted. The interference and suppression from Taiwan Sakura might indeed stabilize resale prices but they could also harm the price competition mechanism of the market. The conduct was therefore in violation of Article 18 of the Fair Trade Act. Acting according to the first section of Article 41 (1) of the same act, the FTC ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of NT$1 million.
False Advertising by New Prospects in Violation of Fair Trade Act

The FTC decided at the 1174th Commissioners’ Meeting on May 7, 2014 that New Prospects Co., Ltd. (originally called New Prospects Enterprise Co., Ltd.; hereinafter referred to as New Prospects) claimed on its website that a HealthCom Medical Products franchisee’s “payback period averages between 6 and 8 months.” The wording was a false, untrue and misleading representation with regard to content of service in violation of Paragraph 3 of Article 21 of the Fair Trade Act and Paragraph 1 of the same article was applicable mutatis mutandis. In addition to ordering the company to immediately cease the unlawful act, the FTC also imposed on it an administrative fine of NT$200,000.

The informer of the case visited the HealthCom Medical Products Chain recruitment web page on the New Prospects website in early February 2012. Besides indicating that the franchise fee was NT$300,000 and the bond NT$900,000 and that the contract period was 3 years, the wording that “the payback period averages between 6 and 8 months” also appeared on the said web page. Although New Prospects contested that the payback period estimate had been based on the outlets at Far Eastern Memorial Hospital, Shuang Ho Hospital, Wan Fang Hospital and the Tri-service General Hospital in January 2012, investigations indicated that the monthly sales of these outlets had not been stable. Loss had occurred sometimes. Hence, New Prospects’ argument could not be considered well-grounded since it had estimated the payback period only based on the profitability in January 2012.

After considering the motive behind New Prospects’ illegal practice, the expected profit, the damage incurred to trading order and the duration of such damage, the FTC acted according to the first section of Article 41 of the Fair Trade Act, ordered the company to immediately cease the unlawful act, and also imposed on it an administrative fine of NT$200,000.
False Advertising by Yue Lao International in Violation of Fair Trade Act

The FTC decided at the 1178th Commissioners’ Meeting on Jun. 4, 2014 that the comparative advertisement posted by Yue Lao International Information Network Co. (hereinafter referred to as Yue Lao International) claiming the company had “the largest number of members” was a false, untrue and misleading representation with regard to quantity of service in violation of Paragraph 3 of Article 21 of the Fair Trade Act and Paragraph 1 of the same article was applicable mutatis mutandis. At the same time, Yue Lao International also falsely indicated in the “service comparison table” posted online that the businesses being compared had no “7-day review procedure” and “fund return mechanism” out of the intention to create the overall impression that the services of the other businesses were not as decent. The practice was obviously unfair conduct likely to affect trading order in violation of Article 24 of the Fair Trade Act. For the two unlawful acts, the FTC imposed an administrative fine of NT$200,000 on the company.

Yue Lao International contested that although the company claimed itself on the website as having “the largest number of members”, the same wording did not appear in the comparative advertisement in question and that comparisons made with other businesses offering paid services were related to the admission fee, fund return mechanism and 7-day review procedure items. However, during the period the advertisement was posted, Yue Lao International did not have the largest number of members among all competitors. Hence, the claim was a false, untrue and misleading representation with regard to quantity of service in violation of Paragraph 3 of Article 21 and Paragraph 1 of the same article was applicable mutatis mutandis.

In the service comparison table posted, only Yue Lao International and X Company were marked as implementing the 7-day review procedure while an X mark was indicated under all the other businesses being compared. This gave the impression that the other businesses did not implement a contract review. However, investigations showed that these other businesses did indicate in their contracts that there was a 7-day review period. Meanwhile, in the same service comparison table, only Yue Lao International and XX Company were marked as having a fund return mechanism and the other businesses being compared were indicated as not having it. This gave the impression that the said other businesses did not have a fund return mechanism yet investigations revealed that some of them did have such a mechanism. Apparently, the false indication that the other businesses being compared had neither the 7-day review procedure nor a fund return mechanism was intended to create the overall impression that the said other businesses were not as good. The practice was obviously unfair conduct likely to affect trading order in violation of Article 24 of the Fair Trade Act.
False Advertising by Shi Yun Auto in Violation of Fair Trade Act

The FTC decided at the 1181st Commissioners' Meeting on Jun. 25, 2014 that the advertisement posted by Shi Yun Automobiles (hereinafter referred to as Shi Yun Auto) on the 8891 used car website (http://swin.8891.com.tw/index.html) for the “2006 Proton Gen 2 gray series (hereinafter referred to as 2006 Proton Gen 2)” was a false, untrue and misleading representation with regard to price of product in violation of Article 21 of the Fair Trade Act. In addition to ordering the company to immediately cease the unlawful act, the FTC also imposed on it an administrative fine of NT$100,000.

Shin Yun Auto marketed the 2006 Proton Gen 2 online and posted information and pictures of the vehicle on the website. Next to the pictures was “Price: NT$100,000” without indication of any conditions. Meanwhile, the transaction record on the said website showed that the 2006 Proton Gen 2 had been “Sold” for “NT$100,000.” It gave the impression that the asking price for the car was NT$100,000 and that the car had been sold for NT$100,000. However, it turned out that the price posted on the website was only the down payment. The actual price included a bank loan of “NT$200,000 to be paid in 20 installments without interest” indicated at the bottom of the page. In other words, the actual price for a 2006 Proton Gen 2 was NT$300,000. Although a discount was given to bring the price down to NT$250,000 when the deal was closed in this case, the inconsistency between the asking and closing prices posted on the website and the actual price was already in violation of Article 21 of the Fair Trade Act.
Multi-level marketing in the country was officially placed under the regulation of a specific law when the Multi-level Marketing Supervision Act was promulgated and implemented on Jan. 29, 2014. To provide further supplementary details to the Multi-level Marketing Supervision Act, the FTC acted according to Article 40 of the Multi-level Marketing Supervision Act, established the Enforcement Rules of the Multi-level Marketing Supervision Act and promulgated them on Apr. 17, 2014 to serve as a reference in the enforcement of the Multi-level Marketing Supervision Act.

Perfecting the multi-level marketing regulatory system had always been one of the FTC's important administrative goals and, after accumulating over two decades of experience in multi-level marketing law enforcement and administration, the FTC this year finally completed the mission of enacting the Multi-level Marketing Supervision Act (hereinafter referred to as the Act) as a specific law. In different sections of the Act are stipulations on the registration of multi-level marketing businesses, multi-level marketing practices, contract cancellation and termination, business inspections, and reviewing and sanctioning procedures. To facilitate implementation of the Act and provide supplementary details, the FTC then acted according to Article 40 of the Act and established and promulgated the Enforcement Rules of the Multi-level Marketing Supervision Act (hereinafter referred to as the Enforcement Rules) to serve as reference in the application of the Act. The key provisions in the Enforcement Rules are as follows:

1. Definition of the basic information, business location, sales system and business volume of multi-level marketing enterprises

To ensure the effective administration of multi-level marketing, it is specified in Paragraph 1 of Article 6 of the Act that a multi-level marketing enterprise is required to submit related documents and data to register with the FTC before starting its operations while the basic information, business location, sales system and business volume to be filed with the FTC as set forth in Paragraph 1 of Article 6 are defined in Articles 2 and 3.

2. Business volume, sales system, and product or service information to be disclosed to participants

Besides the recruitment of others to participate in multi-level marketing schemes, the principal characteristic of multi-level marketing is the promotion and sales of products or services through the participants recruited. For this reason, the recruitment approaches are usually the key to success in multi-level marketing. In reality, however, unscrupulous multi-level marketing enterprises often exaggerate or use false, untrue or misleading advertising measures to entice people to participate. Believing that profit can easily be gained, some people hastily make the decision to join such operations without carefully assessing the likely market development of the product or service in concern. To prevent such problems, it is specified in Article 10 of the Act that multi-level marketing enterprises have the obligation not to conceal any information or make any false, untrue or misleading advertising measures to entice people to participate. Believing that profit can easily be gained, some people hastily make the decision to join such operations without carefully assessing the likely market development of the product or service in concern. To prevent such problems, it is specified in Article 10 of the Act that multi-level marketing enterprises have the obligation not to conceal any information or make any false, untrue or misleading representation before people decide to participate. To make sure that potential participants have a certain level of understanding of the size of capital and business volume of the multi-level marketing enterprise, the sales system and participant requirements, multi-level marketing regulations, the obligations and responsibility of a participant, the conditions for withdrawal and the rights and obligations thereof incurred, the product
or service in concern, and calculation of depreciation of returned products, standards and reasons, it is set forth in Articles 4 and 5 of the Enforcement Rules that multi-level enterprises are required to disclose information with regard to the business volume, sales system and the product or service of concern as specified in Paragraph 1 of Article 10 of the Act so that the rights and interests of participants can be protected.

3. Determination of change in reasonable market price in multi-level marketing and principles applied

Multi-level marketing is operated through the recruitment of others by incumbent participants to build a multi-level network to promote and sell products or services. However, certain approaches adopted may be illegal. Due to the large variety of business operation patterns in multi-level marketing, if the principal earnings of a multi-level enterprise and its participants come from such recruitment, it is a so-called pyramid scheme and eventually later participants are bound to suffer economic loss when unable to recruit enough people. In comparison, the founder or the head of the scheme has already raked in exorbitant profits without any risk and serious social problems often occur as a consequence. For this reason, Article 18 of the Act clearly stipulates that distorted multi-level marketing is prohibited while the main principles applied to assess whether the earnings of participants come from the promotion and sales of products or services at reasonable market prices are set forth in Article 6 of the Enforcement Rules, established in accordance with the FTC’s past enforcement experience.

4. Definition of the term participant as used in Paragraph 3 of Article 20 and Paragraph 3 of Article 21 of the Act

To prevent multi-level marketing enterprises from demanding that bonuses or remuneration be given to the uplines of participants canceling or terminating contracts according to Articles 20 and 21 of the Act, it is stipulated in Article 7 of the Enforcement Rules that the term participant used in Paragraph 3 of Article 20 and Paragraph 3 of the Article 21 refers only to the party canceling or terminating the contract and the subsequent handling procedure does not involve other participants.

5. Definition of product collection time to be calculated in relation to return of products upon contract termination after the cooling-off period

After the cooling-off period stated in Paragraph 1 of Article 20 of the Act, a participant may still request in writing a contract termination and the return of products. However, if the participant has already been in possession of such products for over 6 months, the return of the products is disallowed. To prevent disputes over the return of products between multi-level marketing enterprises and participants, the time period for the collection of products by participants is therefore defined in Article 8 of the Enforcement Rules.

6. Information to be recorded monthly and kept by multi-level marketing enterprises

To facilitate multi-level marketing administration and protect the confidentiality of business information at the same time, it is set forth in Paragraph 1 of Article 25 of the Act that multi-level marketing enterprises are required to record and keep their business information for the FTC to understand through its inspections their business activities and provide guidance or implement regulatory measures accordingly. To ensure that multi-level marketing enterprises are aware of what information to keep, it is specified in Article 9 of the Enforcement Rules that concrete information on company development, product or service sales, the issuance of bonuses and handling of the return of products must be kept either in writing or in electronic storage media.

7. Updating of multi-level marketing enterprise information online and training for participants

To facilitate the public’s access to and understanding
of the management development and important information related to multi-level marketing enterprises, the FTC may post a list of registered multi-level marketing enterprises and their development on the Internet. If any registered multi-level marketing enterprise is dissolved, suspends operation or closes down, the FTC may remove it from the list so that the public is aware of the situation. Meanwhile, participants must learn about related regulations and available complaint-filing channels before starting their sales practice. Multi-level marketing enterprises are required to train them in these areas.

8. Regulations regarding investigation procedure and issuance of notifications, delegated attendance, expression of statements, and acceptance of information

The regulations set forth in Article 27 of the Fair Trade Act and Article 36 of the Administrative Penalty Act are adopted and the FTC’s investigation procedure, issuance of notifications and information to be included, delegation of agents to attend on behalf of people receiving notifications, recording of statements, acceptance of information or evidence from concerned or interested parties, and issuance of receipts are specified in Articles 14 to 18 of the Enforcement Rules.

9. Factors to be taken into account in administrative fine determination

When determining fines, the FTC will take all factors into account, including the motive behind the illegal conduct, the amount of inappropriate profit expected, the level and duration of damage to trading order, the amount of unlawful gain, the violator’s business scale, whether warnings against the violation have been issued, the type and number of violations committed in the past as well as their intervals and sanctions handed down, the level of remorse, the evidence provided, and the level of cooperation throughout the investigation.
According to the FTC’s statistics, a total of 1,335 cases were processed between Jan. and Jul., 2014. Sanctions were handed down in 94 cases and 97 dispositions were issued. When analyzed by violation type (cases concerning two or more articles calculated repeatedly), 43 cases (44.3%) involved false and untrue or misleading advertising in violation of Article 21 of the Fair Trade Act. In other words, one in every 2.3 cases was false advertising (see Fig. 1).

In the past 5 years (from 2009 to the end of Jul. 2014), 621 dispositions were issued for false advertising and 808 businesses were sanctioned. When analyzed by location, 594 of these businesses, or 74%, were in the northern region. The administrative fines imposed totaled NT$222.57 million, averaging at NT$275 thousand per business. The average fine of NT$657 thousand for real estate businesses was the highest, followed by the average fine of NT$292 thousand imposed on information and communications businesses (see Table 1).

Fig. 1 Cases in Which FTC Sanctions Were Handed Down - Classified by Violation Type
(Jan. to Jul., 2014)
When analyzed by type of industry, 278 (44.8%) of the 621 cases of false and untrue or misleading advertising in violation of Article 21 of the Fair Trade Act in these 5 years happened in wholesaling and retailing industries, followed by 124 cases (20.0%) taking place in the real estate industry, 60 cases (9.7%) in the manufacturing industry, 35 cases (5.6%) in information and communications industries, 25 cases (4.0%) in the hospitality industry, 19 cases (3.1%) in specialized, technology and technical service industries, and 80 cases (12.9%) in financial and insurance, support service, educational service and other industries.

Note: the term northern region refers to Taipei City, New Taipei City, Keelung City, Taoyuan County, Hsinchu City, Hsinchu County and Yilan County.

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FTC activities in July and August 2014

On Jul. 1, Associate Professor Lee Li-chung of the School of Law of Shih Hsin University gave a lecture entitled “An Examination of International Lawsuits Resulting from Competition in the Hi-tech Industry—Using Concerted Actions and Mergers as Examples” at the invitation of the FTC.

On Jul. 17, the “Presentation on Fair Trade Commission Disposal Directions (Policy Guidelines) on Use of Endorsements and Testimonials in Advertising” was conducted at the FTC.

On Jul 22, Research Fellow Liu Kung-chung of Academia Sinica Institutum Jusprudentiae gave a lecture entitled “An Analysis of Keyword Advertising Disputes Involving the Trademark Act and the Fair Trade Act” at the invitation of the FTC.

On Aug. 5, Associate Professor Lin Ting-ji of the Graduate Institute of Financial and Economic Law of Feng Chia University gave a lecture on “Abuse of Transaction Refusal by Monopolistic Businesses” at the invitation of the FTC.

On Aug. 7, Prosecutor Huang Zhao-yang of the Office of Economic and Trade Negotiations of the Ministry of Economic Affairs gave a lecture entitled “Sharing of Negotiation Experiences” to the FTC staff members attending the TRP/RCEP negotiation program at the invitation of the FTC.

On Aug. 15, the FTC held the “Workshop on International Antitrust and Sharing of Law-abiding Experiences” at the Competition Policy Information and Research Center.

On Aug. 15 and 22, the FTC conducted the “Presentation on Fair Trade Commission Disposal Directions (Policy Guidelines) on Use of Endorsements and Testimonials in Advertising” respectively in Taichung City and Kaohsiung City.

On Aug. 21, Dr. Elizabeth Xiao-ru Wang, Chairperson of the renowned US consulting company Charles River Associates gave a speech entitled “A Look at Competition Issues in Patent Licensing from the Aspect of Economics” at the FTC.

On Aug. 23, the FTC conducted a presentation on “Various Aspects of Transaction Traps” at the Association for Care and Services for New Immigrants in Tainan City.

On Aug. 29, the FTC conducted a presentation on “Multi-level Marketing Regulations and the Personal Information Protection Act” in Kaohsiung City.
FTC international Exchanges in July and August 2014

- On Jul. 4, EU Directorate-General for Competition International Affairs Policy Officer Mr. Torben Toft delivered a speech on EU competition laws and enforcement.
- On Jul. 15, the FTC attended the teleconference of ICN Cartel Subgroup 2.
- On Aug. 6, the FTC attended the teleconference of ICN Cartel Subgroup 2.
- On Aug. 12, AIT Economic Section Chief Joshua M. Cartin called on the FTC Chairman Wu Shiow-Ming.
- On Aug. 17 and 18, the FTC representatives attended the Second Meeting of the APEC Economic Committee.
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