



NO 046

TAIWAN FTC NEWSLETTER

2012.08

▶▶ Special Topic

A Summary of the “2012 Taiwan International Conference on Competition Policy and Law”

▶▶ Selected Cases

- ⚡ Taitung County Betel Leaf and Unripe Betel Fruit Production and Marketing Association Violated the Fair Trade Act for Joint Pricing
- ⚡ Application of State-run Banks to Form Credit Card Alliance Approved with Conditions Attached
- ⚡ Hotai Motors’ Restriction on Trading Counterparts Violated the Fair Trade Act
- ⚡ Concerted Action of Electronic and Electrical Waste Disposal Businesses Violated the Fair Trade Act
- ⚡ False Market Share Claim by Warm Sun International Co., Ltd. Violated the Fair Trade Act
- ⚡ Mercedes-Benz Taiwan Violated of the Fair Trade Act for Posting False Fuel Economy Claims in Advertisements

▶▶ FTC Statistics

An Overview of the Development of Multilevel Sales Businesses in 2011

▶▶ FTC Activities

FTC Activities in May and June 2012

▶▶ FTC International Exchanges

FTC International Exchanges in May and June 2012

A Summary of the “2012 Taiwan International Conference on Competition Policy and Law”

The FTC’s triennial “Taiwan International Conference on Competition Policy and Law” opened on June 26 this year (2012) at the Visionary Hall of the Howard Civil Service International House and lasted one and a half days. The FTC invited over a dozen distinguished guests from major international organizations as well as the competition authorities of the US, Canada, Germany, France, Japan, New Zealand, Australia, Hungary, Korea, Singapore and Mongolia to attend and present their papers. Also attending the conference were over two hundred people from the government and the industrial and academic sectors in the country. It was a rare and spectacular occasion.

Since the Fair Trade Act took effect in February 1992, the FTC has abided by the legislative purpose of the law and made unsparing efforts to maintain trading order and ensure free and fair competition. However, due to the critical changes in the global economy structure in the past two decades, international competition patterns have become difficult to predict and businesses’ approaches to competition have also become increasingly diversified and complicated. In order to learn from the law enforcement experiences and related research



Vice President Wu Den-yih delivering the opening speech

in other countries to improve the execution of the Fair Trade Act in the country, plus this year being the FTC's 20th anniversary and the FTC having become an independent agency in the government restructure, the theme of the conference was defined as "20 Years of the Fair Trade Act – Retrospect and Prospects," while creating the best competition authority was adopted to be the main axis and the scale of the conference this year was expanded.

The numbers of competition authority heads of foreign countries and the chair of international organizations were the largest ever. This would have helped not only improve the Fair Trade Act enforcement theories and practices in the country but also boost international cooperation and Taiwan's international image. Unquestionably, the FTC had done a remarkable job in international exchange promotion. The distinguished guests attending this conference included the OECD Competition Committee Chairman Dr. Frédéric Jenny,

Canada's Competition Commission Director Ms. Melanie Aitkan, New Zealand's Commerce Commission Chair Mr. Mark Berry, French Competition Authority President Mr. Bruno Lasserre, Hungarian Competition Authority President Mr. Miklós Juhasz, and former chairman of the US Federal Trade Commission Mr. William Kovacic. There were also representatives from Australia, Korea, Japan, Singapore and the EU.

Vice President Wu Den-yih was invited to deliver the opening speech. In addition to congratulating the FTC on the 20th anniversary and its extraordinary performance, he also encouraged the FTC to stand up to the new challenges in the 21st century, continue the good work as the "navigator for the competition policy," perfect the fair trade system, and provide strong support for Taiwan's "Golden Decade."

This was followed by the welcome speech by the FTC Chairperson Wu Shioh-ming. Besides a summarized report on the achievements of the FTC in Fair Trade



The FTC Chairperson Dr. Wu Shiow-Ming delivering the welcome speech

Act enforcement and promoting international exchange and cooperation, he also gave the updates on the amendment of the Fair Trade Act as a result of the adoption of law enforcement experiences in other countries and introduction of the leniency policy and the operations of the FTC after the agency acquired its official independence and made the corresponding organizational adjustment. Through revision of related regulations and structural adjustment, the FTC hoped to upgrade its law enforcement capacity and achieve better results. Meanwhile, the FTC also hoped to create new prospects for competition through the discussions in this conference and learn from the wisdom and experience of the distinguished guests.

The conference began with Professor William Kovacic of the George Washington University Law School (former chairman of the US Federal Trade Commission) giving a special topic speech on “TFTC and the Institutional Structure of Competition Agencies”. The topic was divided into five subjects of discussion.

Day 1

The first subject was “Abuse of Dominance and Unilateral Conduct”. It had long been one of the

important issues in competition law enforcement and raised many concerns. Monopolistic or oligopolistic businesses could demand that their trading counterparts accept the prices or other trading conditions they unilaterally decided. On the one hand, they could obtain supernormal profit while on the other hand restricting the trading opportunities of their competitors and thus eliminate or obstruct competition. Hence, how to enforce the law properly to get effective results had been an important issue in every country when handling the unilateral behavior of businesses with certain market status.

The second subject was “Coordination and Harmonization in Cross-border Merger Controls”. Merger control was an important issue in competition law. The numbers of international trade, cross-border mergers were increasing. As the merger regulations in each country varied somewhat, how to increase the consistency between the reviewing criteria of various competition authorities had become an important issue in coordinating the merger control measures of different countries.

The third subject was “Building Effective Anti-Cartel Enforcement”. Due to economic globalization and consolidation, cross-border cartels were growing in number. Fighting international cartels through global organizations, regional organizations or bilateral agreements between countries had thus become a key factor in effective law enforcement against cartels.

Day 2

The fourth subject was “Competition Advocacy and


Businesses Compliance”. Besides law enforcement, competition advocacy was another important task of competition authorities. The approach of advocacy varies from subject to subject. With different industries, since the purpose of law enforcement was not to punish but to ensure those falling under the regulations were able to know the law, abide by the law and respect the law, assisting the industries to establish self-discipline guidelines had thus become an important task of every competition authority in the process of building a service-oriented government.

The fifth subject was “Creating the Best Competition Agency”. The execution of competition law was closely related to national economic progress. Both developed and developing countries needed to make efforts to build a competition authority in line with the competition environment of the country as well as the international environment. Therefore, how to establish an agency with clearly defined goals and enhanced capacity were both important issues in building a good competition authority.

Most of the distinguished guests attending this conference were either incumbent or former chiefs of competition authorities or chair of international organizations. The FTC took advantage of the rare opportunity and had bilateral talks with the officials from Canada, France, OECD, Australia, Germany, Hungary, Mongolia and Singapore and the results were fruitful.

In addition to the conference, the FTC also arranged cultural performances and a half day sightseeing tour

for the foreign guests. The celebrated Taiwan Aboriginal Art Group performed at the welcome dinner on the first evening. Spellbound by the sincere and uninhibited singing and lively dance, the audience started to sway to the rhythm and brought the party to a climax. The outstanding performance won passionate rounds of applause. Cultural events were arranged after the conference. The guests first visited the National Palace Museum to see the precious collection. Every one was deeply impressed by the ancient artifacts.

After visiting the museum, they were given a tour in the Xinyi Commercial Center where modernity and fashion abound. When looking up and realizing that Taipei 101 soared right in front of them, the guests all became excited. Everyone took out his or her camera, and tried to find the best angle to have the entire 508m-tall 101 building in the picture. After the commotion, the guests walked into the restaurant in a happy mood and tasted different kinds of specialty snack foods that only Taipei could offer. They all agreed that it was a worthy trip to Taiwan. They had not only experienced the warmth of the Taiwanese people and cultural diversity, but had also witnessed the charm of the harmonious blending of classicalness and modernity in Taipei. The evening fell and neon lights started to shine. The guests could not wait to get up to the observatory in 101. As they stood way up high, the splendid sparkles of the entire city came into full view. The stars in the sky provided a beautiful contrast to the city lights. This was going to be their best memory of Taipei. 



Professor William Kovacic of the George Washington University Law School (former chairman of the US Federal Trade Commission) giving a special topic speech on the conference



The FTC Chairperson Dr. Wu Shiow-Ming and the French Competition Council Chairman Mr. Bruno Lasserre at the "Taiwan-France Competition Authority Bilateral Talk"



The FTC Chairperson Dr. Wu Shiow-Ming and the OECD Competition Committee Chair Dr. Frédéric Jenny conducting a bilateral talk



The FTC Chairperson Dr. Wu Shiow-Ming and Commissioner Ms. Sarah Court of the Australian Competition and Consumer Commission at the "Taiwan-Australia Competition Authority Bilateral Talk".

Taitung County Betel Leaf and Unripe Betel Fruit Production and Marketing Association Violated the Fair Trade Act for Joint Pricing

The FTC decided at the 1068th Commissioners' Meeting on April 25, 2012 that the practice of 18 wholesalers, members of the board of directors and supervisors of the Taitung County Betel Leaf and Unripe Betel Fruit Production and Marketing Association, to discuss and determine the betel leaf and unripe betel fruit purchasing and selling prices was an improper restriction on each other's business activity and was able to affect the supply-demand function of the betel leaf and unripe betel fruit market of Taitung County. It met the description of a concerted action set forth in Article 7 of the Fair Trade Act and was therefore in violation of Article 14 (1) of the same act. The FTC ordered the said 18 individuals to immediately cease the unlawful act and also imposed on them administrative fines that totaled NT\$1,050,000.

The FTC's investigation showed that the said association was established in 1997 and created the Product Promotion and Marketing Committee that met to discuss and determine the prices of betel leaves and unripe betel fruits. The 18 members of the board of directors and supervisors of the association met regularly on Mondays,

Wednesdays and Thursdays, days on which betel leaves and unripe betel fruits were


traded, to decide the prices of the day. The quotations included local prices and those plus delivery. The latter were the selling prices of the wholesalers and the former the purchasing prices of the wholesalers from the farmers. After each meeting, the secretary-general of the association would notify the members of the association of the prices by text messages to be the basis of the purchasing and selling prices.

The FTC thought that the 18 members of the board of directors and supervisors of the association simply met regularly on Mondays, Wednesdays and Thursdays, determined the prices, notified the other members by text messages, and were able to make a profit from the difference between their purchasing and selling prices. This apparently reduced each wholesaler's motivation to engage in price competition to increase trading opportunities. The betel leaf and unripe betel fruit wholesalers in Taitung County totaled more than 300 and only about 190 of them were members of the association, yet non-member wholesalers were still able to obtain the latest prices without difficulty and make purchases and sales accordingly. Apparently, the joint pricing of the



members of the board of directors and supervisors of the association could directly restrict price competition between wholesalers and affect the supply-demand function of the market in violation of Paragraph 1, Article 14 of the Fair Trade Act. .

After considering the motive and purpose of the illegal conduct and the unlawful gains expected, the damage of the illegal conduct to trading order and its duration, the profit thus obtained, the business scale, management condition and market status of the

offenders, whether the central competent authority had corrected or warned against similar types of unlawful practices, the types and number of unlawful practices in the past, the intervals between recurrences and penalties handed, whether the offenders had shown remorse, provided evidence and cooperated during the investigation, and the agricultural authority had not established a coordinating mechanism for the sales, production and marketing of betel leaves and unripe betel fruits, the FTC made the aforesaid sanction. 

Application of State-run Banks to Form Credit Card Alliance Approved with Conditions Attached

Background Description

It is a common practice for banks to cooperate with various retail outlets and give certain discounts to their credit card users making purchases at these stores. The purpose is to encourage consumers to apply for or continue to use credit cards from these banks and subsequently stimulate use of these credit cards and increase the charged amounts. Meanwhile, as their credit card holders grow in number, these banks also gain better leverage in acquiring the operations of retail outlets due to the size of the consumer groups they represent. However, this may weaken the competitiveness of other credit card issuers and gradually slow the competition in the credit card market into stagnation.

In order to obtain the cooperation of more stores and make more attractive offers to consumers, eight state-run banks, including First Commercial Bank, Taiwan Cooperative Bank, Mega International Commercial Bank, Hua Nan Commercial Bank, Chang Hwa Commercial Bank, the Land Bank of Taiwan, Taiwan Business Bank and the Bank of Taiwan, drew up a plan to form a "State-run Bank Credit Card Alliance" and sent to the FTC in 2010 a written inquiry regarding whether the alliance would be in violation of the concerted action regulations in the Fair Trade Act. After deliberation, the FTC made the decision that the formation of the said alliance did

indeed meet the description of a concerted action in Article 7 of the Fair Trade Act and that application to the FTC was required as set forth in the proviso in Paragraph 1, Article 14 of the same act. The approval of the FTC would be needed before the alliance could be formed. The eight state-run banks therefore filed the application for concerted action approval in September of the following year.

Case Analysis

The applicants for concerted action approval intended to form the state-run bank credit card alliance and jointly seek stores to cooperate and give special discounts to their credit card users. Each applicant would separately negotiate the discounts with the same store. Once all the applicants completed the negotiations and signed a cooperation agreement with the store, holders of credit cards from any of the applicants would be able to enjoy discounts when shopping at such stores. The applicants would jointly register, own and use the trademark, logo, images and domain name of the "State-run Bank Credit Card Alliance" as well as apply the aforesaid trademark and so on in advertisements or flyers. The practice met the description of the concerted action types set forth in Subparagraphs 1 and 2 of the proviso in Article 14 of the Fair Trade Act.

Evaluation of the overall economy and public benefit:


Through the joint effort to seek the cooperation of stores, the applicants could save on the expenses needed for searching, negotiating and contract signing as well as administrative costs if they worked individually. Thus, more resources could be utilized to develop more added value for their credit card holders. The effects of economies of scale could be maximized to achieve cost reductions and quality improvement. For cardholders, without any extra cost increase, there would be more stores of more varieties in which to do their shopping and at the same time they would enjoy more and better services. For the stores, the number of customers would grow and they would also expand the range of their services. In other words, this concerted action could benefit both consumers and the stores and the effect on the overall economy would be positive. Moreover, this concerted action could also bring competition pressure to other credit card issuers and stimulate competitors to establish the same deal with more stores or offer even more competitive trading terms to increase the number of cardholders or cooperative stores. It would help reinforce the competition intensity in the credit card market.

Evaluation of competition restrictions or unfair competition: After reviewing the case, the FTC was convinced that the application for concerted action approval did not involve any core variable in competition such as a joint price decision, products, markets or customers. Furthermore, in 2010 the eight state-run banks ranked between No. 15 and No. 30 in terms of the number of credit cards issued

and total amount charged in 2010. If added together, these banks accounted for 8.89% and 7.32% of the market in these areas and were in 4th place in terms of the number of credit cards issued and 7th in terms of the total amount charged. There were other credit card issuers larger in scale and stronger in market power. The applicants would be unable to build the capacity to exclude other competitors. In addition, the concerted action could exert pressure on other credit card issuers and encourage the competitors to make more efforts to persuade more stores to cooperate and offer discounts to credit card users and this would not reduce the leverage of stores in the negotiations.

Application Approved with Conditions Attached

Finally, the FTC recognized the applicants' intention to make joint efforts to seek the cooperation of stores and using the same trademark, logo, images and domain name would have positive effects on the overall economy and public benefit. This was consistent with Subparagraphs 1 and 2 of the proviso in Paragraph 1, Article 14 of the Fair Trade Act. However, to prevent the applicants from taking advantage of the concerted action approval to engage in any competition restriction or unfair competition as well as to ensure that the approval could lead to positive effects on the overall economy and public benefit, the FTC acted according to Article 15 (1) of the Fair Trade Act and attached the following conditions to the approval:

1. The applicants may not take advantage of this approval and engage in any concerted action with regard to credit card issuance terms, fee rates and collection, and cardholders' rights and obligations.
2. The applicants may not impose any restriction on any individual applicant from establishing cooperative relations with stores outside those jointly contracted or offering better terms to its cardholders.
3. The applicants may not prohibit any individual applicant from withdrawing from this concerted action. When any change occurs to the subject of the concerted action, the applicants are required to file with the FTC in writing within 30 days.
4. The applicants are required to submit the written and image records of the meeting of the credit card alliance executive team within 30 days of the meeting. 


Hotai Motors' Restriction on Trading Counterparts Violated the Fair Trade Act

The FTC decided at the 1064th Commissioners' Meeting on March 28, 2012 that Hotai Motors' restriction on its distributors' area of responsibility as a condition for continued business relations was an improper restriction on the business activity of its trading counterparts. The conduct was deemed likely to restrict competition or impede fair competition in violation of Subparagraph 6, Article 19 of the Fair Trade Act. The FTC ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of NT\$3,000,000.

The FTC's investigation showed that Hotai Motors and its distributors had signed a "Toyota Distributor Contract" in which the area of responsibility of each distributor was specified. The island was divided into 8 areas placed respectively under the responsibility of Kuotu, Beidu, Tao-miao, Central, Nandu, Eastern, and Lanyang Toyota. Besides the greater Taipei area (Taipei City, New Taipei City and Keelung City) where Beidu and Kuotu were there to compete with each other, in each of the remaining 7 areas of responsibility there was only one distributor operating in two or more counties/cities. The number of taxis in the greater Taipei area accounted for over 70% of the total number of taxis in the country and this made car sales in the Taipei area very competitive.

Hotai Motors had signed with the distributors even before the 2006 "Large Quantity Wholesale Funding Agreement" that carried clauses regarding different funding for sales in and out of the area of

responsibility. However, due to Hotai Motors' policy to place stricter controls on cross-district sales, funding for sales outside the area of responsibility was cancelled in the second half of 2007. The funding difference between in and outside the area of responsibility was 2~3%. Taxi operators wanted to make cross-district purchases but were turned down. This measure helped maintain the sales of cars of the two distributors for taxis at a stable 4-to-6 ratio. The aforesaid agreement apparently could provide enough incentives and had the effect of preventing the distributors from competing outside the area of responsibility. It was a restriction of competition.

Hotai Motors made use of the distribution contract to restrict distributors' areas of responsibility and adopted the extent of each distributor's obedience as the criterion for the large quantity wholesale funding to restrain its business activity and reduce performance competition between distributors. It was likely to restrict competition or impede fair competition in violation of Subparagraph 6, Article 19 of the Fair Trade Act. After assessing the motive and purpose of the illegal conduct, the level of damage to trading order and the financial gains thus obtained, the duration of the conduct, as well as the management condition and market status of the company, the FTC acted according to the first section of Article 41 of the same act, ordered the company to immediately cease the unlawful act, and made the aforesaid sanction. 

Concerted Action of Electronic and Electrical Waste Disposal Businesses Violated the Fair Trade Act

The FTC decided at the 1059th Commissioners' Meeting on February 22 this year (2012) that E&E Recycling and 11 other electronic and electrical waste disposal businesses were in violation of Article 14 (1) of the Fair Trade Act for their joint waste electronic and electrical equipment recycling and distribution. The FTC imposed on E&E Recycling an administrative fine of 25,000,000 NT dollars (the same currency applies hereinafter), 15,000,000 on each of FGD Recycling Industrial Co., Ltd., Perfect Recycling Co., Hong Chin Recycling Enterprise Corp. and Lih Jian Co., Ltd., 10,000,000 on each of Jiu Fa Environmental Protection Engineering Co., Ltd., Da Qi Environmental Technologies Co., Ltd. and Da Nan Fang (transliteration) Recycling Co., Ltd., 2,500,000 on each of Rui Yuan Environmental Protection Co., Ltd. and Ke Bai Sheng Environmental Protection Co., Ltd., 1,250,000 on HK Recycling, and 650,000 on Han Lin Environmental Technologies Co., Ltd. In addition, E&E recycling and 12 other waste information equipment disposal businesses also violated Article 14 (1) of the Fair Trade Act for their joint recycling and distribution of information equipment waste. The FTC imposed an administrative fine of 2,400,000 on E&E Recycling, 2,000,000 on each of FGD Recycling Industrial Co., Perfect Recycling Co., Hong Chin Recycling Enterprise Corp., Lih Jian Co., Ltd., Jiu Fa Environmental Protection Engineering Co., Ltd.,

Da Qi Environmental Technologies Co., Ltd. and Da Nan Fang Recycling Co., Ltd., 500,000 on each of Rui Yuan Environmental Protection Co., Ltd., HK Recycling and Quan Ya Guan Technology Co., Ltd., and 200,000 on Cheng Kuang Recycling.

The FTC's investigation showed that there were 12 electronic and electrical waste disposal businesses, namely, E&E, HK, Han Lin, Jiu Fa, Lih Jian, Perfect, FGD, Hong Chin, Ke Bai Sheng, Rui Yuan, Da Nan Fang and Da Qi, that were legally registered with the Environmental Protection Administration (EPA) and had obtained the status to receive funding from the EPA according to act. The said businesses made their own collection and also purchased from other recycling operations, dismantled the objects, made the corresponding disposal, and applied to the EPA for subsidies. They were considered horizontal competitors. However, between March 2001 and October 2011, these businesses (joining the concerted action at different times) signed the "Agreement on the Joint Recycling and Disposal of Electronic and Electrical Waste" and established the "Regulations for the Management of Joint Recycling and Disposal of Electronic and Electrical Waste". Penalty provisions were also formulated and they met regularly to discuss and decide their purchasing prices for waste electronic and electrical objects, the percentage of objects to be disposed of by each


business, and the division of trading counterparts and cost sharing. In other words, the objects collected were distributed based on a certain ratio and each business applied to the EPA for the subsidy according to the quantity it processed. To ensure fulfillment of the agreement, each business had to turn in a guarantee of NT\$3,000,000 in the form of a check or promissory note and every two businesses would regularly check each other's inventory and fill out the daily recycling disposal report as a way of supervision. Those engaging in price jacking, hoarding, or cross-district acquisition would be subject to established penalties. The aforesaid agreement and regulations stipulated that the businesses would set up a joint recycling disposal management fund and participate in the operations of the organization. The signatory committee was the ultimate decision-maker and under it were a management team and an operation center to be in charge of stock inventory, making daily reports, distribution, and the income and expenditure accounts. In principle, the committee met once every three months and the management team once a month. The management team and



the operation center distributed the electronic and electrical waste evenly among the businesses (except E&E's Taipei Plant that was given a large proportion) with no consideration of the capital expenditures, cost structure and capacity of each business. In order to stick to the established distribution ratio, those with a stronger recycling capacity had to turn in their surpluses for the operation center to distribute among the ones with a smaller disposal capacity. As a consequence, the capacity utilization rates of most of the businesses decreased. The faulty allocation of resources and rigid purchasing prices did huge harm to the competition function. The said businesses were clearly in violation of Article 14 (1) of the Fair Trade Act. After assessing the level of involvement of each business in the concerted action, its length of participation and allotment, its business scale, and the degree of cooperation during the investigation, the FTC made the sanctions according to the first section of Article 41 of the same act.

Another finding of the FTC's investigation revealed that there were 16 businesses, namely, E&E, FGD, Perfect, Hong Chin, Lih Jian, Jiu Fa, Da Qi, Quan Ya Guan, Cheng Kuang, Jia Long, Da Nan Fang, Rui Yuan, Ke Bai Sheng, HK, Han Lin and Xi Fang Recycling, that were legally registered with the EPA as information equipment waste disposal operations and had acquired the status for EPA funding. These businesses made their own collection and also purchased from other recycling operations, dismantled the waste information equipment, made the corresponding disposal, and applied to

the EPA for subsidies. In between, the businesses competed with one another on prices and quantities to win business opportunities with other recycling businesses. The amount they processed required verification before they could apply for subsidies from the EPA. They were horizontal competitors. Nevertheless, besides Ke Bai Sheng, Xi Fang and Han Ling, the remaining 13 businesses signed between July 2008 and August 2009 the “Agreement on the Joint Recycling and Disposal of Information Equipment Waste”, established the “Regulations for the Management of Joint Recycling and Disposal of Information Equipment Waste”, and each turned in a guarantee of NT\$2,000,000 in the form of a check or promissory note to ensure fulfillment of

the agreement. The approach was similar to the operation under the aforesaid “Agreement on the Joint Recycling and Disposal of Electronic and Electrical Waste” and, likewise, resulted in a decrease in the capacity utilization rate of most of the businesses. The faulty allocation of resources also led to serious harm to the competition function of the market. Hence, the FTC ruled that the said businesses had violated Article 14 (1) of the Fair Trade Act. After assessing the level of involvement of each business, its length of participation in the concerted action, the allotment received, its business scale and the degree of cooperation during the investigation, the FTC acted according to the first section of Article 41 of the same act and made the sanctions. 




False Market Share Claim by Warm Sun International Co., Ltd. Violated the Fair Trade Act

The FTC decided at the 1062nd Commissioners' Meeting on March 14, 2012 that the advertisement Warm Sun International Co., Ltd. posted online for the "Hair Stick" clip-on hair extension products (hereinafter referred to as the Hair Stick products) was a false, untrue and misleading representation with regard to quality of product in violation of Article 21 (1) of the Fair Trade Act. Acting according to 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\$50,000.

Market share is closely related to business performance. It is a common practice for businesses to use such data to attract consumers and create trading opportunities. Trading counterparts will normally make reference to such information before deciding on the transaction. The investigation of the FTC revealed that Warm Sun International made the claim on both its own website and YouTube that its

"Seamless European Style Hair Stick products have a 92% market share" and the products had a "staggering 92% market share in Europe." However, the company was unable to provide any objectively established data to support the claim. Therefore, it was considered a false, untrue and misleading representation in violation of Article 21 (1) of the Fair Trade Act.

Another finding of the FTC's investigation showed that Warm Sun International also applied the wording of "testimonies from over 1,000,000 satisfied customers around the globe" and "a million users worldwide." The company admitted that the data had been its own estimates. They were not objectively acquired figures and the company had never conducted any surveys. Hence, Warm Sun International failed to fulfill the obligation of an advertiser to disclose the facts and obtain supporting evidence before posting the claim. This conduct was also in violation of Article 21 (1) of the Fair Trade Act. 

Mercedes-Benz Taiwan Violated of the Fair Trade Act for Posting False Fuel Economy Claims in Advertisements

Mercedes-Benz Taiwan Ltd. (hereinafter referred to as Mercedes-Benz Taiwan) claimed in advertisements for the Smart model that the car could achieve an “average fuel economy of 22.22km/l” and “overall fuel economy of 23.26 kilometers per liter.” The FTC decided at the 1067th Commissioners’ Meeting that the said wording was a misleading representation with regard to quality of product in violation of Article 21 (1) of the Fair Trade Act and therefore imposed an administrative fine of NT\$1,500,000 on the company. Due to the recent gasoline and electricity rate increases, the public has been especially sensitive about fuel economy and money-saving issues. As a consequence, such claims in auto advertisements have become the selling points. The FTC has initiated comprehensive investigations on all major carmakers to safeguard consumers’ interests and pockets.


The FTC’s investigation showed that on its website and in its catalogs Mercedes-Benz Taiwan advertised the Smart model as being able to achieve an average fuel economy of 22~23km/l without any further explanation. It gave consumers the impression that the figure was the average result of the vehicle driven under normal circumstances in the city, on the highway or outside urban areas. Although the claimed fuel economy performance figures had been obtained through tests by laboratories commissioned by Mercedes-Benz in Germany, and the testing

conditions were the same as the fuel economy test values in the Fuel Economy Guide published by the Bureau of Energy (hereinafter referred to as the BOE) of the Ministry of Economic Affairs – the figures had been obtained through tests conducted in laboratories and under specific conditions. According to the BOE, such tests are all conducted in laboratories with temperature and humidity control and the climate and road condition factors are excluded. Moreover, engineers follow the established procedure and test the car on the chassis dynamometer without turning on the headlights, air conditioner and stereo, devices that consume energy. This is supposed to be a requirement to ensure the objectivity of the test results. However, this requirement is obviously inconsistent with the reality that consumers are normally likely to turn on the headlights, air conditioner and the stereo while the climate and road conditions also differ from one place to another.

In the said advertisements, Mercedes-Benz Taiwan did not disclose that the tests had been conducted in laboratories and the differences that there might be in actual driving. Consumers had no way of knowing such differences between laboratory test results and normal driving; neither did they understand that such test results only suggested the maximum fuel economy performance and the actual figures obtained in normal driving could be significantly different. This

could mislead consumers to have wrong perceptions or make wrong decisions. Therefore, the FTC ruled that Mercedes-Benz Taiwan had been in violation of Article 21 (1) of the Fair Trade Act.

Due to the recent gasoline and electricity rate increases, the public is especially sensitive to fuel economy and money-saving issues and

advertisements containing related information have become important references for consumers thinking about buying cars. The FTC will continue to comprehensively investigate whether such misleading advertisements are being presented by all the major carmakers in order to make sure that consumers' interests and pockets are safeguarded. 

An Overview of the Development of Multilevel Sales Businesses in 2011

1. Foreword

Since 2010, the FTC has replaced the annual “Multilevel Sales Business Survey” with the “Multilevel Sales Administration System” for businesses to fill out the questionnaire online. The same business report filing procedure was again adopted in 2011 and the results were compiled into the “2011 Report on the Online Filing of Multilevel Sales Business Development”. The following is an overview of the development of multilevel sales businesses in 2011 based on this report.

2. Special features of this survey

(1) All related businesses were required to use the Multilevel Sales Administration System to report their operations and those failing to file their business operations were singled out as subjects of investigation.

(2) Revision of questions regarding the “number of participants” and the calculation of the “rate of repeated participation”

The FTC learned from the businesses that they used to give their answers for questions regarding the number of participants based on the accumulated number of participants over the years, instead of the number of participants in the target year of the survey. As a result, the figure obtained had been larger than the actual number of participants. Therefore, the revision was made while at the same time the rate of repeated participation, the percentage of people signing up with two or more multilevel sales businesses, was recalculated to arrive at a more precise number of participants in 2011. In so doing, the FTC was able to understand the actual operations of multilevel sales businesses and their development.

(3) Commencement of investigation on the ratio of online marketing conducted by multilevel sales businesses

3. Survey period and subjects

The dynamic data are based on the figures established throughout 2011 while the static data are those obtained at the end of 2011. The survey subjects are multilevel sales businesses that filed with the FTC before the end of 2011.

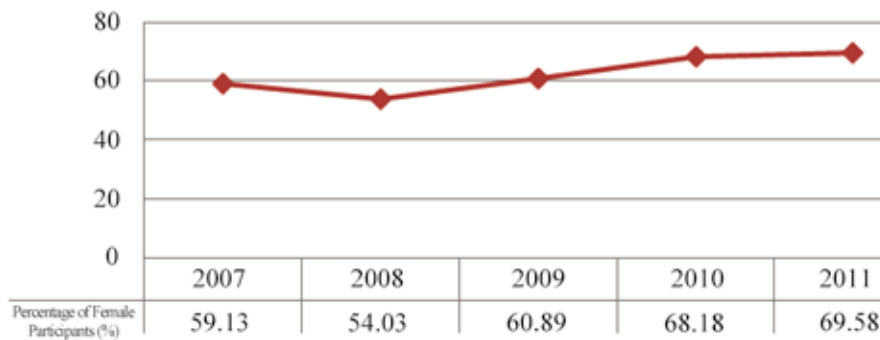
4. Survey results

(1) Survey response rates: The survey was conducted online and directed at 500 businesses. 408 responded and 334 of them confirmed they were still operating multilevel sales. Both figures were higher than in the previous years.

(2) Numbers of participants: The revised calculation showed the numbers of participants for the 334 multilevel sales businesses added up to 2,533,000 person-times. After subtracting repeated participations, the total came to 2,354,000 and the participation rate (the ratio of the number of participants to the total population in the country) was about 10.14%. In other words, 10.14 out of every 100 people was involved in multilevel sales operations.

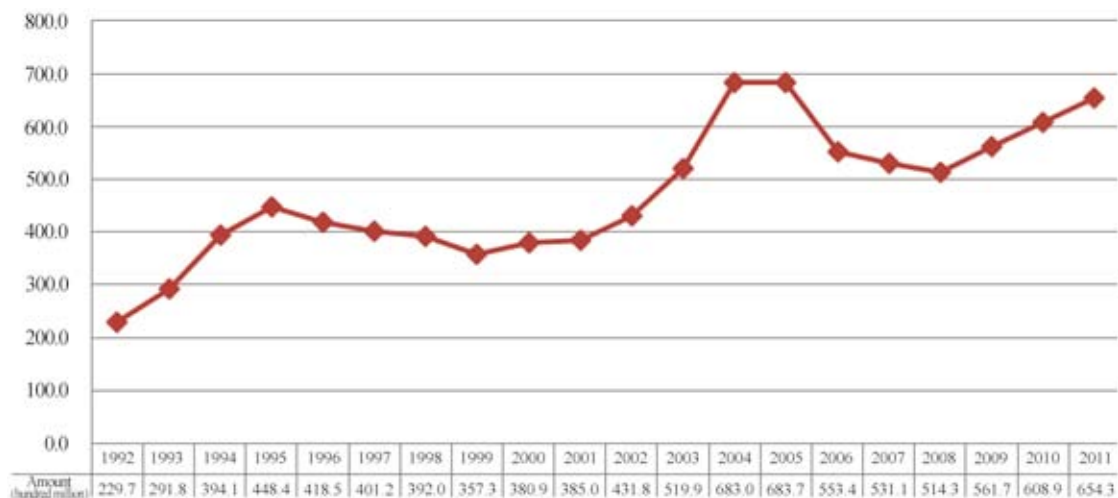
(3) Females forming the majority of multilevel sales participants: There were 1,762,400 female participants in 2011, accounting for 69.58% of total participants. The number had increased from 59.13% in 2007 to 69.58% in 2011. In addition, in 275 of the multilevel sales businesses (82.33%), females accounted for over 50% of total participants. Obviously, females made up the majority of multilevel sales participants.

Run Chart 1. Percentages of Female Participants from 2007 to 2011 (2007 adopted as the beginning in the survey)



(4) Total output value of multilevel sales: The total income of the 334 multilevel sales businesses was 65,430,000,000 NT dollars (the same currency applies hereinafter), growing by 4,535,000,000 (7.45%) from the 60,895,000,000 in 2010.

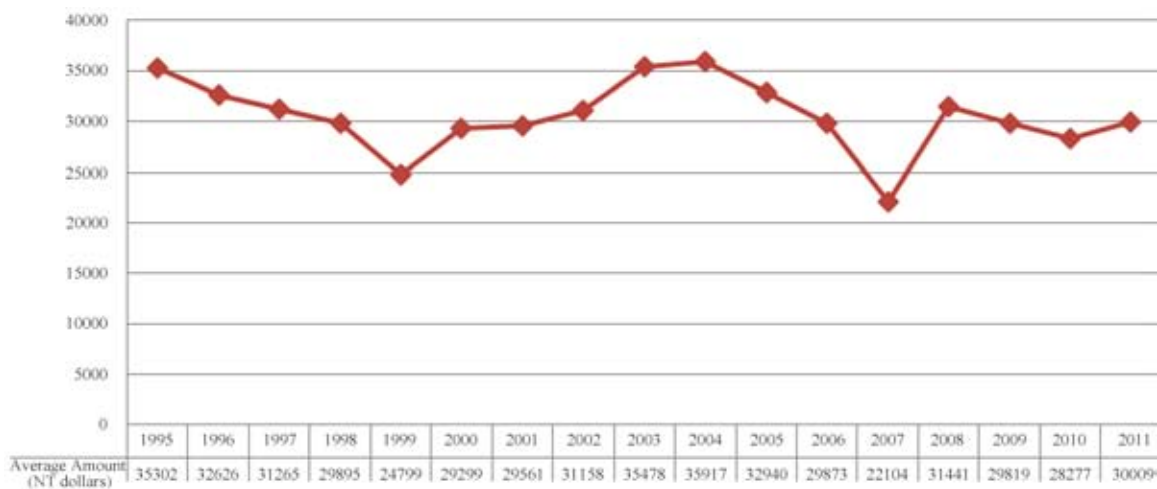
Run Chart 2. Total Multilevel Sales Income Over the Years



(5) Change in business scale: There were 13 multilevel sales businesses (10 in 2010) with annual income of over 1 billion in 2011. The aggregate income of these businesses reached 42.011 billion, averaging 3.23159 billion per business and growing by 14.66% from the 36.637 billion in 2010. The sales of these businesses accounted for 64.21% of the total multilevel sales income and went up by 4.04% from the 60.17% in 2010. There were 61 businesses with annual sales of over 100 million but less than 1 billion, and their aggregate business income was 18.655 billion, decreasing by 5.53 hundred million from the 19.208 billion in 2010 and accounting for 28.51% of the total sales of the industry, dropping 3.03% from the 31.54% in 2010. The above figures indicate that multilevel sales business continued to rise back up. Although the ones with sales of over 1 billion made up merely 3.89% of the total number of multilevel sales businesses, their total sales reached 64.21% of that for the entire industry. If counting those making more than 100 million but less than 1 billion, which accounted for 22.15% of the total number of multilevel sales businesses, the total output value was a staggering 92.72%. As for the smaller operations, their total business income remained less than 10% of the total output value, indicating that there was no significant change in the market structure of the multilevel sales industry.

(6) Numbers and ratios of participants placing orders and collecting rewards (commissions): In 2011, there were 1,443,000 participants placing orders, accounting for 56.97% of the total number of participants, and 796,000 persons, 31.43%, were able to collect commissions (rewards). The average commission (reward) was 30,009 dollars, 1,732 dollars more than the 28,277 dollars in 2010. The data shows that there was no significant difference in the numbers of participants placing orders and collecting commissions (rewards) of 2010 between those in the previous years.

Run Chart 3. Average Commission Collected over the Years (Note: No data were available for 1992 and 1993.)



- (7) Sales of different types of multilevel sales products: The sales of nutrition and healthcare products in 2011 totaled 36,273,000,000 dollars (55.44% of the total sales of the industry) and continued to top the list. Beauty and skincare products came second with 10,083,000,000 dollars (15.41%). The No. 3 and No. 4 best-selling products in 2010 switched positions in 2011 – other products (such as massage chairs, cremation urns, online courses, etc.) took the third place with 5,840,000,000 dollars (8.93%) while cleaning products slipped down a notch with 3,404,000,000 (5.2%). The top four accounted for 84.98% of the total multilevel sales.
- (8) Ratio of online marketing and supply cost: In 2011, there were 118 multilevel sales businesses accepting orders online (accounting for 35.33%) while 78 businesses had set up their online shopping mall (23.35%). This indicates that e-commerce was still not a prevalent practice in multilevel sales and “people” remained the marketing medium in multilevel sales. Meanwhile, the supply cost of multilevel sales businesses took up 30.99% of the total sales income in 2011, rising by 2.73% from the 28.26% in 2010.
- (9) Prospects of future operations: 50.90% of the multilevel businesses expected sales growth in 2012, whereas 14.97% of them were not so optimistic. The likely problems that multilevel level businesses could face in 2012 were in the same order as in 2011. Intensified competition between similar products was first on the list. Sabotage of illegal multilevel sales operations came second. No. 3 was the worry that business might be affected by economic downturns. Apparently, the multilevel sales environment has been influenced by more or less the same factors in recent years.

FTC Activities in May and June 2012

- ▶ On May 8, Assistant Professor Huang Yu-wen of the Graduate Institute of Patent of National Taiwan University of Science and Technology gave a special topic speech on “Competition Policy and Regulation in the Digital Convergence Era” at the invitation of the FTC.
- ▶ On May 10, the FTC conducted the “Fair Trade Act Training Camp” at National Pingtung University of Science and Technology.
- ▶ On May 11, the FTC held the presentation on “ Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks and the Corresponding Regulations” in Taichung City.
- ▶ On May 11, the FTC held the presentation on “Antitrust Regulations and Guidelines for Business Practices” in Hsinchu city.
- ▶ On May 16, the FTC conducted the “Seminar on Price Adjustment of Convenience Store Chains and the Fair Trade Act”.
- ▶ On May 24, the FTC hosted a cross-ministry/council consultation on the Draft Multilevel Sales Administration Act and the draft amendment to the Fair Trade Act.
- ▶ On May 24, the FTC held the presentation on “ Multilevel Sales Regulations” in Taichung City.
- ▶ On May 25, the FTC held the presentation on “ Agriculture and Competition” in Kaohsiung City.
- ▶ On May 25, the FTC conducted the “Fair Trade Act Training Camp” at National Chung Hsing University.
- ▶ On May 28, the FTC held a topic presentation titled “Administrative Fine Criteria Updates and An Analysis of the Leniency Policy for Concerted Actions” in Tainan City.
- ▶ On May 29, Associate Professor Hsu Yao-ming of National Cheng Chi University gave a topic speech on “International Trade and Competition: An Observation Based on the Act of the World Trade Organization” at the invitation of the FTC.
- ▶ On June 1, the FTC held the presentation on “ Guidelines for Business Practices and An Analysis of Violation Cases” in Taipei City.
- ▶ On June 4, the FTC held the presentation on “ Multilevel Sales Regulations” in Kaohsiung City.
- ▶ On June 5, Associate Professor Wu Jin-song of the Department of Business Administration of Chihlee Institute of Technology gave a topic speech on “Quantification – Application of Economic Analysis: Simple Linear Regression and Related Analysis” at the invitation of the FTC.
- ▶ On June 6, the FTC conducted the “Fair Trade Training Camp” at the National University of Kaohsiung.

- 🚩 On June 7, the FTC held the presentation on “Multilevel Sales Regulations” in Taipei City.
- 🚩 On June 13, the FTC held a presentation on “Various Aspects of Trading Traps” at the Nanhua District Post-disaster Recovery Service Center in Tainan City.
- 🚩 On June 15, the FTC held the presentation on “FTC Regulations Regarding Online Advertising” in Taipei City.
- 🚩 On June 21, the FTC held the presentation on “The Fair Trade Act of 2012” in New Taipei City.
- 🚩 On June 22, the FTC held the presentation on “FTC Regulations Regarding Auto Advertising” in Taipei City.
- 🚩 On June 25, the FTC conducted the “Workshop on the Establishment of Fair Competition among Real Estate Agencies” in Taipei City.
- 🚩 On June 25, the chief legal consultant of the US Federal Trade Commission gave a topic speech on “FTC and the Institutional Structure of Competition Agencies” at the invitation of the FTC.



1



2



3



4

1. The presentation on “Antitrust Regulations and Guidelines for Business Practices” in Hsinchu City
2. The presentation on “Agriculture and Competition” in Kaohsiung City
3. Associate Professor Wu Jin-song of the Department of Business Administration of Chihlee Institute of Technology speaking on “Quantification – Application of Economic Analysis: Simple Linear Regression and Related Analysis” at the invitation of the FTC
4. The presentation on “FTC Regulations Regarding Online Advertising” in Taipei City

On June 26 and 27, the FTC hosted the “2012 Taiwan International Conference on Competition Policy and Law” in Taipei City.

On June 29, the FTC held the “Seminar on the FTC’s Disposal Directions on Market Definition (Draft)”.



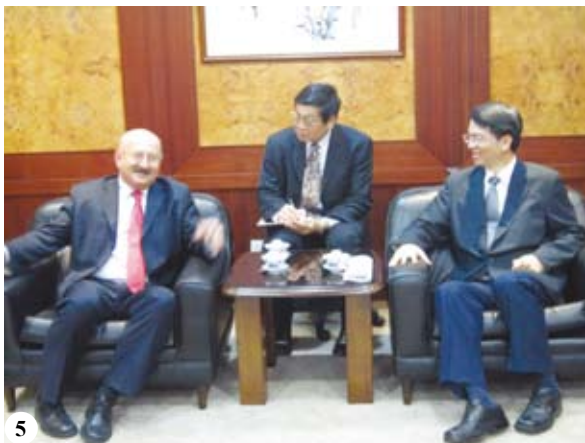
5. Vice President Wu Den-yih with competition authority officials from various countries at the “2012 Taiwan International Conference on Competition Policy and Law” in Taipei



6. The FTC Chairperson Wu Show-ming delivering the welcome speech at the “2012 Taiwan International Conference on Competition Policy and Law” in Taipei

FTC International Exchanges in May and June 2012

- 🚩 On May 2 and 3, FTC Chairperson Wu led a delegation to attend the 7th East Asia Conference on Competition Law and Policy and the 8th East Asia Top Level Officials' Meeting on Competition Policy in Kuala Lumpur, Malaysia.
- 🚩 On May 23, the FTC attended the teleconference of Subgroup 2 (Enforcement Techniques) of the Cartel Working Group of the International Competition Network (ICN).
- 🚩 On May 30 and 31, the FTC attended the 2nd APEC Economic Committee Meeting (EC2) in Kazan, Russia.
- 🚩 From June 11 to 14, the FTC attended the routine meeting of the OECD Competition Committee.
- 🚩 On June 14, the FTC attended the APEC/IPEG "Seminar on Policies and Practices Related to Intellectual Property and Criteria" held by the Intellectual Property Office.
- 🚩 On June 18, 20 and 21, the FTC attended the teleconference of the ICN Merger Working Group, Cartel Working Group, and First General Assembly, respectively.
- 🚩 On June 25, Chairperson Wu Shioh-ming led the executives and conducted the Taiwan-Canada Competition Authority Bilateral Talk with Canadian Competition Bureau Commissioner Ms. Melanie Aitkan and her staff.
- 🚩 From June 26 to 30, the FTC's representatives attended the "Vertical Restraint Seminar" hosted by the OECD Korea Policy Center in Seoul, Korea.
- 🚩 On June 26, the FTC conducted the Taiwan-France Competition Authority Talk with the French Competition Authority Chairman Mr. Bruno Lasserre.
- 🚩 On June 26, the FTC conducted a bilateral talk with Commissioner Ms. Sarah Court of the Australian Competition and Consumer Commission.
- 🚩 On June 26, the FTC conducted a bilateral talk with the 9th Decision Division Director Ms. Silke Hossenfelder of Germany's Federal Cartel Office.
- 🚩 On June 27, the FTC conducted a bilateral talk with OECD Competition Committee Chair Dr. Frédéric Jenny.
- 🚩 On June 28, the FTC conducted the Taiwan-Hungary Competition Authority Bilateral Talk with the Hungarian Competition Authority President Dr. Miklós Juhasz.
- 🚩 On June 28, the FTC conducted the Taiwan-Mongolia Competition Authority Bilateral Talk with the Chairperson of the Authority for Fair Competition and Consumer Protection of Mongolia Mr. Lkhagva Byambasuren.
- 🚩 On June 28, the FTC conducted a working-level bilateral talk with the Strategic Planning Division Director Mr. Teo Wee Guan of the Competition Commission of Singapore.



1. The FTC Chairperson Dr. Wu Shioh-Ming (left) with Malaysia Competition Commission Chairperson Ms. Tan Sri Dato' Seri Siti Norma Yaakob (center) and Japan Fair Trade Commission Chairperson Mr. Kazuhiko Takeshi (right) at the 7th East Asia Conference on Competition Law and Policy
2. The FTC representative (fourth from left, middle row) in Seoul, Korea attending the "Vertical Restraint Seminar" held by the OECD Korea Policy Center
- 3.4. The FTC Chairperson Dr. Wu Shioh-Ming (third from right, Photo 3) with FTC executives and Canadian Competition Bureau Commissioner Ms. Melanie Aitken (second from right, Photo 4) and her staff at the "Taiwan-Canada Competition Authority Bilateral Talk"
5. The FTC Chairperson Dr. Wu Shioh-Ming and Hungarian Competition Authority President Dr. Miklós Juhász at the "Taiwan-Hungary Competition Authority Bilateral Talk"
6. Chairperson of the Authority for Fair Competition and Consumer Protection of Mongolia Mr. Lkhagva Byambasuren handing a certificate of appreciation to the FTC Chairperson Dr. Wu Shioh-Ming

Taiwan FTC Newsletter

Publisher	Wu, Shiow-Ming
Editor- in-Chief	Hu, Kuang-Yu
Co-editor	Hu, Tzu-Shun Cheng, Chia-Lin Cho, Chiu-Jung Wu, Ting-Hung Shen, Li-Yu 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: http://www.ftc.gov.tw Telephone: 886-2-23517588 Fax: 886-2-23278155 E-mail: ftcnl@ftc.gov.tw
Date of Publication	August 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



Attribution Non-Commercial No Derivatives (CC-BY-NC-ND) is released under the Creative Commons Attribution 2.5 License

An individual must attribute the work in the manner specified by the author or licensor, and may not use this work for commercial purposes, alter, transform, or build upon this work.



內付
資已
國郵

台北郵局許可證
台北字第4682號
中華郵政台北雜字
第1309號執照
登記為雜誌交寄

雜誌

無法投遞請退回



FAIR TRADE COMMISSION, R.O.C.

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



9 772070 124009

GPN:2009700036

PRICE:NT\$15