

Taiwan FTC Newsletter



Creating a Quality Competition Environment in Taiwan

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TV and Online Shopping Advertisements - Topics for Discussion!



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TV and Online Shopping Advertisements – Topics for Discussion!

Advertising is a part of modern daily life and affects all of our consumption habits. It can be an important source of information for consumers and offers a way in which products and prices can be compared before making the all important decision to purchase. The purpose of this article is to provide some discussion points and matters to consider concerning the issues confronting TV shopping advertising, online shopping platforms and individuals who buy and sell on auction sites.

“Give me one minute and I’ll give you the whole world.” At some future point in time, when cable TV and the internet have become far more advanced, people may sit at home watching a dazzling array of products broadcast on bright and dazzling TV channels with incredible graphics, or they may find themselves searching through online shops for thousands of products that have become available at the press of a button and in the convenience of their own home. But, how will you know if the advertising of these products on TV shopping channels or online shopping platforms is misleading, false or untrue? Are these advertisements all hype and exaggeration? These advertisements can not only make consumers waste their money, but in some instances the advertising can fail to disclose the harmful effects of products or cause consumers to pursue alternative and unproven remedies for serious medical conditions.

A common advertising technique employed by many shopping channels involves the promotion of products only available in limited quantities. We have all seen the advertisements where pictures are

broadcast showing attractive discounts only to be told that the products are offered by a sole distributor and are available “only while stocks last”. Often the advertising reinforces the message with images of frenzied shoppers hastily grabbing at merchandise in an attempt to secure the all important bargain. We are constantly bombarded with messages such as “the sole distributor offers 10 branded computers only”, “NT\$ 49,999 is the future market price; now one computer with free upgrade priced from price 37,990 yuans”. Should the shopping channel enterprises be responsible for the contents of these advertisements?

Hsiao-yu Wang often likes to auction his second-hand articles on the “y” website. Originally, the auction was merely a way of getting some extra money for goods he no longer required. Later he found that putting goods up for auction was a handy way to make additional income and decided to continue auctioning goods. To achieve his goals he placed a long-term order with an enterprise of water softener and purifier and started advertising on the auction website via his personal account. Should the Fair Trade Act apply to Hsiao-yu Wang’s auction activities? What are the differences between the business of Hsiao-yu Wang and a general business? At what point does an individual become a business? What is the meaning of an enterprise operating its “usual” business or a “long term” business?

Both the TV shopping industry and the online shopping industry has experienced a minority of enterprises publishing false or misleading adver-

tisements, generally in a moment of self-interest with the hope of making a quick dollar. They not only risk the imposition of prosecution for contraventions of Fair Trading provisions but they can ruin their own brand and reputation. There may also be further adverse ramifications for the industry as a whole as consumers learn to distrust any messages portrayed by TV shopping programs or online websites.

Those TV shopping enterprises and online shopping enterprises that are cautious and conscientious, winning through innovation and customer service and observing the relevant legislation, often express their concerns to the FTC about the misconduct of others. These competitors are rightly annoyed because the less scrupulous enterprises can gain an unfair advantage through their dishonest conduct and do harm to the industry as a whole.


Before an enterprise publishes an advertisement it needs to understand its role as either a principal responsible for the message or as an accessory that stands to make some commercial gain or simply as a publisher of someone else's advertising content.

TV shopping and online shopping platforms can operate as a simple advertising enterprise that accepts payment for broadcasting another enterprise's advertisements. In these circumstances the advertising enterprise is not obliged to review the

content of advertisements and is unlikely to bear the legal liabilities to which an "advertising host" may be exposed.

Alternatively, if they become involved in the production and the broadcast of the advertisement or stand to benefit directly from the promotion and sale of the product it is likely that they will be exposed to a level of responsibility and legal liability for the content of the advertisement. To avoid all risk, it would be better to carefully review all advertisements to ensure they convey only accurate messages.

Before consumers make transaction decisions, they often rely on information provided by advertisements to choose the products and services they want to purchase. Advertisements can provide useful information about quality and price and serve to keep markets competitive. However, consumers need to be aware of the advertising methods of enterprises as this will assist them to better understand what is truly being represented in the advertisement and help them to avoid from being misled or making an erroneous or incorrect choice. This is really a key lesson for all consumers.

However, when enterprises produce and broadcast advertisements, they should also avoid using overly exaggerated, misleading, false or untrue statements in their advertisements. 

When a Media Enterprise Becomes an “Advertising Host” its Responsibilities will be Different.

When a regular media enterprise reports or disseminates related information to its audience, it will always carry with its certain social responsibilities and hopefully follow and respect the principles of balance and the pursuit of truth. Alternatively, perhaps it must only perform well the fundamental obligations – to investigate and verify the news that it will report or disseminate. Nevertheless, when it publishes or broadcasts information that denotes a kind of commercial advertising behaviour, a simple media enterprise becomes an “advertising host” and its responsibilities change.

The terms “advertising agency” and “advertising medium” are specifically mentioned in Paragraph 4 of Article 21 of the Fair Trade Act, even though advertising agents and advertising media are generally only involved in the production and publishing of advertisements. If they have not actively participated in transaction procedures related to the sale of advertised products or have not received profits directly as a result of those sales, they are unlikely to bear the legal responsibilities of an “advertising host” under Paragraph 1 of Article 21

of the Fair Trade Act. However, if the conduct of an enterprise goes beyond production and publication and also extends to participation in the sale of advertised products or it receives profits from those sales, it will be difficult to deny legal responsibility for the advertisement. An “advertising host” in this position should carefully examine the veracity of the contents of the advertisements it proposes to publish.

A well known TV shopping enterprise and a well known online shopping enterprise both claimed that the types of product that are advertised and sold via shopping channels or through online platforms were so numerous that it was impossible to vouch for the veracity of each and every product or service. When they produced advertisements, they could only rely on product information provided by suppliers. They also explained that some suppliers logged onto the shopping websites via account names and passwords and directly transmitted the contents of their advertising onto the website themselves. Ultimately, the media enterprises claimed they were unable to review the con-




tents of every advertisement. They viewed the FTC's imposition of such responsibilities upon them as an unduly onerous and difficult task.

In one particular example, an advertisement for the so-called "reverse current chip" was published by an online shopping enterprise and the supplier claimed that by using the product "10-25% of petrol can be saved". The advertisement also claimed the product was "the only reverse current chip that passed the security and assessment test of each country". The online shopping website not only appeared to have manufactured and published the advertisement but the FTC was subsequently able to determine that the online shopping enterprise also displayed its company name in association with the advertisement. The presentation of the company name implied to consumers that the trading partner was the online shopping enterprise itself. This affiliation was further reinforced when, in the same way, the enterprise would display its name when it issued invoices to consumers following the completion of sales transactions.

A thorough examination of the complete sales process demonstrated that the online shopping enterprise indeed was positioned as a retailer of the product in question. The profits earned by it were the difference between the sale price advertised by the supplier and the price of the product purchased by the enterprise. Therefore, the enterprise acted as an "advertising host" that not only acquired profits directly from manufacturing and publishing the advertisement but also directly profited from sales of the advertised product.

In these circumstances, the online shopping enter-

prise was liable for the veracity of the contents of the advertisement and should have had a reasonable basis on which to believe that the claimed effects of the product were true. Its failure to do so prior to publication of the advertisement was a violation of relevant provisions of the Fair Trade Act and the enterprise could not abrogate its responsibilities as an "advertising host" on the basis that the obligations were too onerous. Rather, this case demonstrates that the enterprise failed to gain a clear understanding of its obligations to review and investigate the veracity of the contents of the advertisement. The enterprise was unable to avoid its obligations and invariably faced the responsibilities which must be borne by an "advertising host".

The FTC has formulated a number of Guidelines to assist various industries in understanding their obligations in relation to misleading, false and untrue advertising claims under the Fair Trade Act. These Guidelines are available in Chinese and English on the website at <http://www.ftc.gov.tw/>. All business enterprises, including advertising media enterprises need to carefully examine their roles in the creation and publication of advertisements and be aware of all their obligations arising under the Fair Trade Act. A failure to do so risks prosecution for contravening relevant laws, regulations or orders and could result in liability for damages arising out of a civil claim for damages. Business enterprises can try to seek their own independent legal advice if they have concerns in respect of these issues and avoid the likelihood of making similar mistakes in the future. 

There are Laws to Regulate Auction Sellers for the Purpose of Guaranteeing Consumers' Rights.

“We have everything! We sell everything! Nothing is strange!” This is a slogan used to entice traders and customers to a well known auction website.

The recent rise in the popularity of the internet has seen a consequent growth in online marketing channels, sometimes as the sole distribution channel and sometimes as an adjunct to more traditional marketing methods. Some online enterprises set up “online websites” solely as platforms for sellers and buyers to engage in commercial transactions. Anyone who has completed the application procedure for a basic account name can utilize the platform as a convenient way to buy or sell products. These are commonly known as auction websites.

While the early auction websites provided a convenient platform for one off sales of pre-owned goods, increasingly the trend is for truly commercial enterprises to use such websites as an alternative distribution channel. Is there a role for the Fair Trade Act to intervene and how should consumers' rights be ensured?

Article 2 of the Fair Trade Act defines four types of enterprises. They are:

- (1) a company;
- (2) a sole proprietorship or partnership;
- (3) a trade association; and
- (4) any other person or organization engaging in transactions through the provision of goods or services.

Clearly most enterprises who regularly buy and sell are subject to the provisions of the Fair Trade Act and must run their businesses in accordance with the law. However, it becomes less clear if an individual trades in his/her own name. Subparagraph (4) of the abovementioned article broadens the definition of those that are subject to



Don't be duped! Some online business promotions are exaggerated and untrue.

the Fair Trade Act to include individuals, but in what circumstances?

The Fair Trade Commission (FTC) takes a very practical approach to this issue and will not allow individuals to hide behind the guise of an auction website to avoid their responsibilities to consumers under the law. This approach was evident in a recent decision of the FTC.

“A” auctioned a product called “Alkaline and Energy-Giving Ultrafiltration Device” on the auction site of Yahoo! by using the account name “goodXXXX”. To market the product, “A” claimed that the product had the following health benefits:

“the oxygen capacity derived from the product is increased by 30% or up; such an increase strengthens the motility of water participles, resulting that anti-oxygen performances of cells are brought into play. As the product is integrated with mineral-rich trace elements, it can even advance metabolism, activate cells, increase immunity, consolidate life, delay aging, and make you healthy and live long .”

The FTC considered the advertising was likely to be false and likely to mislead consumers as to the



Some online sellers that participate in market activity on a long term basis need to be aware of their obligations to consumers under the Fair Trade Act.

nature of the true benefits (if any) of the product.

Although the trader undertook to trade as an individual, it quickly became evident that he had undertaken the same enterprise under another name, “riskXXXX”. Under this name, he had engaged in commercial activity to sell water softener and purifier for as long as two to three years. The FTC observed that “A” had separately applied for another account name, “goodXXXX”, also to sell water softener and purifier. His mode of operation simply involved attracting a purchaser online by creating his own advertisement from various parts of advertisements of other enterprises that sold the product. After he located a buyer, he would simply arrange for the supplier closest to the customer’s location to deliver the product. In this way “A” would earn a commission.

In light of the duration of his sales activities and the manner in which “A” conducted his business it was obvious that “A’s” activity was different from an amateur seller who occasionally sells a single article. In the circumstances, the FTC held that “A’s” activity indicated he had “always participated” in market transactions or that such participation was at least aptly described as “a long term participation” in the market. “A” could not prove that the product in this case provided the effects as claimed in the advertising and because he was held to be operating as an enterprise, as defined in Subparagraph 4 of article 2 of the Fair Trade Act,

the FTC imposed a fine of NT\$ 120,000 for false, misleading or untrue advertising.

In the same way, no commercial operation can escape its obligations under the Fair Trade Act simply because it chooses to operate as an individual or by successively moving its activity from one auction site to another. Any individual online seller, that operates on a long term basis or sells a large quantity of products and/or services, needs to carefully consider whether he or she is in fact operating a business. If the answer is yes, then they should refrain from publishing advertisements with unjustifiable or sensational claims.

In addition to the Fair Trade Act, Article 19 and Article 22 of the Consumer Protection Act also provide that:

- consumers have the right to return goods within 7 days of receipt, if the purchase was made online by mail order or by door-to-door sale of a product; and
- that an enterprise’s obligations to consumers shall not be less than what is promised in the advertisements.

If an individual participates in an online market on a long term basis they should be aware of their obligations and conform to the relevant provisions outlined above and not ignore the rights and benefits of consumers. .

Online Shopping: Untrue Ads Offer Limited Quantity of Products – Stop! Look! Listen!

An online shop offers shopping 24 hours a day. People can browse online at their leisure and purchase goods with the click of a button then sit back, relax and wait for the arrival of their goods in the comfort of their own home. Many sites offer unconditional guarantees to return goods if the customer is not totally satisfied. Irrespective of whether goods are purchased online, consumers retain their right to return goods in the same way and under the same circumstances as purchases bought through more traditional retail outlets. While there are many positives to online shopping, how safe is online shopping and are consumers exposed to false advertising online?

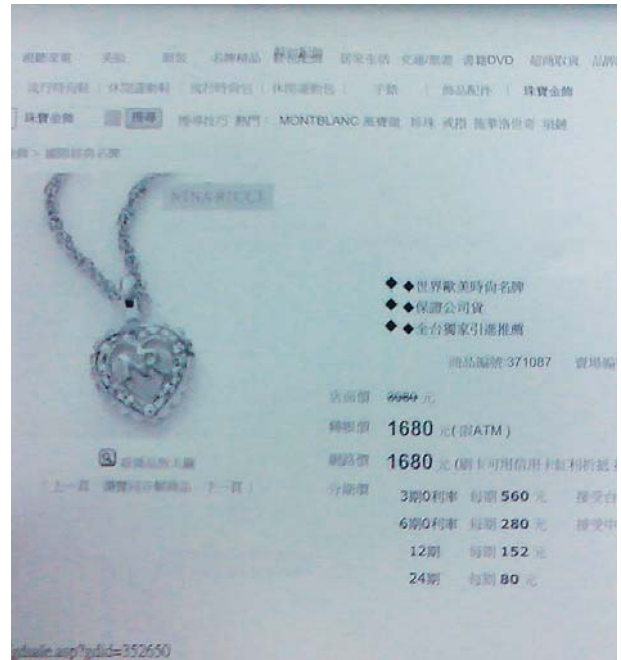
On the webpage of a well known retailer, Y, were advertisements for popular jewelry sold worldwide with the brand name NR. Through the internet, people could view photos of the exquisite jewelry and were further enticed by suggestions that the jewelry was exclusive and only available in limited numbers. Specific representations were made that “there are only 5 pieces (of jewelry) in Taiwan”, “imported by the sole distributor in Taiwan”, “sold by the sole distributor in Taiwan”, “the exclusive design of the sole distributor in Taiwan” and “the sole distributor sells a limited quantity only.” The emphasis on the exclusive nature of the jewelry sought to ensure the discerning buyer that they would be unlikely to encounter the same piece adorning someone else. Even testimonials appeared on the website vouching for the exclusiv-

ity of the product. However, were the claims true or just further examples of shameless false advertising?

The myriad of claims about sole distributorship, exclusive design and limited quantities of the jewelry created an overall impression that the NR products were only available in Taiwan if you purchased from Y online. After investigation by the FTC it was found that other companies within Taiwan sold identical products and were sourcing the goods from the same supplier as Y. These companies not only sold the jewelry online but the same NR products were made more widely available through shopping centres, TV shopping and mail order catalogues.

In addition, in respect of the very specific claim by Y that “there are only 5 pieces (of jewelry) in Taiwan”, the suppliers reported that 10 pieces of jewelry had in fact been imported – 5 pieces of jewelry were allocated for sale online and the other 5 pieces of jewelry were allocated for distribution through other channels.

The FTC took the view that the demand for jewelry-type products was different from the demand for regular living necessities. Consumer purchasing decisions for jewelry are usually based on uniqueness, rarity, novelty and brand awareness. In this case the claims made by the advertising emphasized the uniqueness and scarcity of the goods while at the same time urging consumers to make hasty transaction decisions.



Many products in this promotion claimed to have the characteristics of uniqueness, rarity, novelty and brand awareness which were found to be misleading to consumers.

However, because the products could also be bought and acquired from other sources, the presentation of the online advertising had the effect of misleading consumers who consequently lost the chance to compare products for price and quality. Further, the advertising gave Y an unfair market advantage and possibly had an inverse impact upon competitors who could have lost trading opportunities. Therefore, the FTC found that the advertisements were false, untrue and misleading and violated Paragraph 1 of Article 21 of the Fair Trade Act.

The FTC also discovered through information from the manufacturer, transaction histories, invoices and revenue allocation, that two other companies had close cooperative relationships with the principals of Y. Because these companies also stood to gain from the generation of increased sales volumes, they were also considered to be a party to the unfair, false and misleading conduct. Consequently, the FTC resolved that the suppliers should also cease the advertising acts and fines of NT\$ 400,000 and NT\$ 200,000 were imposed respectively.




Statistics on False Advertising of Non-store Retailers

The Commerce Industrial Services Portal, Ministry of Economic Affairs, R.O.C. recently released statistics from a survey it conducted that showed the turnover of the domestic non-store retailers had increased from NT\$ 49.04 billion in 2001 to NT\$ 76.99 billion (by 56.99%). This sizeable increase occurred in a strong market that also showed a rise in the gross output value of retail trade in the current year of 2.35% (which represents a 0.36% increase on the 1.99% gross output value of the same industry in 2001). Both figures point to a continuing trend of retail growth with expansion in the non-store retailing sector likely to expand at a greater rate.

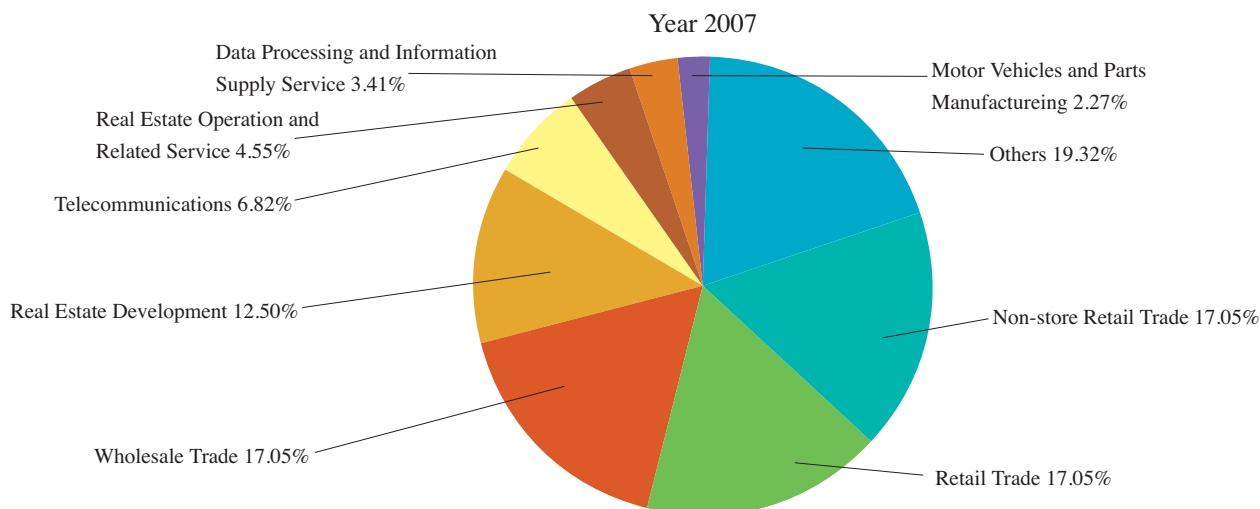
According to the FTC statistics, the number of untrue advertisements under penalties imposed by the FTC in 2007 was 88 and 15 of these were related to non-store retailers. This equates to almost 1 in every six penalty cases for false advertising arising in the non-store retailing sector. The FTC further observed a total of 44 penalty cases directly involving non-store retailers' illegal acts in 2007. Of these 44 cases, the number one issue involved penalty cases for violation of the Fair Trade Act was illegal multi-level sales. This accounted for 28 cases or 63.64% of matters and 29 non-store retailers were punished. The number of cases on violation of the Fair Trade Act concerning false adver-

tising, 15, ranked second (it was 34.09% of 44 penalty cases in 2007) and 22 enterprises were punished. The average fine imposed on each enterprise was NT\$ 842,300.

The FTC examined the distribution of the 22 non-store retailers that received penalties for their false advertising. Not surprisingly the majority (63.64%) were located in the major metropolitan areas of Taiwan; Taipei City, 7, ranked first; followed by Taipei County, 4 and 3 non-store retailers in Kaohsiung City. On the basis of the statistics on types of enterprises for which penalties were imposed, TV shopping channels ranked first and accounted for 14 or 63.64%. Online shopping ranked second with 5 or 22.73% of cases where penalties were imposed.

It matters not whether you shop online, through mail order catalogues, via television or utilise more traditional methods. The Fair Trade Act protects your rights irrespective of the trading environment. Information about these rights and details of how you can guard against illegal conduct can be found at the FTC's website (the website: <http://www.ftc.gov.tw/>) and also the websites of the Consumer Protection Commission, Executive Yuan (Taiwan) and the Department of Health, Executive Yuan. 

Statistical Graph on Types of Industrial Divisions under Penalties against Untrue Advertisements



FTC Activities in August 2008

- On August 5, Commissioner HSIEH Yi-Hong led the colleagues of the FTC to leave for the Financial Supervisory Commission, Executive Yuan to hold a coordination meeting on the “Application of Laws and Regulations Relevant to Financial Enterprises’ involvement in improper marketing of structured financial instruments.”
- On August 5, the FTC invited Researcher CHEN Kong-Pin of the Research Center for Humanities and Social Sciences, Academia Sinica, to present a speech on “Introduction to Internet Economics.”
- On August 15, the FTC propagated an analysis of laws and orders, and cases on multi-level sales as regards multi-level enterprises at the Taipei County Government.
- On August 18, the Consumer Protection Commission, Executive Yuan (Taiwan) went to the FTC to organize a meeting on “Assessment of Achievements of Consumer Services in 2006-2007.”
- On August 21 and 22, the FTC held a “Research and Study Camp on Competition, Production and Marketing in the Agricultural Industry” in Kaohsiung City.




1. Researcher CHEN Kong-Pin of the Research Center for Humanities and Social Sciences, Academia Sinica, presented a speech on “Introduction to Internet Economics.”
2. The FTC propagated an analysis of laws, orders and cases on multi-level sales as regards multi-level enterprises at the Taipei County Government.
3. Chairperson TANG Jinn-chuan (on the right) met officials from the Consumer Protection Commission, Executive Yuan (Taiwan).
4. The Consumer Protection Commission, Executive Yuan (Taiwan) went to the FTC to organize a meeting on “Assessment of Achievements of Consumer Services in 2006-2007.”

- On August 25, the FTC held an orientation seminar to advocate the regulations of acts of advertisement of enterprises under special supervision and direction in Taipei City.
- On August 25 and 26, the FTC organized the 2008 Conference on the Legal System in Yilan. At the conference, lecturers from the Ministry of Justice were employed to discuss and analyze cases with respect to the National Compensation Act, Administrative Penalty Act and Government Information Act as well as provisions relevant to grading.



5. The FTC organized the 2008 Conference on the Legal System.


- On August 28, the FTC held a public hearing on “competition relevant to mergers of instant noodle enterprises” and related competent authorities. Scholars, experts, enterprises which are filing merger reports, instant noodle enterprises, up-stream & down-stream enterprises and representatives of consumer groups were invited to participate in the hearing.
- On August 29, the FTC propagated an analysis of laws and orders, and cases on multi-level sales as regards multi-level enterprises in Kaohsiung City. 

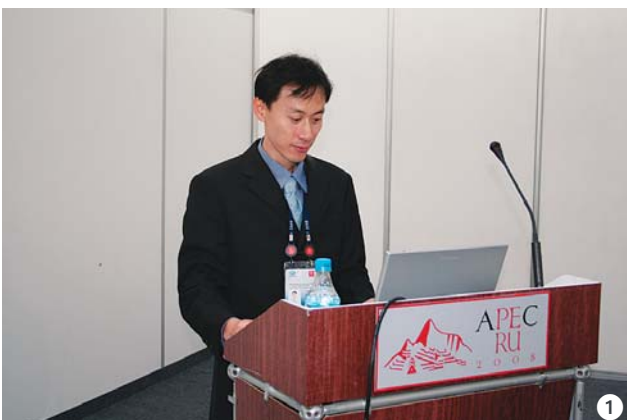


6. The FTC held a public hearing on “competition relevant to mergers of instant noodle enterprises.”

FTC International Exchanges in August 2008

- On August 13 and 14, Inspector TU Hsing-Feng and Officer LIN Wen-Hung of the Department

of Planning of the FTC attended the meeting of CPDG of APEC in Lima, Peru. 



1. Officer LIN Wen-Hung of the FTC made a presentation in the meeting of CPDG of APEC.



2. The assembly hall in Lima, Peru for the meeting of CPDG of APEC (to take place).

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