

NO **106**

TAIWAN FTC NEWSLETTER

2022.8

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Changrong Jiumeng Construction Violated the Fair Trade Act by Requesting Deposits to Acquire the Housing Project Agreement

The FTC decided at the 1578th Commissioners' Meeting on Jan. 5, 2022 that Changrong Jiumeng Development and Construction Co., Ltd. (hereinafter referred to as "Changrong Jiumeng Construction") and Zhengan Advertising Co., Ltd. (hereinafter referred to as "Zhengan Advertising") had violated Article 25 of the Fair Trade Act by requesting that prospective homebuyers pay a deposit to acquire and review the purchase agreement when marketing the presale home units of the "Dapinglin One Housing Project" located in Xindian District, New Taipei City. The practice was obviously unfair conduct able to affect trading order. Therefore, the FTC imposed administrative fines of NT\$1 million and NT\$500,000 on Changrong Jiumeng Construction and Zhengan Advertising, respectively.

The FTC had received complaints from citizens saying they had been requested to pay deposits to review the purchase agreement when checking out the units at the reception center of the "Dapinglin One Housing Project." When the FTC later sent out staff members to visit the center, it found out that the salespeople did in fact request that prospective homebuyers pay deposits to acquire and review the purchase agreement.

A presale home purchase agreement includes important information that homebuyers need to know. It can fully disclose details about the object of transaction and the rights and obligations of both parties. Since the agreement is drafted by the builder unilaterally, the seller has advantageous information against homebuyers. Meanwhile,

the terms in the agreement involve jargon and complicated regulations. For this reason, homebuyers should be given the agreement to review and make a careful assessment before paying the deposits. In other words, requesting homebuyers to pay deposits to acquire and review the agreement will put them in a disadvantageous position as far as transaction

decision making is concerned. It is obviously unfair. At the same time, it is unfair competition to other competitors who take the initiative to enable homebuyers to review such an agreement according to the law. Therefore, such a conduct is able to affect trading order and is in violation of Article 25 of the Fair Trade Act. 

Evolute Labs Violated the Fair Trade Act by Posting Keyword Advertisements Using the Business Symbol of a Competitor

The FTC decided at the 1592nd Commissioners' Meeting on Mar. 30, 2022 that Evolute Labs Co., Ltd. (hereinafter referred to as "Evolute Labs") had violated Article 25 of the Fair Trade Act by using the business symbol of a competitor in keyword advertisements and making the link to its own URL. The unfair conduct exploited the achievements of the efforts of another company and was also able to affect trading order. The FTC imposed an administrative fine of NT\$300,000 on Evolute Labs.

The FTC indicated that Evolute Labs managed its own website to market products of the company's own brand "RhinoShield," such as cell phone cases, screen protectors and so on. Between Jun. 18 and Oct. 7 in 2021, Evolute Labs adopted the name "HAO Best Protector," the business symbol of a competitor, to be the keyword in advertisements. When consumers entered the keyword, the search result would display the keyword advertisement carrying the wording "tough RhinoShield cell phone protector, HAO Best Protectors for cell phone screens—not explosion-proof glass protectors," and the link to the URL of Evolute Labs was placed above the heading.

The FTC's investigation revealed that, apart from using "HAO Best Protector" as the keyword, Evolute Labs also put "HAO," "HAO Best Protector," "HAO Best Protector price range" and "HAO Best Protector prices" in relation to its competitor's business symbol in the keyword group. According to the words consumers entered, different character strings would be displayed and placed side by side with the brand name and product name of Evolute Labs. Overall, it gave Internet users the wrong impression that the symbols "RhinoShield" and "HAO Best Protector" belonged to the same business or that they cooperated with each other. As a consequence, consumers originally intending to search for "HAO Best Protector" ended up getting directed to the website of Evolute Labs. The opportunities for the competitor to make contact with potential customers were reduced and the economic benefits behind the business symbol "HAO Best Protector" were jeopardized. The conduct affected the trading order in the market for cell phone peripheral products such as screen protectors. It was in violation of Article 25. Therefore, the FTC imposed an administrative fine of NT\$300,000 on Evolute Labs. 

Merger of Excelsior Medical Co., Ltd. and Two Sub-subsidiaries of Fresenius Medical Care not Prohibited

The FTC decided at the 1593rd Commissioners' Meeting on Apr. 6, 2022 to cite Article 13(1) of the Fair Trade Act and not prohibit the merger of Excelsior Medical Co., Ltd. (hereinafter referred to as "Excelsior Medical"), Excelsior Medical (Hong Kong) Co., Ltd. (hereinafter referred to as "Excelsior HK"), British Cayman Islands-based Asia Renal Care, Ltd. (hereinafter referred to as "ARC"), British Virgin Islands-based Cardinal Medical Services Ltd. (hereinafter referred to as "Cardinal Medical Services"), Fresenius Medical Care Hong Kong Ltd. (hereinafter referred to as "FMC HK") and Hong Kong-based Nephrocare Ltd. (hereinafter referred to as "Nephrocare HK").

Excelsior Medical intended to acquire about half of the shares of Cardinal Medical Services and Nephrocare HK from ARC and FMC HK, subsidiaries of German company Fresenius Medical Care AG & Co. KGaA (Fresenius Medical Care Group, hereinafter referred to as "FME Group") through its subsidiary Excelsior HK. Excelsior Medical would jointly manage the two companies with ARC and FMC HK. The condition met the filing threshold and, therefore, Excelsior Medical filed a pre-merger notification with the FTC.

Excelsior Medical, Cardinal Medical Services and Nephrocare HK were all suppliers of dialysis machines, artificial kidneys and other products associated with dialysis. Hence, there was horizontal overlapping in the operations of these three companies in the dialysis equipment market. Meanwhile, FME Group was also the supplier of

dialysis machines and artificial kidneys for Excelsior Medical. Therefore, the merger was both horizontal and vertical. Since Cardinal Medical Services and Nephrocare HK only sold products from their parent company the FME Group before and after the merger, Excelsior Medical would acquire less than half of their shares in the two companies and would not have the right to make adjustments to the distribution channels of either of them. Thus the merger would not lead to any changes in the domestic dialysis equipment market. Meanwhile, the downstream trading counterparts of dialysis equipment distributors were all medical institutions with a certain bargaining power and the increases in the market shares of the merging parties would be small after the merger. Hence the merging parties would not have the ability to raise the prices of dialysis equipment arbitrarily.

Moreover, the sales channels of the FME Group after the merger would remain the same as before. Although Excelsior Medical would acquire the shares of two sub-subsidiaries of the FME Group, it would not be able to influence the management strategies of the FME Group. At the same time, the manufacturers of dialysis machines and artificial kidneys were all well-known international companies, and there were also other existing distributors in the market. For the above reasons, the merger would not restrict other dialysis equipment distributors and manufacturers from choosing their upstream and downstream trading counterparts. 

Jiu Jian Household Appliances Co., Ltd. Violated the Fair Trade Act for Posting False Advertisements

The FTC decided at the 1558th Commissioners' Meeting on Aug. 25, 2021 that Jiu Jian Household Appliances Co., Ltd. (hereinafter referred to as "Jiu Jian Household Appliances") had violated Article 21(1) of the Fair Trade Act by claiming its Jinkon JD-5322B warm and hot water dispenser had been "awarded the Energy Label by the Bureau of Energy of the Ministry of Economic Affairs" when marketing the product on the Rakuten website. The wording was a false and misleading representation able to affect the decision-making of consumers. Therefore, the FTC imposed an administrative fine of NT\$200,000 on the company.

The FTC indicated that the claim "awarded the Energy Label by the Bureau of Energy" posted by Jiu Jian Household Appliances on the website to market the aforesaid water dispenser had given people the impression that the product in question had passed the Energy Label certification. Therefore, the product in question would consume less energy compared with other products that had not been awarded the Energy Label. However, according to the Bureau of Energy, the certificate of the Energy Label for the product in question had expired on Nov. 26, 2018. Meanwhile, the Bureau had not received any further application for the Energy Label certification. Moreover, the Bureau of Energy had commissioned

the Industrial Technology Research Institute to carry out inspections of online shopping platforms, and in May 2019 found out about the unlawful claim by Jiu Jian Household Appliances of being awarded the Energy Label. The company was notified to make corrections within a given period. Nevertheless, the same violation was discovered again on Nov. 9, 2020 in a follow-up inspection. In other words, the Energy Label of the product in question had expired, but the company continued to post the wording "awarded the Energy Label by the Bureau of Energy." The claim was able to cause the general public to have wrong perceptions about the quality of the product or make wrong decisions. The conduct was in violation of Article 21(1) of the Fair Trade Act.

The FTC would like to remind consumers that the Energy Label is valid only for a certain period. Before shopping for household appliances, be advised to visit the Energy Label website (<https://www.energylabel.org.tw/englishlabel/index.aspx>) of the Bureau of Energy to verify whether the Energy Label of the products is still valid. For businesses that have been found to have violated the Fair Trade Act in this regard and have been asked to make corrections within a given period, the FTC will impose severe sanctions on them if they continue to post false advertisements. 

Eastern E-Commerce Co., Ltd. Violated the Multi-level Marketing Supervision Act for not Refunding Withdrawing Participants within 30 Days

The FTC decided at the 1590th Commissioners' Meeting on Mar. 16, 2022 that Eastern E-Commerce Co., Ltd. (hereinafter referred to as "Eastern E-Commerce") had violated Article 20(2) and Article 21(2) of the Multi-level Marketing Supervision Act by failing to process the withdrawal of participants and returned products within the statutory period. The FTC imposed an administrative fine of NT\$1.2 million on the company.

The Multi-level Marketing Supervision Act gives multi-level marketing participants a 30-day cooling-off period and allows them to terminate the contract and withdraw from multi-level marketing organizations at any time after that period. It is also clearly specified that after accepting the applications for withdrawing and returning products from participants, multi-level marketing businesses are obligated to complete the procedure within 30 days. The FTC's investigation showed that, among the participant withdrawal cases

received by Eastern E-Commerce between Nov. 2020 and Sep. 2021, more than 100 of them had not been completed following the withdrawal of participants or the return of products. This had affected the rights and interests of participants and was in violation of the Multi-level Marketing Supervision Act.

The FTC would like to remind participants that if they realize they are not suited to engaging in multi-level marketing, they should file written applications with the multi-level marketing business to withdraw from the business and return the remaining products. There are mandarin templates for such written applications available on the FTC's website (<https://www.ftc.gov.tw/internet/main/doc/docList.aspx?uid=1170&mid=1170>). Meanwhile, when processing the withdrawal and return of products from participants, multi-level marketing businesses should keep in mind that there is a statutory period for them to complete the process in order to avoid violating the law. 

Prior Consultation and Online Filing Progress Query Services Provided to Improve Efficiency of Merger Review

As set forth in Paragraph 1 of Article 11 of the Fair Trade Act, enterprises in a merger that exceed the thresholds specified must file a pre-merger notification with the FTC. In subsequence, the FTC shall review the prospective merger in accordance with Paragraph 1 of Article 13 of the Fair Trade Act to evaluate the overall economic benefit and likely disadvantages from competition restraints. During the reviewing process, the FTC needs to examine whether the documents presented are complete, solicit opinions from the public, consider whether the standstill period has to be extended or shortened, and decide whether conditions or undertakings should be attached. For the merging parties, the merger might involve management strategies such as investment decisions or financial plans. Therefore, it is important to keep track of the time it takes and the review progress.

In order to improve merger review efficiency and provide convenient services, the FTC set up the special task force of the “Merger Working Group” in 2021 to review merger-related administrative procedures and regulations. Business groups, foreign chambers of commerce as well as scholars and specialists from the fields of law, competition law and administrative procedure law were invited to attend a seminar on “How to Improve Transparency and Effectiveness in the Review of Mergers” so that the FTC could collect the opinions from various sectors. Later, the FTC set up the “Prior Consulting System of Merger Notification” after referring to the merger control practices adopted in developed countries. The FTC also established the “Directions on Consulting Service for Businesses Prior to Merger Notification”

on Aug. 17, 2021 to help merging enterprises clarify whether their prospective mergers meet the definitions of a merger and whether the conditions exceed the filing thresholds that would require them to file pre-merger notifications. Meanwhile, the FTC also offers advice with regard to the merger documents to be presented and the applicable procedures to be taken in order to minimize misgivings likely to occur before filing pre-merger notifications, so that the applicants can speed up the preparation of the reporting documents.

In addition, in order to make the reviewing progress open and transparent as well as simplify the administrative procedures, the FTC has provided online query services for filing and reviewing progress in pre-merger notification. An online query function for filing and reviewing progress has been provided since Jul. 1, 2021. Therefore, after filing pre-merger notifications, applicants are able to keep track of the review progress through the online merger notification filing system and to plan their management strategies accordingly. At the same time, in order to provide more convenient and faster services, apart from the application of written pre-merger notifications, the FTC has also set up an online filing channel since Oct. 1, 2021 in order to save time when preparing written notification documents or supplements.

In the future, the FTC will develop various electronic merger-filing operations and simplify administrative procedures through informatization and electronication in order to achieve the goal of making the application process more convenient and increasing administrative transparency. 

An Overview of the Development of Multi-level Marketing Business Management in 2021

As the competent authority of the Multi-level Marketing Supervision Act, the FTC conducts surveys on the development of multi-level marketing business every year to have a firm grasp of the latest conditions in the multi-level marketing industry in order to strengthen the guidance for and administration of the industry to ensure that development takes place in a positive direction. The results of the survey in 2021 indicated that the total sales and total commissions (bonuses) issued were both higher than the year before, exhibiting a steadily rising tendency.

After deducting those businesses not yet in operation or no longer in business and in suspension, the 347 multi-level marketing businesses remaining in operation were surveyed. The following is an outline of the survey results:

(1) Overall sales on the rise, yet the difference in business scale between businesses is rather large:

1. The sales of the 347 multi-level marketing businesses in 2021 amounted to NT\$106.845 billion, increasing by a sizable margin compared to the NT\$98.009 billion in 2020.
2. The average sales of the 347 businesses totaled NT\$379.1 million. 108 businesses (31.12% of the overall number of businesses) generated sales of between NT\$10 million and NT\$100 million. They formed the largest group and their total sales came to around NT\$4.384 billion, accounting for 4.10% of the total sales of all the businesses.
3. There were 21 businesses that took in more than NT\$1 billion in sales, accounting for 6.05% of the sales of all of them. Their sales added up to NT\$80.279 billion, accounting for 75.14% of the total sales in the industry. The average amount of sales was NT\$3.823 billion.

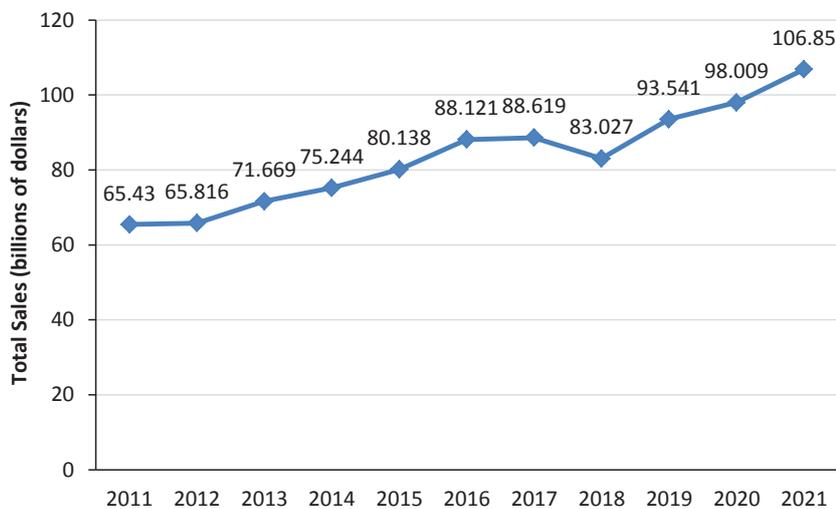


Fig.1 Total Sales of Multi-level Businesses

(2) Female participants remained the main workforce in the multi-level marketing industry:

1. As of the end of 2021, there were 3.6487 million participants, about 159.6 thousand more people compared to the 3.4891 million participants in 2020. After deduction of the ones working with more than one multi-level marketing business, there were 3.63 million participants.
2. The number of participants accounted for 15.56% of the total population. In other words, 1.556 thousand out of every ten thousand people were working in multi-level marketing businesses, an increase of 0.8% compared to the 14.76% at the end of 2020.
3. In 2021, about 811,700 people entered the industry and about 479.6 thousand people withdrew from the industry.
4. Female participants remained the main force in the multi-level marketing market. There were 2.515 million female participants (68.93%) in 2021.

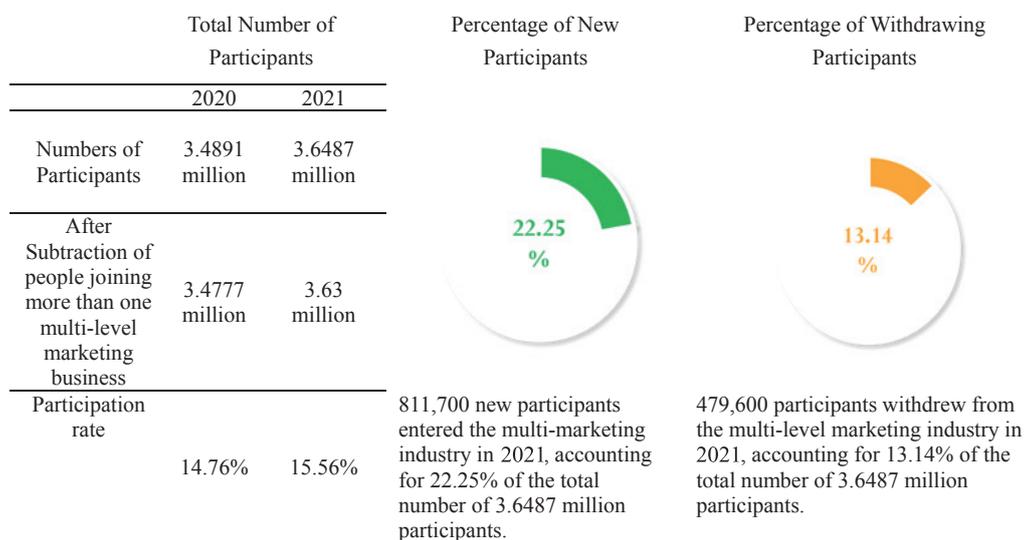


Fig.2 The number of participants

(3) Total commissions (bonuses) increased compared with the previous year:

1. The commissions (bonuses) issued in 2021 totaled NT\$47.502 billion (NT\$43.121 billion in 2020), accounting for 44.46% of the total sales, an increase of 0.46% from the 44.00% in 2020.
2. People join multi-level marketing businesses as participants to promote and sell products or services while they can also recruit new participants to obtain commissions (bonuses) or other economic benefits. However, some of them are just people who like to use the products and do not engage in actual multi-level marketing behaviors. In 2021, about 985 thousand participants, accounting for 27.00% of the total number of participants, had collected commissions (bonuses). Among them, about 723.4 thousand (73.42%) were female and they collected commissions (bonuses) amounting to NT\$33.402 billion (70.32%).



NT\$47.502 billion was issued as commissions (bonuses) in 2021, accounting for 44.46% of the total sales of multi-level marketing businesses. 985,000 participants collected commissions (bonuses) in 2021, accounting for 27.00% of the total number of 3.6487 million participants.

Fig.3 Commissions (bonuses) issued

(4) Sales of nutritional supplements continued to account for the largest share:

Nutritional supplements remained the best-selling products in the multi-level industry in 2021. The sales totaled NT\$70.128 billion (65.64%), followed by the NT\$19.718 billion (18.45%) in sales of skincare products.

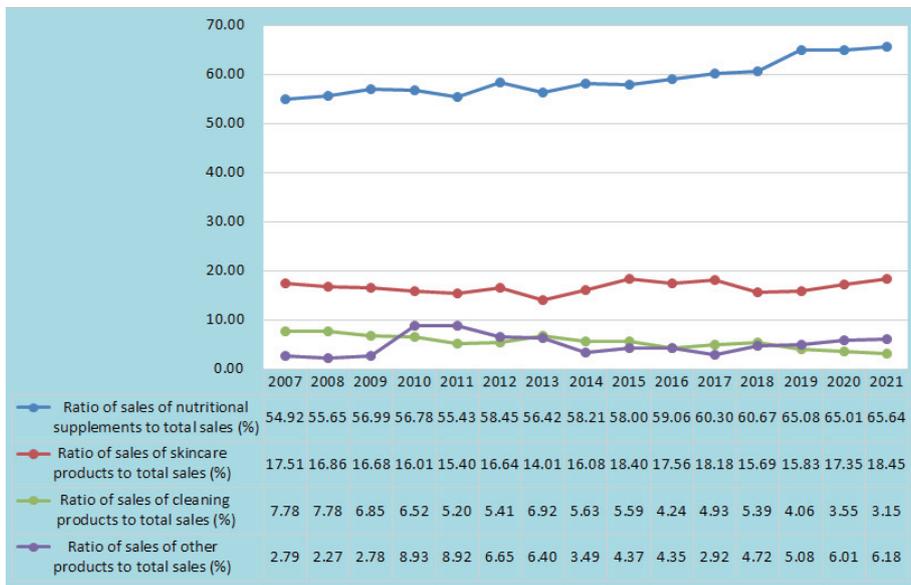


Fig.4 Percentages of different types of multi-level marketing products

(5) Online marketing growth prevalent:

There were 222 businesses, about 63.98% of the total, adopting online marketing in 2021, increasing slightly compared with the 63.06% in 2020. Among them, 212 businesses accepted online orders (online shopping), 178 businesses had set up online shopping malls, and 168 businesses accepted online orders and had also set up online shopping malls.

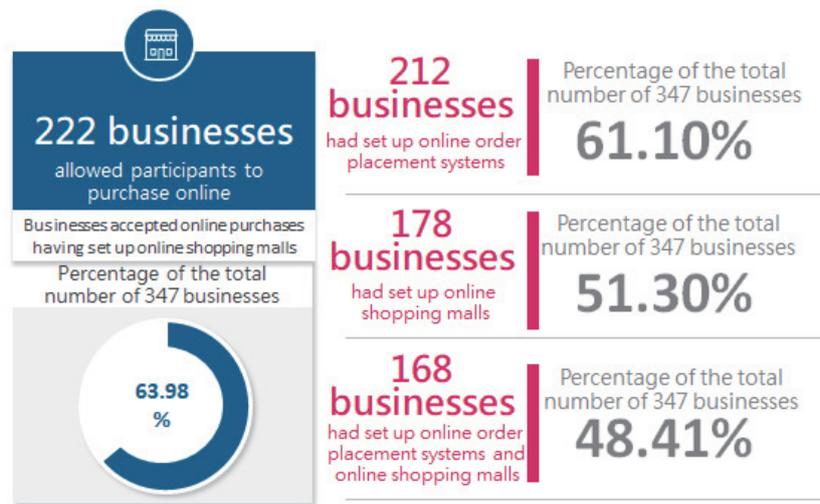


Fig.5 Overview of online marketing adopted by multi-level marketing businesses

(6) Multi-level marketing businesses remain optimistic about operations in the future:

Although multi-level marketing businesses worried about market downturns, increasing competition from similar products and the impact of illegal multi-level marketing operations, 147 businesses (42.36%) expected sales to grow in 2022. Meanwhile, 134 businesses (38.62%) expected sales to be about the same in 2022.

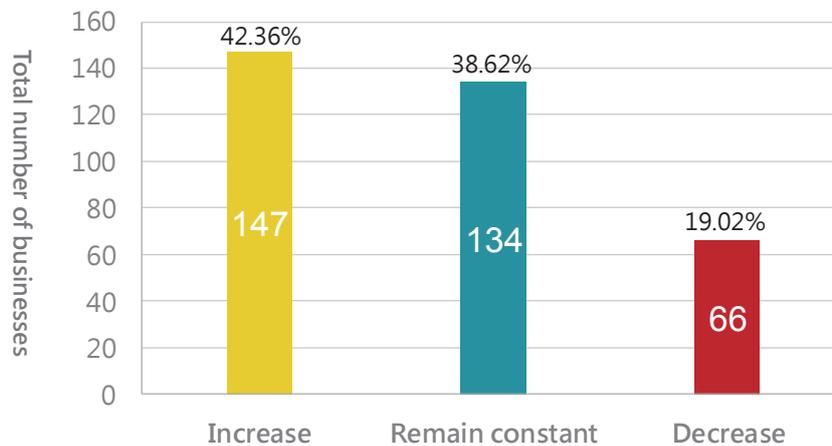


Fig.6 Future business expectations of multi-level marketing operations

FTC Activities in May and June 2022

- 🚩 From May 4 to 6, the FTC attended the ICN 2022 Annual Conference in Germany.
- 🚩 On May 5, the FTC held the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Applied Economics of National Chung Hsing University.
- 🚩 On May 9, the FTC conducted a workshop on “The Prospective Merger of Taiwan Mobile Co., Ltd. and Taiwan Star Telecom Corp. Ltd” and “The Prospective Merger of Far EastOne Telecom Co., Ltd. and Asia Pacific Telecom Co., Ltd.”
- 🚩 On May 11, the FTC held the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Economic and Financial Law of the National University of Kaohsiung (online video).
- 🚩 On May 26, the FTC conducted a workshop on “Issues Associated with Competition among Apple Stores and App Developers.”
- 🚩 On June 17, the FTC conducted presentations on “Various Aspects of Trading Traps” at the Zhangxin Village Office in Wenshan District, Taipei City.
- 🚩 From June 20 to 24, the FTC attended the OECD Competition Committee’s routine meeting and related meetings (videoconferencing).



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1. FTC Vice Chairperson Dr. Chen, Chih-Min (Andy) serving as a speaker during the Group Session on “Urgency Procedure Tools in Unilateral Conducts” at the ICN Annual Conference
2. FTC Vice Chairperson Dr. Chen, Chih-Min (Andy) taking a group photo with Director Holly Vedova (first on the left) of the Bureau of Competition of the USFTC and Chief Lynda Marshall (third from the right) of the International Section of the Antitrust Division, USDOJ during the ICN Annual Conference
3. The FTC holding the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Applied Economics of National Chung Hsing University
4. The FTC conducting presentations on “Various Aspects of Trading Traps” at the Zhangxin Village Office in Wenshan District, Taipei City

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 : _____

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