



NO 043

# TAIWAN FTC NEWSLETTER

2012.02

## ▶▶ Special Topic

Fair Trade Commission's 20th Anniversary  
Celebration Activities

## ▶▶ Selected Cases

- ▶ Domestic chain convenience stores jointly and uniformly increased the prices of fresh brewed coffee in violation of the Fair Trade Act
- ▶ The FTC granted the application from 15 ROC-registered shipping businesses.
- ▶ The FTC fined the three leading domestic dairy companies for jointly raising fresh milk prices
- ▶ Lian Hong LPG Bottling Co., Ltd. in violation of the Fair Trade Act.
- ▶ Asia Pacific Telecom fee comparison advertisement violated the Fair Trade Act.
- ▶ Hao Lai Co., Ltd. fined by the FTC for untrue Gaoluzie Anti-Sensitivity Specialist toothpaste comparison advertisement

## ▶▶ Regulation Report

Additions and Amendments to the Fair Trade Act

## ▶▶ FTC Statistics

Statistics on Sanctions Imposed against Violations  
of the Fair Trade Act

## ▶▶ FTC Activities

FTC Activities in November and December 2011

## ▶▶ FTC International Exchanges

- ▶ FTC International Exchanges in November and December 2011

## Fair Trade Commission's 20th Anniversary Celebration Activities

The year 2012 happens to be the 20th anniversary of the Fair Trade Commission. To celebrate the occasion, the FTC held the "20th Anniversary Party" at the National Taiwan University Hospital International Convention Center starting at 10AM on Jan. 9 and also conducted on the following day (Jan. 10) the "Seminar on the Retrospection and Prospects of the Fair Trade Act after Twenty Years of Enforcement".

In response to the economic globalization, liberalization and systemization as well as to build an environment allowing free competition between businesses, the government enacted the Fair Trade Act in 1991 and enforced it on Feb. 4 1992. On Jan. 27 the same year, the Fair Trade Commission, the competent authority for the Fair Trade Act, was created to develop an environment for fair competition between businesses and this ushered Taiwan into a new era. For twenty years, the FTC has fulfilled its responsibility to improve economic stability and prosperity and make plans to promote competition rules in the country. In spite of the many challenges over the years, the great support from the various sectors and the

efforts of the entire staff have enabled the FTC to come up with remarkable performance in perfecting the fair trade system, executing fair trade regulations, promoting free and fair competition, and extending international cooperation and exchange. According to the “Global Competitiveness Report” released by the World Economic Forum (WEF), Taiwan was rated No. 1 in the category of “Competition in the Local Market” among the 142 countries surveyed for two consecutive years. Apparently, the law enforcement by the FTC has brought outstanding results in the development of a free and fair competition environment.

In his opening speech at the celebration party, Chairperson Wu of the FTC gave an outline of the history and progress of the Commission under different Chairperson over the years, and recently the FTC made considerable efforts to investigate and sanction on concerted action cases related to daily commodities, including the joint increase of freshly made coffee prices by the four major convenience store chains and the joint increase of fresh milk prices by the three major dairy suppliers, to maintain market competition and safeguard consumer interests, as well as the legislation and amendment of laws in relation to fair trade, such as the drafts of the Supervisory Regulations Governing Multilevel Sales, the Organic Act of the Fair Trade Commission, and the Fair Trade Act. The Organic Act of the Fair Trade Commission was approved by the Legislative Yuan on its third reading on Oct. 28 2011 and promulgated by the president on Nov. 14 2011, and the FTC became an independent agency.

The FTC will refer to the practices in advanced countries and set up a unit designated to perform economic analysis to strengthen its capacity in this area. It is also hoped that the FTC will be able to improve the knowledge and skills and energy in law enforcement through regulation amendments and organizational adjustments. Meanwhile, to increase domestic businesses’ understanding of international antitrust regulations to avoid violation of the laws of other countries, the FTC has also developed the “International Antitrust Action Plan” and created the “International Antitrust Affairs Task Force” to enhance the awareness of domestic businesses toward international antitrust laws and minimize the risk of violation.

Vice Premier Chen attended the party and pointed out in his speech that 20 years of age meant adulthood and certain maturity for a government agency, yet the FTC was an “odd ball,” already mature and powerful when it was first created. He affirmed the important contributions of the FTC in maintaining an environment for fair competition on the market, cultivating the concept of fair trade in the people, and reinforcing the competitiveness of domestic enterprises. Also invited to the party were former FTC chairpersons and commissioners, Minister without Portfolio Tzeng Jilang, and distinguished guests from various sectors. Vice Premier Chen Chong, Chairperson Wu Shio-wing of the FTC, Minister without Portfolio Luo Ying-shay, and former Chairperson Zhao Yang-qing cut the cake together. The specially produced “20th Anniversary Commemoration Documentary” was

played at the party to show important events in the past and reflect on the path of the enforcement of the Fair Trade Act and achievements.

A number of specialists and scholars were invited to attend the Seminar on the Retrospection and Prospects of the Fair Trade Act after Twenty Years of Enforcement held on Jan. 10 to offer suggestions for future improvement. During the seminar, discussions were conducted on the topics of “Review and Prospects of Law Enforcement against Competition Restriction” and “Review and Prospects of Law Enforcement against Unfair Competition”.

FTC Chairperson Wu Shiow-ming first briefed the guests on the achievements in the execution of fair trade regulations, establishment of coordination and communication channels, extension of international exchange and cooperation, and development of the fair trade system in the two decades since the Fair Trade Commission was created. The former chairpersons, Wang Chih-kang, Zhao Yang-qing, Huang Zong-le, and Tang Jinn-chuang then took turns to speak. Each of them elaborated on the important undertakings initiated during their terms and the history of the FTC was vividly presented. They gave their best wishes that the FTC could reflect on the past, look forward, and move toward a new milestone.


The discussions began with a keynote speech by Professor Liao Yi-nan of the Department of Law of Shih Hsin University on “Indicative Administrative Court Decisions during the Two Decades of the Enforcement of the Fair Trade Law”. This was followed

by discussions on the topics of “Review and Prospects of the Law Enforcement against Competition Restriction Part (1) and Part (2)” respectively presided over by Chair Professor Lai Yuan-ho of the School of Law of Ming Chuan University and Judicial Yuan Vice President Su Yeong-ching. Professor Liao Yi-nan also presided over the discussion on “Review and Prospects of Law Enforcement against Unfair Competition”. Papers were presented by Associate Professor Chen Chi-min of the Department of Financial Law of Chung Yuan Christian University, Professor Chuang Chuen-fa of the Department of Finance of Jinwen University of Science and Technology, Associate Professor Yan Ting-dong of the Financial Law Department of Ming Chuan University, Judge Wang Ming-yong of Hsinchu District Court, Professor Hsieh Chi-sen of the Department of Law of Aletheia University, and Research Fellow Liu Kung-chung of the Institutum Jurisprudentiae of Academia Sinica to review as well as offer ideas on the prospects of the enforcement of the Fair Trade Act against monopolization, merging, concerted actions, resale price restriction, competition restriction and impediment to fair competition, untruthful advertising, copyright infringement, and deceptive or obviously unfair acts. The suggestions included increased supervision on the forms of the business involvement and market competition to solve problems arising from abuse of market power when enforcing the law, accurate economic analysis in market range definition, improvement of the concerted action sanctioning system and formulation of complementary measures,

establishment of guidelines for recommended prices, and education of the public on untruthful advertising through corresponding courses in school, and so on.

The specialists and scholars also exchanged ideas with the other guests and the FTC was able to understand from the papers and discussions the suggestions and expectations of the public with regard to the FTC's law enforcement measures and administration. The FTC will compile the insightful ideas and positive suggestions from the attendees to serve as reference for future enforcement and amendments. Besides the Fair Trade Act specialists

and scholars, all the former FTC chairpersons were also present and a large number of former commissioners also attended. It was a rare gathering for everyone to look back and attest to the growth of the FTC and draw up a forward-looking blueprint for further progress.

At the end of the party, Chairperson Wu made the comment that the end of the 20th Anniversary celebration was the commencement to welcome the 30th Anniversary. Everyone ought to work together and prepare for the 30th Anniversary and face all challenges that are likely to lie ahead from now on. 



◀ Vice Premier Chun Chong (second from left), Chairperson Wu Shiow-Ming (second from right), Minister without Portfolio Luo Ying-Shay (right) and former FTC Chairperson Chao Yang-Ching (left) cutting the cake together at the FTC's 20th Anniversary party

▶ The guests attending the FTC's 20th Anniversary party





◀ FTC chairperson speaking at the “Seminar on the Retrospection and Prospects of the Fair Trade Act after Twenty Years of Enforcement” (from left to right): former Chairperson Huang Tzong-Leh, former Chairperson Wang Chih-kang, incumbent Chairperson Wu Show-Ming, former Chairperson Chao Yang-Ching, and former Chairperson Tang Jinn-Chuan

▶ The FTC’s incumbent chairperson, former chairpersons and commissioners attending the “Seminar on the Retrospection and Prospects of the Fair Trade Act after Twenty Years of Enforcement” (from left to right): former Chairperson Tang Jinn Chuan, former Chairperson Chao Yang-Ching, Chairperson Wu Shiow-Ming, former Vice Chairperson Liaw Yin-nan, former Chairperson Huang Tzong-Leh, and former Commissioner Lu Fang-ching



## Domestic chain convenience stores jointly and uniformly increased the prices of fresh brewed coffee in violation of the Fair Trade Act

In response to the recent joint price increases by domestic chain convenience stores, the FTC initiated an ex officio investigation into the matter. The 1,043rd Commissioners' Meeting of November 2, 2011 decided that the actions of the four leading domestic chain convenience stores—President Chain Store Corporation, also known as 7-ELEVEN, hereinafter referred to as President Chain, Taiwan FamilyMart Co., Ltd., hereinafter referred to as FamilyMart, Hi-Life Co., Ltd., also known as Hi-Life, hereinafter referred to as Hi-Life, and OK Mart Co., Ltd., also known as OK Mart, hereinafter referred to as OK Mart—that started on or within a week of October 4, 2011 to jointly and uniformly raise their prices on fresh brewed coffee to be in violation of Article 14 of the Fair Trade Act which prohibits enterprises from engaging in concerted action. An administrative fine of NT\$16,000,000 was imposed on President Chain, and administrative fines

of NT\$2,500,000, NT\$1,000,000 and NT\$500,000 were imposed on FamilyMart, Hi-Life and OK Mart.

The FTC indicated that chain convenience stores offered highly varied menu choices of fresh brewed coffee. Its investigation revealed that the four chain convenience stores had a total of 48 fresh brewed coffee products that differed in milk content, size, recipe, preparation, or temperature, products such as small hot latte with higher milk content, large ice latte with less milk, or cappuccino, mocha, and caramel macchiato with various amounts of milk. The investigation also revealed that, despite the high variety, all such fresh brewed coffee offerings had a uniform price increase of NT\$5 a cup. Furthermore, even though the four chain convenience stores had required different amounts of internal preparation time for the decision and promotion of such price action, they all within the same week rushed to the price increase in a uniform way.

The FTC examined relevant evidence. Considering the scales of revenues and store numbers of the four chain convenience stores, in order to effect a price change, each company would undoubtedly have had to engage in internal communications within and among various departments of the company. However, all four companies were unable to offer concrete economic reasons to justify their respective but uniform price increase of NT\$5 per cup for all




their fresh brewed coffee products that had varying degrees of milk content. Given that the four chain convenience stores had different costs of operations and managerial efficiency, their actions of an identical price increase happening at the same time to the same products can be judged to be the result of concerted action among the companies.

It is the opinion of the FTC that the action of President Chain, FamilyMart, Hi-Life, and OK Mart to jointly raise prices on fresh brewed coffee has eliminated competition among themselves and sought unjustified profit at the expense of impairing the market competition mechanism, and that such action was sufficient to influence the market supply and demand functions of domestic chain convenience stores and

was in violation of Article 14 (1) of the Fair Trade Act which prohibits enterprises from engaging in concerted action.

The FTC further indicated that it had always looked at, in addition to direct evidence such as contracts and agreements, indirect evidence to support its judgment of common sense and legality and to form the factual basis for its ruling of the illegality of alleged actions.


The FTC has always been stringent against actions that have involved severe impairment of market competition resulting from price increases undertaken jointly by businesses. The FTC reminds businesses in all industries to honor market mechanisms to maintain fair market competition and the benefit to the consumers. 

## **The FTC granted the application from 15 ROC-registered shipping businesses to extend their consolidated shipping arrangement for imported supplies for government agencies and state-owned enterprises.**

As decided in the 1036th Commissioners' Meeting of September 14, 2011 and pursuant to Subparagraph 5 of Article 14 (1) and Article 15 (2) of the Fair Trade Act, the FTC granted Yang Ming Marine Transport Corporation and 14 other ROC-registered shipping businesses an extension to September 28, 2014 of their permit to jointly ship imported supplies for government agencies and state-owned enterprises.

The FTC indicated that this extension would not involve new items. The volume of the shipment for government agencies and state-owned enterprises by ROC-registered shipping businesses between 2008 and 2010 was miniscule as a percentage of the shipment volume of the bulk freight market and of the general miscellaneous freight. In addition, the Association of Shipping Services of the Republic of China, the organization with the responsibility for coordinating this consolidated shipping agreement, only deals with pre-planning and recommendation. The actual shipping contract is up to individual shipping businesses to negotiate with government agencies and state-owned enterprises. Therefore this extension of the permit does not markedly restrict market competition. Furthermore, the sought-after permit extension in question does offer overall benefits to the economy in lowering the costs of managerial and marketing activities, shipping, and harbor expenses, in utilizing freightliners more

efficiently, and in offering stable ocean shipping and reasonable freight expenses for government agencies and state-owned enterprises. Besides, because each of the applicants alone is unable to completely handle the entire shipping needs of imported supplies for government agencies and state-owned enterprises, there is indeed a need for consolidated shipping. The responsible government agency, the Ministry of Transportation and Communications, also agrees that such a consolidated shipping arrangement could help achieve the policy goals of scaling up the ROC-registered ocean fleet and stabilizing the prices for staple goods.

The FTC also indicated that this application for an extension of permit for the consolidated shipping of imported supplies for government agencies and state-owned enterprises is within the allowable limit, and is beneficial to the overall economy and public interest. Pursuant to Subparagraph 5 of Article 14 (1) and Article 15 (2) of the Fair Trade Act, the FTC approved the application for the extension. In order to avoid any possibility of the negative impact that this extension may have on limiting competition and to ensure the overall wellbeing of the economy and public interest, certain conditions and an extension expiry date are attached to the approval in line with Article 15 (1) of the same act. 

## The FTC fined the three leading domestic dairy companies for jointly raising fresh milk prices

In response to the recent fresh milk price increases, the FTC initiated an ex officio investigation into the matter. The 1041st Commissioners' Meeting of October 19, 2011 decided that the actions of the three leading domestic dairy companies—Wei Chuan Corp., hereinafter referred to as Wei Chuan, Uni-President Enterprise Corp., hereinafter referred to as Uni-President, and Guang Quan Mu Chang (transliteration) Co., Ltd., hereinafter referred to as Guang Quan—to jointly raise milk prices in October 2011 to be in violation of Article 14 (1) of the Fair Trade Act which prohibits enterprises from engaging in concerted action. An administrative fine of NT\$12,000,000 was imposed on Wei Chuan, and administrative fines of NT\$10,000,000 and NT\$8,000,000 were imposed on Uni-President and Guang Quan, respectively.


The FTC indicated that the three dairy companies had an 80 percent combined share of the fresh milk market in Taiwan and that there had been an increase of NT\$1.9 per liter in the price for the purchase of raw milk, which was a factor for pushing up the cost of milk for the dairy companies. However, the three dairy companies raised their suggested retail prices uniformly and in amounts far exceeding the increase in their cost. Competing products among these companies remained in the same price range before and after the price hikes. Take one-liter fresh milk for example. Wei Chuan's Lin Feng Ying 936ml went from

NT\$77 to NT\$83, Uni-President's Rui Sui 930ml went from NT\$76 to NT\$82, and Guang Quan's Ru Xiang Shi Jia 936ml went from NT\$76 to NT\$82. All three companies raised the price by a uniform NT\$6. As for 2-liter (1,857ml) fresh milk, Wei Chuan raised its price by NT\$12 while Guang Quan and Uni-President raised their prices by NT\$11 each. Again, those were very uniform increases among the three companies. It was sufficiently apparent that these companies raised the suggested retail prices of their primary products in a uniform fashion and that the rise in their prices far exceeded the rise in their costs due to the higher purchase price of raw milk. Furthermore, the FTC compared the business considerations of the three companies for raising prices and found them to be different. Nonetheless, their price increases appeared to be uniform. The companies were unable to offer reasonable and objective market factors to support their price actions.

The FTC carefully examined relevant files from past investigations and found out that the rises in suggested retail prices in this current round of price increases had a high degree of uniformity among the companies and that, compared to the raw milk price increase in 2007, this round of price hikes in retail prices exceeded the 2007 hikes by several fold. If there had not been an agreement among the three companies not to engage in price competition, it

would not have been possible to offer a reasonable explanation for such price actions. Take one-liter (936ml) of fresh milk for example, on which all three companies raised their prices by NT\$6. Although the companies were able to attribute about NT\$2 of that to the rise in the price of raw milk, that left NT\$4 (NT\$6 – NT\$2) yet to explain. Despite the fact that the three companies offered their own different reasons to account for their price increases, they in the end arrived at identical amounts of price increases. It can be seen then that the uniform price increases were the result of an agreement among the companies. The three companies, with a combined 80 percent share of the fresh milk market, raised their prices uniformly to remove competition among themselves and to seek

unjustified profit. These actions adversely affect the interest of the consumers.

The FTC further indicated that it had always looked at, in addition to direct evidence such as contracts and agreements, indirect evidence to support its judgment of common sense and legality and to form the factual basis for its ruling of the illegality of alleged actions. The FTC has always been stringent against actions that have involved severe impairment of market competition resulting from price increases undertaken jointly by businesses. The FTC reminds businesses in all industries to honor market mechanisms to maintain fair market competition and the benefit to the consumers. 

## **Lian Hong LPG Bottling Co., Ltd. adopted differentiated treatment to LPG shops in LPG bottle inspection without justification in violation of the Fair Trade Act**

The FTC decided at its 1046th Commissioners' Meeting on November 23, 2011 that Lian Hong LPG Bottling Co., Ltd. (hereinafter referred to as Lian Hong Co.) took advantage of its being the only LPG bottle inspection plant in Kinmen and adopted differentiated treatment to LPG shops in LPG bottle inspection without justification. The conduct was in violation of Article 19 (2) of the Fair Trade Act. In addition, Lian Hong Co. also increased the LPG bottle inspection fee imposed on LPG shops that had had their bottles refilled at other LPG bottling plants, and thus forced such LPG shops to have their bottles refilled only by Lian Hong Co. The act was in violation of Article 19 (3) of the Fair Trade Act. In line with Article 41 of the same act, the FTC ordered the company to immediately cease the unlawful act and also imposed upon it an administrative fine of NT\$1,000,000.

The FTC indicated that Kinmen County, consisting of remote islets, has a small bottled LPG market, which is concentrated primarily on the Greater Kinmen Islet. The county has two LPG bottling plants, operated respectively by Lian Hong Co. and the local farmer's association, and it has ten LPG shops. Lian Hong Co. also operated one of those LPG shops and the sole LPG bottle inspection plant in the county. The company enjoyed a competitive advantage in the local

LPG market.

The FTC further indicated that when LPG shops went to a bottling plant, they normally had large numbers of bottles refilled. This and the high turnover rates of LPG bottles at LPG shops usually caused the shops to need many LPG bottles in order to meet their operational needs. If bottles were held up at the inspection plant waiting to be inspected, LPG shops would be forced to purchase new bottles, increasing the operating costs of the shops. Otherwise, the LPG shops might see their business scales impacted. Lian Hong Co.'s records on ratios of LPG shops' bottles that Lian Hong Co. inspected and the numbers of LPG shops' bottles held up at the inspection plant pending inspection as obtained from the testimony of some LPG shops show that Lian Hong Co. intentionally favored its own LPG shop over others.

The differentiated treatment of bottle inspection ratios had the effect of limiting the bottle turnover rates and operating scales of the LPG shops competing with the Lian Hong Co. operated LPG shop. This act put the competing shops at a disadvantage against the Lian Hong Co. operated LPG shop in the retail market. This act constituted favoring businesses without justification, and it was in violation of Article 19 (2) of the Fair Trade Act.

The FTC lastly indicated that Lian Hong Co. had raised its inspection fees on the LPG shops that had had their bottles refilled at the bottling plant operated by the local farmers' association, from which the LPG

shops were coerced to stay away for refilling. This act indirectly disadvantaged the farmers' association, and was in violation of Article 19 (3) of the Fair Trade Act.



## Asia Pacific Telecom fee comparison advertisement violated the Fair Trade Act

The FTC decided at its 1036th Commissioners' Meeting on September 14, 2011 that the action of Asia Pacific Telecom Co., Ltd., hereinafter referred to as Asia Pacific Telecom, claiming in its TV advertisements that "Mobile calls on Taiwan ---- cost in excess of NT\$5 per minute. The more than 2,850,000 users of Asia Pacific Telecom enjoy free intra-network calls, NT\$2.88/minute inter-network calls, NT\$2.88/minute calls to land-lines, and NT\$2.88/minute international calls", was unfair conduct that was sufficient to affect the orderliness of market transactions, and in violation of Article 24 of the Fair Trade Act. The FTC ordered that Asia Pacific Telecom immediately on the day after its receipt of this ruling cease the unlawful act and also imposed on it an administrative fine of NT\$500,000.



The FTC indicated that advertisement claims such as "Mobile calls through Taiwan ---- cost in excess of NT\$5 per minute. High-end packages mean waste every day...If you don't want to waste, select Asia


Pacific Telecom" gave the impression that calls through all domestic cell phone carriers other than Asia Pacific Telecom would cost more than NT\$5 per minute. Asia Pacific Telecom submitted that it,



based on the general state of mobile communications business as posted on the official website of the National Communications Commission, hereinafter referred to as NCC, had roughly calculated with the number of minutes called (both intra- and inter-network) and the total revenue to arrive at a cost for 2G/3G calls of NT\$5.32/minute. However, the professional opinions from the NCC indicated



that carriers offered different packages and rates in response to market needs and user behavior, and therefore it was impossible to use aggregate statistics to calculate the average phone rate for domestic carriers. So the validity of Asia Pacific Telecom's disputed claim that "mobile calls cost in excess of NT\$5 per minute" was called into question. Furthermore, subscribers to Asia Pacific Telecom's "Kuai Le Tong (transliteration) 888 Program" account for a mere 2.6 percent of its total customer base. Yet the disputed advertisement used "free intra-network calls, NT\$2.88/minute for out-of-network calls, or calls to land-lines and abroad"—benefits available only to the subscribers of that [888] program—and compare them with "Mobile calls on Taiwan ---- cost in excess of NT\$5 per minute." The NCC discredited the method

of calculation that Asia Pacific Telecom had used to arrive at the NT\$5 per minute rate. Furthermore, other mobile communication carriers also offer programs with a monthly fee of around NT\$888, and not all of these programs cost more than NT\$5 per minute. The disputed advertisement only accentuated its own strengths while intentionally omitting the cases where other mobile carriers also offered programs for making calls for less than NT\$5 [per minute]. This unfair comparison might have put other carriers at risk of losing business, and it violated the proper orderly conduct of business and market competitive efficiency. This apparently unfair act was sufficient to affect the order of transactions, and was in violation of Article 24 of the Fair Trade Act. 



## Hao Lai Co., Ltd. fined by the FTC for untrue Gaoluzie Anti-Sensitivity Specialist toothpaste comparison advertisement


The FTC decided at its 1030th Commissioners' Meeting on August 3, 2011 that concerning the action of Hao Lai Co., Ltd.'s (hereinafter referred to as Hao Lai) running a comparison advertisement (hereinafter referred to as the advertisement in question) between its Gaoluzie Anti-Sensitivity Specialist toothpaste (hereinafter referred to as the product in question) and a competing product (hereinafter referred to as the competing product) had presented comparison results that were unfair to the quality of the competing product and that such apparently unfair action was enough to affect the orderliness of transactions and was in violation of Article 24 of the Fair Trade Act. On the authority of Article 41 of the same act, the FTC ordered Hao Lai to immediately cease the unlawful act and imposed on Hao Lai an administrative fine of NT\$400,000.

The FTC indicated that the advertisement in question had started with "We invite users of the other anti-sensitivity toothpaste to compare and see the Gaoluzie Anti-Sensitivity Specialist difference". It was followed by a photograph of the product in question and, in juxtaposition, a partially pixelized toothpaste. When that photograph reappeared, it was accompanied by a voice-over that went, "I'll not use XXX (silenced) again because I want to switch to Gaoluzie, the only one that's really effective." It was apparent that the advertisement in question was comparing its

effectiveness with another anti-sensitivity toothpaste on the market. The pixelized toothpaste showed a green rectangular background on the right side and a white rectangular background on the left. The lower right showed a line of words in white, and in the left white rectangle was blue verbiage taking up a large area. This image was the same as that of Sensodyne toothpaste, an anti-sensitivity toothpaste on the market. The advertisement in question did not display the brand and the name of the competing a product in a clearly recognizable manner, but the content of the advertisement was enough for consumers to conceive its source.

The advertisement in question juxtaposed the product in question and the competing product and voiced-over the image with "I'll not use XXX again" and "because I want to switch to Gaoluzie, the only one that's really effective". This gave people the impression that the product in question was the really effective anti-sensitivity toothpaste on the market, especially when compared with the pixelized toothpaste, i.e., Sensodyne. Sensodyne contained five percent of potassium nitrate as an active ingredient, which, according to the Department of Health's "Table of allowable phrases and sentences for ordinary toothpastes", entitled it to display labels such as "helps alleviate aching from sensitive teeth", and "reduces sensitivity-induced toothaches". These labels indicated

that Sensodyne was also “really effective”. The advertisement in question described only subjectively that the product in question, with the new pro-Argin™ technology, could achieve the advantage of alleviating the soreness or aches from sensitive teeth. The advertisement clearly showed “I’ll not use XXX again” and “because I want to switch to Gaoluzie, the only one that’s really effective”, and it painstakingly placed the product in question side by side with the competing product, Sensodyne, although the latter was pixelized. This was enough to lead consumers

to conjure up the image that the product in question was the only effective anti-sensitivity toothpaste on the market and that other or Sensodyne toothpastes were not really effective. The advertisement in question carried a risk that it might lead consumers to a wrong understanding or wrong decisions, violated the principle of effective competition, apparently went against the business ethic of fair competition, was sufficient to affect orderliness of transactions, and was prescribed as being in violation of Article 24 of the Fair Trade Act. 

口白：我們邀請其他的敏感牙膏使用者來比較高露潔抗敏專家有什麼不同？



口白：我不會再用×××（消音）



口白：因為我想改用高露潔，它才是真正有效



### Additions and Amendments to the Fair Trade Act

The fifth amendment to the Fair Trade Act added Article 35-1 and revised Articles 21 and 41. This amendment was made as a result of the motions from Legislators Ting Shou-chung, Zhao Li-yun, and Luo Ming-tsai for the addition of Article 35-1 to the Fair Trade Act and the revision of Article 21 and Article 41. The motions were approved on the third reading at the 8th Sitting of the 8th Session of the 7th Legislative Yuan on Nov. 8, 2011, and the amendment was promulgated by the president on Nov. 23, 2011. The amendment includes the leniency policy for concerted actions (the addition of Article 35-1), the increase of fines for specific unlawful conduct (the revision of Article 41), and the limitation and reduction of the joint compensation liability of endorsers who are neither celebrities nor specialists (the revision of Article 21). The added article and the revised articles in contrast with the original articles are as shown in the table below:

New Article	Original Article
<p><b>Article 21</b></p> <p>No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.</p> <p>No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.</p> <p>The two preceding paragraphs shall apply mutatis mutandis to the services of an enterprise.</p> <p>Where any advertising agency makes or designs any advertisement that it knows or <u>should have known</u> to be misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or should have known to be likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising</p>	<p><b>Article 21</b></p> <p>No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.</p> <p>No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.</p> <p>The two preceding paragraphs shall apply mutatis mutandis to the services of an enterprise.</p> <p>Where any advertising agency makes or designs any advertisement that it knows or is able to know is misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or is able to know is likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom.</p>


<p>therefrom. Where any endorser provides any testimonials that he knows or should have known to be likely to mislead the public, he shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. <u>However, endorsers who are not celebrities, specialists or organizations shall be held jointly and severally liable with the advertiser for only up to 10 times the reward they have received from the advertiser.</u></p> <p>The endorser set forth in the preceding paragraph shall refer to any person or organization, other than the principal of the advertisement, who expresses opinions, trust, findings, or results of personal experiences with regard to the goods or services.</p>	<p>Where any endorser provides any testimonials that he knows or is able to know is misleading, he shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom.</p> <p>The endorser set forth in the preceding paragraph shall refer to any person or organization, other than the principal of the advertisement, who expresses opinions, trust, findings, or results of personal experiences with regard to the goods or services.</p>
<p><b>Article 35-1</b></p> <p>The Central Competent Authority may grant reduction of or exemption from fines to be imposed in accordance with Article 41 on enterprises in violation of Article 14 but meeting one of the following conditions:</p> <ol style="list-style-type: none"> <li>1. The enterprise files a complaint or informs the Central Competent Authority in writing about the concrete illegal conduct of the concerted action in which it has partaken and also submits the evidence and assists the investigation before the Central Competent Authority is aware of the said illegal conduct or initiated an investigation in accordance with this Law.</li> <li>2. The enterprise reveals the concrete illegal conduct as well as submits the evidence and assists the investigation during the period in which the Central Competent Authority investigates the said illegal conduct in accordance with this Law.</li> </ol> <p>The Central Competent Authority shall enact the regulations with regard to the eligibility of the subjects to whom the preceding paragraph applies, the criteria of the said fine reduction and exemption and the number of enterprises to be granted the said fine reduction or exemption, evidence submission, identity confidentiality, and other matters in relation to the enforcement of the said regulations.</p>	

<p><b>Article 41</b></p> <p>The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative fine of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fail to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative fine of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.</p> <p><u>The Central Competent Authority may impose an administrative fine up of to 10% of the total sales income of an enterprise in the previous fiscal year without being subject to the limit on administrative fines set forth in the preceding paragraph if the enterprise is deemed by the Central Competent Authority to be in serious violation of Articles 10 and 14.</u></p> <p><u>The Central Competent Authority shall enact the regulations with regard to the calculation of the total sales income of the previous fiscal year, definition of serious violations, and calculation of administrative fines.</u></p>	<p><b>Article 41</b></p> <p>The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fail to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.</p>
---	---

The so-called leniency policy is a measure the competition law authority adopts to deter illegal concerted actions by granting a penalty exemption or reduction to enterprises partaking in concerted actions and providing information and evidence on the violation as well as assistance in the corresponding investigations before law enforcement agencies are aware of or obtain the information and evidence on the illegal conduct and thereby improve the effects of investigations and sanctions on illegal concerted actions. Implementation of the leniency policy allows the competition law authority to discover illegal concerted actions at an earlier time and prevent the damage from spreading. At the same time, it facilitates the obtainment of the information and evidence on illegal activities and

the corresponding investigations by the competent authority and saves investigation costs. In addition, it can also prevent and deter businesses with the intention to undertake concerted actions from taking action. For those involved in concerted actions, the leniency policy gives them the chance to be granted penalty exemption or reduction. Hence, the leniency policy was included in this amendment while the FTC was authorized to enact the regulations with regard to the eligibility of the subjects to whom the preceding paragraph applies, the criteria of the said fine reduction and exemption and the number of enterprises to be granted the said fine reduction or exemption, evidence submission, identity confidentiality, and other matters in relation to the enforcement of the said regulations in order to enforce the policy.

According to the regulation set forth in the original Article 41, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars could be imposed on enterprises violating the Fair Trade Act. After the addition of Paragraphs 2 and 3 in this amendment, an administrative fine up to twenty-five million New Taiwan Dollars can still be imposed according to Paragraph 1 on enterprises violating the Fair Trade Act while, according to Paragraph 2, an administrative fine of up to 10% of the total sales income of an enterprise in the previous fiscal year may be imposed if the conduct of an enterprise is deemed by the Central Competent Authority as serious abuse of its monopolistic power or an illegal concerted action. The legislation of Paragraph 2 was because the impact of monopolistic enterprises' abuse of their market status or concerted actions of enterprises on market competition order could be enormous and the profits obtained through such illegal measures could easily exceed twenty-five million New Taiwan Dollars and it would be impossible to deter such unlawful acts without raising the fines. Meanwhile, Paragraph 3 was enacted to provide the legal basis for the authority of the FTC to stipulate complementary regulations regarding the calculation of the total sales income of the previous fiscal year, definition of serious violations, and calculation of administrative fines.

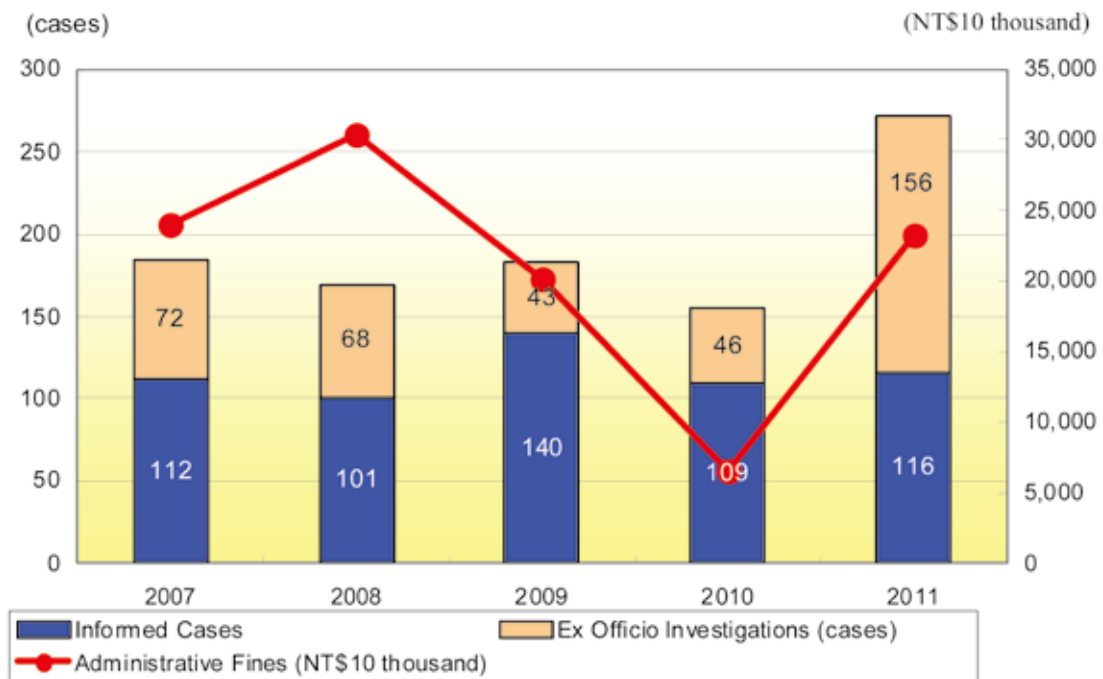
As to the administrative responsibility of advertisement endorsers, if endorsers are confirmed as having knowingly engaged in untruthful advertising with advertisers, the competent authority can act according to Article 14 of the Administrative Penalty Act and hold them jointly liable. In addition, consumers misled by untruthful advertisement endorsements and who have thus suffered losses can also make requests to the advertisers and endorsers for joint compensation. However, with endorsers who are not celebrities, specialists or professional organizations and have not received any reward or have received only a limited reward, asking them to take full joint compensation responsibility is not all that fair. Hence, a proviso clause was added in Paragraph 4 of Article 21 in this amendment to limit the joint compensation liability of endorsers who are not celebrities, specialists or professional organizations to no more than 10 times the reward they have received from the advertiser. 

## Statistics on Sanctions Imposed against Violations of the Fair Trade Act

The FTC initiates investigations on practices suspected of violation of the Fair Trade Act and the Supervisory Regulations Governing Multilevel Sales. Sanctions are imposed on businesses or individuals confirmed as having violated the regulations in order to maintain trading order and ensure fair competition. The sanctions imposed are as follows:

In 2011, the FTC handed out 272 sanctions, 243 of which were administrative fines that came to NT\$233,110,000 in total, increasing by 117 cases (75.5%) and NT\$167,270,000 (254.1%) compared to 2010. 156 cases (57.4%) were the results of ex officio investigations initiated by the FTC and 116 cases (42.6%) were investigated after the FTC was informed of the illegal practices.

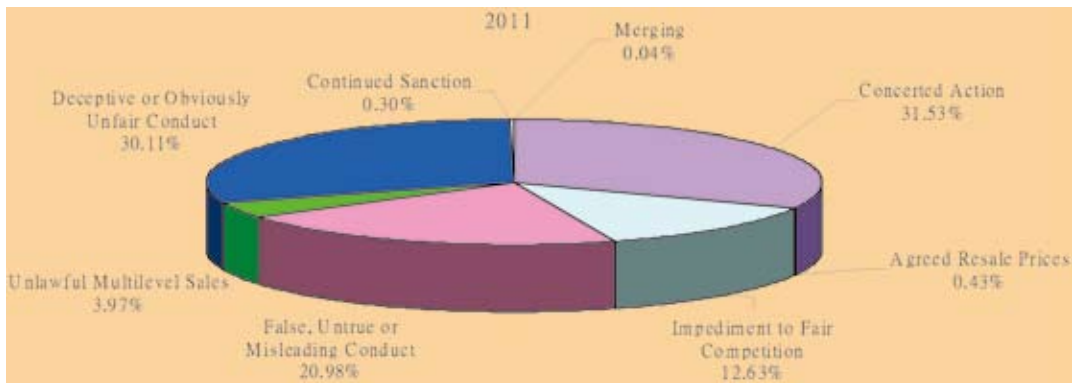
Fig. 1. Sanctions and Administrative Fines Handed out



By the type of violation of the Fair Trade Act, among the cases in which the FTC handed out sanctions in 2011, 151 of them were false, untrue and misleading conduct (according to Article 21), 69 unlawful multilevel sales (Article 23), 35 deceptive or obviously unfair conduct (Article 24), 10 impediment to fair competition (Article 19), 8 concerted action, 6 continued sanction and refusal to comply with the investigation, 1 merging (Article 11), and 1 agreed resale prices (Article 18).

By the administrative fine amount, a total of NT\$73,500,000 (31.53%) was imposed for illegal concerted actions, NT\$70,200,000 (30.11%) for deceptive or obviously unfair conduct (Article 24), and NT\$48,900,000 for false, untrue and misleading conduct (Article 21), which constituted the 3rd largest portion of the violations of the Fair Trade Act.

Fig. 2. Amount of Administrative Fine Imposed - by the Type of Conduct



Up to the end of 2011, the FTC handed out sanctions in 3,611 cases, including administrative fines in 2,168 cases (60.04%) that totaled NT\$2,962,160,000. Full and partial revocations (of the entire or part of the fine) after petitioning or administrative litigation were made on 139 cases. By the type of illegal conduct, 45 of the cases involved deceptive or obviously unfair competition and 38 of them false, untrue or misleading advertising.


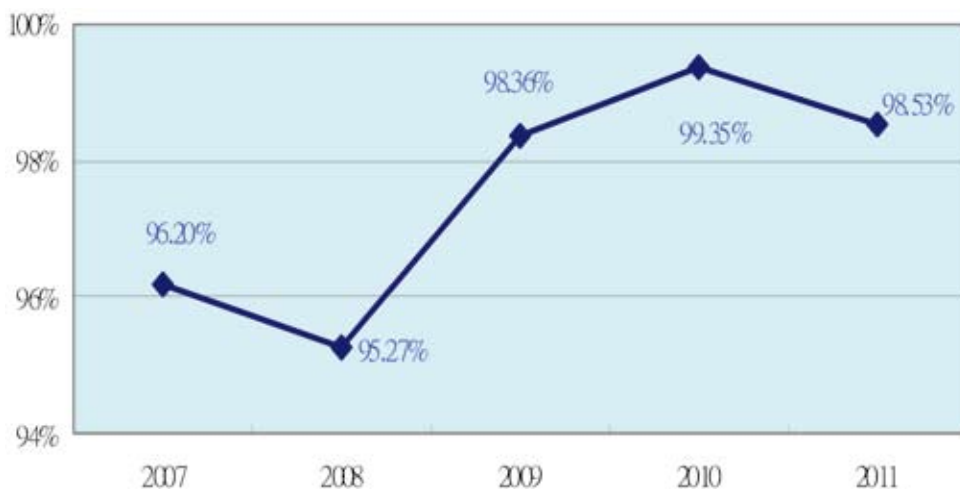
As of the end of 2011, the sanctions handed out in 3,492 cases were sustained (including those partially unrevoked). The sanction sustainment rate achieved was 96.70% (sanction sustainment rate = sanction-sustained cases ÷ sanction cases x 100). In 2,081 of the cases administrative fines were imposed on 2,975 businesses and the fines totaled NT\$2,643,690,000. 

Fig. 3. Annual Sanction Sustainment Rates in the Last Five Years



## FTC Activities in November and December 2011

- ▶ On November 3 and 11, the FTC held the “Fair Trade Act Training Camp” at National Cheng Kung University and National Chiayi University, respectively.
- ▶ On November 8 and 9, the FTC invited anti-trust officials from the Justice Department of the United States to lecture on “The Economic Analysis of Horizontal Mergers”.
- ▶ On November 14 and 25, the FTC held the “Introduction to the Joint Actions of Trade Associations under the Regulation of the Fair Trade Act” in Changhua and Taoyuan Counties.
- ▶ On November 15, the FTC invited Lin Yi-dian, associate professor, Department of Law, National Cheng Kung University, to lecture on “Standards of Law Applicability to Comparison Advertisements: A Revisit and a Review of Recent Court Practice in the Nation”.
- ▶ On November 17 and 18, the FTC held the 2011 annual workshop on the international developments in and case studies on competition laws.
- ▶ On November 18, the FTC conducted “The 2011 Fair Trade Commission Special Topics Lecture Series on the Fair Trade Act” in Kaohsiung.
- ▶ On November 28, December 2, and December 9, the FTC held the “Introductions on Fair Trade Commission Disposal Directions (Policy Statements) on Selling Presale Houses” in Yilan County, Taipei City, and Tainan City.
- ▶ On December 5, the FTC held the “Introduction to the Concerted Actions of Trade Associations under the Regulation of the Fair Trade Act” in Tainan City.
- ▶ On December 6, the FTC invited Professor Paul Chang Bin Liu and Mr. Lu Wen-xiang, chairman of the board and senior consultant, Corner Stone Intellectual Property Foundation, respectively, and Wang Wei-lin, assistant professor, Graduate Institute of Financial and Economic Law, Feng Chia University to lecture on “The Trends and Adaptive Strategies in International Intellectual Property and the Fair Trade Act”.
- ▶ On December 12 and 19, the FTC held training workshops on “Legal Issues on the Effective Date and Legal Delivery of Notification of FTC Rulings”.
- ▶ On December 15, the FTC invited Ms Wei Yi-ling, industrial analyst, Technology Applications and Service Research Department, Industrial Economics and Knowledge Center of Industrial Technology Research Institute to lecture on “Trends and Outlook for the Development of the Cloud Computing Industry”.
- ▶ On December 20, the FTC held the “Introduction to the Fair Trade Commission Disposal Directions (Policy Statements) on the Handling of Cases Concerning Advertising on the Internet” at the Civil Service Development Institute.
- ▶ On December 31, the FTC convened “The Symposium on Drafting the Calculation Method for Penalty Judgment in Cases Involving Severe Violations of Articles 10 and 14 of the Fair Trade Act”.



1



2



3



4



5



6

1. The FTC held the "Introduction to the Joint Actions of Trade Associations under the Regulation of the Fair Trade Act" in Changhua.
2. The FTC invited Lin Yi-dian, associate professor, Department of Law, National Cheng Kung University, to lecture on "Standards of Law Applicability to Comparison Advertisements: A Revisit and a Review of Recent Court Practice in the Nation".
3. The FTC held the 2011 annual workshop on the international developments in and case studies on competition laws.
4. FTC commissioners Dr. Sun Lih-chyun (first from left) and Dr. Lee Lawrence Li-chung (third from left) posed with Mr. Lu Wen-xiang (second from left), senior consultant, and Professor Paul Chang Bin Liu (second from right), chairman of the board, CornerStone Intellectual Property Foundation, and Wang Wei-lin (first from right), assistant professor, Graduate Institute of Financial and Economic Law, Feng Chia University at the Competition Policy Information and Research Center at the Fair Trade Commission.
5. The FTC invited Ms Wei Yi-ling, industrial analyst, Technology Applications and Service Research Department, Industrial Economics and Knowledge Center of the Industrial Technology Research Institute to lecture on "Trends and Outlook for the Development of the Cloud Computing Industry".
6. The FTC held the "Introduction to the Fair Trade Commission Disposal Directions (Policy Statements) on the Handling of Cases Concerning Advertising on the Internet" at the Civil Service Development Institute.

## FTC International Exchanges in November and December 2011

- 🚩 On November 8 and December 6, the FTC participated in teleconferences of the ICN Unilateral Conduct Working Group.
- 🚩 On November 15, the FTC participated in teleconferences of the ICN Mergers Working Group.
- 🚩 On November 17 and 22, the FTC participated in teleconferences of the ICN Advocacy Working Group and Cartel Working Group.
- 🚩 On December 6, the FTC participated in teleconferences of the Operational Framework Working Group.
- 🚩 On December 19, the FTC participated in teleconferences of the ICN Mergers Working Group.
- 🚩 On December 7 and 8, the FTC sent representatives to attend the 36th Taiwan-Japan Economic and Trade Meeting and a staff-level bilateral meeting of the competition ATCs regulatory agencies of Taiwan and Japan.
- 🚩 On December 7 to 9, the FTC dispatched personnel to attend the “Assessing Monopoly Power in Abuse of Dominance Cases” at the OECD-Korea Policy Centre in Busan, South Korea.



The FTC dispatched personnel to attend the “Assessing Monopoly Power in the Abuse of Dominance Cases” at the OECD-Korea Policy Centre in Busan, South Korea.

Dear Readers,

In order to improve the quality of our Taiwan FTC Newsletter, we would like to request a few minutes of your time to fill in the questionnaire below. When completed, it would be appreciated if you would please directly fill in the questionnaire at the website (<http://www.ftc.gov.tw>) Thank you for your assistance and cooperation.”

Fair Trade Commission  
Regards

**Taiwan FTC Newsletter Reader’s Survey**

■ Nationality : \_\_\_\_\_

■ Category of your organization

- Government    Embassy    Commerce Institute    Private Corporation
- NGO    Other(please specify)\_\_\_\_\_

1. What do you think of the design of the Taiwan FTC Newsletter, including style and photos?  
Very Good    Good    Average    Bad    Very Bad
2. Are the articles clear and understandable or difficult to understand?  
Very Clear    Clear    Average    Difficult    Too Difficult
3. Are you satisfied with the contents of the Taiwan FTC Newsletter, including choice of subjects, length and thoroughness of articles?  
Very satisfied    Satisfied    Average    Dissatisfied    Very Dissatisfied
4. Which section is your favourite one?  
Selected Cases    Administrative Court Judgment    FTC Statistics  
FTC Activities    FTC International Exchanges
5. What more would you like to see in the Taiwan FTC Newsletter, e.g. different subjects? Do you have any other suggestions?

Your advice : \_\_\_\_\_

# Taiwan FTC Newsletter

Publisher	Wu, Shio-Ming
Editor-in-Chief	Hu, Kuang-Yu
Co-editor	Cheng, Chia-Lin Tso, Tien-Liang Wu, Ting-Hung Hu, Tzu-Shun Cho, Chiu-Jung Li, Yueh-Chiao Chang, Ying-Fen
Publishers & Editorial Office	Fair Trade Commission, R.O.C. Address: 12-14 F., No. 2-2 Jinan Rd., Sec. 1, Taipei, Taiwan, R.O.C. Website: <a href="http://www.ftc.gov.tw">http://www.ftc.gov.tw</a> Telephone: 886-2-23517588 Fax: 886-2-23278155 E-mail: <a href="mailto:ftcnl@ftc.gov.tw">ftcnl@ftc.gov.tw</a>
Date of Publication	February 2012
First Date of Publication	February 2008
Frequency of Publication	Bimonthly (the Chinese language edition during odd-number month, and the English language edition during even-number month.)
Price	NT\$ 15 per single copy, NT\$ 180 per year (both Chinese version and English version) and NT\$ 90 per language version
Subscription Phone Line	886-2-2351-0022
Subscription Fax	886-2-2397-4997
Exhibition Place	Service Center on the 13th Floor of the Commission Telephone: 886-2-2351-0022 Address: 13 F, No. 2-2 Jinan Rd., Sec. 1, Taipei, Taiwan, R.O.C. Wunan Book Co., Ltd. Telephone: 886-4-2226-0330 Address: No. 6, Chungshan Road, Taichung City, Taiwan, R.O.C. Government Publications Bookstore Telephone: 886-2-2518-0207 Address: 1F, No. 209, Sung Chiang Rd., Taipei, Taiwan, R.O.C.
Printer	Color Art Factory Co., Ltd. Address: 3F-2, No. 157, Ta Lee St, Taipei Taiwan. Telephone: 886-2-2302-0406



**FAIR TRADE COMMISSION, R.O.C. (Taiwan)**

12-14 F., No. 2-2 Jinan Rd., Sec. 1, Taipei, Taiwan, R.O.C.

Tel : 886-2-2351-7588

<http://www.ftc.gov.tw>

ISSN 2070124-1



GPN:2009700036

PRICE:NT\$15