

NO **114**

# TAIWAN FTC NEWSLETTER

2023.12

## ► Selected Cases

- ✦ Taiwan Chicken Food Co., Ltd. Violated the Fair Trade Act by Not Providing Complete Important Franchise Information
- ✦ Concerted Action of Taiwan Mobile and Chunghwa Telecom Violated the Fair Trade Act
- ✦ Chenyang Company Violated the Fair Trade Act by Using a Competitor's Business Symbol Illegitimately to Post Keyword Ads
- ✦ GAOT Violated the Fair Trade Act by Making a Price List to Restrict Members' Pricing Freedom
- ✦ Feng He Bang Construction Posted False Presale Home Ads in Violation of the Fair Trade Act
- ✦ Mr. Jiang Violated the Fair Trade Act by Selling "Vehicle Noise Inspection Disqualification Certificate" Stickers

## ► FTC Statistics

Statistics on False Advertising Cases

## ► FTC Activities

FTC Activities in September and October 2023

## ► FTC International Exchanges

FTC International Exchange Activities in September and October 2023

## Taiwan Chicken Food Co., Ltd. Violated the Fair Trade Act by Not Providing Complete Important Franchise Information


The FTC decided at the 1664<sup>th</sup> Commissioners' Meeting on Aug. 30, 2023 that Taiwan Chicken Food Co., Ltd. had violated Article 25 of the Fair Trade Act by not providing complete important franchise information before contract signature when recruiting franchisees for the Danshui Taiwan Chicken Shop Health-preserving Medicinal Meals chain. The information included the amount or estimated amount needed to purchase products, materials and capital equipment before starting operation, the amount or estimated amount needed to purchase products and materials during operation, the brands and specifications of products and materials to be purchased from the franchisor or specified suppliers during the franchise contract period, and the capital equipment to be purchased from the franchisor and the specifications of such equipment. At the same time, Taiwan Chicken Food Co., Ltd. also concealed information regarding prospective franchisees' use of trademark rights to deceive and mislead trading counterparts. The practice was deceptive and obviously unfair conduct able to affect trading order. The FTC imposed an administrative fine of NT\$150,000 on the company.

Due to the diversity and prosperity of the franchise industry, joining a franchise has become one of the main channels for people in the country to invest and start their own businesses. Franchisors should provide important franchise information in advance for prospective franchisees to understand and think clearly before making decisions. The amount or estimated amount needed to purchase products,

materials and capital equipment from the franchisor or specified suppliers before and during operation as well as the brands and specifications of such products, materials and equipment are important considerations that prospective franchisees require to evaluate whether they will choose the franchisor. Meanwhile, information with regard to the franchisees' use of trademark rights and the duration is closely related to whether franchisees can use the trademark as their business symbol. Prospective franchisees need such crucial transaction information to assess whether they will select the franchisor. All such information can be provided in hardcopy or through email or communications software like LINE for people interested in becoming franchisees to understand.

Being the party in possession of the franchise information, Taiwan Chicken Food Co., Ltd. had the advantage as far as the business information was concerned. However, during the recruitment process, the company only verbally disclosed the estimated amounts needed before and during operation without providing complete transaction information. The practice made it difficult for prospective franchisees to evaluate the expenses needed to buy the different pieces of business equipment and materials as well

as the reasonableness of such expenses. As for the authorization to allow franchisees to use the trademark rights, the company concealed issues concerning disputes over the use of trademark rights. It impeded prospective franchisees from making the correct transaction judgment and had an effect on their interests. In the meantime, the practice also reduced the opportunity for the franchisees to join the franchisor's competitors. Without a doubt, it was deceptive and obviously unfair conduct able to affect trading order. Therefore, the FTC fined the company NT\$150,000.


The FTC would like to remind franchisors that they are startup partners of franchisees. During the negotiation process, they should fully communicate with prospective franchisees and provide complete information regarding the expenses needed and the franchising terms in order to build decent cooperative relations, create a win-win situation for both sides and minimize transaction disputes. Franchisors are required to abide by the Fair Trade Commission Disposal Directions (Guidelines) on the Business Practices of Franchisors (for details see: <https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=750&docid=10264>). 

## Concerted Action of Taiwan Mobile and Chunghwa Telecom Violated the Fair Trade Act

The FTC decided at the 1665<sup>th</sup> Commissioners' Meeting on Sep. 6, 2023 to impose a total administrative fine of NT\$76 million, or NT\$40 million on Chunghwa Telecom Co., Ltd. and NT\$36 million on Taiwan Mobile Co., Ltd. The two companies simultaneously canceled the special offers of "intra-network voice calls free of charge" and "call rate NT\$666 for the first six months" for the cell phone plans of the "special mobile broadband 4G plan without speed reduction (699H or 699)" and "new special cell phone plan (monthly rate NT\$699)" in October 2018. The impact of the concerted action by the two major mobile network operators on the market was tremendous.

The investigation conducted by the FTC revealed that after Taiwan Mobile and Chunghwa Telecom released the special call rate offers for the 699 plans in June and July 2018, the plans attracted mostly new subscribers. As a consequence, the number of people subscribing to high tariff phone plans decreased. The result was inconsistent with the original purpose of increasing revenues and high tariff plan users. Therefore, the two companies intended to cancel the special call rate offers for the 699 plans in the hope that users would subscribe to high tariff plans so that voice call income losses could be reduced.

The domestic mobile broadband service market was an oligopoly. Homogeneity was high and price was a principal means of competition. Hence, a telecom operator unilaterally canceling special call rate offers would risk loss of customers and its market share. For this reason, the staff members of Taiwan Mobile and Chunghwa Telecom exchanged information and achieved a mutual understanding to stop the special call rate offers in October 2018. The cessation of the special offers caused Far EasTone Telecom, another big telecom operator in the country, to follow suit. In other words, the three major telecom businesses canceled their special offers. The impact on the telecom market was immense. The conduct weakened price competition among the companies and the market function was seriously affected.


The FTC would like to remind concerned businesses that concerted actions are key targets for investigation when the agency enforces the Fair Trade Act. Businesses should not try to challenge the law. In order to encourage the reporting of illegal activities, the FTC has raised the rewards for informers of illegal concerted actions. There is a leniency policy regulation in the Fair Trade Act. Enterprises participating in illegal concerted actions can take advantage of the regulation to apply to the FTC for fine reductions or exemptions. 

## **Chenyang Company Violated the Fair Trade Act by Using a Competitor's Business Symbol Illegitimately to Post Keyword Ads**

The FTC decided at the Commissioners' Meeting on Aug. 9, 2023 that Chenyang Enterprise Co., Ltd. (Chenyang Company) had violated Article 25 of the Fair Trade Act by using the business symbol (trademark) of a competitor illegitimately to post a keyword ad to link users to its own website. It was obviously unfair conduct that exploited the fruits of the work of others and was able to affect trading order. The FTC imposed an administrative fine of NT\$100,000 on the company.

The FTC's investigation showed that Chenyang Company had used the business symbol "iMAT" of its competitor as the keyword in a keyword ad between Jun. 29 and Sep. 8, 2021. When consumers entered the text "iMAT Flip Cutting Mat" on Google, an ad displaying "iMAT," Chenyang Company's product copy and company name "Chenyang Morn Sun" would

appear. A user clicking the ad would be linked to the company's website. It was likely to cause people to think that the two companies used the same business symbol, sold the same series of products or had a certain degree of cooperation. The practice was obviously unfair conduct that exploited the fruits of the work of others. It was able to reduce the opportunity of the competitor to contact potential customers and thereby affected trading order in violation of Article 25 of the Fair Trade Act.

The FTC would like to remind businesses to choose their keywords carefully when they contribute capital to post keyword ads either by themselves or through agents. They should check whether the content of the ad includes the name of the company or brand of any competitor to avoid misunderstanding in order not to break the law. 

## **GAOT Violated the Fair Trade Act by Making a Price List to Restrict Members' Pricing Freedom**

The Galvanizing Association of Taiwan (GAOT) made a list of suggested galvanizing process prices, posted it in the quarterly Hot Dip Galvanizing Magazine and distributed the magazines so that members could see the list. The practice violated the regulation against concerted actions set forth in the Fair Trade Act. The FTC imposed an administrative fine of NT\$100,000 on the association.

The main responsibility of the GAOT was to promote hot dip galvanizing techniques to address the issue of iron getting rusted. The association claimed that the list was intended to facilitate the budget assessment of engineering units. It was for reference purposes and not compulsory. However, the investigation conducted by the FTC revealed that, although not all the members quoted prices in accordance with the suggested price list, the association had a certain degree of credibility. Therefore, the list could be restraining and affect the pricing decisions of members. In other words, it already served as

a standard of reference for prices in the market. Some members stated that when their price quotes were higher than the prices listed, customers would question why and in the end turn to competitors. Apparently, the pricing freedom of the members was restricted by the list and the supply-demand function in the relevant market was affected. It was a concerted action forbidden by Article 15 of the Fair Trade Act.

The FTC would like to point out that guilds and associations are composed of competing enterprises. If they produce a suggested price list and make it publicly available, the list can become a reference standard when the enterprises determine prices and the pricing freedom of such enterprises may be restrained. Under such circumstances, the practice could be considered to be an illegal concerted action. Hence, all guilds and associations in different industries should be particularly careful in order not to break the law.



## Feng He Bang Construction Posted False Presale Home Ads in Violation of the Fair Trade Act

In order to sell more units, some builders will construct a mezzanine in the model home to make consumers think that there can be more space that can be used. In particular, when the floor area is small, a mezzanine is definitely a way to increase usable space. Nevertheless, constructing a mezzanine in a home is not always legal.

When marketing the Green City Love 3 presale home project located in Zhongli District, Taoyuan City, Feng He Bang Construction Co., Ltd. posted on Facebook a picture of the model home which had a mezzanine inside. It gave consumers the idea that they could legally put in a mezzanine after buying a unit. However, according to the Taoyuan City Government, the approved building permit for the presale home project did not include any mezzanine design and there was no evidence that a change of design had been ratified.

The Green City Love 3 presale home project had not been approved by the building authority to have a

mezzanine put in any unit. After making purchases, consumers could not have a mezzanine constructed as advertised. A mezzanine built in a unit would be an illegal structure. It could be reported, investigated and dismantled. Therefore, the ad was inconsistent with the fact in violation of Article 21 (1) of the Fair Trade Act. Considering that the presale homes were not yet marketed during the period in which the ad was posted, the FTC decided at the 1656th Commissioners' Meeting on Jul. 5, 2023 to impose an administrative fine of NT\$300,000.

The FTC would like to remind consumers once again to check the building permit for the project when buying presale homes and determine whether the model home design is consistent with the originally approved floor plan. Above all, before buying a presale home with a mezzanine design, potential buyers should confirm whether the mezzanine design is legal. Otherwise, if the design is illegal and reported, the structure they have paid for will be dismantled. It is not worth it.



## Mr. Jiang Violated the Fair Trade Act by Selling “Vehicle Noise Inspection Disqualification Certificate” Stickers

Nowadays, young people like to adopt parodic approaches to produce all kinds of merchandise in an inverse way. However, if the products involve government agency signs or names, it is likely that the consumers will be misled into thinking that the products are associated with the functions of government agencies.

The FTC decided at the 1664th Commissioners' meeting on Aug. 30, 2023 that Mr. Jiang had violated Article 21 of the Fair Trade Act by selling “Vehicle Noise Inspection Disqualification Certificate” stickers on shopee.com. “High Noise,” “Vehicle EPA Noise Inspection Disqualification Certificate” and “Over 110db” were printed on the stickers. The design was similar to the 2G Motor Vehicle Noise Control Standard Noise Inspection Qualification Label in the past in terms of size, design and text arrangement.

The stickers were likely to cause the general public to think that the Environmental Protection Administration issued not only Noise Inspection Qualification Certificates but also Noise Inspection Disqualification Certificates. People would be misled and have wrong perceptions. It was false and misleading conduct in violation of Article 21 of the Fair Trade Act. Considering that Mr. Jiang was an individual seller, that the prices were not high, that he had already modified the ad after the investigation, and that the violation was not serious, the FTC imposed a fine on him and sent him a warning letter.

The FTC would like to remind concerned businesses to post truthful representations when making ads. They should avoid using government agency names in order not to cause misunderstandings and violate the law.



## Statistics on False Advertising Cases

To stimulate purchases, businesses often design all kinds of ads to draw attention, including offering promotional prices and special prices for a limited time and in limited quantities, stressing a long company history, emphasizing product use and functions, claiming that products have passed certification or been awarded labels, accentuating brands for accessories and pointing out the effects of use, etc. to attract consumers. However, could such ads be false?

According to statistics, the FTC closed 1,775 informed cases and ex officio investigation cases between January and September this year (2023). Among them, 1,086 cases involved false or misleading advertising (hereinafter referred to as false advertising), accounting for 61% of all the cases and increasing by 2.5% compared to the previous year). After deducting cases not belonging to the jurisdiction of the FTC, those involving procedural inconsistencies and those reported repeatedly, there were 64 cases associated with false advertising. Administrative sanctions were made in 40 of them and non-disposition was decided in 24 cases. Review (investigation) was suspended in 1,020 cases because criminal law and civil law or the jurisdiction of other agencies was involved or there were procedural inconsistencies, and two cases were consolidated. Between 2019 and September this year (hereinafter referred to as the five recent years), the FTC closed 5,696 false advertising cases (accounting for 56% of the total number of cases). Administrative sanctions were made in 180 cases. Non-disposition was decided in 164 cases. Review (investigation) was suspended in 5,332 cases and 20 cases were consolidated (Table 1).

Table 1 Statistics on False or Misleading Advertising Cases  
– by Handling Result

Unit: Case; %, ten thousand

Year	No. of Cases Involving False Advertising	Ratio to entire cases (%)	Handling Result					
			Sanctions			No. of Cases with Sanctions Given	Suspension of Review (Investigation)	Combination with other cases
			No. of Cases	Number of administrative dispositions (warning letters) issued	The fines maintained (ten thousand)			
<b>Total</b> (2019- Sep.2023)	5,696	56.1%	180	219	7,133	164	5,332	20
2019	977	55.4%	18	24	510	52	905	2
2020	1,170	55.8%	27	28	1,325	37	1,098	8
2021	1,209	50.9%	36	44	1,860	34	1,136	3
2022	1,254	58.7%	59	64	1,740	17	1,173	5
Jan.-Sep.2023	1,086	61.2%	40	59	1,698	24	1,020	2

Note: "Combination with other cases" means that the same informer repeatedly reported the same violation or different informers reported the same violation and the complaints thus filed have been combined and processed together.

From January to September this year, the FTC sanctioned false advertising and issued 59 administrative dispositions (warning letters). 60 businesses were fined and the fines totaled NT\$16.98 million. On average, each business was fined NT\$283,000, NT\$2,000 more than the NT\$281,000 in the previous year.



In the five recent years, the FTC made sanctions, issued 219 administrative dispositions (warning letters) and fined 260 businesses. The fines amounted to NT\$71.33 million. Each business was fined NT\$274,000 on average (Table 1, Fig. 1).

Judged by industry, among the 260 businesses given fines in the five recent years, 112 wholesale, retail, online shopping and mail order businesses accounted for 43.0% and formed the largest group, followed by 63 real estate businesses or 24.2% (including 25 presale home sellers), and 62 wholesale and retail businesses or 23.8% , not including online shopping and mail order businesses. The three types of businesses accounted for more than 90% (Fig. 2). The fines amounted to NT\$71.33 million. The NT\$44 million, or 61.7% of the total, imposed on real estate businesses was the largest amount (NT\$17.45 million was imposed on presale home sellers). The NT\$8.88 million, or 12.4%, imposed on wholesale and retail businesses, not including online shopping and mail order businesses, came next and was followed by NT\$8.7 million, or 12.2%, imposed on wholesale, retail, online shopping and mail order businesses (Fig. 3). The average fine of NT\$1.5 million imposed on mining and quarrying businesses, the average fine of NT\$1.4 million on art, entertainment and recreational service businesses, the average fine of NT\$800,000 on construction businesses and the average fine of NT\$698,000 on real estate businesses were the higher ones (Fig. 2).

Fig. 1 Number of Businesses Fined in the Five Recent Years and Average Fine per Business – by Year

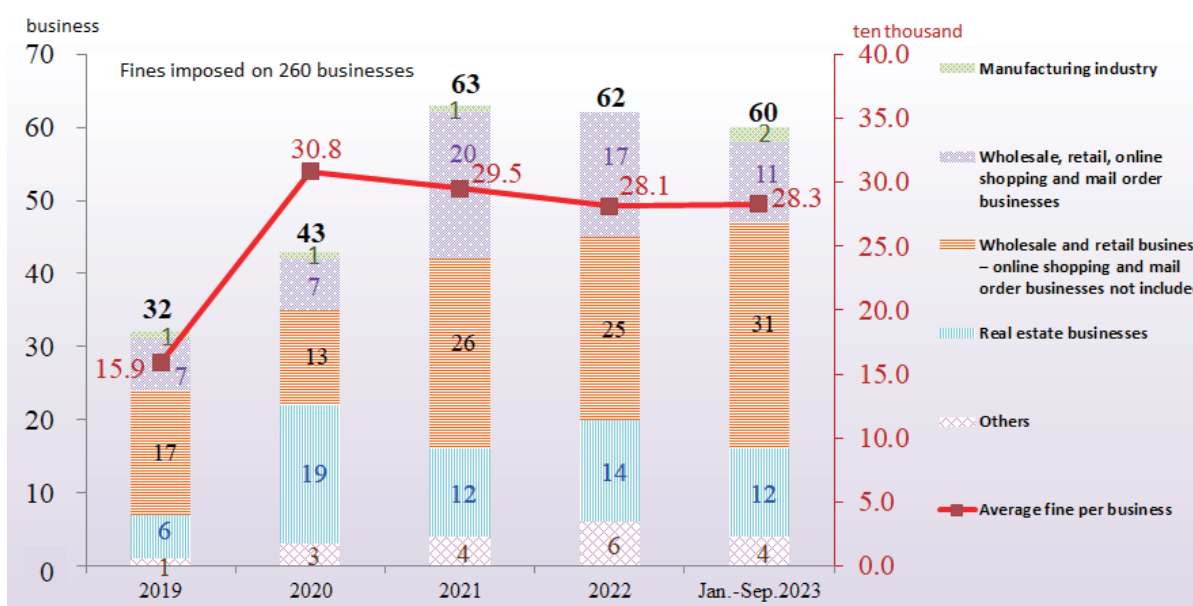


Fig. 2 Number of Businesses Fined in the Five Recent Years and Average Fine per Business – by Industry

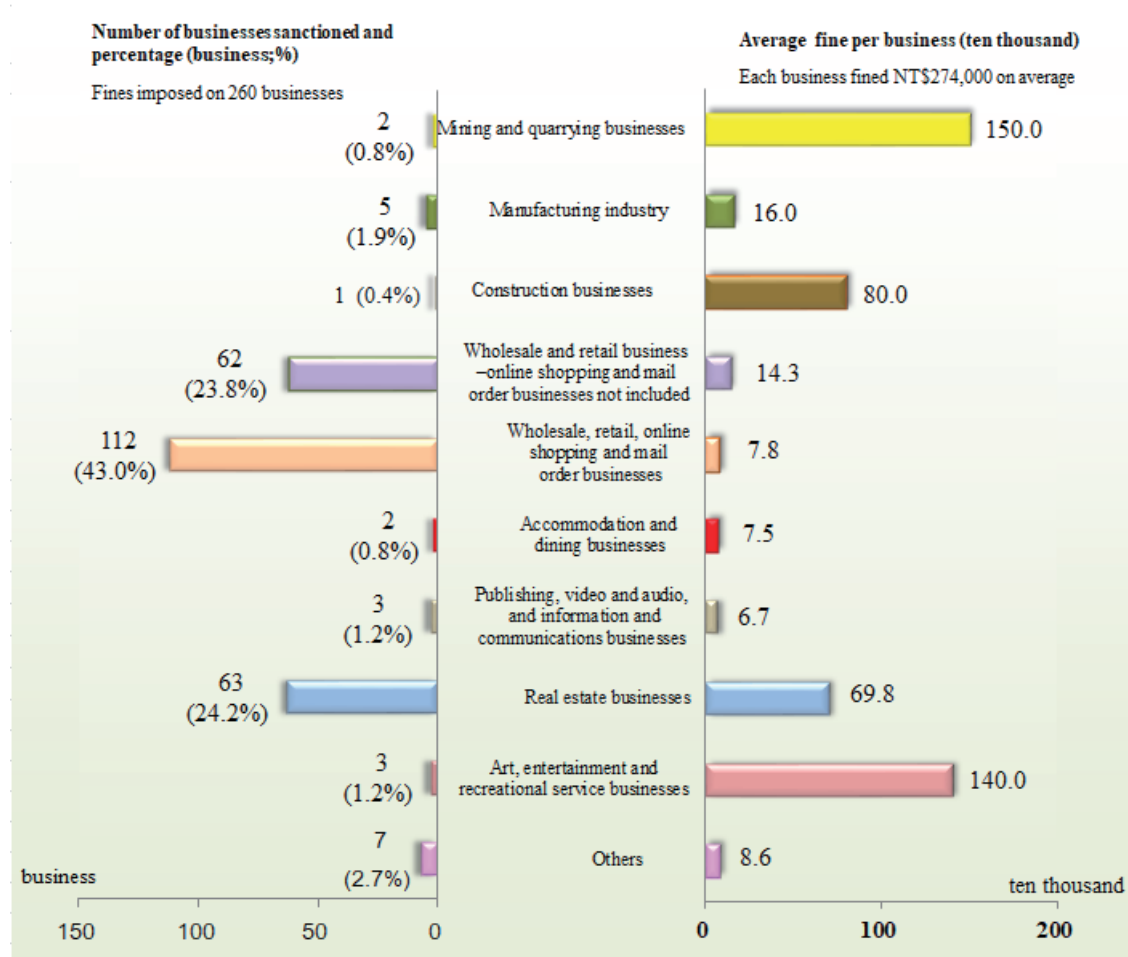
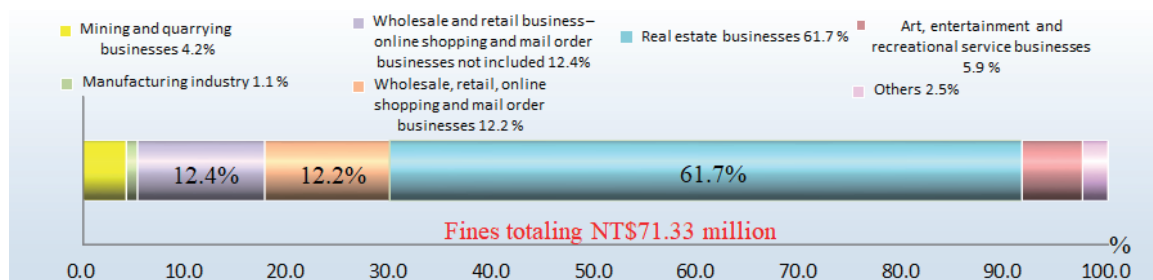


Fig. 3 Fines Imposed in the Five Recent Years – by Industry



## FTC Activities in September and October 2023

- ▲ On Sep. 1 and 22, the FTC conducted a presentation on “Law Observance and Competition in the Manufacturing Industry” for manufacturing industry workers in Kaohsiung City and Taipei City, respectively.
- ▲ On Sep. 8, the FTC held a presentation on “Fair Trade Commission Regulations on False Advertising and Past Cases” in Taitung County.
- ▲ On Sep. 8, the FTC conducted a presentation on “Fair Trade Commission Regulations on Multi-level Marketing” in Taipei City.
- ▲ On Sep. 9, the FTC conducted the 2023 “Various Aspects of Trading Traps” activity at the Good Shepherd Social Welfare Foundation in New Taipei City.
- ▲ On Sep. 18, the FTC held a seminar on the draft of a partial amendment to the Disposal Directions (Guidelines) on the Definition of Relevant Markets at the FTC.
- ▲ On Sep. 26, the FTC held a special topic speech on “The Beginning and Development of Control of Digital Platforms under Competition Law in Germany” at the FTC.
- ▲ On Oct. 11, 25 and 31, the FTC conducted the 2023 “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Insurance and Finance of National Taichung University of Science and Technology, the Department of Economic and Financial Law of the National University of Kaohsiung, and the Department of Business Administration of National Pingtung University of Science and Technology, respectively.
- ▲ On Oct. 16, the FTC held a presentation on the “Fair Trade Commission Disposal Directions (Guidelines) on Selling Presale Houses” in Taichung City.
- ▲ On Oct. 16, the FTC held a presentation on “Fair Trade Commission Regulations on False Advertising and Past Cases” in Taipei City.
- ▲ On Oct. 17, the FTC conducted the “Fair Trade G2B Express” project at Taiwan Power Company.
- ▲ On Oct. 27, the FTC held a presentation on “Have You Abided by the Law Today!? – The Antitrust Law You Don’t Know and Corporate Integrity Governance” in Hsinchu County.
- ▲ On Oct 27, the FTC conducted a presentation on “Fair Trade Commission Regulations on Multi-level Marketing” in Taipei City.



1. The FTC conducting a presentation on “Law Observance and Competition in the Manufacturing Industry” for manufacturing industry workers in Kaohsiung City



2. The FTC conducting a presentation on “Fair Trade Commission Regulations on Multi-level Marketing” in Taipei City





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- 3.The FTC conducting the 2023 "Various Aspects of Trading Traps" activity at the Good Shepherd Social Welfare Foundation in New Taipei City
- 4.The FTC conducting a presentation on "Law Observance and Competition in the Manufacturing Industry" for manufacturing industry workers in Taipei City
- 5.The FTC holding a special topic speech on "The Beginning and Development of Control of Digital Platforms under Competition Law in Germany" at the FTC
- 6.The FTC holding a presentation on the "Fair Trade Commission Disposal Directions (Guidelines) on Selling Presale Houses" in Taichung City
- 7.The FTC holding a presentation on "Fair Trade Commission Regulations on False Advertising and Past Cases" in Taipei City
- 8.The FTC holding a presentation on "Have You Abided by the Law Today!? – The Antitrust Law You Don't Know and Corporate Integrity Governance" in Hsinchu County

## FTC International Exchange Activities in September and October 2023

From Oct. 3 to 5, the FTC attended a competition law workshop on “Cartel and Bid Rigging” held by OECDKPC in Kuala Lumpur, Malaysia.

From Oct. 18 to 20, the FTC attended the 2023 ICN Annual Conference in Barcelona, Spain.



1. The FTC attending a competition law workshop on “Cartel and Bid Rigging” held by OECDKPC in Kuala Lumpur, Malaysia
2. The FTC attending the 2023 ICN Annual Conference in Barcelona, Spain



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. It would be appreciated if you could please directly fill in the questionnaire at the website (<https://www.ftc.gov.tw>). Thank you for your assistance and cooperation.

Regards  
Fair Trade Commission

### Taiwan FTC Newsletter Reader's Survey

■ Nationality : \_\_\_\_\_

■ Category of your organization

☐ Government ☐ Private Corporation ☐ Embassy ☐ NGO ☐ Media ☐ Scholars

☐ 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 favorite one?

☐ Selected Cases ☐ 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	Lee, May
Editor- in-Chief	Hu, Tzu-Shun
Co-editor	Sun, Ya-Chuan Chiu, Shu-Fen Wang, Yi-Ming Wu, Ting-Hung Chi, Hsueh-Li Chen, Yuhn-Shan Li, Yueh-Chiao Hsueh, Kuo-Chin
Publishers & Editorial Office	Fair Trade Commission, R.O.C. Address:12-14 F, No. 2-2,Sec.1,Jinan Rd.,Taipei City, Taiwan, R.O.C. Website: <a href="https://www.ftc.gov.tw">https://www.ftc.gov.tw</a> Telephone: 886-2-2351-7588 Fax: 886-2-2397-5075 E-mail: <a href="mailto:sweetcc331@ftc.gov.tw">sweetcc331@ftc.gov.tw</a>
Date of Publication	December 2023
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,Sec.1,Jinan Rd.,Taipei City, Taiwan, R.O.C. Wunan Book Co., Ltd. Telephone: 886-4-2226-0330 Address: No. 85, Sec. 2, Taiwan Blvd., Taichung City, Taiwan, R.O.C. Government Publications Bookstore Telephone: 886-2-2518-0207 Address: 1F, No. 209, Sung Chiang Rd., Taipei City, Taiwan, R.O.C.
Printer	Hon Yuan Printing Co., Ltd. Address: 9F-1, No. 602, Pa The Rd., Sec 4 Taipei City, Taiwan, R.O.C. Telephone: 886-2-2768-2833



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ISSN 2070124-1



9 772070 124009

GPN:2009700036  
PRICE:NT\$15