

Cases and Materials
on
**Fair Trade Law and Multi-level Marketing
Supervision Act of the Republic of China**

Vol. 15 (2015~2017)

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Chapter 1

Introduction

The Fair Trade Commission (FTC) compiles cases to lay out its practices and the practices of the courts regarding the Fair Trade Law and the Multi-level Marketing Supervision Act in the past years.

Coverage of this Book

This book compiles 109 selected typical cases decided by the FTC between 2015 and 2017, and 6 judicial cases decided by Taipei High Administrative Court and Supreme Administrative Court. In addition to this chapter, the chapter arrangements of this compilation are as follows:

- Chapter 2 compiles 3 cases on monopoly, which are defined in Article 7 and regulated by Articles 7, 8 and 9 of the Fair Trade Law.
- Chapter 3 compiles 5 cases and 1 judicial case on merger, which are defined in Article 10 and regulated by Articles 10, 11, 12 and 13 of the Fair Trade Law.
- Chapter 4 compiles 18 cases and 1 judicial case on concerted actions (cartels), which are defined in Article 14 and regulated by Articles 14, 15, 16, 17 and 18 of the Fair Trade Law.
- Chapter 5 compiles 9 cases on restrictive business practices, which are related to resale price maintenance and regulated by Article 19 of the Fair Trade Law.
- Chapter 6 compiles 9 cases and 1 judicial case on restrictive business practices, which are related to lessening competition or impeding fair competition and regulated by Article 20 of the Fair Trade Law.
- Chapter 7 compiles 38 cases and 2 judicial cases on false, untrue and misleading advertisements, which are regulated by Article 21 of the Fair Trade Law.
- Chapter 8 compiles 1 case on improper offerings of gifts and prizes, which is regulated by Article 23 of the Fair Trade Law.

- Chapter 9 compiles 24 cases and 1 judicial case on other deceptive or obviously unfair conducts, which are sufficient to affect trading order, and therefore deemed to be a violation of Article 25 of the Fair Trade Law.
- Chapter 10 compiles 2 cases on violations of the Multi-level Marketing Supervision Act.

Chapter 2

Monopoly

Koninklijke Philips N.V.

1219th Commissioners' Meeting (2015)

Case: Koninklijke Philips N.V. violated the Fair Trade Law for price manipulation

Key Word(s): CD-R disc, joint licensing

Reference: Fair Trade Commission Decision of March 25, 2015 (the 1219th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104027

Industry: Manufacture of Magnetic and Optical Media (2740)

Relevant Law(s): Article 10 of the Fair Trade Law in effect at the time of the conduct (Article 9 of the current version)

Summary:

1. In 1999 a domestic CD-R manufacturer filed a complaint stating that the CD patent licensing practices of Koninklijke Philips N.V. (hereinafter referred to as “Philips”), Sony Corporation (hereinafter referred to as “Sony”) and Japan-based Taiyo Yuden Co., Ltd. (hereinafter referred to as “Taiyo Yuden”) were in violation of the Fair Trade Law. In 2001, the FTC cited Articles 10(ii) and 14 of the Fair Trade Law at the time and imposed administrative fines on the above three companies. The companies found the sanctions unacceptable and appealed. The Cabinet revoked the original FTC sanctions and instructed the FTC to make other appropriate sanctions. After further investigation and analysis, the FTC made a new decision and imposed different administrative fines on the said businesses in 2002. The three companies still did not want to accept the sanctions but their appeals were overruled. Subsequently, they filed administrative appeals with Taipei High Administrative Court which revoked the above sanctions and requested the FTC to review the case further and give out other legally sound sanctions. The FTC disagreed with the ruling but its appeal was rejected. The FTC then asked for a retrial but the request was also

overruled. In 2009, the FTC reexamined the case, cited Article 10(ii)(iv) of the Fair Trade Law when the illegal conduct had taken place, and imposed administrative fines on the three companies. They refused to accept the decision but their appeals were rejected. An administrative appeal was filed once more but it was overruled by the Intellectual Property Court (2011 Hsing Kung Su Tzu Administrative Judgment No. 4 and No. 5 were confirmed, because Sony and Taiyo Yuden did not appeal further). Philips, however, would not accept the decision and appealed. The decision of the Supreme Administrative Court was: “The original ruling is revoked. Besides the part that is finalized, the decision on the appeal and the original sanctions are revoked.” As Sony and Taiyo Yuden had not appealed further, the above Intellectual Property Court’s decision was final for the two companies. With Philips, the FTC was to act according to the aforesaid decision and come up with another legally sound sanction. The FTC found the verdict unacceptable but its request for a retrial was denied. In 2014, the FTC complied with the said verdict and re-determined the fine amount based on Philips’ violation of only Article 10(ii) of the Fair Trade Law at the time of violation (investigation was terminated since the evidence for the violation against Article 10(iv) of the Fair Trade Law at the time the illegal conduct had taken place was no longer available and the market structure had changed too). Philips appealed. The Cabinet revoked the sanction and instructed the FTC to reassess the case and make a more proper decision.

2. Findings of the FTC after investigation:

The FTC sent Philips a written request for a defense statement and also asked the other two parties in writing several times to provide statements and information to the FTC. The FTC’s staff members also visited and interviewed a number of concerned suppliers, including domestic CD-R makers and Asia Pacific Technology and Intellectual Property Services Inc. The professional opinions from the Electronic and Optoelectronic System Research Laboratories of Industrial Technology Research Institute were solicited a few times as well. In the end, the FTC acted according to the decision of the Cabinet and decided a sanction that was legally sound.

3. Grounds for disposition:

(1) Philips, Sony and Taiyo Yuden enjoyed dominance in the CD-R technology market due to the joint licensing practice they adopted and therefore were able to exclude other enterprises from competing with them. The condition met the description of “monopolistic enterprise” in Article 5 of the Fair Trade Law at the time of violation and this had been affirmed in the decisions of the Cabinet, High Administrative Court, Supreme Administrative Court and Intellectual Property Court.

(2) In principle, businesses should have the liberty to determine their product or service prices in accordance with the competition they face on the market and their cost structures. However, after adopting the above joint licensing practice and attaining monopolistic status in the CD technology market, Philips, Sony and Taiyo Yuden refused to give their licensees any opportunity to negotiate despite that the global CD-R market had grown unexpectedly large in scale. They continued to adhere to the original formulas for calculating the license fees. The conduct was in violation of the regulation against improper price manipulation set forth in Article 10(ii) of the Fair Trade Law at the time of the conduct. Therefore, the FTC imposed an administrative fine of NT\$1.8 million on Philips.

Summarized by Chen, Shu-Hua; Supervised by Wu, Lieh-Ling □

Taiwan Fertilizer Co., Ltd.

1300th Commissioners' Meeting (2016)

Case: Taiwan Fertilizer Co., Ltd. was complained for violating the Fair Trade Law for selling liquid ammonia at prices excessively higher than international market

Key Word(s): Liquid ammonia, improper price

Reference: Fair Trade Commission Decision of October 5, 2016 (the 1300th Commissioners' Meeting)

Industry: Manufacture of Fertilizers and Nitrogen Compounds (1830)

Relevant Law(s): Article 9 of the Fair Trade Law

Summary:

1. The FTC received a complaint from Orient Union Chemical Corporation (hereinafter referred to as "OUCC") about Taiwan Fertilizer Co., Ltd. (hereinafter referred to as "TAIFER") being the only domestic liquid ammonia supplier yet selling liquid ammonia over the years at prices much higher than the Far East CFR prices (average raw material costs in East Asia) indicated in the Fertecon Ammonia Report. The price difference per ton was between US\$100 and 150. Furthermore, from 2013 to early 2015, the price difference even reached the price of NT\$300 per ton. Therefore, OUCC thought TAIFER was in violation of Article 9(ii) of the Fair Trade Law.

2. Findings of the FTC after investigation:

TAIFER started to use a new pricing method for liquid ammonia in March 2015. Before March 2015, the prices of raw materials for liquid ammonia and import costs were the basis of TAIFER's price adjustments. Afterwards, cost-plus pricing was adopted. In other words, the new storage cost for the month was added to the beginning inventory cost of liquid ammonia at the beginning of each month and the estimated new beginning inventory cost was established. Then, a fixed gross

margin was applied as the price adjustment standard. According to the financial reports of TAIFER, the gross margin and operating margin in 2013 and 2014 were not higher than other years. Although a fixed gross margin was set as the price adjustment standard after March 2015, price changes occurred mainly as a result of amortization of the high expenses required for the company to relocate liquid ammonia production equipment from the Kaohsiung Plant to Taichung Harbor, and the expenses spent on the building of a dock and liquid ammonia storage tanks. Under such circumstances, the pricing method in question had to be considered justifiable. Meanwhile, another finding of the FTC's investigation showed that the international market prices TAIFER referred to for liquid ammonia price adjustments over the years was the company's actual material import cost, not the average Far East CFR price for East Asia. As shown in TAIFER's price adjustment records, the company's liquid ammonia prices did fluctuate with the raw material price changes between 2011 and 2015. For this reason, it was difficult to consider TAIFER's liquid ammonia prices inconsistent with international market prices over the years. The prices of raw materials for liquid ammonia could serve as a reference for concerned businesses to understand liquid ammonia price tendencies, but they could not indicate other expenses derived from the backend operations of each company. In fact, in addition to the raw material cost, the structure of liquid ammonia cost also included import duties as well as plant and dock expenses and storage costs. The comparison of TAIFER's liquid ammonia prices, which take inventory costs into account, with the cost of raw materials for liquid ammonia did not show any inconsistency. Moreover, as the difference between TAIFER's liquid ammonia selling prices and liquid ammonia material costs was subject to market price fluctuations, import costs and storage costs, it was impossible to conclude TAIFER's pricing practices was inappropriate. Hence, based on available evidence, the FTC found it hard to determine that TAIFER's pricing practices and price adjustment method were in violation of Article 9(ii) of the Fair Trade Law. However, to prevent the company from engaging in any illegal activity or affecting trading order, the FTC issued a letter to remind TAIFER to abide by related regulations in the Fair Trade Law.

Summarized by Wu, Chien-Hsing; Supervised by Chi, Hsueh-Li □

Qualcomm Incorporated

1353rd Commissioners' Meeting (2017)

Case: Qualcomm Incorporated violated the Fair Trade Law for its patent licensing and chip supply practices

Key Word(s): Baseband chip, patent licensing

Reference: Fair Trade Commission Decision of October 11, 2017 (the 1353rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106094

Industry: Manufacture of Integrated Circuits (2611)

Relevant Law(s): Article 9 of the Fair Trade Law

Summary:

1. Qualcomm Incorporated (hereinafter referred to as “Qualcomm”) is in possession of several major patented wireless communications technologies, and a number of domestic cell phone businesses need Qualcomm to supply them with related chips or license them to use the technologies. However, Qualcomm has adopted practices that restricted market competition. Therefore, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) Besides Qualcomm, the targets of investigation also included cell phone and chip makers in and outside the country, as well as OEM cell phone producers. The investigation was carried out by sending written requests for related information, paying visits and making phone calls to interview concerned businesses, as well as inviting some enterprises to give their statements at the FTC. Competition authorities of other counties were also contacted for information, while the opinions of the competent authority of the industry, research institutions as well as trade unions and associations were also solicited during the investigation.

(2) Mobile communications is a type of wireless communications. To make communication and data transmission work, end devices (cell phones) complying

with the established standard communications protocol for such communication purposes and corresponding built-in key components for the end devices were required. Baseband chips were some of such key components to allow mobile communications. After 3G mobile communications services were launched in the country in 2005, the mainstream standards included CDMA and WCDMA. Furthermore, 4G communications services started in 2014 and LTE became the mainstream standard. The communications standards of different generations could not substitute one another but had the characteristic of downward compatibility. To produce baseband chip products meeting different mobile communications standards, manufacturers required licenses to use patented technologies for various standards. The production and marketing of mobile communications baseband chips involved in this case were closely associated with the essential patents for the CDMA, WCDMA and LTE mobile communications standards.

3. Grounds for disposition:

(1) Qualcomm possessed a rather large number of standard essential patents (SEPs) for CDMA, WCDMA and LTE mobile communications. It also monopolized the CDMA, WCDMA and LTE mobile communications standard baseband chip market. However, abusing its vertical integration capacity, its market dominance, and its advantages associated with mobile communications standards, Qualcomm refused to license mobile communications SEPs to its market competitors out of the intention to prevent exhaustion of baseband chip levels, to increase the transaction costs of cell phone makers and competitors, and to make such businesses pay licensing fees to have the chips installed in their end devices. The company refused to supply baseband chips unless cell phone makers signed patent licensing contracts with it. Desperately in need of the chips, cell phone makers had no choice but to accept licensing terms more advantageous to Qualcomm. Furthermore, Qualcomm used special licensing fees to entice its main trading counterparts to accept exclusionary terms and make it impossible for its competitors to acquire licenses, lose or have less transaction opportunities, or end up having a disadvantageous position in price

competition. Consequently, such businesses had no choice but to sign contracts with Qualcomm that included stipulations requiring them to provide sensitive information such as their chip prices, their customers, and sales amounts to Qualcomm for reference.

(2) Qualcomm monopolized the CDMA, WCDMA and LTE market, but the company refused to license its competitors to use its chips unless they signed contracts that included restrictive provisions, otherwise no chips would be supplied. Meanwhile, Qualcomm also signed with specific businesses contracts that included exclusionary terms and price discounts. The overall management practice of Qualcomm jeopardized competition in the baseband chip market. The unfair conduct of Qualcomm could directly or indirectly impede other businesses from competing with it and was in violation of Article 9(i) of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$23.4 billion on the company.

(3) In addition to fining Qualcomm, the FTC also requested the company to comply with the following orders: stop applying contract provisions that competitors signing contracts had to provide sensitive business information such as their chip prices, customers, sales amounts and product model numbers, stop applying component supply contract provisions that the company would not supply chips to cell phone makers unless they acquired the licenses, and stop applying provisions regarding exclusionary terms and transaction discounts in contracts signed with related businesses. The FTC also demanded Qualcomm to notify its competitors and cell phone makers within 30 days after receiving the disposition that within 60 days after receiving the notification they could propose to Qualcomm for revision or addition of new provisions to their patented technology licensing contracts. After receiving the proposals, Qualcomm had to consult with such businesses under the principles of good faith and integrity, and the range of consultation had to include but should not be limited to the contract provisions that the its consultation parties considered unfair according to this disposition, and the content of consultation could not include any restrictions that prevent its consultation parties from resorting to the court or an independent third party for arbitration to solve disputes. At the same time,

after receiving the disposition, Qualcomm had to report to the FTC every six month the progress of its consultation with the above parties, and report the consultation results to the FTC 30 days after the revised or new contracts were signed.

Summarized by Chen, Shu-Hua; Supervised by: Wu, Lieh-Ling

Chapter 3

Merger

3.1 Decisions

Uni-president Enterprises Corporation & Weilih Foods Co., Ltd.

1336th Commissioners' Meeting (2017)

Case: The FTC initiated an ex-officio investigation of Uni-president Enterprises and Weilih Foods' suspected violation of failing to file a premerger notification

Key Word(s): Instant noodles, business management, personnel appointment and dismissal

Reference: Fair Trade Commission Decision of June 14, 2017 (the 1336th Commissioners' Meeting)

Industry: Manufacture of Macaroni, Noodles, Couscous and Similar Farinaceous Products (0892)

Relevant Law(s): Article 10 of the Fair Trade Law

Summary:

1. A former employee of Weilih Foods Co., Ltd. (hereinafter referred to as “Weilih Foods”) informed the FTC that Uni-president Enterprises Corporation (hereinafter referred to as “Uni-president Enterprises”) seemed to be involved in the business management of Weilih Foods. The signs of suspicious behavior included that the employees of Weilih Foods started to wear uniforms similar to those worn by the personnel of a logistics company belonging to Uni-president Enterprises, and that Weilih Foods made instant noodles for Uni-president Enterprises, etc. However, no photos and other evidences were provided by the informant to support the above suspicion. Moreover, Weilih Foods began to purchase certain raw materials from affiliates of Uni-president Enterprises and also gave its human resources outsourcing contracts, which used to be given to several human resources agencies, to a certain

human resources agency presumably related to Uni-president instead. Again, no proof was available for this suspicion and the FTC therefore initiated an ex officio investigation.

2. Earlier at the 879th Commissioners' Meeting on September 10, 2008, the FTC had made a decision to prohibit the merger between Uni-president Enterprises and Weilih Foods. Further, Uni-president applied for merger approval again on July 2, 2010, but the FTC decided at the 982nd Commissioners' Meeting on September 1, 2010 to prohibit the merger. Uni-president Enterprises took the decision made in 2010 to court and the Supreme Administrative Court sustained the original decision of the FTC. Hence, Uni-president Enterprises and Weilih Foods could not merge.

3 Findings of the FTC after investigation and grounds for disposition:

(1) To find out whether Uni-president Enterprises actually controlled the business management of Weilih Foods directly or indirectly, the FTC issued a written request for the six major retail chains, asking them to provide the name lists of Uni-president Enterprises' and Weilih Foods' sales representatives who contacted them for business purposes, the information with regard to changes of prices of the main products, as well as scheduling of promotional sales of the two companies between 2013 and 2015. The FTC's staff members also visited the retail chains and Weilih Foods to conduct the investigation. The result of the above investigation indicated that neither company made price adjustments on its instant noodle products marketed through the six retail chains and the contact sales representatives of the two companies were also different. In other words, no evidences showed that both companies had engaged in joint marketing. As for the reduction of promotional sale activities for Weilih Foods' main products and the decrease of sale events conducted through some of the retail chains, Weilih Foods explained this had been the results of its limited productivity and its preventive policy on avoiding the fines imposed by its clients for its failing to supply adequate products. As a matter of fact, its overall number of promotional sales had not been reduced. At the same time, the company had started to make new products and the original main products were no longer the main source of its

revenue.

(2) Another finding of the investigation revealed that Weilih Foods had organized a promotional activity that included basketballs as gifts. The customer service part of the activity was indeed outsourced to an affiliate of Uni-president Enterprises, but the event was totally controlled by Weilih Foods and the outsourcing expense only accounted for a fairly small percentage of the entire cost. This could be proven with the company's internal documents. Meanwhile, the new uniforms were only for assembly line workers and they were not exactly the same as the uniforms of the logistics company belonging to Uni-president Enterprises. In addition, there were no evidences to prove the change of human resources outsourcing contractors had anything to do with Uni-president Enterprises. As for the fact that Weilih Foods made three types of instant noodles for Uni-president Enterprises, it was simply a business arrangement meant to boost the rate of its' capacity utilization. Nothing indicated that Uni-president Enterprises directly or indirectly controlled the business management of Weilih Foods.

(3) In order to understand whether Uni-president Enterprises had intervened in Weilih Foods' personnel appointment and dismissal after it acquired certain shares of Weilih Foods, the FTC obtained insurance information from the Bureau of Labor Insurance and found out five people currently employed at Weilih Foods used to work for Uni-president Enterprises or its affiliates and the FTC invited them over to give their statements. The investigation showed the former finance and accounting section chief of Uni-president Enterprises presently served as an assistant general manager at Weilih Foods responsible for financial and accounting affairs. The present Weilih Foods general manager met the then general manager of Weilih Foods when holding a position responsible for procurement in an affiliate of Uni-president Enterprises and consequently switched to Weilih Foods to work as the executive vice general manager. Later, the board of directors promoted him to be the general manager because of his performance. This could be supported by the board of directors meeting minutes. In addition, the three remaining individuals used to be the subordinates of the current general manager of Weilih Foods when working for an affiliate of Uni-president Enterprises. Later, they found jobs with Weilih Foods

as a result of the general manager's recommendations, but none of them was holding any important position. In other words, Weilih Foods offered higher salaries or better benefits to attract the five aforesaid individuals. As people moving from company to company out of their own volition was common, it was difficult to conclude with the fact of the five individuals' change of jobs as evidences that Uni-president Enterprises had intervened in Weilih Foods' personnel appointment and dismissal.

(4) With the result of the investigation into the personnel changes and actual business management, and the verification of the evidences provided by the informer, the FTC found it impossible to consider Uni-president Enterprises and Weilih Foods had engaged in any of the merging patterns specified in the subparagraphs of Article 10 (1) of the Fair Trade Law.

Summarized by Chien, Hao-Yu; Supervised by: Yang, Chia-Hui □

3.2 Non-Prohibited Cases

Yuanta Financial Holding Co., Ltd. & Ta Chong Bank Co., Ltd.

1255th Commissioners' Meeting (2015)

Case: Yuanta Financial Holdings filed a pre-merger notification to the FTC regarding its intention to acquire shares of Ta Chong Bank

Key Word(s): Financial industry, bank

Reference: Fair Trade Commission Decision of November 25, 2015 (the 1255th Commissioners' Meeting)

Industry: Activities of Financial Services Holding Companies (6421)

Relevant Law(s): Articles 10 and 13 of the Fair Trade Law

Summary:

1. The board of directors of Yuanta Financial Holding Co., Ltd. (hereinafter referred to as "Yuanta Financial Holdings") made a decision on August 21, 2015 to acquire all the outstanding shares of Ta Chong Bank Co., Ltd. (hereinafter referred to as "Ta Chong Bank") through share exchange. After the merger, Ta Chong Bank and its affiliates would become affiliates of Yuanta Financial Holdings. The condition met the merger pattern description of "where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise" in Article 10(1)(ii) of the Fair Trade Law, and "where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise" in Subparagraph 5 of the same Article. In the meantime, the sales of both Yuanta Financial Holdings and Ta Chong Bank in 2014 had also achieved the merger filing thresholds announced by the FTC and none of the proviso regulations in Article 12 of the same law applied. Therefore, Yuanta Financial Holdings filed a merger notification with the FTC.

2. The merger was a horizontal one. The overlapped markets of the two enterprises included banking, securities business, insurance agency and leasing business. Hence,

the assessment of the case had to be focused on the impacts of the merger on the overlapped markets. In banking sector, the HHI of the pre-merger deposit market, loan market and credit card market was all below 1,500 and therefore its market concentration was low. Meanwhile, the two merging parties together only accounted for 2.9%, 3.02% and 2.6% of the deposit, loan and credit card markets respectively. In securities sector, the HHI of transaction amounts, margin purchase and short sale margin trading balance was all below 1,500 and thus its market concentration was low. The merging parties together accounted for 13.08%, 1.23%, 9.21% and 21.42% of the brokered market, dealer market, underwriter market and margin trading market respectively. In insurance agency sector, the two merging parties together accounted for 6.58% and 0.46% of the personal insurance market and property insurance market respectively. In leasing, sector the two merging parties together accounted for merely 0.27% of the market. Therefore, the merger could not cause significant changes to the structures of the relevant markets or increase the level of concentration in such markets.

3. After evaluating in accordance with Point 8 of the “Fair Trade Commission Disposal Directions (Guidelines) on Merger Filings”, the FTC concluded that the above merger was unlikely to lead to any restrictions on market competition. The FTC also took into consideration the factors listed in Paragraph 5 of Point 4 of the “Fair Trade Commission Disposal Directions (Policy Statements) on the Financial Industry” to assess the merger and decided the merger would have no negative effect on the stability and solidity of the financial market or the prevalence, accessibility and convenience or innovation of financial services. Therefore, the FTC cited Article 13(1) of the Fair Trade Law and did not prohibit the merger.

Appendix:

Yuanta Financial Holding Co., Ltd.’s Uniform Invoice Number: 70796749

Ta Chong Bank Ltd.’s Uniform Invoice Number: 86521079

Summarized by Lai, Hsin-Yi; Supervised by Liao, Hsien-Chou

Synnex Tecgnology International Corp. & BestCom Infotech Corp.

1273rd Commissioners' Meeting (2016)

Case: Synnex Technology filed a pre-merger notification with the FTC regarding its intention to merge with BestCom Infotech

Key Word(s): Information service industry, server, notebook computer, PC

Reference: Fair Trade Commission Decision of March 30, 2016 (the 1273rd Commissioners' Meeting)

Industry: Other information service activities (6390)

Relevant Law(s): Articles 10 and 13 of the Fair Trade Law

Summary:

1. Synnex Technology International Corp. (hereinafter referred to as “Synnex Technology”) engaged in the sales of cell phones, notebook computers, PCs and servers whereas BestCom Infotech Corp. (hereinafter referred to as “BestCom Infotech”) engaged in the sales of servers, notebook computers and PCs. Before the merger, Synnex Technology already possessed 40% of the shares of BestCom Infotech. To enhance its cooperation with BestCom Infotech, Synnex Technology intended to acquire all the shares of BestCom Infotech through a public takeover and gain the control of its management and personnel appointment. As the condition met the merger patterns of “where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise ” set forth in Subparagraph 2 and "where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise" in Article 10(1)(v) of the Fair Trade Law, the sales of BestCom Infotech accounted for one quarter of the domestic server market in 2015, and the annual sales of both enterprises in 2016 reached the filing threshold announced by the FTC while the proviso in Article 12 of the same Law did not apply, Synnex Technology therefore filed a pre-merger notification with the FTC.

2. The merger was a horizontal one. Both companies overlapped in the sales of PCs, notebook computers and servers. BestCom Infotech neither sold cell phones nor had any plan to do so in the future. Hence, both sides had no horizontal or vertical relations in the cell phone sales market. After the merger, Synnex Technology and BestCom Infotech together would account for 23%~33% of the PC, notebook computer and server market. However, Synnex Technology focused on the consumer market while BestCom Infotech concentrated on the commercial market. In addition, the target markets and marketing channels of both companies differed. Consequently, the level of substitutability between the two companies was limited. Moreover, since they both dealt with established brands, distributors or system integrators, upstream suppliers and downstream buyers would still have enough countervailing power on the market. Therefore, it was difficult to conclude that the merger could lead to any significant unilateral effect. Besides, no special government permission, specific technology, large amount of preliminary investment or sunk cost was required and no entry barrier caused by legal, technical or economic factors existed in this case. In other words, as there was no specific entry barrier, the merger would not result in any significant coordinated effect. As for the sales of cell phones in which the two companies did not overlap, because the merger could not change the structure and concentration of the cell phone market, the merger would not create any competition restraint.

3. The merger was analyzed in accordance with the structures of the PC, notebook computer, server and cell phone markets and the effects likely to be incurred on competition therein. The conclusion was that the merger could not lead to any significant competition restraint. Therefore, acting according to Point 6(2) of the Fair Trade Commission Guidelines on Handling Merger Filings, the FTC decided that the overall economic benefit from the merger would outweigh the disadvantages resulted from any competition restriction thereof incurred and therefore Article 13(1) of the Fair Trade Law should be applied in this case and the merger should not be prohibited.

Appendix:

Synnex Technology International Corp.'s Uniform Invoice Number: 23060541

BestCom Infotech Corp.'s Uniform Invoice Number: 22351654

Summarized by Chen, Haw-kae; Supervised by: Liao, Hsien-Chou

**Nan Shan Life Insurance Co., Ltd. &
AIG Taiwan Insurance Co., Ltd.**

1279th Commissioners' Meeting (2016)

Case: Run Chen Investment Holding Co., Ltd. filed a pre-merger notification regarding its affiliate Nan Shan Life Insurance's intention to merge with AIG Taiwan

Key Word(s): Life insurance, property insurance

Reference: Fair Trade Commission Decision of May 11, 2016 (the 1279th Commissioners' Meeting)

Industry: Non-life insurance (6520)

Relevant Law(s): Articles 10 and 13 of the Fair Trade Law

Summary:

1. Run Chen Investment Holding Co., Ltd. (hereinafter referred to as "Run Chen Investment Holdings") filed a pre-merger notification regarding the intention of its affiliate Nan Shan Life Insurance Co., Ltd. (hereinafter referred to as "Nan Shan Life Insurance") to acquire all the shares of AIG Taiwan Insurance Co., Ltd. (hereinafter referred to as "AIG Taiwan") and appoint representatives to serve on the board of directors of AIG Taiwan. The condition met the merger patterns described in Article 10(1)(ii)(v) of the Fair Trade Law. At the same time, the sales of Run Chen Investment Holdings, Nan Shan Life Insurance and AIG Taiwan all reached the filing

threshold announced by the FTC whereas none of situations prescribed in Article 12 of the same law existed. Therefore, a pre-merger notification had to be filed.

2. Nan Shan Life Insurance and AIG Taiwan respectively engaged in life insurance and property insurance businesses. The concentration in either market was low. Nan Shan Life Insurance accounted for about 11.6% of the life insurance market while AIG Taiwan only took up around 2.4% of the property insurance market. Besides casualty insurance and health insurance, the two companies had no horizontal overlap or vertical relations. As for casualty and health insurance business in which the two companies overlapped, AIG Taiwan merely claimed 0.21% of the casualty insurance market (including the casualty insurance offered by property insurance and life insurance companies) and only 0.015% of the health insurance market (including the health insurance offered by property insurance and life insurance companies) in 2015.

3. The case involved a conglomerate merger and thus an analysis was performed mainly according to the competition effects of conglomerate mergers. However, the competition effect likely to be created in casualty and health insurance where both companies overlapped was also evaluated. As specified in insurance regulations, the same insurance company could not engage in both property and life insurance operations. Hence, the two companies had no potential competition relations in the life insurance, pension insurance, car insurance, fire insurance and liability insurance markets. Furthermore, Nan Shan Life Insurance and AIG Taiwan had no significant market power in the life insurance market and the property insurance market. Both companies therefore were not in a position to adopt tie-in or bundling sales or package deal strategies to attract potential customers or create market foreclosure. For this reason, the merger could not lead to any elimination of market competition. As for the areas where the two companies overlapped, Nan Shan Life Insurance would have no significant share increase in the casualty and health insurance markets after the merger while the company also had no incentive or the capacity to raise prices unilaterally. In other words, there would be no significant unilateral effect.

Meanwhile, because no change would happen to the structure of the casualty and health insurance markets or the concentration therein, no significant coordinated effect would be created. Finally, after assessing potential market entry barriers and existing countervailing power and assuring the merger would not lead to substantial weakening of competition, the FTC concluded the overall benefits of the merger would outweigh the potential disadvantages from the competition restrictions thereof incurred and decided that Article 13(1) of the Fair Trade Law should be applied and thus the merger should not be prohibited.

Appendix:

Nan Shan Life Insurance Co., Ltd.'s Uniform Invoice Number: 11456006

AIG Taiwan Insurance Co., Ltd.'s Uniform Invoice Number: 11099303

Summarized by Lai, Hsin-Yi; Supervised by: Liao, Hsien-Chou

BOC LienHwa Industrial Gasses Co., Ltd. & Tung Bao Corporation

1310th Commissioners' Meeting (2016)

Case: BOC LienHwa filed a pre-merger notification regarding its intention to acquire stock shares of Tung Bao Corporation

Key Word(s): Hydrogen, acetylene

Reference: Fair Trade Commission Decision of December 14, 2016 (the 1310th Commissioners' Meeting)

Industry: Manufacture of Chemical Material (1810)

Relevant Law(s): Articles 10 and 11 of the Fair Trade Law

Summary:

1. BOC LienHwa Industrial Gasses Co., Ltd. (hereinafter referred to as “BOC LienHwa”) intended to acquire 12 million shares of Tung Bao Corporation (hereinafter referred to as “Tung Bao Corp. ”) in order to improve the hydrogen production techniques of Tung Bao Corp. After the merger, BOC LienHwa would be in possession of 50.7% of the total shares of Tung Bao Corp. and gain direct control of its management or the power of personnel appointment and dismissal. The condition met the merger patterns described in Article 10(1)(ii)(v) of the Fair Trade Law. Meanwhile, the hydrogen and acetylene produced by BOC LienHwa and the acetylene produced by Tung Bao Corp. accounted for more than one quarter of the corresponding markets in the country in 2015 and the acetylene produced by both enterprises after the merger would account for over one third of the domestic acetylene market. The condition was covered by the provisions in Article 11(1)(i)(ii) of the Fair Trade Law. Consequently, a pre-merger notification was filed with the FTC.

2. Both BOC LienHwa and Tung Bao Corp. sold acetylene and hydrogen. Hence, it would be a horizontal merger. Acetylene was mainly used in metal cutting and welding. As far as the way of its production is concerned, acetylene can be divided into calcium carbide acetylene and petrochemical acetylene. The two merging parties mainly sold petrochemical acetylene and Chinese Petroleum Corporation (hereinafter referred to as CPC) was the only petrochemical acetylene supplier in Taiwan. Due to the facts that the expected operating life of its production equipment is limited and the production cost of petrochemical acetylene is rather high, CPC’s production of petrochemical acetylene will eventually come to a halt. Therefore, the production activities of the two merging parties would still be restricted by the acetylene supply from CPC. In the meantime, the FTC sent written requests for the opinions of the competitors and downstream businesses of the merging parties as well as related trade unions; they all responded that the intended merger would have no impact on their operations or the prices of related products. In addition, the acetylene market did not include only homogeneous products whereas the costs and production equipment were asymmetrical. As a result, collusion would be unlikely. According to the

result of the FTC survey, if the merging parties increased the price, those operating at the downstream could switch to other trading counterparts, produce their own or import acetylene since there was no legal, capital or tariff barrier for acetylene importation. Neither was there any significant restriction on productivity increase or entry to the corresponding market where there were other large suppliers to provide liquefied petroleum gas and acetylene. Therefore, the merger would not lead to any competition restraint.

3. Tung Bao Corp. completed the construction of its Kaohsiung Hydrogen Plant in July 2015. However, due to limited technical capacity, it was unable to mass-produce hydrogen that is necessary for advanced products. In consequence, production costs became too high and the company's operating profit dropped in 2015. BOC LienHwa was able to produce high-quality hydrogen, but its Kaohsiung Hydrogen Plant had been in operation for over 20 years. The equipment of its Kaohsiung Hydrogen Plant was old and inefficient. As a result, the yield could not meet the demand from the hi-tech industry in the southern part of Taiwan. If the merger was completed, the transportation efficiency of the merging parties; the acetylene production and transportation safety of Tung Bao Corp. all can be improved. Therefore, the FTC cited Article 13(1) of the Fair Trade Law and gave the merger a green light while concluding the overall economic benefit of the merger would be greater than the disadvantages incurred from any competition restraint brought by the merger.

Summarized by Chang, Fa-Chu; Supervised by: Chi, Hsueh-Li □

3.3 Judicial Cases

Cashbox Partyworld Co., Ltd. & Holiday Entertainment Co, Ltd.

Supreme Administrative Court (2016)

Case: Supreme Administrative Court overruled the administrative litigation filed by Cashbox and Holiday over the FTC's decision for their violation of Fair Trade Law

Key Word(s): KTV service, joint management

Reference: Supreme Administrative Court Judgment (2016) Pan Tzu No.428

Industry: Operation of Audiovisual and Singing Facilities (9322)

Relevant Law(s): Article 11 of the Fair Trade Law in effect at the time of conduct (the same Article of the current version)

Summary:

1. Appellants Cashbox Partyworld Co., Ltd. (hereinafter referred to as appellant “Cashbox Partyworld”) and Holiday Entertainment Co., Ltd. (hereinafter referred to as appellant Holiday) (both together referred to as “the appellants”) often engaged in joint management and the situation complied with the merger pattern described in Article 6(1)(iv) of the Fair Trade Law before the amendment on February 4, 2015 and the sales of both appellants also achieved the merger filing threshold specified in Article 11(1)(i) of the same Law while the proviso prescribed in of Article 11-1 did not apply. In other words, the appellants had to file a merger notification as required by law but failed to do so. It was in violation of Article 11(1) of the Fair Trade Law at the time of their conducts. Consequently, the appellee (the FTC) cited Article 13(1) and Article 40(1) of the same Law and issued the Disposition Kung Ch’u Tzu No.103051 on April 28, 2014 to order the appellants to make necessary corrections within three months after receiving the disposition. In addition, the FTC imposed administrative fines of NT\$5 million and NT\$4 million on appellant Cashbox and appellant Holiday respectively. The appellants found the sanctions unacceptable and

filed a petition, which was overruled later. The appellants then filed an administrative litigation which was also overruled eventually. As a result, they filed this appeal.

2. The main business item of the appellants was providing consumers with audiovisual and singing equipment for entertainment. Together both appellants accounted for over one third of the domestic KTV service market. Meanwhile, the appellants made the decision to rent the 4th and 5th floors of a building on Zhongxiao East Road to be their offices. The same team of personnel was responsible for the termination of the leases for their original offices, handover of the properties, and relocation to the new sites. All the telephone and Internet equipment needed for operation was installed by the same personnel. Appellant Holiday also paid the bills for the phones used for consumers to make reservations at different outlets of appellant Cashbox. The employees of both appellants worked in the same office space and processed both companies' documents, employee benefits, and product procurement. The purpose obviously was to undergo internal consolidation with the purpose of cutting down their operating costs and share resources. Based on the facts stated above, the appellee concluded that the appellants were engaging in joint management on a regular basis as described in Article 6(1)(v) of the Fair Trade Law at the time of their conducts whereas both companies also achieved the merger filing threshold specified in Article 11(1)(i) of the same Law while the proviso prescribed in Article 11-1 did not apply. In other words, the appellants had to file a merger notification but did not do so. It was in violation of Article 11(1) of the Fair Trade Law. As a result, the FTC cited Article 13(1) and of Article 40(1) of the same Law and maintained the original decisions to order the appellants to make corrections within three months after receiving the disposition. In addition, the administrative fines of NT\$5 million and NT\$4 million on appellant Cashbox and appellant Holiday were imposed respectively. The decision was consistent with the ruling on the appeal and did not contradict any law.

3. As described above, the Supreme Administrative Court sustained the original decision and rejected the appeal from the appellants over the decision made by the

court of the first instance. The appeal was intended to contest that the original ruling had violated related laws and regulations and it should be abolished. However, the Supreme Administrative Court found the reasons unsound and rejected the appeal.

Appendix:

Cashbox Partyworld Co., Ltd.'s Uniform Invoice Number: 22327867

Holiday Entertainment Co., Ltd.'s Uniform Invoice Number: 84256265

Summarized by Lai, Chia-Ching; Supervised by: Ren, Han-Ying

Chapter 4

Concerted Actions

4.1 Decisions

Telecommunications Businesses

1215th Commissioners' Meeting (2015)

Case: Telecommunications businesses was complained for violating the Fair Trade Law for its iPhone 6 promotional plans and 4G unlimited Internet access service plan

Key Word(s): Telecommunications, oligopoly, subscription, Internet access

Reference: Fair Trade Commission Decision of February 11, 2015 (the 1215th Commissioners' Meeting)

Industry: Telecommunications (6100)

Relevant Law(s): Articles 7 and 14 of the Fair Trade Law in effect at the time of the conduct (Articles 14 and 15 of the current version)

Summary:

1. Newspaper ads for iPhone 6 posted by major telecommunications businesses indicated subscription rate consistency and consequently the public complained that telecommunications businesses intended to stop the 4G unlimited Internet access service at the end of October 2014. Therefore, the FTC launched an investigation to look into the matter.

2. Findings of the FTC after investigation:

(1) Subscription rate consistency: Chunghwa Telecommunications Co., Ltd. (hereinafter referred to as "Chunghwa Telecom") said it had determined the price of iPhone 6 by comparing with the promotional price of iPhone 5S for subscribers before announcing the promotional price of iPhone 6 on September 12, 2014. Taiwan Mobile Corporation (hereinafter referred to as "Taiwan Mobile") said it had assessed

the promotional prices offered by its competitors prior to announcing the subscription plan for iPhone 6 on September 19 of the same year and the price had been decided after its evaluation of the competition condition in the market, user needs and the basic earnings on plans of different monthly fees and the cost of each cell phone. Far EasTone Telecommunications Co., Ltd. (hereinafter referred to as Far EasTone Telecom) expressed that its cell phone prices and fees were all established according to those of Chunghwa Telecom except the design of tariff contents was different and its highest and lowest monthly fees for iPhone 6 sold to subscribers were not consistent with those of Chunghwa Telecom either. Taiwan Star Telecom Corporation Limited (hereinafter referred to as Taiwan Star) stated that its subscription rates for iPhone 6 purchases were determined after deducting the company's purchasing cost and multiplying the result with the subscription compensation percentage. Its iPhone plans were announced on September 18 but renewing subscribers were given a discount.

(2) The exit time of promotional plans of 4G unlimited Internet access service without connection speed decrease: According to Chunghwa Telecom, the company had notified the National Communications Commission on August 27 that its promotional plans would take effect on September 1. Later on, due to the fact of its users increase and the target of its 4G services was to achieve the goal of occupying over 40% of the total market share, Chunghwa Telecom decided on October 30 to extend its offer of promotional plans. Taiwan Mobile said since 4G services provided faster Internet access, the company hoped that users could subscribe to such upgraded services as early as possible. As a result, starting on June 16 it began to make the offer that the Internet access speed would not decrease during the contract period for renewing subscribers paying more than NT\$999 of monthly fees. Far EasTone Telecom expressed that it had referred to the pricing policy of Chunghwa Telecom, the leading competitor in the market, and decided to offer its promotional plans between September 1 and the end of October. However, after learning about Chunghwa Telecom's decision to keep its old plans available after the end of October before new plans were released, it had no choice but to follow suit to prevent loss of its own customers. Meanwhile, Taiwan Star said the company

had publicly announced its 4G unlimited Internet access service plans on August 25 when it officially launched operation. It offered 4G unlimited Internet access without connection speed decrease for new and old subscribers paying more than NT\$599 of monthly fees.

3. Grounds for non-disposition:

(1) Whether nearly consistent subscription rates involved concerted action: There were only a few 4G mobile broadband service providers in the market and thus consumers could easily compare their promotional prices and service contents. To compete and maintain its market share, each business, besides considering its operating cost, had to take into account market supply and demand, competition condition and pricing strategies of competitors when setting the prices for the product or service it offers. In other words, it would determine the prices of its product or service in accordance with the prices of the leading competitor on the market in order to prevent aberration from ongoing market rates and loss of subscribers. For this reason, the promotional cell phone prices of the telecommunications businesses would eventually become consistent and the tendency was related to the structure of this oligopolistic market and the nature of the product. The result of the FTC's investigation indicated that the telecommunications businesses had determined their promotional cell phone prices and announced their decisions at different times. During its decision-making process, each business had compared the prices of its competitors and made adjustments before finalizing its prices. Some businesses had even chosen to offer dissimilar plans and, moreover, each telecommunications business had offered different promotional cell phone prices aiming at different clienteles. In the meantime, there are many kinds of telecommunications service plans. The said businesses might have offered similar promotional cell phone prices but the contents of their mobile communications service differed even when the monthly fees were close. Such differentiated services under similar monthly fees and promotional cell phone prices were intended to attract different clienteles to compete for their shares of the 4G mobile broadband service market. Based on the decision-making process and sales of each business, the consistency of promotional cell phone

prices had to be a result of price follower strategy in this oligopolistic market.

(2) Whether the exit time of 4G unlimited Internet access service plans without connection speed decrease involved concerted action: Due to poor growth in the number of 4G users, some telecommunications businesses chose to replicate the strategies of their bigger competitors in the market and released promotional plans of 4G unlimited Internet access service without connection speed decrease. However, their reasons varied and their plans were announced at different times while their decisions were made after they took into account the period and content of the special offers made by other businesses. The reasons behind the extending the offer period of promotional plans were different because they were adopted after taking into account of the decisions made by their competitors, meaning that established decisions could be altered as a consequence of competitors' change of plans. That is, each business' decision-making mode could easily be altered depending on market competition information they acquired. Based on such decision-making processes, the FTC concluded that there was no evidence showing the businesses in concern determined to end their offers of promotional plans as a result of any mutual understanding. Comparison of the periods in which the four telecommunications businesses had offered their promotional plans since 2013 also indicated no consistency in time and it was not uncommon that the validity period of such special offers was extended when it expired. The duration of the offer of promotional plans of 4G unlimited Internet access service without connection speed decrease was determined as same as the duration of other promotional plans was determined. There was no difference between the approaches of establishment and announcement of such promotional plans and those in the past. Above all, each telecommunications business continued to offer promotional plans of 4G unlimited Internet access service without connection speed decrease and no such offers had been ended at the same time.

(3) The telecommunications businesses had launched their promotional plans of unlimited Internet access service without connection speed decrease, announced their promotional cell phone prices at different points of time, and their plan contents were also dissimilar from one another. Meanwhile, comparison of the internal decision-making information of the businesses revealed that their promotional plans and cell

phone prices were decided in accordance with the condition of market competition. Based on existing evidence, the FTC found it difficult to conclude that the businesses had had any mutual understanding or meeting of the minds to engage in any concerted practices in violation of regulations against concerted actions.

Summarized by Fang, Yen-Hsiu; Supervised by Kuo, An-Chi □

First Commercial Bank Co. Ltd. & 7 Other Financial Institutions

1216th Commissioners' Meeting (2015)

Case: First Bank and 7 other financial institutions applying for extension of the “Pan-public Bank Credit Card Alliance”

Key Word(s): Credit card, concerted action permission, financial institution

Reference: Fair Trade Commission Decision of February 25, 2015 (the 1216th Commissioners' Meeting), Letter Kung Lian Tzu No.104002

Industry: Banks (6412)

Relevant Law(s): Articles 15 and 16 of the Fair Trade Law

Summary:

1. First Commercial Bank Co. Ltd. (hereinafter referred to as “First Bank”) and seven other banks having government agencies on their lists of shareholders formed the “Pan-public Bank Credit Card Alliance” to promote their credit cards by offering users discounts at specific retail outlets and free gifts. Earlier, the FTC decided to approve the formation of the alliance at its 1063rd Commissioners' Meeting on March 21, 2012 with conditions attached. When the approved period expired on March 1, 2015, the said banks acted according to Article 15(2) of the Fair Trade Law before amendment and applied to the FTC for permission to extend the concerted action.

2. After reviewing the application, the FTC concluded that the content of the concerted action of the “Pan-public Bank Credit Card Alliance” included joint registration and possession and use of the trademark, images and domain name of the “Pan-public Bank Credit Card Alliance” whereas the participating banks would also work cooperatively to promote business. The condition met the description of “unifying the specifications or models of goods or services for the purpose of reducing costs, improving quality, or increasing efficiency” set forth in Article 15(1)(i) of the Fair Trade Law. In the meantime, the participating banks also worked together to negotiate the contents of special offers with specific stores and the results applied to all the participants. This part of the deal met the description of “joint research and development on goods, services, or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency” specified in Article 15(1) (ii) of the Fair Trade Law. In addition, the implementation of the concerted action in this case also met the requirement of “beneficial to the economy as a whole and in the public interest” prescribed in the proviso of Article 15(1) of the Fair Trade Law.

(1) When reviewing the application from First Bank and the said seven financial institutions for approval to form the “Pan-public Bank Credit Card Alliance” at its 1063rd Commissioners’ Meeting on March 21, 2012, the FTC had already analyzed the nature and content of the intended concerted action, the market power of the participating banks, whether exclusivity existed and likely effects on market competitors that were not part of the alliance. The FTC then reached a conclusion was that the formation of the alliance would not lead to any significant competition restriction.

(2) During the aforesaid meeting, the commissioners also considered that the intended concerted action could result in positive effects of cost reduction and quality improvement, both of which could enhance efficiency while the content of the action also would not go beyond the necessary degree for efficiency enhancement. Furthermore, credit card holders and the specific stores could also share the positive results to a reasonable extent. The FTC believed the concerted action would be beneficial to the economy as a whole, serve the public interest and thus decided give its approval with conditions attached.

(3) First Bank and the said seven financial institutions signed the “Pan-public

Bank Credit Card Alliance” agreement on September 5, 2014 with the purpose of conduct transactions with stores providing special offers. However, the participating banks have never fully executed the content of concerted action as they planned and it is true that there had not been any significant change in structure of the credit card service market since the said first application. According to the credit card business statistics from the Financial Supervisory Commission, the HHI (Herfindahl-Hirschman Index, a commonly applied measure of market concentration) of the time when the first application was filed and current data showed that the credit card service market did not become more concentrated during the period in between. In addition, the aggregate market share of the participating banks of the said Alliance also did not grow any bigger after the first application. Furthermore, the content of the application for permission submitted this time to extend the concerted action was the same as that of the previous application. In other words, there was no new factor that could lead to competition restrictions on the market at issue.

3. Based on the above analysis, the FTC concluded that continuation of the concerted action in this case would be beneficial to the economy as a whole and serve the public interest. Citing Article 15(1) and Article 16(2) of the Fair Trade Law, the FTC approved the concerted action to be extended for another five years from March 2, 2015 to March 1, 2020. However, to eliminate doubts about the likelihood of competition restrictions thereof incurred and also to supervise the actual execution of the concerted action, the FTC cited Article 15(1) of the Fair Trade Law and approved the extension with attached conditions that are the same as those attached to the previous decision made by the FTC in 2012.

Appendix:

First Commercial Bank's Uniform Invoice Number: 05052322

Taiwan Cooperative Bank 's Uniform Invoice Number: 70799128

Mega International Commercial Bank 's Uniform Invoice Number:03705903

Hua Nan Commercial Bank 's Uniform Invoice Number: 03742301

Chang Hwa Commercial Bank 's Uniform Invoice Number: 51811609

Land Bank of Taiwan 's Uniform Invoice Number: 03700301

Taiwan Business Bank 's Uniform Invoice Number: 03793407

Bank of Taiwan 's Uniform Invoice Number: 03557311

Summarized by Chen, Haw-Kae; Supervised by Liao, Hsien-Chou

Bao Ning Neng Trading Co. Ltd. and 14 Other Businesses

1219th Commissioners' Meeting (2015)

Case: Bao Ning Neng and 14 other businesses violated the Fair Trade Law

Key Word(s): Medicines advertised on the radio, suggested price, pharmacy

Reference: Fair Trade Commission Decision of March 25, 2015 (the 1219th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104023

Industry: Manufacture of Drugs and Medicines (2002), Manufacture of
Chinese Medicines (2004)

Relevant Law(s): Article 14(1) of the Fair Trade Law in effect at the time
of the conduct (Paragraph 1 of Article 15 of the current
version)

Summary:

1. Bao Ning Neng Trading Co., Ltd. (hereinafter referred to as "Bao Ning Neng") and 14 other businesses were sanctioned by the FTC for violating the Fair Trade Law and appealed the above sanctions. Taipei High Administrative Court revoked the fines imposed on the said businesses and ruled that the FTC shall conduct a de novo review and make another appropriate decision.

2. Findings of the FTC after investigation:

An earlier investigation revealed that the "Yong Jian Medicine Advertising Association" (hereinafter referred to as "Yong Jian Association") was formed by dozens of pharmacies designated by radio stations running medicine advertising

programs in Kaohsiung County, Kaohsiung City and Pingtung County before the administrative reorganization. The association held a routine meeting every three months. The purpose was to monopolize sales of medicines advertised on the radio and control the prices. The organization also achieved a mutual understanding to maintain the prices of the medicines advertised in the region. It was a concerted action to constrain each other's business activities. In addition, during the investigation the FTC also found out that upstream suppliers had also attended the routine meetings of Yong Jian Association and each upstream supplier was required to pay an annual fee of NT\$12,000. Meanwhile, these upstream suppliers also organized the "Advertised Medicine Suppliers Association" (hereinafter referred to as "Suppliers Association") which was in violation of the Fair Trade Law. As a consequence, the FTC decided at its 895th Commissioners' Meeting on December 31, 2008 that the 53 member pharmacies of "Yong Jian Association" and 16 member suppliers of the "Suppliers Association" had violated the regulation prohibiting concerted actions set forth in Article 14 of the Fair Trade Law at the time and administrative fines were imposed on the said parties. Bao Ning Neng and 15 other members of "Suppliers Association" found the sanctions unacceptable and appealed to the Executive Yuan. Among the offenders, Da Tian Pharmaceutical Co., Ltd. never filed further administrative suit after the appeal was rejected by the Executive Yuan. But Bao Ning Neng and the other 14 members of the "Suppliers Association" appealed further to Taipei Administrative Court. Taipei Administrative Court revoked the fines and instructed the FTC to make another legally sound decision.

3. Grounds for disposition:

The fines imposed were decided by the FTC de novo mainly because of the following considerations:

(1) Bao Ning Neng and the other members of the "Suppliers Association" had intentionally engaged in the aforementioned concerted action. To prevent downstream pharmacies from making price competition and brand competition on products recommended among one another, the "Suppliers Association" organized lunch and dinner meetings to jointly request the members of "Yong Jian Association" to sell medicines advertised on radio programs according to the suggested prices. There

was no legitimate or justifiable purposes or motives for the concerted action at all. It was undertaken simply to maintain profits and the damage resulting from market competition restrictions was rather significant.

(2) The said illegal conduct had lasted for several years.

(3) Bao Ning Neng and the other members of the “Suppliers Association” refused to admit they had engaged in any concerted action and never provided any information to help the FTC investigation.

(4) Taking into account the capital and sales of each offender, as well as the individual income of each party involved, the FTC respectively imposed an administrative fine of 2.71 million NT dollars on Hitona Enterprise Co., Ltd., 1.41 million on Her Chi Pharmaceutical Co., 1.21 million on Xin An Enterprise Co., Ltd., 1.06 million on Concern Biotech Corp., 1.04 million on Jian Mei Pharmaceutical Co., Ltd., 930,000 on Shen Sheng Hua Enterprise Co., Ltd., 860,000 on Ou Chi Na Wa Co., Ltd., 390,000 on De Li Co., Ltd., 290,000 on Wu Xiang Xian Pharmaceutical Co., Ltd., and 100,000 on each of Bao Ning Neng, Lu Wang International Development Co., Ltd., Yang De Pharmaceuticals and Mr. Guo.

Appendix:

Hitona Enterprise Co., Ltd. 's Uniform Invoice Number: 86444469

Her Chi Pharmaceutical Co.'s Uniform Invoice Number: 84605622

Xin An Enterprise Co., Ltd.'s Uniform Invoice Number: 23865441

Concern Biotech Corp.'s Uniform Invoice Number: 80451527

Jian Mei Pharmaceutical Co., Ltd.'s Uniform Invoice Number: 84728217

Shen Sheng Hua Enterprise Co., Ltd.'s Uniform Invoice Number: 12619582

Ou Chi Na Wa Co., Ltd.'s Uniform Invoice Number: 16121698

De Li Co., Ltd.'s Uniform Invoice Number: 69519681

Wu Xiang Xian Pharmaceutical Co., Ltd.'s Uniform Invoice Number: 97061690

Bao Ning Neng Trading Co. Ltd.'s Uniform Invoice Number: 97193257

Lu Wang International Development Co. Ltd.'s Uniform Invoice Number: 12789410

Yang De Pharmaceutical's Uniform Invoice Number: 90490400

Summarized by Yeh, Su-Yen; Supervised by Lin, Gin-Lan □

Japanese Medicine Businesses

1223rd Commissioners' Meeting (2015)

Case: The FTC initiated an ex officio investigation of suspected violation of the Fair Trade Law by domestic Japanese medicine businesses for failing to reflect foreign exchange difference after depreciation of the Japanese Yen

Key Word(s): Depreciation of Japanese Yen, medicine

Reference: Fair Trade Commission Decision of April 15, 2015 (the 1223rd Commissioners' Meeting)

Industry: Manufacture of Raw Material Medicines (2001), Manufacture of Drugs and Medicines (2002)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

1. The media reported that the Japanese Yen continued to depreciate but related businesses insisted on not lowering the prices of their products. To find out whether Japanese pharmaceutical businesses were in violation of the related regulations in the Fair Trade Law, the FTC initiated an ex officio investigation.
2. The FTC's investigation showed that Japanese medicines sold in the country came from various sources and import prices could be quoted in USD, TWD or JPY. Furthermore, domestic Japanese medicine businesses also had to take into account the costs of their imported raw material, personnel costs, as well as advertising and marketing expenses. Depreciation of the Japanese Yen was not the only factor they shall take into consideration. In addition, market competition in the retail market of Japanese medicines was fierce. Furthermore, retailers could even import Japanese medicines on their own and had the independence and capacity to decide their retail prices. Watson's and Cosmed, for example, did lower the retail prices of some Japanese medicines they sold.
3. Domestic Japanese medicine businesses adopted different price strategies and

made price adjustments at various points of time. There was no price consistency at all. Each business competed on price, quality and service. In other words, both of their market positions and advertising appeals were dissimilar and the market competition was quite intense. There was no evidence indicating any domestic Japanese medicine businesses having established mutual understandings to make price decisions jointly or create price consistency. Hence, it was difficult to conclude that any domestic Japanese medicine businesses had violated the related regulations in the Fair Trade Law. However, the FTC will continue to keep a close watch on the developments in the domestic medicine market.

Summarized by Tsai, Tsung-Yung; Supervised by Lin, Gin-Lan □

Butter and Powdered Milk Importers

1225th Commissioners' Meeting (2015)

Case: The FTC initiated an ex officio investigation of suspected violation of the Fair Trade Law by domestic importers of baking butter and powdered milk

Key Word(s): Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC), butter, powdered milk

Reference: Fair Trade Commission Decision of April 29, 2015 (the 1225th Commissioners' Meeting)

Industry: Manufacture of Dairy Products (0850)

Relevant Law(s): Article 14 of the Fair Trade Law in effect at the time of the conduct (Article 15 of the current version)

Summary:

1. Prices of baking butter and powdered milk continued to rise in the country after

2013. Even after the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (hereinafter referred to as “ANZTEC”) took effect, the prices of the above products remained high. According to a newspaper report on March 6, 2014, prices of imported powdered milk from New Zealand and Australia started to go up in August 2013 and the increase reached 75% compared to the same period the year before. Therefore, the FTC initiated an ex officio investigation to understand the price adjustment practices of related business and the competition in the market at issue.

2. Findings of the FTC after investigation:

(1) The FTC conducted several investigations in order to look into butter and powdered milk price adjustments made by related businesses. The major suppliers included Fonterra Brands (New Young) PTE. Ltd. Taiwan Branch (hereinafter referred to as “New Young”), Fonterra (ING.) Limited Taiwan Branch (hereinafter referred to as “ING”), and Tehmag Foods Co., Ltd. (hereinafter referred to as “Tehmag”). On March 14 and July 10, 2014 the FTC inspected the quarterly data provided by the three businesses.

(2) According to information provided on the website of the Customs Administration of the Ministry of Finance, after ANZTEC took effect, the import duty reductions for regular butter, clarified butter and whole milk were respectively 5%, 8% and 10%. Again, the statistics of the Customs Administration on imported dairy products from New Zealand showed that the import prices in the first half of 2014 were obviously higher than those in the same period in 2013. The prices of regular butter went up 18.36%, clarified butter 49.84% and whole milk 43.62%. These figures supported the statements of related businesses about their purchasing costs. Further examination of the wholesale prices of New Zealand dairy products in the aforesaid period and the same period in 2013 listed on the Commodity Prices website of China Times revealed that the average price increase of domestic businesses was still compatible with the range of import cost increase.

(3) The principal products of New Young, ING and Tehmag, the three major importers of butter and powdered milk from New Zealand, were not entirely the

same. Take regular butter for example. Only New Young and Tehmag sold it. After ANZTEC took effect, the former made two price adjustments for regular butter it sold. The margins of adjustment were between 1.3% and 7.69% and its product prices were set between NT\$3,850 and 4,200. The latter made 11 price adjustments of the same product that ranged between -3.74% and 4.69% and the product prices were set between NT\$3,907 and 4,236. As for whole milk, ING and Tehmag were the two suppliers. After ANZTEC took effect, the former made two price adjustments for whole milk that ranged between -11.79% and -9.3% whereas the product prices were set between NT\$4,240 and 5,300. The latter made 10 price adjustments of the same product that were between -4.42% and 0.09% and set the product prices between NT\$4,523 and 5,267. Meanwhile, ING was the only company selling clarified butter and it made two price adjustments of the product after ANZTEC took effect. The margins of adjustment were between -20% and 3.88% while the product prices were set between NT\$4,280 and 5,350. According to the above investigation results, the three businesses focused on different products and the number of price adjustments, margins of adjustment and product prices were all different.

3. Grounds for non-disposition:

Products sold by the three New Zealand butter and powdered milk importers, namely New Young, ING and Tehmag, were not entirely the same and the number of price adjustments they made, the margins of adjustment and their product prices were also different. In fact, each business had increased and lowered prices. Therefore, there was no consistency on its face. After January 2013, the prices of dairy products imported from Zealand continued to go up and the import duty reductions after ANZTEC took effect did not bring down the operating costs of the said business significantly. The said businesses made price adjustments in accordance with their costs and management strategies. It was within the range of freedom of businesses. With the evidences it gathered, the FTC found it difficult to conclude any of the said businesses had violated the Fair Trade Law.

Summarized by Wang, Hsing-Yuan; Supervised by Yang, Chia-Hui

Cement Manufacturers

1230th Commissioners' Meeting (2015)

Case: Taiwan Cement Corporation, Asia Cement Corporation and Southeast Cement were complained for violating the Fair Trade Law

Key Word(s): Type II Portland cement, Taiwan Cement, Southeast Cement, Asia Cement

Reference: Fair Trade Commission Decision of June 3, 2015 (the 1230th Commissioners' Meeting)

Industry: Manufacture of Cement (2331)

Relevant Law(s): Articles 14, 19, and 24 of the Fair Trade Law in effect at the time of the conduct (Articles 15, 20, and 25 of the current version)

Summary:

1. An informer stated that before participating in a tender put up by BES Machinery Co. Ltd. for procurement of Type II Portland cement in June, 2012, he had made an agreement with Southeast Cement Corporation (hereinafter referred to as "Southeast Cement") for the latter to supply cement that will meet the quality requirements indicated in the test report as well as provide a sample to be presented with his bid.
2. On August 6, 2012, the informer won the tender by offering the price of NT\$2,600 per ton and signed a contract with BES Machinery Co. Ltd. However, Southeast Cement refused to supply the cement and the informer had to purchase the cement needed from Asia Cement Corporation (hereinafter referred to as "Asia Cement") at a higher unit price. The informer thought Southeast Cement had refused to supply the cement as agreed earlier because a downstream distributor of Taiwan Cement Corporation (hereinafter referred to as "Taiwan Cement") had not been awarded the contract and Taiwan Cement therefore had threatened to "stop buying slag from Southeast Cement" and "stop supplying cement clinker and cement

products to Southeast Cement” so that Southeast Cement will be coerced into compliance. For this reason, the informer filed the complaint with the FTC.

3. Grounds for non-disposition:

(1) Regarding the allegation that Taiwan Cement, Southeast Cement and Asia Cement had violated Article 14 of the Fair Trade Law at the time: The informer accused the three cement businesses of holding a meeting with respect to the Type II cement procurement project in question on August 14, 2012 and Southeast Cement refused to do transact with the informer consequently. The informer also provided the recordings of his five telephone calls with the staff members of Southeast Cement between August 14 and September 3 in 2012. However:

A. It was difficult to prove whether the consultation held between the three cement businesses on August 14, 2012 as mentioned in the telephone call recordings had really taken place. The FTC questioned Southeast Cement about the matter and the reply was the statement had been made to stop the informer from bothering the company any further. In addition, the three cement businesses all denied having had any consultation with regard to the Type II cement procurement project in question that caused Southeast Cement to refuse to do the transaction with the informer.

B. The telephone call recordings showed that the contents of the conversation had mostly been about hypothetical questions brought up by the informer and the staff members of Southeast Cement responded accordingly. In other words, the informer employed leading questions to express his subjective thinking and the replies given were mostly to brush him off. Therefore, it was difficult to use the telephone call recordings as evidence that the accused had really consulted to establish any concerted action.

C. After Southeast Cement refused to supply any cement, the informer turned to Asia Cement, who gave him a price quotation. Nevertheless, the informer decided not to purchase Type II cement from Asia Cement due to business considerations. If the three cement businesses had really held the alleged consultation regarding the Type II cement procurement project on August 14, 2012 that rendered the informer unable to

fulfill his contract, Asia Cement's offering the price quotation to the informer would have been contradictory to the alleged content of the telephone call recordings. In addition, Southeast Cement had never signed any Type II cement supply contract with the informer. Therefore, Southeast Cement did not have the obligation to supply Type II cement to the informer. This was pointed out in the related decision made by Kaohsiung District Court.

D.The FTC thought about checking whether a lot of telephone calls had been made between the above companies before and after August 14, 2012 in order to gather more evidences with regard to the alleged concerted action in question but no telephone call recordings could be obtained because it had been too long. Under such circumstances, the recordings of five telephone calls between the informer and the staff members of Southeast Cement were insufficient for the FTC to conclude that the contents of the said telephone call recordings were true.

(2) Regarding the allegation that Southeast Cement and Asia Cement had violated Article 19(ii) of the Fair Trade Law at the time:

A.The informer accused Southeast Cement of refusing to supply the Type II cement needed for the procurement project but having no trouble supplying it to Bing Guang Co., Ltd. on the same conditions. The FTC's investigation revealed that Southeast Cement had not signed any contract with the informer and therefore had not supplied any cement to the informer. This was pointed out in the above decision made Kaohsiung District Court. On top of that, the informer was a cement distributor, operating on a different competition level from Bing Guang Co., Ltd. In other words, no issue of discriminatory treatment was involved here and thus there was no violation of Article 19(ii) of the Fair Trade Law at the time.

B.As for the informer's accusation that Asia Cement had raised the price to NT\$2,850 per ton which included transportation fee NT\$300 and was NT\$200 more than the usual price without any justification, as well as the statement that the company had not charged Li Hong Premixed Cement Co., Ltd. for transportation, the FTC's investigation showed that Asia Cement had quoted the informer NT\$2,550 per ton if handed over at its Taichung Plant (delivery to the construction site requiring

the transportation fee of NT\$300 per ton) or NT\$2,600 per ton if delivered to the construction site from its Hualien Plant. The informer had chosen that it was to be delivered to the construction site from the Taichung Plant and the price was NT\$2,850 per ton. The evidence showed that the agreement reached between Li Hong Premixed Cement Co., Ltd. and Asia Cement had been delivery to the construction site from the Hualien Plant at NT\$2,650 per ton which was the same offer Asia made to the informer. As no discriminatory treatment was involved, it is impossible for the FTC to reach the conclusion that Asia Cement had violated Article 19(ii) of the Fair Trade Law at the time.

(3) Regarding the allegation that Southeast Cement and Asia Cement had violated Article 24 of the Fair Trade Law at the time: The key issue in this case was whether the three cement businesses had engaged in any illegal concerted action or discriminatory treatment. These were practices likely to lead to competition restrictions as stated in Articles 14 and 19(ii) of the Fair Trade Law at the time. As the above provisions already provided sufficient criteria for the determination of whether the conduct involved in this case had been unlawful, there was no need to make any further exploration under Article 24 of the Fair Trade Law.

Appendix:

Taiwan Cement Corporation' s Uniform Invoice Number: 11913502

Asia Cement Corporation 's Uniform Invoice Number: 03244509

Southeast Cement Corporation 's Uniform Invoice Number: 83078600

Summarized by Hung, Chin-An; Supervised by Liou ,Chi-Jung

Chinese Petroleum Corporation

1231st Commissioners' Meeting (2015)

Case: The FTC initiated an ex officio investigation of the reasonableness of CPC's LPG price calculation formulas and suspected concerted action of LPG businesses

Key Word(s): Chinese Petroleum Corporation (CPC), liquefied petroleum gas (LPG), price calculation formula

Reference: Fair Trade Commission Decision of June 10, 2015 (the 1231st Commissioners' Meeting)

Industry: Gas Supply (3520)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

Yeh Chin-ling and three other legislators put forward a proposal at the Legislature Yuan to urge the FTC to investigate whether Chinese Petroleum Corporation's (hereinafter referred to as "CPC") liquefied petroleum gas (hereinafter referred to as "LPG") price calculation formulas were reasonable and whether LPG businesses had engaged in any concerted action. Legislator Yeh Chin-ling and two other legislators representing Taiwan Solidarity Union also held a press conference to point out that CPC and Formosa Petrochemical Corp. (hereinafter referred to as "Formosa Corp") did not lower LPG prices according to the rates they adopted before they were sanctioned for joint monopolization and LPG businesses did not lower LPG prices according to the rates they adopted before the sanction was imposed for their joint price increase. The FTC therefore launched an investigation to look into both matters simultaneously.

1. Findings of the FTC after investigation:

(1) The structure of the domestic LPG market was divided into four levels, namely production and importation (suppliers), distribution, bottling, and retailing (LPG shops). The businesses at each level had their personnel and operating costs that eventually reflected on the retail prices of bottled LPG.

(2) CPC began to implement the "LPG Price Monthly Review and Adjustment

Mechanism” in January 1997. Prices were reviewed and adjusted according to the agreed contract price of the month announced by Saudi Arabia Oil Company, ocean freight rates, operating cost and the international oil market prices. The results were posted on the websites of the Bureau of Energy of the Ministry of Economic Affairs and CPC. However, CPC was also required to take into consideration the policies of the Executive Yuan and the Ministry of Economic Affairs as well as the decision of the Legislative Yuan when making its price adjustment decisions.

2. Grounds for non-disposition:

(1) Regarding whether CPC’s LPG price calculation formulas were reasonable: CPC calculated its LPG prices in accordance with the contract price, ocean freight rate and exchange rate fluctuations. That is, the contract price was only one of the factors behind list price changes. The Ministry of Economic Affairs invited specialists and scholars to review and revise the price adjustment mechanism and the decisions made in such meetings held in December 2009 and January 2011 were to maintain the existing adjustment mechanism. In the meeting held in February 2013, the periods to be included in ocean freight rate and exchange rate calculation were revised. In other words, the said mechanism had been reviewed by the competent authority for several times. Besides, to comply with government policy, CPC did not fully adjust the list price in 2013 and 2014 and only gradually recovered later the costs the company had absorbed. For this reason, it was difficult to conclude that the price calculation formulas of CPC were unreasonable merely based on the comparison made between the contract price and list price increase and decrease margins.

(2) Regarding whether Formosa Corp. was in violation of concerted action regulations by following CPC in price adjustment: The domestic LPG market was an oligopolistic market dominated by two major suppliers. CPC publicly announced market information through its price adjustment mechanism and Formosa Corp. could easily estimate CPC’s LPG prices for the following period according to the adjustment mechanism and avoid the risk of making its own price decisions. In other words, as long as Formosa Corp. followed the price of CPC, it would become the company’s best price adjustment plan. There would be no additional cost of analysis

or the question of lagging in its decision-making. It is not necessary for the company to worry about loss of customers and could at the same time safeguard its business profits. This is a characteristic of oligopolistic markets. Moreover, the LPG prices and price adjustment margins of CPC and Formosa Corp. in the past three years were not consistent at all. Even if the two companies intended to establish a “mutual understanding,” they would still be unable to change the adjustment mechanism that was open, transparent and subject to government policy. Therefore, the price strategies of the two major suppliers had to be treated as price leadership strategy and price follower strategy. There was no concrete evidence to prove that CPC and Formosa Corp. had entered into any contracts, agreements or mutual understandings of any form to jointly determine LPG prices in the country.

(3) Regarding whether domestic retail prices of bottled LPG failed to reflect list price changes after CPC finally recovered in December 2014 the costs it had absorbed earlier: After CPC finally recovered in December 2014 all the costs it had absorbed earlier, the amount of list price increase or decrease each month between January and April 2015 was generally consistent with the increase or decrease of average retail price of 20kg bottled LPG in the country according to the result of random checks conducted by the Bureau of Energy of the Ministry of Economic Affairs. However, the increase and decrease margins of CPC’s list price were larger than those of the retail price of bottled LPG. In other words, “upstream price change margins were large and downstream price change margins were small.” The cause of this phenomenon was that the cost changes at every stage of the sales process eventually reflected on the retail prices of bottled LPG. Hence, the retail prices of bottled LPG already reflected the list price adjustments of CPC and it was difficult to conclude that LPG businesses had violated the concerted action prohibition provisions set forth in Article 15 of the Fair Trade Law based on existing evidence.

(4) Regarding LPG businesses did not go back to previous price standards after they were sanctioned by the FTC for jointly increasing prices: The FTC is not a commodity price regulator. Statutorily, the FTC is not given the authority to control commodity prices and order businesses to adjust prices to earlier levels. Moreover, when sanctioning LPG businesses earlier, the FTC already ordered them to stop

their unlawful practice. When the FTC inspected LPG trade associations, it did not discover any violation of regulations prohibiting concerted actions. Meanwhile, according to statistics released by the Bureau of Energy, the average retail prices of bottled LPG in different areas varied, indicating that free competition existed in the bottled LPG market. As the situation of the market was constantly changing, “original prices” were not necessarily the reasonable prices in the market at present. Besides, how much price decrease was reasonable was not for the government to decide. The prices of bottled LPG should be determined in accordance with the supply and demand on the market. It would be inappropriate for the government to impose direct price control.

Summarized by Wang, Hung-Chu; Supervised by Liou, Chi-Jung □

37 Wheat Import Enterprises

1245th Commissioners’ Meeting (2015)

Case: 37 enterprises applied for extension of the concerted action regarding joint wheat purchases and shipment

Key Word(s): Wheat, joint purchase, joint shipment, exceptional approval

Reference: Fair Trade Commission Decision of September 16, 2015 (the 1245th Commissioners’ Meeting); Letter Kung Zhi Tzu No. 1041360518

Industry: Manufacture of Grain Mill Products (0862)

Relevant Law(s): Articles 15 and 16 of the Fair Trade Law

Summary:

1. The FTC had previously given approval to the “joint wheat purchases and shipment” concerted action via Letter Kung Lian Tzu No.101007 dated September 12, 2012 to extend the permission period to September 30, 2015. As the said

extension was about to expire, the applicants acted according to Article 16(2) of the Fair Trade Law and applied to the FTC in June 2015 for another extension of the concerted action period.

2. Findings of the FTC after investigation:

All the wheat that domestic businesses use has to be imported from other countries. Since wheat is imported in large bulk quantities, the purchasing amount and size of shipment will make a difference to the purchasing costs. “Joint wheat purchases and shipment” could increase purchased amounts and enable domestic importers to ask for better prices from grain businesses overseas as well as lower fares from shipping companies. At the same time, it also allowed the said importers to bring in large quantities of wheat and control shipping schedules to provide steady supply. In subsequence, downstream businesses would also be able to obtain the flour they need at stable prices from steady supplies.

3. Grounds for disposition:

(1) Each year, more than 900,000 metric tons of wheat was imported through “joint wheat purchases and shipment.” Every year the Taiwan Fermenting Food Industry Association need about 15,000 to 17,000 metric tons in total to produce soy sauce while the local distilleries consume more than 3,000 metric tons and the remaining amount was used to make flour. Therefore, the “joint wheat purchases and shipment” was mainly to serve the flour market. There were 22 flour mills domestically. Their products were highly homogeneous and their import costs were similar. Since price was the only consideration for consumers when they purchase flour, price competition could only cause gradual fluctuations in flour prices. Wheat import costs and profit rates of flour businesses had an inverse relation.

(2) “Joint wheat purchases and shipment” could add up purchase amount, reduce wheat purchasing prices and shipment costs, and thus enhance trading effectiveness. At the same time, intensive and steady shipping schedules could be maintained (at least one ship per month) under this arrangement. This allowed wheat importers to register and purchase wheat regardless of the prices and split the import costs to

prevent drastic fluctuations in wheat prices. Price competition in the flour market was fierce. Furthermore, as the wheat cost accounted for over 80% of total production cost for flour, flour businesses had the incentive to reflect the wheat cost they saved on their flour prices and the economic benefit could also reach midstream and downstream buyers and consumers. For this reason, the concerted action was deemed able to benefit the overall economy and public interest. Therefore, citing Article 15(1)(v)(vi) and Article 16(2) of the Fair Trade Law, the FTC extended its approval for the concerted action for another five years. However, to eliminate the potential risk of competition restrictions associated with the extension and to facilitate necessary supervision, the FTC also acted according to Article 16(1) of the Fair Trade Law and attached conditions and undertakings to the approval.

Summarized by Wu, Hsin-Te; Supervised by Yang, Chia-Hui □

Domestic Soy Sauce Market

1254th Commissioners' Meeting (2015)

Case: The FTC initiated an ex officio investigation of the domestic soy sauce market

Key Word(s): Soy sauce made with genetically modified soybeans, industrial survey

Reference: Fair Trade Commission Decision of November 18, 2015 (the 1254th Commissioners' Meeting)

Industry: Manufacture of Seasoning (0896)

Relevant Law(s): Articles 14 and 15 of the Fair Trade Law

Summary:

1. The public has learned to value food safety increasingly. After the Ministry of Health and Welfare enforced a new system of labeling of food products using

genetically modified ingredients since December 31, 2015, major soy sauce producers in the country made plans to switch to non-genetically modified soybeans for soy sauce material gradually to meet consumers' demand. At the same time, the FTC also received complaints from private citizens about different brands soy sauce running out of stock in stores and therefore initiated an ex officio investigation to look into competition in the soy sauce market to see whether the price adjustments made by soy sauce producers involved concerted practices.

2. Findings of the FTC after investigation:

(1) Questionnaires mailed to major soy sauce producers to conduct an industrial survey: There were over 200 soy sauce producers all over the island and the market share for the four top businesses together accounted for 60% of the market. All the products of the leading producer were made with genetically modified soybeans and it had no plan to change its material for soy sauce in the near future. The second large soy sauce producer only produce a small amount of soy sauce made with non-genetically modified soybeans. The third large producer planned to adopt non-genetically modified soybeans to make all of its products but would raise the prices to reflect cost increase. The fourth large producer was still in the stage of trial fermentation and assessment of soy sauce made with non-genetically modified soybeans. The remaining businesses accounted for less than 1% of the market share accordingly and targeted different customer groups from that of the four top businesses. Some of them either used non-genetically modified soybeans completely or adopted black beans, more expensive than non-genetically modified soybeans, to make soy sauce. The results of the survey indicated that a complete shift to the use of non-genetically modified soybeans in soy sauce production would increase the soybean cost by 28% to 40% and the production cost would go up 7% to 10%.

(2) Interviews with distributors and retailers: Soy sauce could be divided into business soy sauce and household soy sauce and manufacturers made market segregation accordingly. General consumers purchased household soy sauce (less than 2 liters each bottle). Soy sauce manufacturers usually signed supply contracts with hypermarkets and household soy sauce was given priority in their production

scheduling. The main clientele of business soy sauce (5 to 6 liters per jug) includes restaurants, small eateries, shops in the food courts of department stores, and so on. Manufacturers signed contracts with distributors for them to make deliveries in their distribution areas. Each box of soy sauce weighed 20 to 25 kilograms. Therefore, labor was required to move the boxes and it is usually difficult to find workers to do it. Some distributors sold different brands of soy sauce and none of the distribution areas demarcated by each soy sauce maker was under exclusive agency. The fierceness of inter-brand competition was obvious. Soy sauce makers provide distributors with suggested prices for their soy sauce products but never interfered with their actually selling prices. If there were several distributors in the same area, consumers would make price inquiries and market information was transparent. The FTC visited 14 retail stores in the areas where private citizens complained about certain brands of soy sauce being out of stock but there was no household soy sauce being out of stock.

(3) So far, only one soy sauce maker has made price adjustments after using non-genetically modified soybeans. The other businesses have no plan to adjust their product prices. Furthermore, an examination of the purchasing and selling records of soy sauce producers and their distributors since 2015 indicates that the supply of soy sauce has been steady and the amounts distributors purchase and sell are consistent. Therefore, there is no evidence showing that soy sauce producers or their distributors have violated the Fair Trade Law.

Summarized by Chien, Hao-Yu; Supervised by Yang, Chia-Hui □

Sand and Gravel Businesses in Taichung City

1269th Commissioners' Meeting (2016)

Case: Sand and gravel businesses in Taichung City violated the Fair Trade Law by jointly increasing prices

Key Word(s): Sand and gravel, ready-mixed concrete

Reference: Fair Trade Commission Decision of March 2, 2016 (the 1269th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105019

Industry: Wholesale of Brick, Tile, Ballast, Cement and Products (4612)

Relevant Law(s): Article 14 of the Fair Trade Law in effect at the time of the conduct (Article 15 of the current version)

Summary:

1. In 2013, the production of sand and gravel in Nantou County declined. The sand and gravel supply in Miaoli County, Changhua County, Nantou County and Yunlin County was affected and there was pressure that sand and gravel prices could go up. However, some sand and gravel businesses in the Taichung area met and jointly decided to raise sand and gravel prices. Since the decision had a direct impact on the ready-mixed concrete plants at the downstream, the Ready-mixed Concrete Industry Association reported to the FTC that the joint price increase by the sand and gravel businesses was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

Certain sand and gravel businesses in the Taichung area had always kept close touch. Bao Ren Sand and Gravel Development Co., Ltd. (hereinafter referred to as “Bao Ren”), Zhi Jian Enterprise Co., Ltd. (hereinafter referred to as “Zhi Jian”), Bao Wen Co., Ltd. (hereinafter referred to as “Bao Wen”), Yi Hua Sand and Gravel Co., Ltd. (hereinafter referred to as “Yi Hua”), An Xin Enterprise Co., Ltd. (hereinafter referred to as “An Xin”) and Yi Yu Enterprise Co., Ltd. (hereinafter referred to as “Yi Yu”) met several times in March, April and May 2014 at a restaurant in Xitun District, Taichung City to exchange market price information. The six businesses decided

to raise their sand and gravel prices to reflect the rising costs. They respectively informed their downstream customers of the newly adjusted listed prices. Later, after finding out the FTC was about to launch an investigation into the matter, they stopped to convene the said meeting and quitted the price increase. As a consequence, sand and gravel prices in the area came down.

3. Grounds for disposition:

(1) By dining together to establish their mutual understanding on raising sand and gravel prices, Bao Ren, Zhi Jian, Bao Wen, Yi Hua, An Xin, and Yi Yu had affected the supply and demand of sand and gravel in the central region. The conduct was in violation of Article 14(1) of the Fair Trade Law.

(2) After assessing the motive and objective (raising prices to reflect the rising costs due to the shortages of sand and gravel supply) behind the unlawful act of the six aforesaid businesses, the level of harm done to trading order (their downstream customers could still purchase from other suppliers), the scale, management condition, sales and market status (small market share) of each of the businesses, their sense of remorse and cooperative attitudes throughout the investigation, the offense being the first ever, and sanctions handed down in the past by the FTC for concerted actions involving sand and gravel, the FTC cited Article 41(1) of the Fair Trade Law at the time of conduct and imposed an administrative fine of NT\$400,000 on Bao Ren, NT\$400,000 on Zhi Jian, NT\$400,000 on Bao Wen, NT\$200,000 on Yi Hua, NT\$100,000 on An Xin, and NT\$100,000 on Yi Yu. The fines totaled to NT\$1.6 million.

Appendix:

Bao Ren Sand and Gravel Development Co., Ltd.'s Uniform Invoice Number: 70646427

Zhi Jian Enterprise Co., Ltd.'s Uniform Invoice Number: 80132117

Bao Wen Co., Ltd.'s Uniform Invoice Number: 70488475

Yi Hua Sand and Gravel Co., Ltd.'s Uniform Invoice Number: 25158180

An Xin Enterprise Co., Ltd.'s Uniform Invoice Number: 28390330

Yi Yu Enterprise Co., Ltd.'s Uniform Invoice Number: 24238784

Summarized by Wang, Hung-Chu ; Supervised by: Liou, Chi-Jung

21 Container Terminal Operators

1276th Commissioners' Meeting (2016)

Case: 21 container terminal operators violated the Fair Trade Law for jointly deciding to collect charges for the use of machines to load and unload CFS export goods

Key Word(s): Container terminal operator, contain yard, charges for use of machines for CFS export goods

Reference: Fair Trade Commission Decision of April 20, 2016 (the 1276th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105034

Industry: Service Activities Incidental to Water Transportation (525)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

Between June 2014 and January 2015, the FTC received from several informers complaints about container terminal operators (hereinafter referred to as “container yard operators”) having jointly decided to collect charges for use of machines to load and unload CFS export goods under three tons in weight (hereinafter referred to as “the charges for use of machines for CFS export goods”). They requested the FTC to look into the matter.

1. Findings of the FTC after investigation:

(1) In 1994, the container yard operators involved in this case had applied and obtained the approval of the competent authority to collect charges for use of machines to load and unload CFS export goods. However, the 1994 situation was

due to the fact that the government had given container yards subsidies in accordance with the policy of encouraging exportation and promoting industrial upgrades. As a result, no container yard operators actually collected the said charges. Later, export market business declined over the past 20 years. Export quantities dropped by a large margin and container yard operation costs increased as a result. To boost business income, container yard operators began to talk about resuming collection of the charges for use of machines to load and unload CFS export goods either in private or during meetings of the Container Terminal Transport Association (hereinafter referred to as “the CTTA”) on several occasions. Nonetheless, not a single operator was willing to take the risk of losing customers by being the first to resume collection of the said charges. Finally, around the end of 2013 and January 2014, three container yard operators in the Taichung area started to collect the charges and 21 of the 31 container yard operators in the country decided to follow suit and began to impose the charges. Consequently, all container yard operators decided to discuss the issue again.

(2) Between December 10, 2013 and February 26, 2014, Evergreen International Storage & Transport Corp. (hereinafter referred to as “Evergreen International”) and 20 other container yard operators had meals together after the CTTA meetings to exchange ideas and discuss the resumption of the collection of the charges for use of machines to load and unload CFS export Goods. Through the CTTA, the said businesses contacted the Keelung Customs Brokers Association for a number of times to talk about the ways of collecting the said charges. They also presented the documents or announcements regarding resumption of the said charges for the CTTA to officially notify associations of shipping companies, shipping agents, forwarders, consignors, custom brokers, import/export businesses and container truck operators as well as the Customs. The notification contained the wording of "...Starting on July 1, the members of the CTTA shall resume collection of the charges for use of machines to load and unload CFS export goods..." The documents or announcements from each container yard regarding resumption of collection of the charges were also attached.

2. Grounds for disposition:

(1) Evergreen International and 20 other container yard operators resumed the collection of the said charges on July 1 or in the beginning of July in 2014. In addition to exchanging ideas when having meals together, some of the container yard operators also admitted that they had made the decision and established their mutual understanding to resume collection of the said charges. The 21 businesses were competitors on the same market. Their joint decision to resume collection of the charges for use of machines for CFS export goods was a restriction on the business activities of one another. The conduct was considered a "concerted action" as described in Article 14(1) of the Fair Trade Law.

(2) Evergreen International and 20 other container yard operators together accounted for over 80% of the total sales of container terminals and CFS export goods transportation in the country. Being horizontal competitors on the market, they should have offered better prices, quality, services, or other transaction conditions to compete with one another for trading opportunities. Each container yard should have decided whether it would resume the collection of the charges for use of machines to load and unload CFS export goods according to its management cost, the market competition condition and its business assessment. However, all of them resorted to the concerted action at issue to accomplish the goal of resuming the collection of the charges and at the same time reduce the competition risk of any single company resuming the collection of the charges alone. As a result, the collection of the charges was indeed resumed in July 2014 at every container yard. The conduct already reduced the incentive for container yards to offer better prices, quality and services to attract trading counterparts, and this market function was seriously distorted.

(3) Evergreen International and 20 other container yard operators violated the regulation of "no enterprise shall engage in any concerted action" specified in Article 15(1) of the Fair Trade Law. After evaluating the motives behind the unlawful act, the level of harm, seriousness of violation, as well as each participant's business scale and attitude after the violation, the FTC cited Article 40(1) of the Fair Trade Law to order the said businesses to stop collecting the charges for use of machines to load and unload CFS export goods under three tons, and further imposed administrative

finances ranging between NT\$100,000 and 17.25 million on them. The fines totaled to NT\$72.20 million.

Appendix:

Evergreen International Storage & Transport Corp.'s Uniform Invoice Number: 04406559

Tungya Transportation & Terminal Corp.'s Uniform Invoice Number: 11366005

CMT Logistics Corp.'s Uniform Invoice Number: 36510597

Kaofeng International Logistics Corp.'s Uniform Invoice Number: 79330146

Associated Consolidation & Terminal Corp.'s Uniform Invoice Number: 04398474

China Container Terminal Corp.'s Uniform Invoice Number: 39014517

TK Logistics International Corp.'s Uniform Invoice Number: 27901897

Keelung Container Terminal China Trade & Development Corp.'s Uniform Invoice Number: 03098301

Asia Pacific Logistics International Group's Uniform Invoice Number: 04230623

Express Container Terminal Corp.'s Uniform Invoice Number: 00655979

Kuo Chen Total Logistics Corp.'s Uniform Invoice Number: 04146610

Universal Container Terminal Corp.'s Uniform Invoice Number: 39227119

Unitop Corp.'s Uniform Invoice Number: 79043587

Central Freight Terminal Corp.'s Uniform Invoice Number: 04375444

Horng Maw Container Terminal Corp.'s Uniform Invoice Number: 04383606

Taiwan Container Terminal Corp.'s Uniform Invoice Number: 04448299

Tasan Hong International Container Terminal Corp.'s Uniform Invoice Number: 23983209

Worldwide Freight Terminal Corp.'s Uniform Invoice Number: 11792205

Worldwide Logistics Service Corp.'s Uniform Invoice Number: 27898725

Taipei Port Container Terminal Corp.'s Uniform Invoice Number: 80027874

United Logistics International Corp.'s Uniform Invoice Number: 16753954

Summarized by Shen, Li-Wei; Supervised by: Kuo, An-Chi

The Guidelines on Concerted Petroleum Purchasing by Domestic Individual Gas Stations

1277th Commissioners' Meeting (2016)

Case: Amendment to Point 6 of the "Fair Trade Commission Disposal Directions (Guidelines) on Concerted Petroleum Purchasing by Individual Petrol Stations"

Key Word(s): Gas station, concerted petroleum purchasing

Reference: Fair Trade Commission Decision of April 27, 2016 (the 1277th Commissioners' Meeting)

Industry: Gasoline and Liquefied Petroleum Gases (LPG) Stations (4821)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

Earlier, the FTC decided to establish the “Fair Trade Commission Disposal Directions (Guidelines) on Concerted Petroleum Purchasing by Individual Petrol Stations” (hereinafter referred to as “the Guidelines”) at the 731st and 733rd Commissioners’ Meetings. It was set forth in Point 6(i): “Concerted action exemption application: any joint petroleum purchase consisting of individual petrol stations that collectively account for greater than 5% of the market, based on the number of petrol stations nationwide listed for the current month by the Bureau of Energy, Ministry of Economic Affairs.” At the time, Germany had the policy of not imposing fines for small concerted actions and adopted 5% market share as the threshold. Therefore, when establishing the Guidelines, the FTC made reference to the German legislation and stipulated that individual gas stations together accounting for less than 5% of the market share did not need to apply to the FTC for exceptional permission for concerted actions since the negative impact from their joint gasoline procurement on market competition would be limited.

1. According to the decision of the FTC achieved at the 1266th Commissioners’ Meeting on February 3, 2016, the FTC’s immunity consideration standard for small

offenses of concerted actions was: “The enterprises participating in a concerted action together account for less than 10% of the relevant market and there will be no impact on the production, product transaction or service provision in the relevant market.” Therefore, Point 6(i) of the Guidelines was amended to revise the total market share of individual gas stations that were required to apply for exception permission for concerted actions from 5% to 10%.

2. Meanwhile, Point 6(iv) will also be partially amended to be in line with Article 2(2) of the Fair Trade Law and Article 12(2) of the Enforcement Rules of Fair Trade Law to revise the wording from “...when applications are filed by the trade association or an agent, the agent’s identification document shall be submitted” to “...when the aforementioned enterprises belong to a trade association or organization specified in Article 2(2) of the Fair Trade Law, the trade association or organization shall apply to the FTC for permission. Such an application may be filed by an agent.”

Summarized by Tsai, Tsung-Yung; Supervised by: Chi, Hsueh-Li □

Simplification of Documents Filing for Bulk Commodity Procurement

1280th Commissioners' Meeting (2016)

Case: The FTC simplified the documents to be filed for bulk commodity procurement

Key Word(s): Bulk commodity, wheat, flour

Reference: Fair Trade Commission Decision of May 18, 2016 (the 1280th Commissioners' Meeting)

Industry: Manufacture of Macaroni, Noodles, Couscous and Similar Farinaceous Products (0892)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

1. After the FTC gave permission in 2000 for domestic flour mills to engage in "joint shipment of wheat imports," the participants of the concerted action were required to file their monthly reports to the FTC through the Taiwan Flour Mills Associations (hereinafter referred to as "TFMA") regarding wheat and flour production and sales and price changes in the country. Meanwhile, the competent authority of the industry the Agriculture and Food Agency (hereinafter referred to as "AFA"), the Bureau of Foreign Trade (hereinafter referred to as "BOFT"), the Bureau of Industrial Development (hereinafter referred to "BID"), and the Department of Statistics also requested the TFMA to provide detailed information on the inventories, sales and purchases of bulk commodities in order to adjust food supply and demand and establish import and export statistics. As a result, the TFMA had to prepare all kinds of documents and different types of information. It has become a burden and simplification was necessary. Therefore, after comparing the seven types of forms that all the aforementioned agencies received, the FTC convened a cross-agency working group meeting on February 17, 2016 and invited concerned personnel from each of the related agencies for the initial consultation. In the meeting, all agencies agreed on unifying the document formats and that the documents were to be filed as official documents. The competent authority would be listed as the recipient of the original copy and other agencies that required a copy would be recipients of duplicates. On March 11, 2016, all the agencies also issued a formal reply to confirm the decision.

2. The documents simplified and the changes made are as follows:

(1) Wheat Inventory and Sales Details: The list is to be filed as an official document on a monthly basis. The AFA is the original copy recipient and the BOFT, the BID and the FTC are the duplicate recipients.

(2) Wheat Procurement List: The list is to be filed as an official document on a monthly basis. The AFA is the original copy recipient and the BOFT, the BID and the FTC are the duplicate recipients.

(3) Wheat Import quantity and Consumption Details: The list is to be filed as an official document on a monthly basis. The AFA is the original copy recipient and the

BOFT is the duplicate recipient.

(4) Wheat Consumption Details: Filing is no longer required.

(5) Statistics on Wheat Inventories in the Country and Quantities Already Purchased but Not Yet Arriving: The document is to be filed officially with the BOFT on a monthly basis.

(6) Flour Inventory and Sales Details: The list is to be filed as an official document on a monthly basis. The BID is the original copy recipient and the Department of Statistics and the FTC are the duplicate recipients.

(7) Flour Price Survey Form: The Form is to be filed as an official document every two weeks. The AFA is the original copy recipient and the BID and the FTC are the duplicate recipients.

3. The TFMA was requested to cooperate on the abovementioned simplification and promised to file related lists and forms as official documents in the future. Moreover, if any of the related agencies should have urgent or special needs, they would provide necessary information in time. On the other hand, the TFMA affirmed that the consultation had indeed led to document simplification. The TFMA and concerned agencies would begin their adoption on the aforementioned simplified procedures in May 2016.

Summarized by Wu, Li-Ya; Supervised by Yang, Chia-Hui □

Red Vermicelli Noodle Makers

1281st Commissioners' Meeting (2016)

Case: Four noodle makers violated the Fair Trade Law for jointly raising prices of handmade vermicelli noodle

Key Word(s): Vermicelli noodles, trade association

Reference: Fair Trade Commission Decision of May 25, 2016 (the 1281st Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105054

Industry: Manufacture of Macaroni, Noodles, Couscous and Similar Farinaceous Products (0892)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

1. An informer complained about the members of the Taoyuan City Noodle Makers' Association jointly raising the price of handmade red vermicelli noodles by NT\$3 per catty while the price of flour had not gone up. In other words, the price increase was not justifiable. Violation of the Fair Trade Law was suspected and the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) After visiting and interviewing the informer and the Taoyuan City Noodle Makers' Association, as well as conducting surveys for 3 times on the grains dealers in the Dihua Street area, the FTC found out that the price of handmade red vermicelli noodles had gone up indeed. Upstream suppliers confirmed the price increase took place in September 2015 and it was raised by NT\$3 per catty. The six businesses involved included Tai Yi Vermicelli Noodles Enterprise Co., Ltd. (hereinafter referred to as "Tai Yi"), An Shun Noodles (hereinafter referred to as "An Shun"), Liang Hong Yi Enterprise Co., Ltd. (hereinafter referred to as "Liang Hong Yi"), Fu Fa Vermicelli Noodles (hereinafter referred to as "Fu Fa"), Jin Xing Noodles (hereinafter referred to as "Jin Xing") and Zhan Xin Vermicelli Noodles Enterprise Co., Ltd. (hereinafter referred to as "Zhan Xin").

(2) Tai Yi was a famous handmade vermicelli noodle producer. It established a mutual understanding with An Shun and Zhan Xin to increase the price. Later, in September 2015, An Shun used Line communications to inform Tai Yi that the price increase had been successfully done. In August and September 2015, Tai Yi also sent to Zhan Xin through Line information regarding the time and margin of price increase and also asked for confirmation. Apparently, the price increase was the idea of Tai Yi. This could be proven by the statements from the businesses involved and the above Line messages. Furthermore, An Shun notified its downstream retailers of the price increase on September 15, 2015 and this matched the time when it sent the Line message to Tai Yi. It also informed Jin Xing to make the same price adjustment on the same day. The testimony from Jin Xing could serve as evidences for this decision. Jin Xing then passed on the message to Liang Hong Yi and Zhan Xin (Zhan Xin never raised the price). Liang Hong Yi did not produce large amounts of handmade vermicelli noodles but decided to increase the price because of the phone call from Jin Xing. In other words, An Shun, Jin Xing, Tai Yi and Liang Hong Yi did jointly raise the price of handmade red vermicelli noodles by NT\$3 per catty in September 2015.

3. Grounds for disposition:

Article 15(1) of the Fair Trade Law provides that "no enterprise shall engage in any concerted action..." It is also stipulated in Article 14(1) of the same law that concerted actions are defined as those resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services. However, such impacts on market functions do not have to actually affect market functions for the undertakings to be considered concerted actions. As long as the mutual understanding among the participating enterprises leads to any competition restriction, and the supply-demand function in the relevant market is endangered, it constitutes a concerted action. An Shun, Jin Xing, Tai Yi and Liang Hong Yi were major handmade red vermicelli noodle suppliers in the northern region. In order to prevent price increase by any single supplier from leading to loss of customers,

they reached the agreement in September 2015 on raising the price of handmade red vermicelli noodles by NT\$3 per catty and carried out the decision subsequently. The joint price increase did have an effect on the handmade red vermicelli noodle market in the northern region and was in violation of Article 15(1) of the Fair Trade Law. Therefore, the FTC imposed administrative fines of NT\$250,000 on Tai Yi, NT\$160,000 on An Shun, NT\$150,000 on Jin Xing and NT\$100,000 on Liang Hong Yi.

Appendix:

Liang Hong Yi Enterprise Co., Ltd.'s Uniform Invoice Number: 97330225

Tai Yi Vermicelli Noodles Enterprise Co., Ltd.'s Uniform Invoice Number: 66921230

Summarized by Chen, Wei; Supervised by: Yang, Chia-Hui

Clinics in the neighborhood of Zhongli Train Station

1318th Commissioners' Meeting (2017)

Case: The clinics in the neighborhood of Zhongli Train Station in Taoyuan City were complained for violating the Fair Trade Law for jointly raising registration fees

Key Word(s): Registration fee, clinic, medical institution

Reference: Fair Trade Commission Decision of February 8, 2017 (the 1318th Commissioners' Meeting)

Industry: Clinic Activities (8620)

Relevant Law(s): Articles 14(1) and 15 of the Fair Trade Law

Summary:

1. The media reported that the clinics in the neighborhood of Zhongli Train

Station in Taoyuan City jointly raised their registration fees. After visiting the clinics and confirming the raises, the Department of Public Health of Taoyuan City Government sent a written request to the FTC and asked the FTC to investigate the matter.

2. Findings of the FTC after investigation:

The clinics the Department of Public Health of Taoyuan City Government asked the FTC to investigate included nine clinics respectively specializing in family medicine, pediatrics and otolaryngology. Between February 2 and April 1, 2016, Huang Wenchang Clinic and five others did raise their registration fees from NT\$100 to NT\$150. The other three clinics charging between NT\$50 and NT\$100 for registration made no raises. According to the list provided by the Taoyuan City Government, there were 486 medical institutions, respectively specializing in pediatrics, general medicine, family medicine and otolaryngology, in the ten districts in the city, including 136 in Zhongli District. Meanwhile, the statistics on the website of the Ministry of Health and Welfare showed that 10,161,941 registrations were made to see doctors of pediatrics, general medicine, family medicine and otolaryngology in Taoyuan City in 2014 and the six clinics in question together saw about 210,000 patients per year.

3. Grounds for non-disposition:

(1) Market definition: Huang Wenchang Clinic and the five other clinics offered medical services in pediatrics, general medicine and otolaryngology. They treated adults and children with common colds, sore throats, and ear and nose discomfort. From patients' angle, the substitutability of medical services in pediatrics, general medicine, family medicine and otolaryngology existed. Therefore, in this case the product market was defined as the provision of "medical services in pediatrics, general medicine, family medicine and otolaryngology." Meanwhile, the medical services of the six clinics were available to all the people living in the ten districts of Taoyuan City. Patients' choice of medical institutions for their need of medical care was highly regionally oriented. However, as the districts in Taoyuan City were close

to one another and the transportation in Taoyuan City was convenient, the geographic market was defined as the ten districts in Taoyuan City, including Zhongli District.

(2) Huang Wenchang Clinic and the five other clinics did increase their registration fees from NT\$100 to NT\$150 between February and April 2016. The raises were all NT\$50. However, besides Ma Xinghua Clinic and Zhongxin Pediatric Clinic happened to make their adjustments of registration fees on April 1, the raises of the other clinics were made at different points of time in the above two-month period. Hence, the registration fee adjustments were not made at the same time and it was difficult to consider the clinics in question as engaging in a concerted action.

(3) The operators of the six clinics expressed that they had decided to make the registration fee adjustments to reflect the increases in personnel cost, utility expenses and medical equipment cost. Lin Guokui Pediatric Clinic particularly mentioned that specialized personnel were needed in their provision of pediatric care. The management cost was therefore higher than that of other types of clinics and the registration fee raise had been made to assure its high quality of pediatric care could be maintained. The increase had not been made along with other clinics. In other words, the six clinics had raised their registration fees because of their cost increases and management considerations. Both were financially justifiable. In addition, the quality of medical services, including medical techniques, effectiveness of treatments, medical equipment, location convenience, etc., was the main concern for patients. For patients, the registration fee was only one of the many factors to be considered and its influence on their choices of clinics varied with people. If the registration fees of all medical institutions were the same, non-price competition on the overall medical service quality would be even more obvious.

(4) There were many medical institutions in the area in question. Huang Wenchang Clinic and the five other clinics merely accounted for 1.23% of the medical institutions in the area, or 4.41% of the total number of medical institutions in Zhongli District. In the meantime, the 210,000 patients the six clinics in question saw in 2014 only accounted for 2.06% of the total number of registrations made to seek medical care in Taoyuan City in the same year. Such a small percentage made it

impossible to consider the registration fee adjustment made by the six clinics could have any impact on the supply-demand function in the "pediatric, general medicine, family medicine and otolaryngology medical service" market in Taoyuan City.

(5) According to the facts it found out in the above, the FTC concluded that the registration fee adjustments made by Huang Wenchang Clinic and the five other clinics did not involve any illegal concerted action that could have an effect on the "pediatric, general medicine, family medicine and Otolaryngology medical service" market in Taoyuan City

Summarized by Pan, Min-Hui; Supervised by: Chiou, Shwu-Fen

Taichung City Security Trade Union

1334th Commissioners' Meeting (2017)

Case: Taichung City Security Trade Union violated the Fair Trade Law by restricting members from giving quotations

Key Word(s): Trade union, security, cost analysis

Reference: Fair Trade Commission Decision of May 31, 2017 (the 1334th Commissioners' Meeting); Disposition Kung Ch'u-Tzu No.106039

Industry: Activities of Businesses and Employers Membership Organizations (9421)

Relevant Law(s): Articles 14 and 15 of the Fair Trade Law

Summary:

1. The FTC received from the Taichung City Government a written inquiry regarding whether security service quotations from the Taichung City Security Trade Union (hereinafter referred to TCSTU) and the items included were subject to the concerted action regulations in the Fair Trade Law. After an initial inspection, the

FTC discovered the TCSTU had established a "List of Statutory Costs of Security Service within Work Hours in Compliance with the Labor Standards Act" (hereinafter referred to as "Statutory Cost List") and had also requested some of its members offering prices lower than the amounts indicated on the Statutory Cost List when bidding for apartment buildings security service procurement projects to donate the "advance payments" to the TCSTU. As the conduct involved the concerted act regulations in the Fair Trade Law, the FTC launched an investigation.

2. Findings of the FTC after investigation:

(1) The TCSTU had 116 members. Most of them were security companies operating in Taichung City, but some were security companies from other counties and cities.

(2) During a general assembly, the members passed the "Regulations Governing the Fundamental Practices of Security Companies" in which the Article 3(xv) stipulated "prices quoted for security personnel service may not be any lower than the amounts specified in the Labor Standards Act and the statutory substantial costs." At the same time, it was also prescribed in its Article 4 that any member found in violation of Article 3 would "accept sanctions unconditionally and without objection" as well as donate the advance payment to the TCSTU and at the same time turn in an equal amount as the penalty. The "statutory substantial costs" referred to contents indicated in the "Statutory Cost List." A member found in violation of the "Regulations Governing the Fundamental Practices of Security Companies" had to donate the NT\$20,000 turned in as the advance payment when joining the TCSTU.

(3) The TCSTU began to issue the "Statutory Cost List" to its members in 2013. The costs on the list were calculated according to the regulations in the Labor Standards Act and were revised a number of times in accordance with the adjustments made to related provisions in the Labor Standards Act. After each revision, the TCSTU would send the new version to each of its members.

3. Grounds for disposition:

(1) Paragraph 15 (1) of the Fair Trade Law provides that "No enterprise shall

engage in any concerted action. In Article 14(4) of the same Law, it is specified that "The act of a trade association or other groups, as referred to in Article 2(2), to restrict activities of enterprises by means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, to restrict activities of enterprises is also deemed as concerted action as used in this Law." The "Regulations Governing the Fundamental Practices of Security Companies" were approved by the TCSTU General Assembly as a trade union resolution. Members giving quotations lower than the amounts indicated in the "Statutory Cost List" were considered in violation of the "Regulations Governing the Fundamental Practices of Security Companies" and had to donate the advance payment turned in when they joined the union. Under such circumstances, the resolution had to be considered a restriction imposed on the business activities of the members. In the meantime, the "Statutory Cost List" was established and issued by the TCSTU and the TCSTU did indeed impose penalties on members giving quotations lower than the amounts indicated on the "Statutory Cost List." For this reason, the FTC concluded the TCSTU had used the resolution of the general assembly and other measures to restrict the business activities of its members.

(2) The TCSTU restricted the members from giving security service quotations lower than the amounts calculated according to the "Statutory Cost List" but could not assure the wages (or other labor conditions) of security personnel could comply with rates specified in the Labor Standards Act. Even if security companies could be guaranteed to receive minimum service charges, the motivation for suppressing wages or lowering labor conditions to maximize the profit still existed. The restriction imposed by the TCSTU to keep the members from giving quotations lower than the amounts calculated according to the "Statutory Cost List" was by no means only to repeat the regulations in the Labor Standards Act and other regulations, but it was also to add restrictions outside the law. As the TCSTU was the only business group of security companies in the relevant geographic market in which there were 130 security companies operating and 100 of them were members of the TCSTU, the restriction the TCSTU imposed on the business activities of its members could easily have an effect on the competition on the marketplace.

(3) The TCSTU used a general assembly resolution and other measures to restrict security companies from determining their security service quotations. The practice restricted the business activities of its members and also affected the supply-demand function in the relevant market in violation of the regulation prohibiting concerted actions specified in Article 15 (1) of the Fair Trade Law. It had to be stopped immediately. Meanwhile, the Article 3 (xv) of the "Regulations Governing the Fundamental Practices of Security Companies" also gave the union the right to restrict the members' freedom to decide their security service quotations. For this reason, the FTC ordered the TCSTU to change the content of the regulation set forth in the subparagraph into indicating the union could not restrict the security companies' decision of security service quotation, while imposing an administrative fine of NT\$200,000 on the union.

Summarized by Fang, Yen Hsiu; Supervised by: Liao, Hsien Chou

Nestle Taiwan Ltd. & Orient EuroPharma Co., Ltd.

1338th Commissioners' Meeting (2017)

Case: Nestle Taiwan and Orient EuroPharma was complained for violating the Fair Trade Law for raising prices for baby formula

Key Word(s): Baby formula, lock-in effect

Reference: Fair Trade Commission Decision of June 28, 2017 (the 1338th Commissioners' Meeting)

Industry: Manufacture of Dairy Products (0850)

Relevant Law(s): Articles 15 , 19 and 25 of the Fair Trade Law

Summary:

1. On March 1, 2017, Nestle Taiwan Ltd. (hereinafter referred to as “Nestle

Taiwan”) raised the retail prices of six of its baby formulas while Orient EuroPharma Co., Ltd. (hereinafter referred to as “Orient EuroPharma”) also increased the retail prices of its 13 baby formulas. The FTC staff obtained the approval to initiate an ex officio investigation to see whether the price raises made by the two companies were in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) To find out whether the two companies had achieved a mutual understanding on the price raises, the FTC sent a written request for the two companies to give their statements at the FTC. At the same time, the FTC also requested the competent authority to provide information regarding the two companies’ costs to import their baby formulas while some FTC staff members were sent to inspect pharmacies and related retail outlets to collect evidences. After examining the two companies’ internal assessments, approval records, emails and price raise notices sent to retailers, the FTC thought the time points of the two companies’ price raise decisions and the amounts of raises had no consistency. In addition, there were no evidences indicating the two companies had achieved a mutual understanding on the price raises. As a result, it was impossible to conclude the price adjustments made by the two companies were a concerted action. Furthermore, the FTC's investigation, statements from retailers, and the contracts signed between the two companies and their distributors also showed that the two companies had not imposed any resale price restrictions.

(2) Article 25 of the Fair Trade Law provides that "in addition to what is provided in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order." If an enterprise has a lock-in effect on its trading counterparts as a result of the particularity of its product and the trading counterparts thus become dependent on the enterprise, the enterprise has its relatively dominating market status. Under such circumstances, if the enterprise improperly takes advantage of such market status and engages in obviously unfair conduct that is able to affect the trading order on the marketplace, it is in violation of Article 25 of the Fair Trade Law.

(3) Baby formulas are the main source of food and nutrition for infants under one year old. All the baby formulas in the country are imported and importers are required to apply to the competent authority for inspections of the formulas and specifications in order to acquire importation permission. Therefore, importers of other products are unable to bring in similar products to compete with existing importers without going through such time-consuming procedures. After acquiring the permission to import baby formulas, businesses will define their own market position and set the prices of their products. Once infants get used to the formula of a certain brand, it is quite unlikely for the parents to switch to any other brand. This was proven true by the statements offered by the pharmacies and other retailers selling baby formulas. In other words, consumers would need to take into account the cost of formulas of other brands and the possibility of their babies being unable to adapt to new formulas. Once the lock-in effect kicks in after a certain brand of baby formula is chosen and consumers get used for it for some time, it would be rather unlikely for such consumers to switch to other brands. Hence, the FTC concluded Nestle Taiwan and Orient EuroPharma indeed had their relatively dominating market status.

(4) Nestle Taiwan and Orient EuroPharma did not improperly take advantage of their market status to engage in deceptive or obviously unfair conduct in this baby formula price adjustment incident. However, in light of the dependence of consumers who have chosen baby formulas from the two companies, the FTC specifically warned the two companies to abide by the Fair Trade Law when making their price adjustments.

Summarized by Chien, Hao-Yu; Supervised by: Yang, Chia-Hui □

Taiwan Barley Products Industry Association and 3 of Its Association Members

1363rd Commissioners' Meeting (2017)

Case: Taiwan Barley Products Industry Association filing an application on behalf of Formosa Oilseed Processing Co. Ltd. and two other companies for extension of joint barley purchase and shipment

Key Word(s): Barley, approval for concerted action

Reference: Fair Trade Commission Decision of December 20, 2017 (the 1363rd Commissioners' Meeting); Letter Kung Lian Tzu No. 106003

Industry: Manufacture of Prepared Animal Feeds (0870)

Relevant Law(s): Articles 15 and 16 of the Fair Trade Law

Summary:

1. On behalf of Formosa Oilseed Processing Co., Ltd., Fwusow Industry Co., Ltd. and Uni-president Enterprises Corporation, the Taiwan Barley Products Industry Association (hereinafter referred to as "TBPIA") filed an application for an extension of the permission for joint procurement and shipment of barley imports.
2. Application items:
 - (1) Extension of permission for joint procurement and shipment of barley imports.
 - (2) Periods of joint shipment: January 1, 2018 to December 31, 2022, five years in total.
3. Contents of permission:
 - (1) The original joint procurement and shipment permission held by the applicants expired on December 31, 2017 and the extension applied for this time complied with the proviso set forth in Articles 15(1)(v) and 16(2) of the Fair Trade Law. Therefore, the applicants requested for the permission are to be extended until December 31, 2022.
 - (2) Each quarter, the applicants would file with the FTC a written report on the

implementations of joint procurement and shipment, including the registered quantity to be purchased by each importer on each ship, the actual quantity purchased, the date of loading, the name of port of loading, the date of ship arrival at the port of loading, the departure date from the port of loading, the arrival date at the port in the country, purchasing prices, and each applicant's quantity of imports, sales and inventory each month.

(3) The applicants could not use this permission to engage in other concerted actions, nor can they restrict the freedom of any applicant to decide the quantity to purchase, prohibit any applicant from procuring and importing independently, refuse other enterprises to participate in the joint procurement without justification. Any changes occurred to the participants in this concerted action had to be reported to the FTC for reference.

4. Grounds for approval:

(1) For the applicants, joint procurement and shipment of barley could reduce import costs, diversify risks, make the building of large storage facilities unnecessary, reduce spoilage of stored materials, cut down interest expenses and capital tie-ups, and indirectly bring down processing costs. It could also increase negotiating capacity when trade disputes occur. In addition, suppliers would value the large quantities purchased and provide barley of better quality. As a result, the quality of products from animal feed processing businesses could be assured. Moreover, the purchasing costs thus saved could benefit downstream animal feed businesses and thus prices of animal feeds would drop. In other words, joint procurement and shipment could be helpful for the overall economy and public interest.

(2) Barley was a commodity subject to no limitation and the government had no restrictions on the qualifications of importers. Any business could freely register the quantity it intended to import and choose the appropriate time to bring it in or purchase from a supplier. There was no difficulty in acquiring this material. Barley in the country was mainly imported from Australia and used in animal feed formulas or in foods after refinement. Substitutability existed between barley, corn for animal feeds and wheat for animal feeds. The barley brought in through joint shipment was

a raw material most of which was processed into semi-finished and finished products like barley grain, course cereal and cereal. They were resold to be processed into fine cereal at the midstream or downstream or used for other purposes. According to the statistics on the quantities and value of barley imports from the Customs Administration of the Ministry of Finance, the quantities of barley imported into the country in 2015, 2016 and 2017 (January to September) were respectively 56,688 metric tons, 50,152 metric tons and 44,957 metric tons. Meanwhile, the data and quarterly filed information from the TBPIA indicated that the joint shipment at issue brought in 15,150 metric tons, 11,850 metric tons and 10,002 metric tons respectively in 2015, 2016 and 2017 (January to September), and they accounted for 28.22%, 23.63% and 22.25% of the total barley imports in the same periods. Compared to the 53.87%, 58.71% and 39.40% in 2012, 2013 and 2014, the declining tendency was obvious. Furthermore, as substitutability existed between corn and wheat for animal feeds and semi-finished or finished products produced with barley imported through the joint shipment at issue, the quantities of barley imports through the joint shipment in question in 2015, 2016 and 2017 (January to September) would only account for 0.39%, 0.30% and 0.33% of the total imports if the quantities of corn and wheat for animal feeds were taken into account. Compared to the 0.72% , 0.68% and 0.46% in 2012, 2013 and 2014, there was no sign of increasing concentration. Therefore, the influence of the joint shipment of barley imports on the relevant market was limited.

(3) As described above, the FTC concluded that the extension of the permission for joint procurement and shipment of barley imports could benefit the overall economy and public interest. It complied with the provision set forth in Article 15(1)(v) of the Fair trade Law and therefore the application was approved. However, to prevent abusive behaviors within the enterprises filing the application and in their transactions with other businesses as a result of the permission for the concerted action, and with the purpose of facilitating its supervision on the enterprises, the FTC, acting pursuant to Article 16(1) of the Fair Trade Law, had some undertakings attached to the permission in its approval of the application.

4.2 Judicial Cases

FDG Recycling Industrial Co., Ltd. and 11 others

Supreme Administrative Court (2015)

Case: Supreme Administrative Court overruled the appeal of administrative litigation filed by FDG Recycling and others regarding the FTC's decision for violation of the Fair Trade Law

Key Word(s): Electronic waste disposal, agreed purchasing price, distribution ratio

Reference: Supreme Administrative Court Judgment (2015) Pan Tzu No. 202

Industry: Materials Recovery (3830)

Relevant Law(s): Article 14(1) of the Fair Trade Law in effect at the time of the conduct (Article 15(1) of the current version)

Summary:

1. FDG Recycling Industrial Co., Ltd. and 11 other companies were businesses engaging disposal of electronic waste in the country. Starting on March 2, 2001, they signed a joint agreement on electronic waste recycling and disposal (hereinafter referred to as “the agreement”) and met on a regular basis until October 2011 to determine their purchasing prices for electronic waste and the percentage and quantity to be disposed of by each business. As the practice was able to affect the supply-demand function of the domestic electronic waste disposal market, the FTC concluded that it had been in violation of the concerted action prohibition regulation set forth in Article 14(1) of the Fair Trade Law at the time and sanctioned the said parties.

2. The 12 offenders had acted according to related regulations and applied to the Environmental Protection Administration (the “EPA”) in April 2011 and acquired their permission from the EPA to set up electronic waste disposal operations entitled to government subsidization. The said businesses collected electronic waste or purchased them from recycling establishments, dismantled such electronics and disposed of them. Subsequently, they applied to the EPA for subsidies according

to the certified quantities they disposed of. Competition existed among the said businesses and they were horizontal competitors. However, starting in March, 2001, the 12 offenders started to sign the said agreement according to which all of the 12 businesses were to accept the percentages of electronic wastes distributed to them for disposal. A management team was also created to be in charge of the said distribution and each business issued the management team a cashier's check to be the guarantee as set forth in the agreement. In response to change of market prices of recyclable electronic wastes, the management team would meet, discuss and decide new purchasing rates and each business would be informed of the new rates in writing and then purchase electronic waste accordingly. The management team also established penalty regulations. If any of the 12 businesses intentionally pushing up prices, lying about disposed quantities, hoarding electronic waste, transporting electronic waste across regions without reporting to the management team in advance, or accepting electronic waste transported across regions, its guarantee would be entirely or partially confiscated or would be given a fine, depending on the seriousness of the violation. The purpose of the above regulations was to assure each business would stick to the stipulations in the agreement. In other words, the offenders negotiated to reach the mutual understanding described above, abided by the agreement and operated under the supervision of the management team, and through an operation center to restrict each other's business activities regardless of the difference in capital expenditure, cost structure and management and marketing capacity of each business. According to the established distribution percentages, those able to collect more electronic waste were required to give part of their recyclable resources to the ones who could not collect enough of their shares. Under such circumstances, competition between the originally horizontal competitors was rendered nonexistent. Meanwhile, as the prices for recyclable electronics were consistent, recycling operations were deprived of their ability to negotiate and the supply-demand function of the market was jeopardized. Therefore, the Supreme Administrative Court decided that the FTC's original sanctions imposed in accordance with Articles 7 and 14(1) of the Fair Trade Law at the time were not inappropriate and therefore overruled the appeal of the offenders. The case was finalized after the Supreme Administrative Court decision was delivered.

Appendix:

E & E Recycling Inc.'s Uniform Invoice Number: 16636181

FGD Recycling Industrial Co., Ltd.'s Uniform Invoice Number: 16181490

Perfect Recycling Co., Ltd.'s Uniform Invoice Number: 16725373

Hong Chin Recycling Enterprise Corp. 's Uniform Invoice Number: 16393240

Liuh Jian Co., Ltd.'s Uniform Invoice Number: 16821593

Chiu-Fa Environmental Protection& Engineering Co., Ltd.'s Uniform Invoice Number: 22926912

Da Chi Environmental Technologies Co., Ltd.'s Uniform Invoice Number: 80703951

Big South Resources Regeneration Co., Ltd.'s Uniform Invoice Number: 27224616

Ruiyuan Recycling Corporation's Uniform Invoice Number: 80426350

Ke Bai Sheng Co., Ltd.'s Uniform Invoice Number: 28792313

Hung Kung Recycling Co., Ltd.'s Uniform Invoice Number: 80632513

Han Lin Environmental Technology Co., Ltd.'s Uniform Invoice Number: 24360525

Summarized by Chen, Yi-Syuan; Supervised by Ren, Han-Ying □

Chapter 5

Resale Price Maintenance

Koninklijke Philips N.V.

1212nd Commissioners' Meeting (2015)

Case: Swan Panasia violated the Fair Trade Law for restricting online sales prices of its downstream businesses

Key Word(s): Resale price maintenance, supply discontinuation

Reference: Fair Trade Commission Decision of January 28, 2015 (the 1212nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104014

Industry: Wholesale of Toys and Recreational Goods (4583)

Relevant Law(s): Article 18 of the Fair Trade Law in effect at the time of the conduct (Article 19 of the current version)

Summary:

1. The FTC received from a private citizen (hereinafter referred to as “informer”) an email stating that he managed a tabletop game business and the products he sold included foreign tabletop games for which Swan Panasia Enterprise Co., Ltd. (hereinafter referred to as “Swan Panasia”) was the agent. In December 2013, he indirectly received a warning notice from Swan Panasia that the online prices of its downstream retailers for products the company represented had to be set according to the prices suggested by the company in order to prevent malicious price competition; otherwise, supply would be discontinued. Furthermore, Swan Panasia had also sent warnings and notices of supply discontinuation to distributors in the southern region.

2. Findings of the FTC after investigation:

(1) Le You You Enterprise Co., Ltd. (hereinafter referred to as “Le You You”) was a distributor for Swan Panasia in the Kaohsiung region. Le You You resold tabletop games purchased from Swan Panasia to tabletop game retailers who then sold the products to consumers.

(2) The informer operated an online store on Ruten Auction Site where he sold products from Swan Panasia at 90% of the suggested prices from the company. On December 5, 2013, he received from Swan Panasia an email stating “1. You are requested to follow our price policy and do not give consumers any discount...2. Tobey (Le You You) is requested to not give Ice (the informer) any supply for the time being; wait until Ice has made price adjustments according to our suggested prices...3. If the tabletop game stores in the Kaohsiung region find our price policy unacceptable, we will have to supply Tobey only for him to do the business alone...” Supply was discontinued on that very same day (December 5). After the informer remarked the prices at the online store according to suggested prices, Le You You made the confirmation and Swan Panasia gave its approval, Le You You started to supply the informer again.

3. Grounds for disposition:

(1) According to the suggested tabletop game prices established by Swan Panasia and the purchasing price lists of distributors at various levels, delivery receipts, proof of transactions with Le You You and the product price lists, Le You You made outright purchases from Swan Panasia and distributed the tabletop games. In the meantime, the informer paid for the products bought from Le You You and any risk with regard to sales of such products was the informer's. In other words, outright purchase relations also existed between Le You You and retailers.

(2) Swan Panasia had established suggested prices (retail prices) for the tabletop game products it represented, allowable discounts and distribution prices (purchasing prices of retailers). In addition, most of the company's downstream businesses (including retailers and distributors operating through physical outlets and online) sold such products in accordance with these standards. Consequently, it could be concluded that Swan Panasia did have decisive influence on the distribution and retail prices of the products in question.

(3) As mentioned earlier, Swan Panasia sent emails to warn its downstream businesses that they should stick to the company's suggested prices and it also did actually discontinue supply to force them into making price adjustments. In addition,

the company admitted that it had demanded online retailers to mark its suggested prices on related web pages. If any retailer refused to comply after it received the said warnings, Swan Panasia would stop doing business with it. This was enough proof that Swan Panasia had not only established suggested prices for the products it represented but also sent warning emails as well as actually discontinued supply to force the downstream businesses of its distributors to sell the products in questions at the suggested rates. Thus, it could be concluded that Swan Panasia did restrict the resale prices of its downstream businesses.

(4) By demanding its downstream businesses to sell the tabletop game products it represented only at suggested rates, Swan Panasia restricted their freedom to determine their prices. The conduct could damage the price competition mechanism in the relevant market and was in violation of Article 18 of the Fair Trade Law at the time.

(5) After taking into consideration of the sales of Swan Panasia, the fact that purchases from retailers accounted for 60% of the company's sales each month, and the discontinuation of supply on the informer, the FTC concluded that the conduct of the company could bring certain harm to the trading order in the tabletop game retail market. However, the violation was the first time ever and the company was cooperative during the investigation. Therefore, the FTC cited the first section of Article 41 of the Fair Trade Law, ordered Swan Asia to cease its unlawful act immediately after receiving the disposition, and also imposed an administrative fine of NT\$200,000 on the company.

Appendix:

Swan Panasia Enterprise Co., Ltd.'s Uniform Invoice Number: 13120886

Summarized by Wen, Che-Chia; Supervised by Chiou, Shwu-Fen □

Bionime Corporation Ltd.

1288th Commissioners' Meeting (2016)

Case: Bionime Corp. violated the Fair Trade Law for restricting resale prices of distributors

Key Word(s): Blood glucose meter, promotion

Reference: Fair Trade Commission Decision of July 13, 2016 (the 1288th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105078

Industry: Manufacture of Other Medical Instruments and Supplies (3329)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. When checking the condition of the blood glucose meter market in the country, the FTC discovered that the contract signed by Bionime Corporation (hereinafter referred to as “Bionime Corp. ”) with its distributors were in violation of the regulation against resale price restrictions in Article 10(1) of the Fair Trade Law and, therefore, initiated an ex officio investigation.

2. Findings of the FTC after investigation:

After talking with Bionime Corp. and inquiring its distributors in writing, the FTC found out that, besides producing and marketing its own Rightest blood glucose meters, Bionime Corp. was also licensed to sell blood glucose meters manufactured by General Electric International, Inc. (hereinafter referred to as “GE ”). Bionime Corp. supplied the products to its distributors through outright sales.

(1) Bionime Corp. stipulated in the distribution contract that the company had the right to cancel sales performance incentives (according to the contract with distributors for GE and Rightest blood glucose meters in 2013, 2014 and 2015) and overseas travel incentives (according to the contract with distributors for GE and Rightest glucose meters in 2013 and 2014) as well as terminate the contract if any distributor sabotaged prices set by the company. Moreover, Bionime Corp. issued a statement to the distributors to reiterate its policy to terminate contracts with

distributors who failed to make product price adjustments in compliance with the company's suggested prices after being requested to do so repeatedly. At the same time, Bionime Corp. also sent its employees to different retail outlets to check the prices that its products were sold, and advise, remind or demand distributors to adjust prices to as close to company's suggested prices as possible if the prices they saw far lower than the suggested prices. The practice restricted the resale prices of goods supplied to its trading counterpart for resale to a third party.

(2) Bionime Corp. contested that the practice was intended to stabilize product prices to maintain brand positioning and its profit. It was also insisted that the company had never really taken any punitive measure. However, Bionime Corp. was unable to provide any evidence to explain how it could achieve the goal of "promoting intra-brand competition" by restricting the resale prices of the distributors. In addition, distributors who did not abide by the contractual clause could have their sales performance and overseas travel incentives canceled or their contracts terminated. This could easily form some psychological pressure on the distributors. Therefore, the abovementioned interference from Bionime Corp. had actually restricted its distributors from determining their resale prices.

3. Grounds for disposition:

As set forth in Article 19(1) of the Fair Trade Law, "an enterprise shall not impose restrictions on the resale prices of goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale; however, those with justifiable reasons are not subject to this limitation." Therefore, whether resale price restrictions would restrain or promote market competition and whether an enterprise needed to restrict resale prices for a certain period or within a certain range to achieve promotion of competition were matters the party in concern had to clarify. Bionime Corp. used the contractual means to restrict the resale prices of its distributors for GE and Rightest blood glucose meters and also issued a statement to threaten the distributors that the company would cancel sales performance and overseas travel incentives or even terminated the contract if any distributor failed to comply with its suggested prices. The above practice obviously was a restriction on the freedom of

the distributors to make their resale price decisions in accordance with the market competition they faced and their cost structures. In consequence, intra-brand price competition would be weakened and the resale price restriction could not be justified as intended to promote competition. Without question, the practice was in violation of Article 19(1) of the Fair Trade Law. In addition to ordering Bionime Corp. to immediately cease the unlawful act, the FTC also imposed on it an administrative fine of NT\$100,000.

Appendix:

Bionime Corporation Ltd.'s Uniform Invoice Number: 80310225

Summarized by Chang, Fa-Chu; Supervised by: Chi, Hsueh-Li

Float-Tek International Co., Ltd.

1267th Commissioners' Meeting (2016)

Case: Float-Tek International was complained for violating the Fair Trade Law by unjustifiably sending warning letters

Key Word(s): Warning letter, patent

Reference: Fair Trade Commission Decision of February 17, 2016 (the 1267th Commissioners' Meeting)

Industry: Manufacture of Boilers, Metal Tanks and Pressure Containers (2531)

Relevant Law(s): Article 19(i) in effect at the time of the conduct and Article 25 of the Fair Trade Law

Summary:

1. Full Most Co. Ltd. (hereinafter referred to as “Full Most”) filed a complaint about Float-Tek International Co., Ltd. (hereinafter referred to as “Float-Tek International”) sending a warning letter on November 14, 2015 to its agent Beijing

Rongxin Heda Technology Co., Ltd. (hereinafter referred to as “Beijing Heda”) in Mainland China concerning the brick-style honeycomb floating discs Beijing Heda has purchased from Full Most in 2012. The letter accused that Beijing Heda had no right to purchase and use without the consent of Float-Tek International because the patent in China for such "oil tank floating roof" devices was owned by Float-Tek International. Full Most thought Float-Tek had violated the Fair Trade Law by sending the warning letter.

2. Findings of the FTC after investigation and grounds for disposition:

Inventor and patentee are two different concepts. Only patentees may claim to own patents. The patent in question was issued in Mainland China and the representative of Full Most and a third party were registered as the patentees. Float-Tek International was not one of the registered patentees at all. Even if Float-Tek International contested that Full Most had obtained the patent illegally, the dispute would be over the ownership of the said patent and both parties should have taken measures stipulated in the Patent Act to seek the resolution and related remedies. Such matters were not subject to the Fair Trade Law. Since Float-Tek International was not the owner of the patent in question, the "Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights" should not apply in this case. Another finding revealed that Float-Tek International had sent the warning letter on November 14, 2014 to protect its own rights. As there were still many competitors in the relevant product market, Float-Tek International only had limited market power and would not be able to impose any restriction on market competition. Besides, Full Most did not provide any concrete evidence to show Beijing Heda, its trading counterpart in the Mainland China market, had refused to do further business after receiving the warning letter from Float-Tek International. In fact, Full Most admitted that Beijing Heda was still its general agent. For this reason, the FTC found it difficult to conclude the warning letter was able to affect the trading order in the relevant market. In other words, with existing evidences, it was impossible to conclude that Float-Tek International had violated Article 19(i) of the Fair Trade Law in effect at the time of the said conduct and Article 25 of the current Fair Trade Law by sending the warning letter. However, to prevent the company from

breaking the law or affecting the trading order on the relevant, the FTC still issued a written warning to remind Float-Tek International to abide by regulations set forth in the Fair Trade Law.

Summarized by Wu, Chien-Hsing; Supervised by: Chi, Hsueh-Li □

Taiwan Sakura Corporation

1300th Commissioners' Meeting (2016)

Case: Taiwan Sakura Corp. violated the Fair Trade Law by restricting prices of its products marketed through online auction websites

Key Word(s): Water heater, gas stove, online auction website

Reference: Fair Trade Commission Decision of October 5, 2016 (the 1300th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105107

Industry: Manufacture of Other Domestic Appliances (2859)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. The informer was selling products of Taiwan Sakura Corporation (hereinafter referred as “Taiwan Sakura”) online at excessively low prices. Taiwan Sakura informed the platform operator that the informer had infringed its copyright or trademark right and the products therefore had to be taken off the shelf provided by the platform. The informer thought Taiwan Sakura's practice was a restriction on online sellers' product prices and this was in violation of Article 19 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The FTC requested Taiwan Sakura and its general distributor for each region

to provide copies of their distribution contract as well as describe their sales practices. Apparently, Taiwan Sakura marketed its products through the general distributors for different regions and their distributors. The products were sold outright and distributors at various levels were responsible for any risk thereafter entailed. With the general distributors, Taiwan Sakura signed the "general distribution contract" which included provisions on resale price restrictions and corresponding penalties.

(2) The FTC requested the said online platform operator to provide the web page involving rights infringement as claimed by Taiwan Sakura and also the information of the sellers who was the targets of the infringement complaints so that the FTC can investigate why and how the products were taken off the shelf. A questionnaire survey was also conducted on distributors authorized by Taiwan Sakura to market online before 2014 and their transactions with the company. The survey result showed that some of the distributors expressed they had not used the logo of Taiwan Sakura, but claims of rights infringement were filed and their products were taken off the shelf because their marked prices were lower than the prices agreed upon between Taiwan Sakura and the general distributors.

3. Grounds for disposition:

(1) As stipulated in the general distribution contract signed between Taiwan Sakura and its general distributors, the prices for Sakura products were to be set in accordance with those both sides agreed upon. Any price adjustment to be made required further negotiations between both parties. If there was any violation of the above contractual clauses, Taiwan Sakura could issue written statements to demand correction and improvement efforts made by the general distributors within a given period. Meanwhile, it was also stipulated that either party violating or failing to abide by the contract and not making corrections or fulfilling its contractual obligation within 30 days, the other party could issue a written notice to terminate the contract. Some of the contracts also included provisions regarding resale price restrictions, handling of breaches of contract, and punitive fines. The FTC also found out that there had been a few online distributors (who obtained their products from Taiwan Sakura's general distributors or their distributors) ending up having their products

taken off the shelf because their prices were lower than the those agreed upon between Taiwan Sakura and the general distributors for different regions.

(2) When requested to provide justifiable causes for restricting resale prices, Taiwan Sakura stated that the complaints filed by the company with the platform operator were mostly against unauthorized use of its trademark. However, most of the web pages removed by the platform operator only displayed product pictures, names, model numbers or descriptions without the logos of the company. Some even did not show any image. Taiwan Sakura claimed trademark infringement had indeed occurred but was unable to prove those products with the Sakura trademark were products from Taiwan Sakura and therefore trademark infringements had happened. Neither was the company able to present any evidence to explain how it could promote intra-brand competition by restricting the resale prices of its downstream distributors. The business scales, operating models and management costs of the distributors were all different. Resale price restrictions would prohibit the distributors from determining their prices, weaken price competition between different retailers, and thus price rigidity on the market could occur. Therefore, it was impossible to conclude that Taiwan Sakura had any justifiable causes as specified in the proviso of Article 19(1) of the Fair Trade Law.

(3) By restricting the resale prices of its distributors, Taiwan Sakura deprived them of the freedom to make price decisions. The distributors were unable to determine their product prices according to the competition they faced and their management strategies. As a result, intra-brand price competition between different retail outlets would be weakened whereas the excuse of promoting competition was not justifiable. The conduct was in violation of Article 19(1) of the Fair Trade Law. Therefore, the FTC cited the first section of Article 40(1) of the same Law and imposed an administrative fine of NT\$1.2 million on Taiwan Sakura.

Appendix:

Taiwan Sakura Corporation's Uniform Invoice Number: 23113940

Summarized by Ma, Ming-Ling; Supervised by: Wu, Lieh-Ling

Chiseng Co., Ltd.

1301st Commissioners' Meeting (2016)

Case: Chiseng Co., Ltd. violated the Fair Trade Law by imposing restrictions on distributors

Key Word(s): Pepper product, Chinese spicy seasoning

Reference: Fair Trade Commission Decision of October 12, 2016 (the 1301st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105111

Industry: Manufacture of Seasoning (0896)

Relevant Law(s): Articles 19 and 20 of the Fair Trade Law

Summary:

1. Almost 80% of domestically produced seasonings were sold domestically. As a result of lifestyle changes in the past years, the number of people eating out increased and the demand for pepper powder and other spicy seasonings continued to grow. In order to understand the condition of the seasoning market, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) The three major seasoning brands were Tomax from Tomax Enterprise Co., Ltd. (hereinafter referred to as "Tomax"), Flying Horse from Chiseng Co., Ltd. (hereinafter referred to as "Chiseng") and Old Man Brand from Tong Long Enterprise Co., Ltd. (hereinafter referred to as "Tong Long"). They all offered a large variety of products, including pepper powder, pepper whole, pepper salt and other seasonings (such as allspice, rosemary, and so on). However, their main products and marketing approaches were different.

(2) Pepper was the primary wholesale item for Chiseng although the company also sold other spicy seasonings. In the sales agreement signed by Chiseng with its distributors, besides provisions regarding ways of payment and various incentives or sales thresholds for discounts, Paragraph 1 of Point 6 of the agreement specified that "Party B shall sell the products according to the suggested marketing approaches

established by Party A (Chiseng) and may not engage in price competition or jack up prices, to sabotage the market prices of products from Party A or market products in other districts and sabotage the order of such markets. Party A may cancel the rebate for the quarter or terminate the contract if any distributor should violation these provisions...” In addition, Chiseng assigned its employees to evaluate the sales performance of each distributor on a regular basis or check if any distributor was engaging in price competition or cross-district sales. The said provision must have been continued from previous versions of the sales agreement and it was impossible to find out when they were first established. However, the original idea was, with supplying capacity and profitability taken into consideration, probably that each distributor could make a reasonable profit if it concentrated on the management of the regional market to which it belonged. On the other hand, if any distributor engaged in cross-district sales, the profit of other distributors could be therefore affected. The sales contract did include punitive measures, but as a matter of fact no distributorship had ever been revoked. When distributors were found to be engaging in cross-district sales, moral persuasion was the only measure taken. If the situation remained unimproved, Chiseng would gradually cut back on the cooperation with such distributors and it might consider not renewing the contract in the following year, but this had rarely happened.

3. Grounds for disposition:

According to Article 19(1) of the Fair Trade Law, an enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such a third party for making further resale; however, those with justifiable reasons are not subject to this limitation. Furthermore, in Article 20(v), it is also stipulated that “no enterprise may impose improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement and restrain competition as a consequence.” Chiseng employed its power provided by the sales contract to restrict the product prices and operating districts of its distributors, and further threatened to cancel the rebate for the quarter, terminate the contract or cut back on cooperation to force its trading counterparts to sell its products according

to its suggested prices and within the districts to which they belonged. The conduct had obviously restricted the distributors their power to decide their resale prices and operating areas. Moreover, as the number of major players in the Chinese spicy seasoning market was limited, intra-brand competition was inadequate. Consumers usually stuck to the habit of using the seasonings of certain brands and seasoning businesses seldom made active investments such as advertising or offered services before or after sales. Furthermore, the resale price restrictions from the company could not be interpreted as a justifiable cause for promotion of competition. To the contrary, restricting distributors to operate only in certain areas could only weaken market competition. As the above two practices were respectively in violation of Article 19(1) and Article 20(v) of the Fair Trade Law, the FTC imposed an administrative fine of NT\$500,000 on Chiseng.

Appendix:

Chiseng Co., Ltd.'s Uniform Invoice Number: 04309819

Summarized by Chen, Ru-Ya; Supervised by: Yang, Chia-Huig

Nexgen Mediatech Inc.

1322nd Commissioners' Meeting (2017)

Case: Nexgen violated the Fair Trade Law by imposing resale price restrictions on its distributors

Key Word(s): Household appliance, online sale

Reference: Fair Trade Commission Decision of March 9, 2017 (the 1322nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106013

Industry: Manufacture of Other Domestic Appliances (2859)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. The informer was a dealer selling the products of Nexgen Mediatech Inc. (hereinafter referred to as “Nexgen”) online at the prices too low and Nexgen complained to the online platform operator that the dealer had infringed its copyright and the dealer was therefore removed from the platform. The informer claimed that Nexgen imposed restrictions on the prices of online dealers for its products and this was in violation of Article 19 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) Nexgen and its distributors were requested to provide and explain the contents of their distribution contracts and its actual sales practices. Nexgen marketed Chimei household appliances both on its own and through the distributors who purchased the products outright and shouldered the risks. It signed distribution contracts with distributors and issued letters of online distribution authorization. Neither the distribution contract nor the letters of online distribution authorization include any clauses regarding resale price restrictions or penalty provisions. However, the FTC found emails dated between June 8, 2015 and February 2, 2016 containing names of distributors who were penalized by Nexgen and the corresponding penalties.

(2) The FTC requested the aforementioned online platform operator to provide their web pages and the information associated with the dealer who had been complained by Nexgen as engaging in copyright infringement for the purpose of investigating how the dealer had been removed from the platform and how his rights to use the platform had been suspended. Quite a few people interviewed by the FTC also confirmed that their supply had been disconnected by Nexgen for failing to sell products at prices suggested by Nexgen.

3. Grounds for disposition:

(1) The emails found by the FTC containing names of distributors penalized by Nexgen and the penalties imposed included the following contents: "The original manufacturer has always enforced price control," "Subject: Buying back the

machines on June 8 from EASY Household Appliances Auction Site, DF-14BOST... Failing to display company certification and selling at prices excessively low—1) Supply to be suspended between June 8 and June 18 as a warning" and "2) Supply to be suspended for one month from June 16 to July 15, etc." Nexgen contested that most of the contents were internal jokes and the penalties had been imposed as a result of the concerned distributors' credit problems so that the risk of bad debt could be reduced and the distributors could be placed under watch. However, the findings of the FTC's investigation revealed that not all the distributors having their supply suspended were those failing to make payments or the ones whose names were on credit watch list. Meanwhile, some of the distributors having their supply suspended had indeed sold products at prices lower than the prices suggested by Nexgen. In addition, Nexgen did not deny it had suspended supply to the distributors indicated in the aforesaid emails and further admitted that the suspension had been decided as a result of the distributors' selling products at prices lower than their purchasing costs. In other words, Nexgen had indeed imposed resale price restrictions on distributors.

(2) The FTC requested Nexgen to justify its imposition of resale price restrictions. The company only responded this was to prevent price competition from affecting service quality and necessary before-sales service (such as arranging product display space, hiring and training sales clerks, and providing explanations), to reduce the possibility of sellers acquiring products from unknown sources or through illegitimate means, and to minimize the risk of bad debt. Nevertheless, it could not provide any concrete measures or related evidences to support its statement. Apparently, its contestation could not justify the imposition of resale price restrictions.

(3) By restricting the resale prices of its distributors, Nexgen had deprived them of the freedom to make price decisions. The distributors could not set product prices in accordance with the market competition they faced and their management strategies. In consequence, intra-brand price competition between different retail outlets would be weakened while the conduct could never be justified as for promotion of competition. It was in violation of Article 19(1) of the Fair Trade Law. Therefore, the FTC cited the first section of Article 40 of the same Law and imposed

an administrative fine of NT\$500,000 on Nexgen.

Appendix:

Nexgen Mediatech Inc.'s Uniform Invoice Number: 12997819

Summarized by Ma, Ming-Ling; Supervised by: Wu, Lieh-Ling

Sinphar Pharmaceutical Co., Ltd.

1326th Commissioners' Meeting (2017)

Case: Sinphar Pharmaceutical violated the Fair Trade Law by restricting the resale prices of downstream businesses for the company's products

Key Word(s): Pharmacy, contract, suggested price list

Reference: Fair Trade Commission Decision of April 7, 2017 (the 1326th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106024

Industry: Manufacture of Drugs and Medicines (2002)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. Sinphar Pharmaceutical Co., Ltd. (hereinafter referred to as "Sinphar Pharmaceutical") signed with pharmacies the "Sinphar Counter Project Contract" in which it was stipulated that " Party B (pharmacy) hereby agrees to sell the products of Party A (Sinphar Pharmaceutical) at suggested prices; otherwise, Party A may terminate the contract and cancel the feedback percentage in order to maintain the cooperation system of this project, brand image and market order." This stipulation in the contract was in violation of Article 19 of the Fair Trade Law.

2. Findings of the FTC after Investigation:

(1) According to pharmacies that had set up a Sinphar Counter, the ownership of

the products they purchased outright from Sinphar Pharmaceutical belonged to them. When they sold the products to consumers, the invoices were issued in their own names. Therefore, their pricing considerations included their profit margin which had to be the difference between their purchasing price and selling price. Moreover, the fact that Sinphar Pharmaceutical did not pay them commissions was enough to prove the pharmacies purchased outright from Sinphar Pharmaceutical.

(2) It was stipulated in contracts Sinphar Pharmaceutical signed with the pharmacies between 2013 and 2016 that Sinphar Pharmaceutical could terminate the contract and cancel the provision of free medicines or monetary feedback if any pharmacy failed to sell the company's products according to the agreement between both sides or at prices suggested. Meanwhile, according to many pharmacies that had set up a Sinphar Counter, if Sinphar Pharmaceutical's salespeople discovered prices of products at the Sinphar Counter were marked lower than the suggested prices, they would request, remind or persuade such pharmacies to make adjustments. The FTC's investigation revealed that a number of pharmacies had indeed accordingly raised the prices of products at the Sinphar Counter. In other words, the company was able to use the abovementioned contract stipulation and certain practices to impose restrictions on the resale prices of products supplied to its trading counterpart for the resales to third parties. Despite that Sinphar Pharmaceutical contested that it had never really terminated any contract on any pharmacy, the aforesaid contract stipulation and the threat to cancel the provision of free medicines or monetary feedback or early contract cancellation had already formed psychological pressure for such pharmacy operators. In other words, the intervention resulted from the company's practice had substantially restricted the freedom of the pharmacy operators to decide their resale prices.

(3) Sinphar Pharmaceutical contested the resale price restriction was imposed to maintain the image of its brand name and products, and the service quality of professional pharmacists selling the company's medicines. However, it could not provide any evidences to explain how the resale price restriction could help achieve promotion of intra-brand competition. In addition, the business scales, operating modes and management costs of the pharmacies were all different. The resale price

restriction could only prevent the pharmacies from deciding their own prices and at the same time weaken intra-brand competition. Apparently, Sinphar Pharmaceutical was unable to provide any concrete evidences to prove the resale price restriction could promote intra-brand competition or was economically justifiable due to competition consideration as described in Article 25 of the Enforcement Rules of Fair Trade Law, so that the condition could comply with the proviso set forth in Article 19(1).

3. Grounds for disposition:

Sinphar Pharmaceutical used the contract to impose restrictions on the resale prices of pharmacies for its products and also instructed its salespeople to request, remind or persuade pharmacies to adjust their prices. The conduct made it impossible for pharmacies with a Sinphar Counter to determine their prices according to the competition they faced, their management strategy, and their cost structure. Intra-brand price competition between different retail outlets was therefore weakened, yet the restriction could not be justified as intended to promote market competition. Apparently, Sinphar Pharmaceutical had violated Article 19(1) of the Fair Trade Law. After assessing the sales of Sinphar Pharmaceutical, the facts that the duration of the unlawful act having lasted for more than three years, the 1,066 pharmacies cooperating with the company in different period spreading all over the country, and 739 pharmacies signing contracts with the company between October 2015 and September 2016, the FTC ordered the company to immediately cease its unlawful act while imposing on it an administrative fine of NT\$2.5 million.

Appendix:

Sinphar Pharmaceutical Co., Ltd.'s Uniform Invoice Number: 42042734

Summarized by Ma, Ming-Ling; Supervised by: Wu, Lieh-Ling

Alterna International Haircare Co. Ltd.

1332nd Commissioners' Meeting (2017)

Case: Alterna International Haircare violated the Fair Trade Law by restricting the resale prices of its hair salon products

Key Word(s): Hair salon, price competition

Reference: Fair Trade Commission Decision of May 17, 2017 (the 1332nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106036

Industry: Wholesale of Cosmetics (4572)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. The FTC received complaints from private citizens about Alterna International Haircare Co. Ltd. (hereinafter referred to as “Alterna International Haircare”) illegitimately restricting the resale prices of hair salons for its Moroccanoil (hereinafter referred to as “argan oil products”) in violation of Article 19 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The main business item of Alterna International Haircare was selling Moroccanoil products (including argan oil products). According to the written statement from Alterna International Haircare and interviews with hair salons selling the products, the latter purchased outright from the former.

(2) Alterna International Haircare stipulated in the sales authorization agreement for different products to restrict the hair salons from engaging in price competition. Otherwise, the company had the right to terminate the authorization and suspend product supply. According to the statement given by Alterna International Haircare at the FTC and the results of a survey and interviews conducted by the FTC, if the salespeople of Alterna International Haircare discovered any hair salon selling the company's argan oil products at prices lower than the suggested prices established by the company or the on sale prices lower than 90% of the suggested prices, they would

request, remind or persuade the hair salon to make adjustments. Meanwhile, the FTC's investigation also revealed that many hair salons sold the argan oil products at prices suggested by Alterna International Haircare. This meant the company was able to use the aforementioned stipulation and practices to impose restrictions on the resale prices of products supplied to its trading counterpart for resale to third parties. Alterna International Haircare contested that as a matter of fact hair salon operators normally would cooperate after they were requested and persuaded by its salespeople and no authorization had actually been terminated. However, the threat of sales authorization termination and supply suspension as specified in the agreement had already formed psychological pressure for the hair salon operators. In other words, the intervention resulted from the company's practice had substantially restricted the freedom of the hair salon operators to decide their resale prices.

(3) Alterna International Haircare used maintenance of price consistency and prevention of vicious competition as the excuse for the resale price restriction imposed on the hair salons but could not explain the connection between the resale price restriction and promotion of competition. In addition, as the business scale, operating mode and management cost of the hair salons were all different, the resale price restriction would only suppress the freedom of the hair salon operators to determine their prices and weaken intra-brand competition. This meant Alterna International Haircare was unable to provide any concrete evidences to prove the resale price restriction could promote intra-brand competition and justify its conduct as legitimate as prescribed Article 25 of the Enforcement Rules of Fair Trade Law, so that the condition could comply with the proviso of Article 19(1) of the Fair Trade Law.

3. Grounds for disposition:

Alterna International Haircare stipulated in the sales authorization agreement for different products to restrict the resale prices of hair salons for the company's argan oil products. Its salespeople would also persuade and request the hair salons to maintain product prices; otherwise the company would resort to the punitive measures of terminating sales authorization and suspending supply as stipulated in

the agreement. The conduct apparently restricted retailers' freedom to decide their own prices and the outcome would weaken intra-brand price competition between different businesses while the conduct could not be justified as for promotion of market competition. Hence, the practice was in violation of Article 19(1) of the Fair Trade Law. After assessing the duration of the unlawful act having lasted since 2012, the number of contracted hair salons, the motive and purpose behind the unlawful act, the violation being the first, and the company's cooperativeness throughout the investigation, the FTC ordered Alterna International Hair to immediately cease the unlawful act while imposing on it an administrative fine of NT\$150,000.

Appendix:

Alterna International Haircare Co. Ltd.'s Uniform Invoice Number: 25114563

Summarized by Wu, Chien-Hsing; Supervised by: Chi, Hsueh-Li

Nestle Taiwan Ltd. & Orient EuroPharma Co., Ltd.

1338th Commissioners' Meeting (2017)

Case: Nestle Taiwan and Orient EuroPharma was complained for violating the Fair Trade Law by raising prices for baby formula

Key Word(s): Baby formula, lock-in effect

Reference: Fair Trade Commission Decision of June 28, 2017 (the 1338th Commissioners' Meeting)

Industry: Manufacture of Dairy Products (0850)

Relevant Law(s): Articles 15 , 19 and 25 of the Fair Trade Law

Summary:

1. On March 1, 2017, Nestle Taiwan Ltd. (hereinafter referred to as “Nestle

Taiwan”) raised the retail prices of six of its baby formulas while Orient EuroPharma Co., Ltd. (hereinafter referred to as “Orient EuroPharma”) also increased the retail prices of its 13 baby formulas. The FTC staff obtained the approval to initiate an ex officio investigation to see whether the price raises made by the two companies were in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) To find out whether the two companies had achieved a mutual understanding on the price raises, the FTC sent a written request for the two companies to give their statements at the FTC. At the same time, the FTC also requested the competent authority to provide information regarding the two companies’ costs to import their baby formulas while some FTC staff members were sent to inspect pharmacies and related retail outlets to collect evidences. After examining the two companies’ internal assessments, approval records, emails and price raise notices sent to retailers, the FTC thought the time points of the two companies’ price raise decisions and the amounts of raises had no consistency. In addition, there were no evidences indicating the two companies had achieved a mutual understanding on the price raises. As a result, it was impossible to conclude the price adjustments made by the two companies were a concerted action. Furthermore, the FTC's investigation, statements from retailers, and the contracts signed between the two companies and their distributors also showed that the two companies had not imposed any resale price restrictions.

(2) Article 25 of the Fair Trade Law provides that "in addition to what is provided in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order." If an enterprise has a lock-in effect on its trading counterparts as a result of the particularity of its product and the trading counterparts thus become dependent on the enterprise, the enterprise has its relatively dominating market status. Under such circumstances, if the enterprise improperly takes advantage of such market status and engages in obviously unfair conduct that is able to affect the trading order on the marketplace, it is in violation of Article 25 of the Fair Trade Law.

(3) Baby formulas are the main source of food and nutrition for infants under one year old. All the baby formulas in the country are imported and importers are required to apply to the competent authority for inspections of the formulas and specifications in order to acquire importation permission. Therefore, importers of other products are unable to bring in similar products to compete with existing importers without going through such time-consuming procedures. After acquiring the permission to import baby formulas, businesses will define their own market position and set the prices of their products. Once infants get used to the formula of a certain brand, it is quite unlikely for the parents to switch to any other brand. This was proven true by the statements offered by the pharmacies and other retailers selling baby formulas. In other words, consumers would need to take into account the cost of formulas of other brands and the possibility of their babies being unable to adapt to new formulas. Once the lock-in effect kicks in after a certain brand of baby formula is chosen and consumers get used for it for some time, it would be rather unlikely for such consumers to switch to other brands. Hence, the FTC concluded Nestle Taiwan and Orient EuroPharma indeed had their relatively dominating market status.

(4) Nestle Taiwan and Orient EuroPharma did not improperly take advantage of their market status to engage in deceptive or obviously unfair conduct in this baby formula price adjustment incident. However, in light of the dependence of consumers who have chosen baby formulas from the two companies, the FTC specifically warned the two companies to abide by the Fair Trade Law when making their price adjustments.

Summarized by Chien, Hao-Yu; Supervised by: Yang, Chia-Hui □

Chapter 6

Other Restrictive Business Practices

6.1 Decisions

Dell B.V., Taiwan Branch

1225th Commissioners' Meeting (2015)

Case: Dell Taiwan violated the Fair Trade Law for boycotting

Key Word(s): Boycott, cut supply, agent, tender

Reference: Fair Trade Commission Decision of April 29, 2015 (the 1225th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104033

Industry: Computer consultancy and computer facilities management activities (6202)

Relevant Law(s): Article 19(i) of the Fair Trade Law in effect at the time of the conduct (Article 20(i) of the current version)

Summary:

1. The FTC received complaints accusing Dell Taiwan (hereinafter referred to as “offender”) of requesting its agents to cut supply on a tender-winning bidder and the boycotting practice was in violation of the Fair Trade Law.

2 Findings of the FTC after investigation:

The Environmental Protection Bureau of Tainan City put up a tender in 2013 to procure operating platform maintenance and integration services for its air quality database. After winning the contract, the Southern Taiwan Branch of Chunghwa Telecommunications Co., Ltd. (hereinafter referred to as “Chunghwa Telecom Southern Branch”) delegated a collaborating supplier to negotiate and purchase the SonicWALL server antivirus software. When the collaborating supplier was negotiating to purchase the Sonic WALL software between March and June 2013,

Dell Taiwan on several occasions made agents and distributors for SonicWALL refuse to give quotations or sell the product to Chunghwa Telecom Southern Branch. In the end, the collaborating supplier was unable to acquire from domestic agents or distributors the SonicWALL software needed for Chunghwa Telecom Southern Branch to fulfill the contract.

3. Grounds for disposition:

(1) The SonicWALL software was a network security product developed by SonicWALL LLC which was a subsidiary of Dell Inc. SonicWALL signed its agency contracts with Weblink International Inc. and Zero One Technology Co., Ltd. for them to be in charge of marketing SonicWALL products in the country. Dell Taiwan did not sell SonicWALL products but had the responsibility to assist the agents to promote SonicWALL products while the agents were required to report their related operations to Dell Taiwan or apply to it for issuance of OEM certificates of authorization. In other words, Dell Taiwan had the power to decide whether the agents could purchase at special prices or acquire OEM certificates of authorization. Despite that SonicWALL products did not account for a large share of the domestic network and data security device market, it is a fact that they were specified in the procurement project of the Environmental Protection Bureau of Tainan City and the contract winning bidder could not replace the SonicWALL software with any information security product of a different brand without breaching the contract.

(2) After winning the contract from the Environmental Protection Bureau of Tainan City in March 2013, Chunghwa Telecom Southern Branch delegated a collaborating supplier to negotiate and purchase the SonicWALL product needed for the project. When finding out that the collaborating supplier was asking Weblink International Inc. for quotation, Dell Taiwan notified Weblink International Inc. “not to give any quotation or do anything about the request.” The collaborating supplier turned to Taifon Computer Co., Ltd. (hereinafter referred to as “Taifon Computers”) for quotation yet Dell Taiwan requested Taifon Computers to “leave the Tainan City Environmental Protection Bureau case alone.” As a result, the collaborating supplier went back to Weblink International Inc. but Dell Taiwan once again told the

company that “if any company make price inquiries or place orders in relation to the procurement project of the Environmental Protection Bureau of Tainan City, do not supply any product.”

(3) The boycotting conduct of Dell Taiwan during March to August 2013 made the collaborating supplier unable to purchase SonicWALL products in the country. In the end, it bought the software overseas. However, Dell Taiwan changed the expiration date of authorization and rendered the product unusable. Consequently, Chunghwa Telecom Southern Branch could not complete the acceptance inspection as scheduled in this case and the conduct of Dell Taiwan also deterred other suppliers from taking part in bidding for similar projects and created a chilling effect. The FTC concluded that the aforementioned conduct of Taiwan Dell had already met the description of “causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise” set forth in Article 19(i) of the Fair Trade Law at the time and it was likely to lead to competition restrictions. Therefore, the FTC imposed an administrative fine of NT\$2 million on Dell Taiwan.

Appendix:

Dell B.V., Taiwan Branch (the Netherlands)'s Uniform Invoice Number: 27247049

Summarized by Yang, Chung-Lin; Supervised by Liao, Hsien-Chou □

Cement Manufacturers

1230th Commissioners' Meeting (2015)

Case: Taiwan Cement Corporation, Asia Cement Corporation and Southeast Cement were complained for violating the Fair Trade Law

Key Word(s): Type II Portland cement, Taiwan Cement, Southeast Cement, Asia Cement

Reference: Fair Trade Commission Decision of June 3, 2015 (the 1230th Commissioners' Meeting)

Industry: Manufacture of Cement (2331)

Relevant Law(s): Articles 14, 19, and 24 of the Fair Trade Law in effect at the time of the conduct (Articles 15, 20, and 25 of the current version)

Summary:

1. An informer stated that before participating in a tender put up by BES Machinery Co. Ltd. for procurement of Type II Portland cement in June, 2012, he had made an agreement with Southeast Cement Corporation (hereinafter referred to as "Southeast Cement") for the latter to supply cement that will meet the quality requirements indicated in the test report as well as provide a sample to be presented with his bid.
2. On August 6, 2012, the informer won the tender by offering the price of NT\$2,600 per ton and signed a contract with BES Machinery Co. Ltd. However, Southeast Cement refused to supply the cement and the informer had to purchase the cement needed from Asia Cement Corporation (hereinafter referred to as "Asia Cement") at a higher unit price. The informer thought Southeast Cement had refused to supply the cement as agreed earlier because a downstream distributor of Taiwan Cement Corporation (hereinafter referred to as "Taiwan Cement") had not been awarded the contract and Taiwan Cement therefore had threatened to "stop buying slag from Southeast Cement" and "stop supplying cement clinker and cement products to Southeast Cement" so that Southeast Cement will be coerced into

compliance. For this reason, the informer filed the complaint with the FTC.

3. Grounds for non-disposition:

(1) Regarding the allegation that Taiwan Cement, Southeast Cement and Asia Cement had violated Article 14 of the Fair Trade Law at the time: The informer accused the three cement businesses of holding a meeting with respect to the Type II cement procurement project in question on August 14, 2012 and Southeast Cement refused to do transact with the informer consequently. The informer also provided the recordings of his five telephone calls with the staff members of Southeast Cement between August 14 and September 3 in 2012. However:

A.It was difficult to prove whether the consultation held between the three cement businesses on August 14, 2012 as mentioned in the telephone call recordings had really taken place. The FTC questioned Southeast Cement about the matter and the reply was the statement had been made to stop the informer from bothering the company any further. In addition, the three cement businesses all denied having had any consultation with regard to the Type II cement procurement project in question that caused Southeast Cement to refuse to do the transaction with the informer.

B.The telephone call recordings showed that the contents of the conversation had mostly been about hypothetical questions brought up by the informer and the staff members of Southeast Cement responded accordingly. In other words, the informer employed leading questions to express his subjective thinking and the replies given were mostly to brush him off. Therefore, it was difficult to use the telephone call recordings as evidence that the accused had really consulted to establish any concerted action.

C.After Southeast Cement refused to supply any cement, the informer turned to Asia Cement, who gave him a price quotation. Nevertheless, the informer decided not to purchase Type II cement from Asia Cement due to business considerations. If the three cement businesses had really held the alleged consultation regarding the Type II cement procurement project on August 14, 2012 that rendered the informer unable to fulfill his contract, Asia Cement's offering the price quotation to the informer would have been contradictory to the alleged content of the telephone call recordings. In

addition, Southeast Cement had never signed any Type II cement supply contract with the informer. Therefore, Southeast Cement did not have the obligation to supply Type II cement to the informer. This was pointed out in the related decision made by Kaohsiung District Court.

D.The FTC thought about checking whether a lot of telephone calls had been made between the above companies before and after August 14, 2012 in order to gather more evidences with regard to the alleged concerted action in question but no telephone call recordings could be obtained because it had been too long. Under such circumstances, the recordings of five telephone calls between the informer and the staff members of Southeast Cement were insufficient for the FTC to conclude that the contents of the said telephone call recordings were true.

(2) Regarding the allegation that Southeast Cement and Asia Cement had violated Article 19(ii) of the Fair Trade Law at the time:

A.The informer accused Southeast Cement of refusing to supply the Type II cement needed for the procurement project but having no trouble supplying it to Bing Guang Co., Ltd. on the same conditions. The FTC's investigation revealed that Southeast Cement had not signed any contract with the informer and therefore had not supplied any cement to the informer. This was pointed out in the above decision made Kaohsiung District Court. On top of that, the informer was a cement distributor, operating on a different competition level from Bing Guang Co., Ltd. In other words, no issue of discriminatory treatment was involved here and thus there was no violation of Article 19(ii) of the Fair Trade Law at the time.

B.As for the informer's accusation that Asia Cement had raised the price to NT\$2,850 per ton which included transportation fee NT\$300 and was NT\$200 more than the usual price without any justification, as well as the statement that the company had not charged Li Hong Premixed Cement Co., Ltd. for transportation, the FTC's investigation showed that Asia Cement had quoted the informer NT\$2,550 per ton if handed over at its Taichung Plant (delivery to the construction site requiring the transportation fee of NT\$300 per ton) or NT\$2,600 per ton if delivered to the construction site from its Hualien Plant. The informer had chosen that it was to be delivered to the construction site from the Taichung Plant and the price was NT\$2,850

per ton. The evidence showed that the agreement reached between Li Hong Premixed Cement Co., Ltd. and Asia Cement had been delivery to the construction site from the Hualien Plant at NT\$2,650 per ton which was the same offer Asia made to the informer. As no discriminatory treatment was involved, it is impossible for the FTC to reach the conclusion that Asia Cement had violated Article 19(ii) of the Fair Trade Law at the time.

(3) Regarding the allegation that Southeast Cement and Asia Cement had violated Article 24 of the Fair Trade Law at the time: The key issue in this case was whether the three cement businesses had engaged in any illegal concerted action or discriminatory treatment. These were practices likely to lead to competition restrictions as stated in Articles 14 and 19(ii) of the Fair Trade Law at the time. As the above provisions already provided sufficient criteria for the determination of whether the conduct involved in this case had been unlawful, there was no need to make any further exploration under Article 24 of the Fair Trade Law.

Appendix:

Taiwan Cement Corporation' s Uniform Invoice Number: 11913502

Asia Cement Corporation 's Uniform Invoice Number: 03244509

Southeast Cement Corporation 's Uniform Invoice Number: 83078600

Summarized by Hung, Chin-An; Supervised by Liou ,Chi-Jung

Chiseng Co., Ltd.

1301st Commissioners' Meeting (2016)

Case: Chiseng Co., Ltd. violated the Fair Trade Law by imposing restrictions on distributors

Key Word(s): Pepper product, Chinese spicy seasoning

Reference: Fair Trade Commission Decision of October 12, 2016 (the 1301st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105111

Industry: Manufacture of Seasoning (0896)

Relevant Law(s): Articles 19 and 20 of the Fair Trade Law

Summary:

1. Almost 80% of domestically produced seasonings were sold domestically. As a result of lifestyle changes in the past years, the number of people eating out increased and the demand for pepper powder and other spicy seasonings continued to grow. In order to understand the condition of the seasoning market, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) The three major seasoning brands were Tomax from Tomax Enterprise Co., Ltd. (hereinafter referred to as "Tomax"), Flying Horse from Chiseng Co., Ltd. (hereinafter referred to as "Chiseng") and Old Man Brand from Tong Long Enterprise Co., Ltd. (hereinafter referred to as "Tong Long"). They all offered a large variety of products, including pepper powder, pepper whole, pepper salt and other seasonings (such as allspice, rosemary, and so on). However, their main products and marketing approaches were different.

(2) Pepper was the primary wholesale item for Chiseng although the company also sold other spicy seasonings. In the sales agreement signed by Chiseng with its distributors, besides provisions regarding ways of payment and various incentives or sales thresholds for discounts, Paragraph 1 of Point 6 of the agreement specified

that “Party B shall sell the products according to the suggested marketing approaches established by Party A (Chiseng) and may not engage in price competition or jack up prices, to sabotage the market prices of products from Party A or market products in other districts and sabotage the order of such markets. Party A may cancel the rebate for the quarter or terminate the contract if any distributor should violation these provisions...” In addition, Chiseng assigned its employees to evaluate the sales performance of each distributor on a regular basis or check if any distributor was engaging in price competition or cross-district sales. The said provision must have been continued from previous versions of the sales agreement and it was impossible to find out when they were first established. However, the original idea was, with supplying capacity and profitability taken into consideration, probably that each distributor could make a reasonable profit if it concentrated on the management of the regional market to which it belonged. On the other hand, if any distributor engaged in cross-district sales, the profit of other distributors could be therefore affected. The sales contract did include punitive measures, but as a matter of fact no distributorship had ever been revoked. When distributors were found to be engaging in cross-district sales, moral persuasion was the only measure taken. If the situation remained unimproved, Chiseng would gradually cut back on the cooperation with such distributors and it might consider not renewing the contract in the following year, but this had rarely happened.

3. Grounds for disposition:

According to Article 19(1) of the Fair Trade Law, an enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such a third party for making further resale; however, those with justifiable reasons are not subject to this limitation. Furthermore, in Article 20(v), it is also stipulated that “no enterprise may impose improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement and restrain competition as a consequence.” Chiseng employed its power provided by the sales contract to restrict the product prices and operating districts of its distributors, and further threatened to cancel the rebate for the quarter, terminate the contract or

cut back on cooperation to force its trading counterparts to sell its products according to its suggested prices and within the districts to which they belonged. The conduct had obviously restricted the distributors their power to decide their resale prices and operating areas. Moreover, as the number of major players in the Chinese spicy seasoning market was limited, intra-brand competition was inadequate. Consumers usually stuck to the habit of using the seasonings of certain brands and seasoning businesses seldom made active investments such as advertising or offered services before or after sales. Furthermore, the resale price restrictions from the company could not be interpreted as a justifiable cause for promotion of competition. To the contrary, restricting distributors to operate only in certain areas could only weaken market competition. As the above two practices were respectively in violation of Article 19(1) and Article 20(v) of the Fair Trade Law, the FTC imposed an administrative fine of NT\$500,000 on Chiseng.

Appendix:

Chiseng Co., Ltd.'s Uniform Invoice Number: 04309819

Summarized by Chen, Ru-Ya; Supervised by: Yang, Chia-Huig

Global Digital Media and Two Other Channel Agents

1302nd Commissioners' Meeting (2016)

Case: Global Digital Media and two other channel agents violated the Fair Trade Law for engaging in discriminative treatment when licensing their clients

Key Word(s): Channel agent, channel licensing, minimum contracted subscribers

Reference: Fair Trade Commission Decision of October 19, 2016 (the 1302nd Commissioners' Meeting); Dispositions Kung Ch'u Tzu No.105118, 105119, and No.105120

Industry: Leasing of Intellectual Property and Similar Products, Except Copyrighted Works (7740)

Relevant Law(s): Article 20(ii) of the Fair Trade Law

Summary:

1. The FTC launched an investigation to clarify whether channel agents Global Digital Media Co. Ltd. (hereinafter referred to as “Global Digital Media”), Jia Xun Multimedia Co., Ltd. (hereinafter referred to as “Jia Xun Multimedia”) and Kbro Co., Ltd. (hereinafter referred to as “Kbro”) had violated the Fair Trade Law by obstructing new and cross-district cable Television operators from participating in market competition when licensing them to use channels the three companies were agents for in 2016.

2. Findings of the FTC after investigation:

During the investigation, the FTC discovered that when licensing DigiDom Cable TV Co., Ltd. (hereinafter referred to as “DigiDom”), Dafeng Cable TV Co., Ltd. (hereinafter referred to as “Dafeng”), New Kaohsiung Cable TV Co., Ltd. (hereinafter referred to as “New Kaohsiung”), TaipeiNet Cable TV Co., Ltd. (hereinafter referred to as “TaipeiNet”) and Sky Digital Convergence Service Co., Ltd. (hereinafter referred to as “Sky Digital”), all starting operation in 2015, Global Digital Media, Jia Xun Multimedia and Kbro all adopted the policy having subscribers achieving

15% of the total households of the corresponding administrative district as the minimum guarantee (MG), but the investigation revealed that the actual MG for the aforesaid operators was several times of the number of subscribers of each system operator. Meanwhile, the channel licensing contracts Global Digital Media, Jia Xun Multimedia and Kbro signed with existing system operators showed that the MG applied was only a certain percentage of the actual number of subscribers. In other words, the difference ended up causing the new operators DigiDom, Dafeng, New Kaohsiung, TaipeiNet and Sky Digital to pay much higher licensing fees than existing system operators and making it harder for them to compete on the market.

3. Grounds for disposition:

(1) The FTC assessed the supply-demand condition on the relevant market, cost differences, transaction amounts and credit risks and concluded the discriminative treatment adopted by Global Digital Media, Jia Xun Multimedia and Kbro was not justifiable. Since most cable TV channels were licenses by channel agents for system operators to broadcast to consumers, Global Digital Media, Jia Xun Multimedia and Kbro apparently had rather considerable market power in the channel agent market. In addition, the channels they represented included some of the mainstream channels that were extremely popular programs. System operators who were unable to obtain licensing for such channels would find it difficult to attract consumers to enter into the subscription contract with them. The three channel agents took advantage of the need of new and cross-district cable TV system operators and made it hard for them to use better prices, quality and service to attract consumers. It became a competition barrier for new and cross-district system operators. In fact, they might even end up getting pushed out of the market. The conduct had seriously weakened competition in the cable TV service market in violation of Article 20(ii) of the Fair Trade Law.

(2) After evaluating the motive behind the illegal conduct of Global Digital Media, Jia Xun Multimedia and Kbro, the extent of damage incurred, the seriousness of the violation, as well as the business scales and attitudes of the offenders after the violation, the FTC cited Article 40(1) of the Fair Trade Law and ordered Global Digital Media, Jia Xun Multimedia and Kbro to correct the unlawful act within one

month after receiving the disposition while also imposed on them administrative fines of NT\$40 million, 45 million and 41 million respectively. The fines totaled NT\$126 million.

Appendix:

Global Digital Media Co. Ltd.'s Uniform Invoice Number: 27977066

Kbro Co., Ltd.'s Uniform Invoice Number: 80173221

Jia Xun Multimedia Co., Ltd.'s Uniform Invoice Number: 12385992

Summarized by Shen, Li-Wei; Supervised by: Kuo, An-Chi

Hong Yin Multimedia Technology Co., Ltd.

1315th Commissioners' Meeting (2017)

Case: Hong Yin Multimedia violated the Fair Trade Law by adopting illegitimate means to impede market competition

Key Word(s): Market dominance, karaoke machine, karaoke, MIDI

Reference: Fair Trade Commission Decision of January 18, 2017 (the 1315th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106007

Industry: Operation of Audiovisual and Singing Facilities (9322)

Relevant Law(s): Article 20(iii) of the Fair Trade Law

Summary:

1. The FTC received a complaint about Hong Yin Multimedia Technology Co., Ltd. (hereinafter referred to as "Hong Yin Multimedia") warning its distributors, karaoke machine lessors and karaoke operations using its products that if they were found to be using karaoke products from other companies, Hong Yin Multimedia would raise the rent for each MDS-655 karaoke machine (hereinafter referred to

as MDS-655 machine) by NT\$2,000. The informer pointed out the practice was in violation of Article 20 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) According to the distribution contracts signed between Hong Yin Multimedia and its distributors in 2015, the company would collect around 10% of the total sales of each distributor each year, paid by check, as the royalties for the “Hong Yin Selection MIDI.” It was also stipulated in the contract that Hong Yin could use a portion of the royalties as an incentive depending on the sales performance of the distributor. In early 2015, the company further established the operating regulations on the maintenance of preferential rentals and rate adjustments (hereinafter referred to as the operating regulations) which included the clause that “...2. For karaoke operators who have already rented the MDS-655 machines and are financially unable to rent karaoke machines of other brands, Hong Yin Multimedia will take into consideration the tough management situation of such operators and the job security of their employees and maintain the preferential rentals for them...” and demanded its distributors to abide by the operating regulations and turn in related forms they filled up every month. Distributors were told that the aforementioned contract provisions and the operating regulations would be adopted as one of the standards when the company performed administrative evaluations to consider whether it would issue incentives to distributors and to decide the amounts to be issued.

(2) The result of the interview, conducted by the FTC, with the distributors showed that most of them had already assumed at the beginning that they would not be get any of the aforesaid royalties back and were psychologically prepared to absorb the increased management cost or increase the rentals for MDS-655 machines on the machine lessors or karaoke operators. The said distributors also attested that Hong Yin Multimedia had indeed established the policy of increasing the monthly rental for each MDS-655 machine by NT\$2,000 on karaoke operators that were also renting machines from the company’s competitors but would openly announce that increase was the result of cancelation of the preferential offer or resumption of the original price. Some distributors further pointed out that they had had to fill out the

“Equipment List of MDS-655 Lessors with Unadjusted Rentals (Application for Maintenance of the Preferential Offer)” and the Equipment List of MDS-655 Lessors with Adjusted Rentals” and turned them in every month in order to show that they had complied with the abovementioned policy, distribution contract and operating regulations of Hong Yin Multimedia.

(3) The distributors for Hong Yin Multimedia in each district had all made it clear to their karaoke machine lessors or karaoke operators that Hong Yin Multimedia would start the implementation of the policy of raising the monthly rental for each MDS-655 in 2015 on those who also use karaoke machines of other brands. As a matter of fact, the distributors in some areas did carry out the policy. As karaoke operators were dependent on MDS-655 machines (and the songs they played) for their business, those who also use machines of other brands ended up paying higher rents or choosing to stop leasing karaoke machines of other brands.

3. Grounds for disposition:

(1) According to the distribution contract, Hong Yin Multimedia collected 10% of each distributor’s annual sales in 2015 as the royalties for the use of its machines and would determine the amount of royalties to give back to the distributors as the rebate after it looked into the sales of each distributor. The company also established the operating regulations in which it was stipulated that the company would maintain the preferential rental rate for karaoke operators unable to rent karaoke machines of other brands. At the same time, distributors were required to fill out and turn in the equipment lists of operators applying for preferential rental rate and the equipment lists of operators subject to rent adjustment. The practice made the distributors demand machine lessors to increase the monthly rental for each MDS-655 by NT\$2,000 on karaoke operators that were also using machines provided by the company’s competitors (or the distributors did so directly to operators). This would force karaoke operators to stop leasing machines of other brands. One of the findings indicated that the market rate for each MDS-655 was NT\$300 to 600 per month. Therefore, the objective of the policy adopted by Hong Yin Multimedia was not to promote the songs the machines played or to reflect the cost of the machines

or the songs therein. It was an illegitimate practice to prevent its competitors from competing with itself as described in Article 20(iii) of the Fair Trade Law.

(2) Meanwhile, as a result of Hong Yin Multimedia's distribution policy, the company's distributors in some areas did enforce the policy to increase the monthly rent for each MDS-655 machine by NT\$2,000 on karaoke operators using machines of other brands at the same time and such operators either ended up paying a higher rent for each MDS-655 or stopping their leasing relationship with the company's competitors. In other words, the policy had obstructed its competitors from engaging in market competition.

(3) As the MDS-655 machines from Hong Yin Multimedia accounted for 90% of the market. The company's distributors had definite dominance on the market. The dependence of karaoke machine lessors and karaoke operators on MDS-655 machines was extremely high. The aforementioned distribution contracts and operating regulations had indirectly led to the fact that the distributors also using machines of other brands (or the distributors did so to the operators directly) to demand karaoke machine lessors to increase the monthly rental for each MDS-655 by NT\$2,000 on karaoke operators, forcing such operators to stop leasing machines of other brands. In consequence, consumers paying the same amount of money had a smaller selection of songs to choose from in some karaoke places. The conduct of Hong Yin Multimedia thus had a negative impact on competition in the karaoke product supply market and also the interests of consumers. It could lead to competition restraints and, therefore, was in violation of Article 20(iii) of the Fair Trade Law.

(4) The sales on Hong Yin Multimedia in 2014 and 2015 were about NT\$400 million. In addition, the company's karaoke machines accounted for more 90% of the market and its market dominance was absolute. During the period in which the illegal practice lasted, the company had obviously reduced the business opportunities of other karaoke product providers and made it extremely difficult for products from these competitors to compete with Hong Yin Multimedia on the market. The extent of harm to the karaoke product market was quite immense. After assessing the degree of remorse of Hong Yin Multimedia and its cooperativeness throughout the investigation process, the FTC cited the first section of Article 40(1) of the Fair Trade Law, ordered

the company to immediately cease its unlawful act and at the same time imposed on it an administrative fine of NT\$10 million.

Appendix:

Hong Yin Multimedia Technology Co., Ltd.'s Uniform Invoice Number: 04779781

Summarized by Wen, Che-Chia; Supervised by: Chiou, Shwu-Fen

Bokelai Digital

1326th Commissioners' Meeting (2017)

Case: The FTC initiated an ex officio investigation of Bokelai Digital's use of "most favored customer clauses" to restrict the business activities of its suppliers

Key Word(s): Most favored customer clause, electronic commerce, dominating market status

Reference: Fair Trade Commission Decision of April 7, 2017 (the 1326th Commissioners' Meeting)

Industry: Other Information Service Activities (6390)

Relevant Law(s): Article 20(v) of the Fair Trade Law

Summary:

1. In recent years, the competition authorities in the United States and other countries have begun to pay attention to competition problems derived from "most favored customer clauses" established between electronic commerce operators and their suppliers and initiated antitrust investigations on electronic commerce operators adopting "most favored customer clauses." In order to understand whether Bokelai Digital Science and Technology Co., Ltd. (hereinafter referred to as "Bokelai Digital") applied "most favored customer clauses" to restrict its suppliers from

offering better prices or transaction conditions to its competitors, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) Suppliers intending to sell products on the shopping website of Bokelai Digital had to sign with the company the "product supply contract," "product transaction agreement," "product order transfer agreement," "warehoused product transaction agreement," and "marketing activity cooperation agreement" which included stipulations regarding matters associated with purchase prices of products to be marketed on the Bokelai shopping website, payments, product supply and returns, sales incentives and supply discounts. The FTC's intention was to find out whether the contents of the agreements included clauses requesting suppliers to give Bokelai Digital the "most favored customer treatment," such as purchase prices could not be any higher than those offered to horizontal competitors, as a transaction condition which could restricted market competition.

(2) The FTC investigation of the abovementioned agreements signed between suppliers and Bokelai Digital revealed that the terms of transaction with regard to purchase prices, payment terms, product supply and returns, sales incentives and purchase price discounts slightly varied from supplier to supplier. Some suppliers even removed the provisions concerning sales incentives or requested Bokelai Digital to pay for transportation of returned products, indicating Bokelai Digital did not have enough power in the online shopping market to decide the contents of agreements on its own. Meanwhile, the agreements did not request suppliers to give Bokelai Digital the "most favored customer treatment" as a transaction condition. In other words, Bokelai Digital did not impose any "most favored customer clauses" to restrict the business activities of suppliers and this was confirmed by suppliers cooperating with the company.

(3) The Bokelai shopping website sold a large number of different types of products. The condition was not the same as that of "single product or service" price-comparing websites overseas, such as auto insurance, hotel room reservation or plane ticket purchase sites where "most favored customer clauses" would be adopted.

Moreover, the Bokelai shopping website did not enjoy any dominating status in the domestic online shopping market. Suppliers had the liberty to choose any shopping site for cooperation and each shopping website would offer better transaction terms to attract suppliers to form enough competition pressure. At the same time, none of the suppliers interviewed expressed Bokelai Digital had used contracts or other measures to demand them to give the company the "most favored customer treatment" as a transaction condition. Therefore, there was no concrete evidence to conclude Bokelai had engaged in any anti-competition practice to restrict the business activities of its trading counterparts.

3. Grounds for disposition:

In conclusion, the FTC decided Bokelai Digital had not demanded suppliers to give it the "most favored customer treatment" as a transaction condition. In other words, the company had not engaged in any anti-competition conduct to restrict the business activities of its trading counterparts. Therefore Bokelai Digital did not violate the Fair Trade Law.

Summarized by Chen, Haw-Kae; Supervised by: Liao, Hsien-Chou

Shinday Audio-video Entertainment Co., Ltd.

1328th Commissioners' Meeting (2017)

Case: Shinday Entertainment was complained for violating the Fair Trade Law for refusing to license a few Karaoke music agents

Key Word(s): Karaoke music, exclusive licensing, discriminatory treatment

Reference: Fair Trade Commission Decision of April 19, 2017 (the 1328th Commissioners' Meeting)

Industry: Sound Recording and Music Publishing Activities (5920)

Relevant Law(s): Article 20(ii) of the Fair Trade Law

Summary:

1. When investigating another case, the FTC discovered that Shinday Audio-video Entertainment Co., Ltd. (hereinafter referred to as “Shinday Entertainment”) and other music labels and music copyright companies refused to license G Yuanbao Audio-Video Technology Inc. (hereinafter referred to as “Yuanbao Inc. ”), other karaoke music agents, and computer karaoke machine businesses. Therefore, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

Shinday Entertainment was a domestic music label. In recent years, the karaoke music rights, including the original sound tracks and videos, and non-original sound tracks and videos, of all new songs released were exclusively licensed to Yangsheng Multimedia Technology Co., Ltd. (hereinafter referred to as “Yangsheng Multimedia”). In addition, Shinday Entertainment also licensed musical works with expired exclusive licensing periods to Inyuan International Co., Ltd. and Zhenyang Audi-video Technology Co., Ltd. for them to produce and release karaoke products. Soon after Yuanbao Inc. was founded that in April, 2015, the company contacted Shinday Entertainment about acquiring licenses for Shinday Entertainment’s songs to produce and release karaoke products. During the negotiation, Shinday Entertainment offered transaction terms similar to the ones stipulated in the karaoke product licensing contract signed with Yangsheng Multimedia. However, since Yuanbao Inc. was a new company with uncertain financial capacity, it is difficult to make sure whether a partnership could be established on a long-term basis. If the cooperation between Shinday Entertainment and Yuanbao Inc. can only lasted a few months and Shinday Entertainment had to terminate the long partnership with Yangsheng Multimedia, Shinday Entertainment thought it would be very unwise for in terms of business management. As a result, Shinday Entertainment requested Yuanbao Inc. to pay a NT\$3 million guarantee in advance in order to get the licenses for its new songs. As long as Yuanbao Inc. could continue to make payments regularly for two years, the guarantee would be returned to Yuanbao Inc. Both sides negotiated for

several months but could not reach any consensus on the amount of guarantee and the ways of making payments. Eventually, Shinday Entertainment signed a licensing contract with Yangsheng Multimedia on October 15, 2015.

3. Grounds for non-disposition:

(1) Yangsheng Multimedia was one of the two largest karaoke music agents in the country. Its upstream trading partners included a number of major international music labels and downstream trading partners included large KTVs, RTVs, karaoke establishments, night clubs and hotels. Over the years, the company had been licensed by Shinday Entertainment for the new songs used to produce and release karaoke products. Both sides had a long business relationship. On the contrary, Yuanbao Inc. never represented or released any karaoke products after it was founded in April 2015, and its downstream business channels and trading counterparts were unknown at all. From the standpoint of Shinday Entertainment, the credit risk in dealing with Yuanbao Inc. was way bigger than the risk it assumed while dealing with Yangsheng Multimedia. Compared to the total licensing fees of more than NT\$10 million Yangsheng Multimedia paid when signing karaoke music licensing contracts with Shinday Entertainment on March 4, 2014 and October 15, 2015, the NT\$3 million guarantee Shinday Entertainment requested Yuanbao Inc. to pay up front at the time of signing the contract in order to prevent serious damages in case Yuanbao Inc. became unable to fulfill the contract and make payments continuously was merely 20.27% and 17.56% of the licensing fees Yangsheng Multimedia put out in advance. In addition, when Shinday Entertainment and Yangsheng Multimedia signed the karaoke music licensing contract on October 15, both sides also signed a supplementary agreement in which it was stipulated Yangsheng Multimedia had the exclusive right to re-license the old songs of Shinday Entertainment, and at the same time Yangsheng Multimedia paid up front a licensing fees of NT\$1.5 million which would be deducted from the licensing fees to be collected by Shinday Entertainment during the period of representation. In other words, the practice of Shinday Entertainment mentioned earlier was not inconsistent with common business transaction practices. The request for Yuanbao Inc. to pay NT\$3 million in advance

in order to sign an exclusive licensing contract for acquiring its new songs to produce karaoke products was simply the justifiable result of Shinday Entertainment's credit risk consideration.

(2) As for the licenses for songs with expired exclusive licensing periods, Shinday Entertainment and Yuanbao Inc. only discussed about using the number of MIDI sets sold to calculate the licensing fees for such songs and no conclusion was reached about the actual amount of licensing fees. Later, both sides could not reach any consensus on the amount of the guarantee. Even though Shinday Entertainment did inquire Yuanbao Inc. about its interest in signing a contract, the latter never gave a clear response on the inquiry. Naturally, it was impossible that Yuanbao Inc. would make any further negotiation about song licensings. Moreover, as Shinday Entertainment did exclusively license 82 songs with expired exclusive licensing periods for Inyuan International Co., Ltd. to produce karaoke products, it was difficult to conclude that Shinday Entertainment refused to license to Yuanbao Inc. songs with expired exclusive licensing periods with the purpose of restricting market competition.

(3) With the above evidences, the FTC found it difficult to conclude Shinday Entertainment had violated Article 20(ii) of the Fair Trade Law when it did not license Yuanbao to use its songs for the purpose of producing and releasing karaoke products.

Appendix:

Shinday Audio-video Entertainment Co., Ltd.'s Uniform Invoice Number: 76432387

Summarized by Hsu, Cho-Yuan; Supervised by: Chiou, Shwu-Fen

TWT Communication Inc.

1344th Commissioners' Meeting (2017)

Case: TWT Communication Inc. violated the Fair Trade Law by adopting illegitimate practices to impede competitors from competing

Key Word(s): Cable TV, apartment building, exclusive management rights

Reference: Fair Trade Commission Decision of August 9, 2017 (the 1344th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106064

Industry: Wired Telecommunications Activities (6101)

Relevant Law(s): Article 20(iii) of the Fair Trade Law

Summary:

1. When conducting an investigation on other cable TV network operators (hereinafter referred to as “cable TV operators”) in their potential violation of the Fair Trade Law, the FTC discovered that TWT Communication Inc. (hereinafter referred to as “TWT Inc. ”) had signed contracts with some apartment building management committees (hereinafter referred to as “management committees”) in Sanchong District, New Taipei City and demanded that the management committees could not enter agreements with other cable TV operators for their services. It was using illegitimate measures to impede competitors from participating or engaging in market competition and this was likely to restrict competition. Therefore, the FTC initiated an ex officio investigation on TWT Inc.

2. Findings of the FTC after investigation:

TWT Inc. began in 2012 to sign with the management committees collective cable TV subscription contract in which an exclusive managements condition was stipulated in Article 2. Starting in July 2015, a new collective cable TV subscription contract was adopted. In its Article 5, community management rights and protection of the right to use concealed pipes were specified. Later, the first paragraph of its Article 5 of the digital cable TV and value-added service special offer agreement that was signed in May 2015 carried provisions regarding community management rights

and guarantee of the right to use concealed pipes. All the aforementioned contracts and agreements also contained regulations on breaches of contract. It was using illegitimate measures to impede or exclude other competitors from participating or engaging in market competition. As TWT Inc. accounted for close to 50% of the relevant market, its adoption of provisions on exclusive management rights and breaches of contract could block or exclude opportunities for other cable TV operators to enter contracts with the management committees. The practice could also cause difficulties to the business management of competitors and increase their costs. It could lead to competition restrictions.

3. Grounds for disposition:

(1) TWT Inc. started to sign with the management committee contracts that guaranteed the company's exclusive management and community management rights and its right to use concealed pipes. It could be expected that the cables of other cable TV operators could no longer be set up for the apartment buildings of management committees that had signed contracts with TWT Inc. If such management committees insisted on allowing the cables of other cable TV operators to be set up in their buildings for the purposes of providing services, TWT Inc., besides the right to determine that the management committees have breached the contract and to cancel special subscription packages, had the right to ask the management committees to pay five times the total amount of contract value or to return the amount equivalent to the total special subscription packages as a punitive damages. Obviously, this already had resulted in the effect of obstructing competitors from participating or engaging in market competition.

(2) In early 2015, when new cable TV operators began to enter the relevant market in this case to operate and promote their services, TWT Inc. immediately sent warning letters to management committees that had signed contracts with it, reminding them that allowing the cables of new cable TV operators to enter their buildings would constitute in violation of the subscription contract. The company also demanded the management committees to ask new Cable TV operators to remove the equipment they had set up. Apparently, the new subscription contracts signed with

the management committees and the warning letters issued were intended to impede new cable TV operators from participating or engaging in competition in the relevant market. Meanwhile, when promoting their business, new cable TV operators were told by some apartment building management committees that they were bound by the exclusive management contracts signed with TWT Inc. and, therefore, could not conduct any transactions with the new cable TV operators. That was proof that the provisions of the exclusive management right in the contract had indeed deterred the management committees from doing business with other competitors.

(3) TWT Inc. was an existing business with 41.9% market share the cable TV service market at issue and thus enjoyed considerable market power. However, the conduct described above apparently had led to competition restrictions in the cable TV service market in Sanchong and Luzhou Districts in New Taipei City. For new cable TV operators in the area, there were two sources of customers: households that had not subscribed to any service providers and subscribers to existing cable TV services. For this reason, it seems fair to say that the conduct of TWT Inc. had to have a certain impact on new cable TV operators. In particular, Sanchong District and Luzhou District were part of a densely populated metropolitan area filled with apartment buildings and other collective housing units and communities. By signing with a single apartment building management committee a contract including the aforementioned provisions, a cable TV operator would be able to restrict the freedom of all the households in the same community to switch to other cable TV operators for their services, and competition from other cable TV operators could thus be eliminated. On the other hand, it is true that consumers originally could get certain benefits from the competition between new cable TV operators and existing cable TV operators, such as lower subscription fees and higher service quality. However, TWT Inc.'s adoption of illegitimate measures obstructed competitors from entering the market and made it impossible to realize the above potential benefits for consumers. If the unlawful practice was not stopped, the result would be competitors (especially new cable TV operators) withdrawing from the relevant market and the overall benefits of consumers would be jeopardized. Then, the existing cable TV operators could go back to the original subscription fee and reduce or cancel the feedback

money to the community, and this will in turn lead to significant and immediate loss of consumer benefits. Therefore, the conduct of TWT Inc. apparently had a negative effect on competition in the cable TV service market and the interests of consumers in Sanchong and Luzhou Districts of New Taipei City, leading to market competition restrictions. Therefore, in addition to ordering TWT Inc. to immediately cease the unlawful act, the FTC imposed on it an administrative fine of NT\$1.6 million.

Appendix:

TWT Communication Inc.'s Uniform Invoice Number: 96973810

Summarized by Yang, Jhe-Hao; Supervised by: Kuo, An-Chi

CLN Cable TV Co., Ltd.

1351st Commissioners' Meeting (2017)

Case: CLN Cable TV violated the Fair Trade Law by offering low prices to attract subscribers and impede competitors from competing

Key Word(s): Cable TV, enticement with low prices

Reference: Fair Trade Commission Decision of September 27, 2017 (the 1351st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106082

Industry: Wired Telecommunications Activities (6101)

Relevant Law(s): Article 20(iii) of the Fair Trade Law

Summary:

1. The FTC received complaints about Chuanlien CATV Co., Ltd. (hereinafter referred to as "CLN Cable TV") starting in July 2016 to offer one-year free services for subscribers of other new cable TV operators in Sanchong District, New Taipei

City so that such subscribers will be enticed to change their cable subscriptions. The use of predatory pricing below the company's management cost to attract subscribers was in violation of Article 20(iii) of the Fair Trade Law. Therefore, the FTC initiated an investigation.

2. Findings of the FTC after investigation:

(1) According to the statement from CLN Cable TV, the company offered a special plan of 18-month subscription for NT\$1,500 to price-sensitive users and public-relation subscribers between June and August 2016. The text of "Special offer of 0 dollars for the first 12 months and prepayment for the following 3 months to get 3 months free of charge" was indicated in the "Plan Notes" field on the cable TV subscribers' installation form for the special plan. The so-called price-sensitive users were old CLN Cable TV subscribers who tended to be switching to other providers as a result of growing competition in the market and the price war started by competitors.

(2) The 112 cable TV subscriber installation forms provided by CLN Cable TV showed that under its special plan there were two different special offers, "True Color of Hero Special Offer" and "Target Offer" (together hereinafter referred to as "special offers"). 98 of them were for one-year free subscription and 14 were NT\$1,500 for one-and-half-year subscription. In other words, the issue was whether CLN Cable TV's special offers of "free service for one year" and "NT\$1,500 for one-and-half-year subscription" constituted the conduct of enticing subscribers with low prices to impede competitors from participating or engaging in market competition.

3. Grounds for disposition:

(1) The relevant market involved in this case was the cable TV service market in Sanchong and Luzhou Districts of New Taipei City. CLN Cable TV accounted for 50.31% of the market and had considerable market power. The investigation revealed that CLN Cable TV made two special offers in 2016, including "free service for one year" and "free service for the first year and subscription for 3 months to get 3 months free of charge in the second year (NT\$1,500 in total, averaging NT\$83.3 per

month)". However, the average variable cost of CLN Cable TV for each subscriber in 2014, 2015 and 2016 was about NT\$200. Apparently, the offers were lower than the company's average variable cost and also quite incommensurable to the prices the company had charged regular subscribers before or charges imposed by other cable TV operators. Either in view of common business concept or in the perspective of cable TV subscribers, the offers were obviously rather unusual.

(2) To respond to the situation of new cable TV operators entering the relevant market, CLN Cable TV adopted the aforesaid offers to entice subscribers of new competitors and the offers already had an effect on the customers' normal choice of cable TV service provider and its new competitors therefore suffered from losing their customers and losses due to subscription termination and refunding. Meanwhile, CLN Cable TV also used breach-of-contract provisions to deter users from dealing with its competitors and form a shield against competition from new cable TV operators. The above conducts created a negative effect on the performance competition in the relevant market and eventually could force new cable TV operators out of the market. Since CLN Cable TV had considerable market power in the relevant market, the conduct obviously had a negative impact on the competition in the cable TV service market in Sanchong and Luzhou Districts of New Taipei City and consumers' interests. It could result in the restrictions of market competition. Therefore, the FTC concluded that CLN Cable TV had violated Article 20(iii) of the Fair Trade Law and imposed an administrative fine of NT\$1 million on the company. However, since the special offers ended in August 2016, there was no need for the FTC to order the company to cease the unlawful act.

Appendix:

Chuanlien CATV Co., Ltd.'s Uniform Invoice Number: 96973620

Summarized by Fang, Yen-Hsiu; Supervised by: Kuo, An-Chi

6.2 Judicial Cases

Chung Tai Resource Technology Corp.

Supreme Administrative Court (2016)

Case: The Supreme Administrative Court overruled an appeal filed by Chung Tai Resource Technology regarding its violation of the Fair Trade Law

Key Word(s): CRT, Waste CRT glass market, reuse of waste panel glass

Reference: Supreme Administrative Court Judgment (2016) Pan Tzu No.267

Industry: Materials Recovery (3830)

Relevant Law(s): Article 19 of the Fair Trade Law in effect at the time of the conduct (Article 20 of the current version)

Summary:

1. In the "Waste CRT Glass Reuse Agreement" signed with waste electrical appliance and waste information equipment disposal plants between 2010 and 2012, the appellant (Chung Tai Resource Technology Corp.) took advantage of its dominant status in the waste CRT glass disposal market in stipulating inappropriate provisions to restrict the trading counterparts, transaction amounts and operating plans of the said businesses. The imposition of business activity restrictions as a condition for the said operators to do business with the company was in violation of Article 19(vi) of the Fair Trade Law at the time of conduct. Therefore, the appellee cited the first section of Article 41 of the same Law and imposed an administrative fine of 2 million NT dollars (same currency applies hereinafter) on the appellant via Disposition Kung Ch'u Tzu No.104056 (hereinafter referred to as "the original sanction") on July 20, 2015. The appellant found the sanction unacceptable and filed an administrative appeal. The Taipei High Administrative Court (hereinafter referred to as "the court of original instance") rejected the appeal via the 2015 Judgment Su Tzu No.1194 (hereinafter referred to as "the original verdict"). The appellant again found it unacceptable and filed this appeal.

2. The restrictive provisions stipulated by the appellant in the waste CRT glass reuse agreements signed with waste electrical appliance and waste information equipment disposal plants included the following: to regard the appellant the only waste CRT glass reuse factory, not to sign waste CRT glass reuse cooperation agreement with any other enterprise (not to supply waste CRT glass to any other enterprise), not to process waste CRT glass for reuse in their own plants, the amount of waste panel glass provided to be no less than the amount of waste CRT glass provided, and a fine of 2.5 million to be imposed on those violating the agreement. The said clauses had a serious impact on the business activities of the waste electrical appliance and waste information equipment disposal plants and thus made it impossible for them to process waste CRT glass on their own. In other words, the freedom of other enterprises to compete and seek trading counterparts was restricted and the competition on the market could be weakened. Hence, the FTC considered the practice of imposing illegitimate restrictions on the business activities as a condition for trading counterparts to continue business relations with the company was a restraint on market competition or impediment to fair market competition.

After assessing the arguments and evidence presented in this case, the court of original instance pointed out the appellant was not the highest-paying buyer of waste CRT glass in the market and many of the waste electrical appliance and waste information equipment disposal plants (those signing waste CRT glass reuse agreements) had planned to find other companies to deal with. However, because of the restrictions stipulated in the above agreements and the appellant being the only qualified reuse processor for waste items of the C-0102 category, as well as their fear of getting penalized for agreement violations, they continued to do business with the appellant. As a result, the restrictive provisions did lead to market foreclosure.

3. Accordingly, it was a correct decision that the court of original instance maintained the original sanction and overruled the appellant's appeal over the first instance verdict. The appeal's contestation that the original sanction had been in violation of related regulations and had to be discarded was unsound and had to be rejected.

Appendix:

Chung Tai Resource Technology Corp.'s Uniform Invoice Number: 12862116

Summarized by Lee, Qin-Qing; Supervised by: Ren, Han-Ying

Chapter 7

False, Untrue and Misleading Advertisements

7.1 Decisions

Chunghwa Telecom Co., Ltd.

1218th Commissioners' Meeting (2015)

Case: Chunghwa Telecom violated the Fair Trade Law by posting false comparative ads regarding charges for “100M Internet Access Speed + TV Channels”

Key Word(s): False and untrue, misleading

Reference: Fair Trade Commission Decision of March 11, 2015 (the 1218th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104021

Industry: Telecommunications (6100)

Relevant Law(s): Paragraph 4 of Article 21 and Paragraph 1 of the same Article applicable mutatis mutandis and Article 25 of the Fair Trade Law

Summary:

1. The FTC received complaints that Chunghwa Telecommunications Co., Ltd. (hereinafter referred to as “Chunghwa Telecom”) posted in the Pingtung region an ad in which charges for “100M Internet access speed + TV channels” were compared. The comparison was made between the NT\$1,184 plan of Chunghwa Telecom and the NT\$1,448 plan of “another business.” However, the “high definition channels,” “upload speed” and “daily life information” comparisons were false and untrue.

2. Findings of the FTC after investigation:

Chunghwa Telecom claimed in the ad at issue that its NT\$1,184 plan offered 83 high definition channels but in reality the number of such channels was 77. As the number of high definition channels was listed as a compared item, Chunghwa Telecom apparently considered it a key advantage in its service. Whether TV

programs are run on high definition channels have a direct effect on their picture qualities. It would be an important factor when consumers make their decision as to whether they would subscribe to such service. For this reason, the untruthful statement in the said ad was a false, untrue and misleading representation in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same Article was applicable *mutatis mutandis*.

3. Grounds for disposition:

(1) The comparison in the advertisement posted by Chunghwa Telecom was “10M” of upload speed, yet the fact was the broadband access speed of the “NT\$1,448 plan” that “another business” business offered was 100M/20M, meaning download speed 100M and upload speed 20M. In addition, Chunghwa Telecom claimed in the ad that the NT\$1,448 plan” offered by “another business” did not include provision of daily life information. However, the “Daily Life Information Service” of the digital network TV services included in the “NT\$1,448 plan” did provide “EZ movie ticker booking,” “weather forecasts,” “High Speed Rail Schedules,” “Taiwan Railways Schedules” and “Lunar Calendar.” Consequently, Chunghwa Telecom obviously had made false statements about the upload speed and daily life information service included in the “NT\$1,448 plan” offered by “another business.” It was obviously unfair conduct in violation of Article 25 of the Fair Trade Law.

(2) After assessing the motive behind the unlawful conduct of Chunghwa Telecom, the damage thus created, the seriousness of the violation, the business scale of the company, and the company’s attitude after the violation, the FTC applied the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$300,000 on Chunghwa Telecom for its violation of Article 21(4) of the Fair Trade Law and Paragraph 1 of the same Article was applicable *mutatis mutandis*, as well as another administrative fine of NT\$500,000 for its violation of Article 25 of the same law. The fines totaled NT\$800,000.

Appendix:

Chunghwa Telecom Co., Ltd.'s Uniform Invoice Number: 96979933

Summarized by Lee, Wan-Chun; Supervised by Lai, Mei-Hua

Han Xiang Development Co., Ltd.

1224th Commissioners' Meeting (2015)

Case: Han Xiang Development violated the Fair Trade Law for posting false advertisements of "Xin Jie Du" presale home project

Key Word(s): False advertisement, presale home, balcony extended outward

Reference: Fair Trade Commission Decision of April 22, 2015 (the 1224th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104029

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Advertising flyers from Han Xiang Development Co., Ltd. (hereinafter referred to as "Han Xiang Development") carried the wording of "creative 2-room units," "creative 2-room units on 9F/A8," "creative 2-room units on 5F/B7" "creative 2-room units on 11F/A2," "creative 2-room units on 9F/B4," "1+1>2, creative super-efficient use of space," "exquisitely designed creative 2-room units in 'Xin Jie Du'...micro homes with 1+1>2 maximum use of space..." as well as pictures of real scenes taken in a sample creative 2-room unit. At the same time, advertisements for the same housing project posted in newspapers also included the claims of "magical 2-room units," "creative 2-room units and creative 1+1 room units." Meanwhile, when showing interested consumers around in the sample unit, the company's salesclerks expressed that although the project included one-room apartments, 2-room units and 3-room units, before handing over one-room apartments to buyers the company would extend the balconies outward to increase space for an extra room, and a bed was indeed placed in the balcony area which was labeled "This is how the area may eventually become." False advertising was suspected.

2. Findings of the FTC after investigation:

(1) Han Xiang Development alone provided the funding and constructed the buildings of the presale home project. It also had the flyers printed and distributed

them while Xin He Advertising Co., Ltd. (hereinafter referred to as “Xin He Advertising”) was delegated to be in charge of selling the units. As Han Xiang Development admitted that it had been responsible for reviewing and producing all the advertisements in relation to the project, the company was indeed the advertiser. In the meantime, according to the sales authorization agreement, Xin He Advertising was to market the units on a commission basis and would take 1.2% of each closed deal as its reward. As Xin He Advertising was not given any power to make decision with regard to the advertisements, it could not be considered as another advertiser of the advertisements posted for the project.

(2) Whether a presale home advertisement is false and untrue or misleading has to be assessed in accordance with the objective conditions when the advertiser uses advertisements (such as the advertiser’s capacity to deliver later, related regulations, etc.) If an advertiser is perfectly aware of or should be aware of at the time when the advertisement in concern is posted that it cannot deliver as advertised or even if it can but the content of delivery is in violation of related regulations, such an advertisement is false, untrue and misleading.

(3) The pictures and texts in the above advertisements could easily mislead consumers to believe that certain space in the one-room apartment, other than as a balcony, could also be used as a bedroom, and they might make their transaction decisions based on this mistaken perception. Moreover, when the company’s salesclerks showed potential buyers around in the sample unit, which originally had been designed as a one-room apartment, the fact that the bed was placed in the balcony area and the label stating that “this is how the area may eventually become” could also deepen the misconception in consumers. According to the building authority of New Taipei City Government, if balcony space was turned into bedroom space through second engineering in a housing project after the acquisition of the use permit, it would be considered as changes inconsistent with the approved uses. Such inconsistency with the pictures and texts attached to the original use permit would be in violation of Article 73 of the Building Act and subject to the Illegal Construction Administration Regulations.

3. Grounds for disposition:

(1) When marketing the “Xin Jie Du” housing project, Han Xiang Development marked the balcony space as part of the interior. It was a false, untrue and misleading representation with regard to content and use of product in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive of Han Xiang Development behind the aforesaid unlawful act and the illegitimate profits the company expected from it, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$1.5 million on the company. Since Han Xing Development already removed the bed placed in the balcony area in the sample unit during the investigation period and also stopped using the aforementioned flyers and posting the newspaper advertisements described earlier, there was no need to order the company to cease the practice of using illegal advertisements. Therefore, the FTC did not order Han Xiang Development to cease the aforesaid unlawful act.

Appendix:

Han Xiang Development Co., Ltd.'s Uniform Invoice Number: 16153902

Summarized by Lin, Jia-Ta; Supervised by Chen, Jen-Ying

Jayshelyn Construction Co., Ltd. and Jayshelyn Real Estate & advertising Co., Ltd.

1226th Commissioners' Meeting (2015)

Case: Jayshelyn Construction and Jayshelyn Advertising violated of the Fair Trade Law by posting false advertisements for the “Jayshelyn Shui Li Fang” housing project

Key Word(s): Swimming pool, name of enterprise, building regulations

Reference: Fair Trade Commission Decision of May 6, 2015 (the 1226th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104034

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received a letter from a private citizen complaining that he purchased the 25F of Building B of the “Jayshelyn Shui Li Fang” housing project from Jayshelyn Construction Co., Ltd. (hereinafter referred to as “Jayshelyn Real ESTATE & Construction”) on December 26, 2009. Previously, an advertisement for the project claimed there would be a 22-ping rooftop private garden with a swimming pool (hereinafter referred to as “Ad A”) and pictures of a 12-meter swimming pool were also displayed (hereinafter referred to as “Ad B”). Jayshelyn Construction also posted an advertisement including the wording of “12-meter pool, your private 22-ping rooftop swimming pool garden” (hereinafter referred to as “Ad C”) on Facebook in February 2014. After inspecting the pictures and text attached to the use permit, it was suspected that Jayshelyn Construction had marked the balcony area as the swimming pool and the practice was in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

Ad A, Ad B and Ad C were used from January 1 2009 to December 31, 2010. The informer did not provide any evidence indicating Jayshelyn Construction and Jayshelyn Real Estate & Advertising Co., Ltd. (hereinafter referred to as “Jayshelyn Advertising”) continued to use Ads A and B after December 31, 2010 and the FTC

also did not find any evidence showing Jayshelyn Construction and Jayshelyn Advertising continued to Ads A and B after the aforesaid period. Therefore, the three-year period in which the two companies could be sanctioned for use of Ads A and B already expired on December 31, 2014. The FTC could only sanction the two companies if Ad C actually involved false advertising.

3. Grounds for disposition:

(1) Jayshelyn Construction provided the construction funding and constructed the housing project in question and delegated Jayshelyn Advertising to design the advertisements and market the units. Jayshelyn Advertising stated that Ad C had been approved by Jayshelyn before it was used. At the same time, according to Articles 15 and 16 of the advertising production agreement signed between the two companies, it was the responsibility of Jayshelyn Construction to supervise and review the production and use of Ad C. Consequently, Jayshelyn Construction apparently could not shirk its advertiser's responsibility by claiming that it did not have any knowledge about Ad C. Meanwhile, since Jayshelyn Advertising produced Ad C, used it to market the housing project and profited from it, the company also had to be considered an advertiser of Ad C.

(2) In February 2014, Jayshelyn Construction posted on Facebook an advertisement claiming "pool lanes...sole ownership...private rooftop swimming pool." The combination of "swimming pool" and "pool lanes" could make consumers think the "swimming pool" was a legal facility for the residents to use and therefore make purchasing decisions. However, according to the Public Works Department of New Taipei City Government, the area indicated as for the swimming pool had originally been ratified to be used for "balcony." If the construction company wanted to change the "balcony" into a swimming pool, it would have to file a separate application for change of use permit and a miscellaneous license.

(3) Jayshelyn Construction admitted that the company had never applied for change of use permit and a miscellaneous license, nor did it have any plan to do so. Hence, the claim in the advertisement saying there would be a "swimming pool" was a change of use without the permission of the competent authority of buildings. The pool could end up being dismantled because it was in violation of building

regulations. In other words, the content of the advertisement was inconsistent with facts and the difference was beyond what regular consumers could accept. It could also lead to mistaken perceptions and wrong decisions. Therefore, the practice was a false, untrue and misleading representation with regard to content and use of product in violation of Article 21(1) of the Fair Trade Law. For this reason, the FTC imposed an administrative fine of NT\$1 million on Jayshelyn Construction and NT\$600,000 on Jayshelyn Advertising.

Appendix:

Jayshelyn Construction Co., Ltd.'s Uniform Invoice Number: 28006602

Jayshelyn Real Estate & Advertising Co., Ltd.'s Uniform Invoice Number: 86159963

Summarized by Tseng, Huei-Yi; Supervised by Yang, Hsiu-Yun

IEZ Mall Co., Ltd.

1228th Commissioners' Meeting (2015)

Case: IEZ Mall Co. Ltd. violated the Fair Trade Law for its TV commercial of
“Bing Li mobile water-cooling AC”

Key Word(s): TV commercial, false advertising

Reference: Fair Trade Commission Decision of May 20, 2015 (the 1228th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104031

Industry: Retail Sale via Mail Order Houses or via Internet (4871)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The National Communications Commission forwarded the FTC a written complaint from a private citizen stating that a product named “Bing Li Mobile Water-

cooling AC” was advertised on TV as able to reduce the temperature by 8 degrees but no such effect could be achieved when the machine was used and therefore false advertising was suspected.

2. Findings of the FTC after investigation:

It was claimed in the TV commercial that “room temperature dropped 8 degrees in no time.” However, the FTC’s investigation revealed that it had not been explained in the commercial that water and ice cubes had been placed in the machine during the commercial shooting process. Moreover, the temperature reduction had been measured at the air outlet of the machine. The result therefore would be rather different from the overall drop of room temperature as the general public would usually perceive. Meanwhile, after placing water and ice cubes in the machine and actually operating it, the temperature reductions at the air outlet and at one meter away from it were obviously different from the impression commercial viewers would get and the difference would be unacceptable to the general or concerned consumers. It could lead to mistaken perceptions or wrong decision made by the public and, therefore, constituted violation of Article 21 of the Fair Trade Law.

3. Grounds for disposition:

The commercial also claimed that “you will find the Bing Li mobile water-cooling AC has nearly the same capacity as a 2-ton air conditioner. It is able to reduce the temperature in the room by 6-8 degrees while consuming only one tenth of the power that the air conditioner requires.” According to professional opinions offered by the Bureau of Energy of the Ministry of Economic Affairs, the air-cooling function and product design of water-cooling ACs were dissimilar from those of air conditioners releasing cold air generated from coolant circulation. The comparison between the cooling capacity and power consumption in the commercial had been made by measuring the temperature, and by comparing the result with that of a real AC according to the amount of power consumed. However, since where temperature was measured, the humidity at the air inlet and outlet, the air volume,

the way of measurement, and how the values were extracted were not disclosed, it was impossible to calculate the air-cooling capacity claimed in the said commercial. Therefore, the cooling capacity and power consumption comparison made by IEZ Mall Co., Ltd. between the product in question and an air conditioner whose structure was totally different to exaggerate the cooling effect of the water-cooling AC was a false, untrue and misleading representation with regard to the quality of the product in violation of Article 21 of the Fair Trade Law. For this reason, the FTC imposed an administrative fine of NT\$200,000 on the company.

Appendix:

IEZ Mall Co., Ltd.'s Uniform Invoice Number: 27427008

Summarized by Wang, Chun-Wen; Supervised by Lai, Mei-Hua

Family Spa Enterprise Co.

1232nd Commissioners' Meeting (2015)

Case: Family Spa violated the Fair Trade Law for posting false advertisements claiming itself as “the largest manufacturer and wholesaler in the country” and “having in business for 20 years”

Key Word(s): False advertising, use of superlatives, time of establishment

Reference: Fair Trade Commission Decision of June 17, 2015 (the 1232nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104042

Industry: Manufacture of Wooden Containers (1404)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Family Spa Enterprise Co. (hereinafter referred to as “Family Spa”). posted

an advertisement in Apple Daily claiming itself as “the largest manufacture and wholesaler in the country” without providing objective statistics, such as sales figures or survey results, to support the statement. In the same advertisement, the company also applied the wording of “special thanks sale to celebrate the 20th anniversary” and “having been in business for 20 years” which was inconsistent with the information indicated in its business registration. False advertising was therefore suspected.

2. Findings of the FTC after investigation:

(1) Family Spa paid for the said advertisement, provided Apple Daily with the information to be posted in the advertisement and approved the design of the advertisement before it was posted. Therefore Family Spa was without doubt the advertiser of the advertisement in question.

(2) The claim of company being “the largest manufacturer and wholesaler in the country” gave the public the impression that the company had the biggest business scale among all market competitors or it offered the largest selection. Family Spa, a family-owned business with branches all around the country, made such a claim but could not provide objective statistics to prove that it was “the largest in the country.” Obviously, the claim was groundless.

(3) The wording of “special thanks sale to celebrate the 20th anniversary” and “having been in business for 20 years” gave the public the impression that the company had been in operation for two decades. However, business registration records indicated Family Spa International Development Co., Ltd. was founded on August 10, 2004 and dissolved on December 4, 2007. Further, Family Spa was established on December 3, 2007 and started operation from then on. Even though Family Spa provided newspaper clippings showing the company had already been in business on as early as December 10, 2003, the proved entire period was still far from 20 years. Generally, consumers would make more positive associations with the quality of product or service of a business with a history. Therefore, the length of time a business had been in operation could have an effect on consumers’ judgment of its product or service quality and could lead to the making of transaction decisions.

Hence, businesses have the obligation to be truthful about its history when appealing to consumers through advertising. Although the company contested the claim of 20 years of history was based on the fact that its operator had begun to work in the said business at around 1996, one person's work experience could not be associated with the business reputation of Family Spa International Co., Ltd. or Family Spa Enterprise Co., Ltd. In other words, it was not enough to prove the company had been in operation for 20 years.

3. Grounds for disposition:

(1) Family Spa claimed in the advertisement that the company was “the largest manufacturer and wholesaler in the country” without objective statistics, such as sales figures or survey results, to support the statement. However, such a claim could cause consumers to have wrong perceptions or even make wrong decisions. It was a false, untrue and misleading representation in violation of Article 21(1) of the Fair Trade Law.

(2) The wording of “special thanks sale to celebrate the 20th anniversary” and “having been in business for 20 years” in Family Spa's advertisement was not consistent with the facts. It could cause trading counterparts to have mistaken perceptions and to make wrong decisions. Therefore, it was a false, untrue and misleading representation in violation of Article 21(1) of the Fair Trade Law.

Appendix:

Family Spa Enterprise Co.'s Uniform Invoice Number: 45567043

Summarized by Chuang, Ching-Yi; Supervised by Chen, Jen-Ying □

LG Electronics Taiwan Taipei Co., Ltd.

1247th Commissioners' Meeting (2015)

Case: LG Taiwan violated the Fair Trade Law for falsely advertising its upright inverter washing machines as passing "Energy Label Certification" on its company website

Key Word(s): Energy Label, washing machine, false advertising

Reference: Fair Trade Commission Decision of September 30, 2015 (the 1247th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104085

Industry: Retail Sale of Electrical Household Appliances in Specialized Stores (4741)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. LG Electronics Taiwan Taipei Co., Ltd. (hereinafter referred to as "LG Taiwan") marketed upright inverter washing machines models WT-D182YG and WT-D182HVG (hereinafter referred to as "the products at issue") and advertised the products at issue as passing the "Energy Label certification." However, the FTC checked the official website of the Bureau of Energy of the Ministry of Economic Affairs and found out that the Energy Label of the products at issue was valid from February 5, 2013 to February 4, 2015. In other words, the validity had expired. Therefore, the wording of passing "Energy Label certification" on the website as mentioned above was false advertising in violation of Article 21 of the Fair Trade Law.

2 Findings of the FTC after investigation:

According to the Bureau of Energy, the Energy Label on a product meant the energy efficiency of the product was in the top 15% to 30% of all products of the same category in the market. It was intended to help consumers to identify highly energy efficient products. Meanwhile, according to Point 5 of the "Bureau of Energy Operating Guidelines for Promotion and Use of the Energy Label", if a business did

not renew the usage contract upon expiration of the validity of the Energy Label, the right to use the Energy Label became invalid when expired. LG Taiwan expressed that the company normally applied for the Energy Label and the Water-saving Label for its appliances as soon as it acquired the corresponding import certificates and would post them on the company website after the application was approved. However, the Energy Label for the products at issue was valid from February 5, 2013 to February 4, 2015 and the products at issue were old models that would not be manufactured anymore. Therefore, the company did not apply for contract renewal with the Bureau of Energy. In addition, due to the negligence of its employees, the wording about the Energy Label had not been deleted.

3. Grounds for disposition:

(1) LG Taiwan posted the advertisement for the products at issue and claimed that the products had passed the “Energy Label certification” as one of its significant features. This gave consumers the impression that the products at issue had indeed certified by the Bureau of Energy as more energy-efficient than other products that had not been awarded the label. However, the official website of the Bureau of Energy indicated that the validity of the Energy Label for the products in concern was from February 5, 2013 to February 4, 2015. The validity had expired and LG Taiwan still used the wording of passing “Energy Label certification” on its company website. It was a false, untrue and misleading representation with regard to the quality of the product at issue and was in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and purpose of LG Taiwan’s unlawful conduct, the illegal gains expected, the damage to trading order, the duration of the conduct, the profits obtained, the scale of business of the company, the management condition, the company’s market power, its offense record in the past, remorse shown for the act and attitude of cooperation throughout the investigation, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$200,000 on the company.

Appendix

LG Electronics Taiwan Taipei Co., Ltd.'s Uniform Invoice Number: 22553217

Summarized by Tsao, Hui-Wen; Supervised by Wu, Ding-Hong

Nanyuan Construction Development Co., Ltd.

1253rd Commissioners' Meeting (2015)

Case: Nanyuan Construction violated the Fair Trade Law for posting a false advertisement on "West Lake Impression" housing project

Key Word(s): Function zoning, residence house, hotel

Reference: Fair Trade Commission Decision of November 11, 2015 (the 1253rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104119

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. In April 2015, Nanyuan Construction Development Co., Ltd. (hereinafter referred to as "Nanyuan Construction") used the terminology for regular residences in an advertisement (hereinafter referred to as "the advertisement") posted on housetube.com for its "Impression of the West Lake" housing project but the project was located in a hotel zone. It was false advertising.

2. Findings of the FTC after investigation:

Nanyuan Construction provided the entire funds to build the housing project. It hired an advertising agency to design the advertisement for the project but the right to review and decide the contents of the advertisement was reserved to Nanyuan

Construction. The company also used the service of another business to post the advertisement on housetube.com. According to the building authority of Chiayi City Government, the function zoning of the area where the project was for hotels and the purpose of the application filed for approval by the company was to build hotel buildings. Therefore, sanctions might be imposed in accordance with Article 73(2) and 91 of the Building Act, if it was found out the company did not obtain approval to change the use permit when the project was inspected in the future or the public complained about the units being sold as residences.

3. Grounds for disposition:

(1) In the advertisement, Nanyuan Construction used the terminology for regular residences and posted the wording of “I have checked out and compared all the housing projects in Chiayi and searching for houses has become an interest and responsibility for me because I must provide my family with a most beautiful and well-built home. Therefore, I always check out new houses on rainy days;” “Chiayi does not lack luxury houses but it needs to break through limitations;” “jumping out artificial arrangements, living in nature to enjoy the great earth, taking leisurely walks around the lake at any time, the beautiful views around Holland Lake making one after another performance around the clock, from life to living;” “the only avant-garde community, embracing the lake scenery, sparkling with a mingling of traditional and modern beauty and breaking through limitations will rewrite the lifestyle of the elite on Daya Road” and “the 8M-wide roads in the community show that the focus is set on not only the appearance but also the design of community roads to liberate the perspectives of the units.” The overall advertisement gave consumers the impression that the units of the project could be purchased and used as residences. They would not know the project was not for such purposes. The investigation revealed that the company had no documents issued by the building authority to prove the units could be used as residence houses. Hence, Nanyuan Construction’s advertisement for the “Impression of the West Lake” housing project was inconsistent with the facts in this case and in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and purpose of Nanyuan Construction’s unlawful

conduct, the illegal gains expected, the damage to trading order, the duration of the conduct, the profits obtained, the scale of business of the company, the management condition, the company's market power, offense records from the past, remorse shown for the act and attitude of cooperation throughout the investigation, the FTC concluded that the conduct had had a serious effect on marketing competition because the housing project was in a hotel zone and could not be used as residence houses. Therefore, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$600,000 on the company.

Appendix:

Nanyuan Construction Development Co., Ltd.'s Uniform Invoice Number: 80571023

Summarized by Chen, Wei-Fan ; Supervised by Lai, Mei-Hua

**Ontech Corp., ERA Communications Co., Ltd., GOMAJI Corp.,
Contact Digital Integration Co., Ltd., and Groupon Taiwan Co.,
Ltd.**

1255th Commissioners' Meeting (2015)

Case: Ontech Corp., ERA Communications, GOMAJI, Contact Digital Integration, and Groupon Taiwan violated the Fair Trade Law by posting false advertisements

Key Word(s): Information disclosure, false advertising

Reference: Fair Trade Commission Decision of November 25, 2015 (the 1255th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104114

Industry: Activities of Amusement Parks or Theme Parks (9321), Retail Sale via Mail Order House or via Internet (4871)

Relevant Law(s): Article 21(4) of the Fair Trade Law

Summary:

1. A consumer filed with the FTC a complaint that online shopping platform were selling a presale ticket to the “Japanese Gourmet Food Fair” at NT\$240 and offering a voucher worthy of NT\$500 for each ticket bought. However, when consumer showed up at the fair, she was told that the use of the voucher could only get a NT\$20 discount on each food product purchased. The consumer thought the online shopping platform operators had violated the Fair Trade Law by failing to explain the condition on the use of the voucher.

2. Findings of the FTC after investigation:

Ontech Corp. organized the “Japanese Gourmet Food Fair” and commissioned operators of online shopping platforms ERA Communications Co., Ltd.(hereinafter referred to as “ERA Communications”), GOMAJI Corp., Ltd. (hereinafter referred to as “GOMAJI”), Contact Digital Integration Co., Ltd (hereinafter referred to as “Contact Digital Integration”). and Groupon Taiwan Co., Ltd. (hereinafter referred to as “Groupon Taiwan”) to sell tickets to the said food fair. Ontech Corp. also provided related texts and pictures for the said companies to use in the advertisements.

3. Grounds for disposition:

(1) The claim of giving a NT\$500 voucher for each ticket of NT\$240 purchased in advance was obviously intended to attract customers. Therefore, the value of the voucher was certainly an important consideration for consumers to decide whether they would buy a ticket. However, when using the voucher to buy food products at the fair, a consumer could only get a NT\$20 discount for each item she bought. Assuming each food product was NT\$100, then a consumer would have to purchase 25 items by spend NT\$2,000 in order to enjoy the total worth of the NT\$500 voucher. This was very different from the understanding that a consumer only had to pay NT\$240 for a ticket to get a voucher worthy of NT\$500.

(2) The advertisements for the food fair did not disclose any condition on how the voucher could be used. A consumer needed to buy a ticket first and would not

find out about the condition and limit on the special offer that had led to his or her transaction decision until he or she attended the food fair. The actual value of the voucher and the condition on how the voucher could be used were both important factors when consumer decided whether they wanted to buy a ticket or not. Yet such important trading information was not disclosed in the advertisements and consumers were affected in their decision making. In other words, the claim about the N\$500 voucher in the advertisements was a false, untrue and misleading representation.

(3) After assessing the income of each company derived from the unlawful act, the motive behind the conduct, each company's management condition and market power, remorse shown for the act and attitude of cooperation throughout the investigation, the FTC imposed an administrative fine of NT\$100,000 on Ontech Corp., NT\$80,000 on ERA Communications, and NT\$50,000 on each of GOMAJI, Contact Digital Integration, and Groupon Taiwan.

Appendix:

Ontech Corp.'s Uniform Invoice Number: 80679002

ERA Communications Co., Ltd.'s Uniform Invoice Number: 05091991

GOMAJI Corp., Ltd.'s Uniform Invoice Number: 25145643

Contact Digital Integration Co., Ltd.'s Uniform Invoice Number: 24317014

Groupon Taiwan Co., Ltd.'s Uniform Invoice Number: 28481887

Summarized by Hsu, Tzung-Yu ; Supervised by Chen, Jen-Ying

Momo.com Inc. and Super Link Global Inc.

1257th Commissioners' Meeting (2015)

Case: Momo.com and Super Link violated the Fair Trade Law by posting false advertisements when marketing "Super Model Wardrobe medium and large size blouse sets with retro patterns"

Key Word(s): False and untrue, misleading

Reference: Fair Trade Commission Decision of December 9, 2015 (the 1257th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 104126

Industry: Retail Sale via Mail Order House or via Internet (4871)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received from private citizens complaints that the "Super Model Wardrobe medium and large size blouse sets with retro patterns" being sold on the website of Momo.com Inc. (hereinafter referred to as "Momo.com") were indicated in the catalog as "65% cotton and 35% polyester" but the labels on the products they received revealed that the blouses were made with 95% polyester and 5% spandex. Therefore, they thought the advertisement had been untrue.

2.. Findings of the FTC after investigation:

The aforesaid advertisement was posted both in the Momo Shopping Catalog in May 2015 the released by Momo.com and the Momo.com shopping website from April 27 to June 10, 2015. Besides, the recipient of payments from consumers making purchases and the issuer of invoices was specified as Momo.com. Meanwhile, according to the cooperation agreement signed between Momo.com and Super Link Global Inc. (hereinafter referred to as "Super Link"), Super Link was the supplier of the products in question. The company confessed that it had provided Momo.com with the contents of the advertisement or uploaded them itself. It also admitted that the indication of the materials being "65% cotton and 35% polyester" had been a

mistake and therefore it was inconsistent with the “95% polyester and 5% spandex” revealed on the label of the said products.

3. Grounds for disposition:

The blouses were advertised as “65% cotton and 35% polyester” and “cotton-soft material friendly to your skin.” It gave consumers the impression that the fabric contained mostly natural materials that would not be bad for their skin. Super Link admitted that the aforesaid wording had been posted by mistake and therefore became inconsistent with the indication of “95% polyester and 5% spandex” revealed on the label of the product. The advertisement was the only information consumers had before deciding to make their purchases or not. They had no way to know the materials indicated in the advertisement would be different from the materials revealed on the label until they received the products. In other words, the advertisement had caused consumers to have wrong ideas about the materials of the products. It was a false, untrue and misleading representation in violation of Article 21(1) of the Fair Trade Law. Therefore, the FTC cited the first section of Article 42 of the same law and imposed an administrative fine of NT\$50,000 each of Momo.com and Super Link.

Appendix:

Momo.com Inc.’s Uniform Invoice Number: 27365925

Super Link Global Inc.’s Uniform Invoice Number: 27666345

Summarized by Chen, Jian-Yu; Supervised by Wu, Ding-Hong

Charng Shun Trading Co., Ltd.

1258th Commissioners' Meeting (2015)

Case: Charng Shun Trading violated the Fair Trade Law for posting false advertisements when marketing the "Alstrong hex bolt extractor L wrench set"

Key Word(s): Wrench, advertisement, patent

Reference: Fair Trade Commission Decision of December 16, 2015 (the 1258th Commissioners' meeting); Disposition Kung Ch'u Tzu No. 104131

Industry: Manufacture of Cutlery and Metal Hand tools (2511)

Relevant Law(s): 21(1) of the Fair Trade Law

Summary:

1. Charng Shun Trading Co., Ltd. (hereinafter referred to as "Charng Shun Trading") marketed the "Alstrong hex bolt extractor L wrench set" and the prints on the packaging claiming that "Taiwan 198032", "Germany Patent and Trademark Office Patent No. 203 03 312.4" and "European Union Intellectual Property Office Patent No. 001769027-0001". In the meantime, on the company website of Charng Shun Trading, "Taiwan 198032", "Germany Patent and Trade Mark Office Patent No. 203 03 312.4" and "European Union Intellectual Property Office Patent No. 001769027-0001" were also posted. However, the FTC's investigation result revealed that the said patents in Taiwan and Germany had already expired. Furthermore, the product in question had never been acquired the patents. The FTC also found out that the application for the patents had been on May 22, 2002. According to Article 114 of the Patent Act, the patents had expired. Therefore, it was false advertising.

2. Findings of the FTC after investigation:

Charng Shun Trading provided the funds to design and produce the advertisement itself and posted the advertisement on its company website as well as printed it on the packaging of the product. The Taiwan patent had expired on May 21, 2014. Though

the German patent certificate did not indicate the patent expiration date but the patentee indicated that the patent had expired. Obviously, Charng Shun Trading had not checked whether the patents were still valid before posting the advertisement.

3. Grounds for disposition:

(1) Charng Shun Trading had produced and posted the advertisement itself to attract customers and make profits from the sale of the product. Therefore, the company was the advertiser.

(2) The posting and printing of “Taiwan 198032” and “Germany Patent and Trademark Office Patent No. 203 03 312.4” gave the receivers the impression that the product had indeed been patented both in Taiwan and Germany, and the patents were still valid and any competitors who copy the design would become in violation of the Patent Act. The practice had deterred competitors as well as misled consumers to believe the product patents were still valid and the performance or quality was better than unpatented products. However, the Taiwan patent had expired on May 21, 2014. Although the patent certificate from Germany did not indicate the patent expiration date, the patentee confessed that the patent had also expired. Hence, the advertisement was inconsistent with the facts.

(3) Based on the above findings, the FTC concluded that the wording of “Taiwan 198032” and “Germany Patent and Trademark Office Patent No. 203 03 312.4” posted in the advertisement by Charng Shun Trading to support the claim of the “Alstrong hex bolt extractor L wrench set” being a patented product was a false, untrue and misleading representation with regard to the quality of the product at issue and in violation of Article 21(1) of the Fair Trade Law. The FTC therefore imposed an administrative fine of NT\$50,000 on the company according to the first section of Article 42 of the same law.

Appendix:

Charng Shun Trading Co., Ltd.’s Uniform Invoice Number: 52513987

Summarized by Huang, Li-Ming; Supervised by Yang, Hsiu-Yun □

Guan Hao Construction Co. Ltd. and Zhong Xing Xing Development Co., Ltd.

1261st Commissioners' Meeting (2016)

Case: Guan Hao Construction and Zhong Xing Xing Development violated the Fair Trade Law by posting false advertisements when marketing the "Dun Nan Guan Zhi" housing project

Key Word(s): Travel time, false advertising

Reference: Fair Trade Commission Decision of January 6, 2016 (the 1261st Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104145

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. TVBS reported a builder had used "8 minutes from Wenshan District to Taipei 101" as the appeal in an advertisement to attract consumers to take a look at its housing project. However, the name of the housing project was concealed in the report. The FTC searched on the Internet for several times, compared the results with the picture of the advertisement, and then concluded that the project in question was probably the "Dun Nan Guan Zhi" housing project. The FTC's staff members visited the site of the project and saw the poster (hereinafter referred to as "the advertisement") for the housing project indicating the builder as Guan Hao Construction Co., Ltd. (hereinafter referred to as "Guan Hao Construction") and the advertising agency as Zhong Xing Xing Development Co., Ltd. (hereinafter referred to as "Zhong Xing Xing Development"). The claim of "8 minutes to Xinyi District" was also in the advertisement. According to one of the sale representatives for this housing project, people already residing in units therein had told that it would take 8 to 15 minutes to drive from the site of the project (Lane 106, Fuxing Road, Taipei City), taking Xinglong Road, Xinhai Road, Keelung Road and Xinyi Road, to get to Taipei 101 in Xinyi District. It was therefore inconsistent with the claim in the advertisement.

2. Grounds for disposition:

(1) Guan Hao Construction delegated Zhong Xing Xing Development to advertise and sell the remaining units of the “Dun Nan Guan Zhi” housing project. In other words, Guan Hao Construction only provided the funds and built the housing project while the advertising and marketing were the responsibility of Zhong Xing Xing Development. Therefore, Guan Hao Construction was the advertiser. According to the advertising contract, Zhong Xing Xing Development was responsible for advertising and marketing and would pay for the advertising expenses. All the advertising materials had to be reviewed and approved by Guan Hao Construction before they could be printed and posted or distributed. Meanwhile, it was set forth in Article 7 of the “Dun Nan Guan Zhi Marketing Contract” that Guan Hao would pay Zhong Xing Xing for its service 5% of the total bottom price the remaining units and parking spaces were sold for. Although the advertising materials was approved by Guan Hao Construction, Zhong Xing Xing Development was the company actually responsible for planning and producing the advertisement, using the advertisement to market the units and making profits according to the amount of the sales it achieved. Therefore, it is sensible to consider Zhong Xing Xing as one of the advertiser in this case.

(2) The claim of “8 minutes to Taipei 101 in Xinyi District” gave consumers the impression that it would take only 8 minutes to drive from the site of the housing project to Taipei 101. According to the actual test run by Guan Hao Construction and Zhong Xing Xing Development, the route between the site of the project to Taipei 101 would be from Lane 106 of Fuxing Road, Fuxing Road, Section 2 of Xinglong Road, Section 4 of Xinhai Road, Section 3 of Xinhai Road, Section 2 of Keelung Road, Section 5 of Xinyi road, to Taipei 101 in Xinyi District. Meanwhile, according to Taipei City Traffic Engineering Office, the abovementioned route was 6km long. The speed limit was 50km an hour and there were 22 traffic lights on this route. When driving at 50km an hour, it would take about 7.2 minutes ($6\text{km} \times 60\text{min} / 50\text{km per hr} = 7.2\text{min}$). However, waiting at traffic lights, traffic jams and traffic conditions during rush hours and other factors also had to be taken into consideration. Later Zhong Xing Xing Development admitted that under the aforementioned

circumstances, it would take about 12 to 17 minutes to travel from the project site to Taipei 101 by car or motorcycle. It would be impossible to do it in 8 minutes. In other words, the advertisement was inconsistent with the facts and the difference was more than what the public could accept. The said claim was therefore able to cause wrong perception or decision and in violation of Article 21(1) of the Fair Trade Law. For this reason, the FTC imposed an administrative fine of NT\$300,000 on Guan Hao Construction and NT\$150,000 on Zhong Xing Xing Development.

Appendix:

Guan Hao Construction Co., Ltd.'s Uniform Invoice Number: 28716293

Zhong Xing Xing Development Co., Ltd.'s Uniform Invoice Number: 70453862

Summarized by Tseng, Huei-Yi; Supervised by Yang, Hsiu-Yun

Bai Mian Dong Industry Co., Ltd.

1263rd Commissioners' Meeting (2016)

Case: Bai Mian Dong Industry violated the Fair Trade Law by adopting unlawful practices in franchisee recruitment

Key Word(s): Franchise, advertising, important information

Reference: Fair Trade Commission Decision of January 20, 2016 (the 1263rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105005

Industry: Beverage Service Activities via Stalls (5632)

Relevant Law(s): Articles 21 and 25 of the Fair Trade Law

Summary:

1. A former worker of Bai Mian Dong Industry Co., Ltd. (hereinafter referred to as "Bai Mian Dong Industry") filed with the FTC a complaint claiming that after

joining the “Bai Mian Dong Top Quality Carambola Juice” franchise through the special deal for employees, he found out the contents in the advertisement posted on the company’s website were inconsistent with those in the brochure provided by the company. In addition, the company was prosecuted that it had not disclosed important franchise information before the franchise contract was signed. The informer believed that the company had violated Articles 21 and 25 of the Fair Trade Law.

2. Findings of the FTC after investigation:

Bai Mian Dong Industry claimed on its website that “Currently there are over 60 franchisees and all of them are making profits.” In its franchisee brochure it was also stated that “ Presently there are over 60 franchisees and all of them are making profits,” “There are close to 70 franchisees at present and everyone is making money,” and “Presently, there are nearly 100 franchisee and they are all making profits.” Apparently, the numbers of franchisees revealed in the above documents were inconsistent. Bai Mian Dong Industry admitted that the numbers of profit-making franchisees had been established according to the Carambola juice concentrate orders placed by franchisees. In reality, the company had no objective figures to support such information. Meanwhile, the written information that Bai Mian Dong Industry provided to prospective franchisees before the contract was signed did not include the numbers of existing franchisees in different counties and cities and their addresses or the ratios of contract cancellation and termination in the previous year.

3. Grounds for disposition:

(1) The numbers of franchisees and the claim that every franchisee was making profits as advertised on the website of Bai Mian Dong Industry and in its franchisee brochure were inconsistent. The difference was unacceptable to trading counterparts and was likely to lead to wrong perceptions and decisions of parties interested in joining the franchise. It was in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 applicable *mutatis mutandis*.

(2) The numbers of existing franchisees in different counties and cities and their

addresses and the ratios of contract cancellation and termination in the previous year were important information concerning the scale of the market and intra-brand competition condition that potential franchisees needed to assess management performance and risks before deciding whether they would join the franchise or choose other franchisers. As the party having information advantage, Bai Mian Dong Industry took advantage of the information asymmetry and signed contracts with its trading counterparts without fully disclosing important information. It was obviously unfair conduct as stated in Article 25 of the Fair Trade Law. Moreover, Bai Mian Dong Industry applied the practice repeatedly to signed contracts with unspecific trading counterparts and the practice could have an effect on many potential victims in the future if it was not stopped. Furthermore, it might also cause the company's competitors to lose their opportunity to sign contracts with prospective franchisees and thus would result in unfair competition on the market. The conduct was able to affect trading order in the franchise market and in violation of Article 25 of the Fair Trade Law.

(3) After assessing the duration of the advertisement, the number of franchisees recruited during the duration, the duration in which the company did not fully disclose important franchise information, the total sales of the company from 2012 to 2014, the number of franchisees recruited each year from 2013 to July 2015, the total number of new franchisees, the aggregate of franchise fees collected, the attitude of cooperation by the company throughout the investigation, and the first offense by the company for having corrected the false information in the advertisement, etc., the FTC imposed an administrative fine of NT\$100,000 on the company for its violation of Paragraph 4 of Article 21 by applying *mutatis mutandis* Paragraph 1 of the same article as well as NT\$50,000 for the company's violation of Article 25 of the same law. The fines totaled NT\$150,000.

Appendix:

Bai Mian Dong Industry Co., Ltd.'s Uniform Invoice Number: 53981707

Summarized by Lin, Cheng-Yu; Supervised by Ho, Yen-Jung

EasyCard Corporation, Ltd.

1268th Commissioners' Meeting (2016)

Case: EasyCard Corp. violated the Fair Trade Law for false and untrue advertisements regarding pre-purchases of EasyCards

Key Word(s): Information disclosure, false advertising, EasyCard, snap up

Reference: Fair Trade Commission Decision of February 24, 2016 (the 1268th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105014

Industry: Other Financial Intermediation Not Elsewhere Classified (6499)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. On August 31, 2015, EasyCard Corporation Ltd. (hereinafter referred to as "EasyCard Corp.") posted an advertisement on its website that 15,000 sets (30,000 pieces) of Hatano Yui EasyCards (hereinafter referred to as "the product in question") would be available for the public to purchase over the phone starting at 00:00 September 1. On September 1, the company announced on its website that the products in question were sold out within four hours and 18 minutes. Later, however, the media reported that only 12,005 sets of the product in question were offered that day for consumers to place orders over the phone. EasyCard Corp. also admitted that the quantity released for public purchase was indeed different from the quantity it announced. Therefore, false advertising was suspected.

2. Findings of the FTC after investigation:

(1) To sell the product in question, EasyCard Corp. posted on its website on August 31 that "15,000 sets of Hatano Yui Public Welfare EasyCards to be available for the public purchase over the phone starting at 00:00 September 1, 2015, each set including one devilish version and one angelic version..." When the activity ended on September 1, the company posted another announcement stating that "the Hatano Yui Public Welfare EasyCards were sold out at 04:18, Septmeber 1..."

(2) The FTC's investigation indicated that 15,000 sets of the product in question had been printed and the former chairperson of EasyCard Corp. gave the instruction

to offer 12,000 sets for the public to purchase over the phone and in the end 11,980 sets were sold to the general public over the phone. The remaining sets were reserved for purchases by EasyCard Corp. employees, as well as pre-orders or gifts from EasyCard Corp for public relations purposes. The EasyCard Employee Welfare Benefit Committee sent an email to every employee on September 1 to notify them that each person could buy two sets at the maximum and, as it turned out, 438 sets were sold to employees. The sets for buyers intending to use them for public relations purposes were offered to business partners and potential customers of EasyCard Corp and 1,597 sets were sold. Meanwhile, 205 sets were given by the company to enhance its public relations.

3. Grounds for disposition:

(1) The advertisement deliver the public the impression that 30,000 cards (15,000 sets) had been printed and calling up to place an order was the only way for consumers to purchase the product in question. The overall content of the advertisement was understood by anyone with common sense as "these are the entire available product" and "they can only be acquired by placing orders over the phone" and all 15,000 sets of the product in question were offered for the public to purchase over the phone starting at 00:00, September 1. By 04:18 on September 1, the product in question was sold out and consumers had no way to purchase any of them after that point of time.

(2) However, the truth was only 12,000 sets were offered for the public to purchase by phone while the actual quantity sold over the phone was 11,980 sets. The remaining cards were either sold to EasyCard Corp. employees (438 sets) or to other parties buying them to use for public relations purposes (1,597 sets). Then there were also 205 sets given away as gifts by the EasyCard Corp. for its own public relations purposes. Being advertised as an activity for consumers to place orders for a limited quantity of the product in question over the phone, it drew people's interest. Consumers called in to place orders because they believed there were 15,000 sets available as announced by EasyCard Corp. Nevertheless, the truth is the company only offered 12,000 sets to be purchased over the phone. This means

buyers had no idea that a certain proportion of the cards had been reserved for the employees of EasyCard Corp. and other parties purchasing to use them for public relations purposes. In other words, the public was misled and might have made the wrong decisions as a result. In addition, the whole practice also led the public to have the mistaken idea about exactly when the products in question were sold out. By not disclosing the actual quantity of the product in question to be made available, EasyCard Corp. had failed to fulfill the obligation and responsibility of an advertiser and the conduct was in violation of Article 21(1) of the Fair Trade Law.

Appendix:

EasyCard Corporation, Ltd.'s Uniform Invoice Number: 70765909

Summarized by Hsu, Tzung-Yu ; Supervised by Hsu, Hung-Jen

Asustek Computer Incorporation

1269th Commissioners' Meeting (2016)

Case: Asus Computer violated the Fair Trade Law by falsely claiming its

PadFone S smartphone as equipped with electronic wallet functions

Key Word(s): Smartphone, electronic wallet, false advertising

Reference: Fair Trade Commission Decision of March 2, 2016 (the 1269th

Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105020

Industry: Retail Sale of Telecommunications Equipment in Specialized Stores
(4832)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. To market its PadFone S (model no. PF500KL) smartphone (hereinafter referred

to as “the cell phone in question”) Asustek Computer Inc. (hereinafter referred to as “Asus Computer”) posted an advertisement on its company website and claimed the cell phone in question was a "smartphone with brand new functions allowing near field communication, contactless transaction and data switch, officially integrating your wallet in your cell phone" (hereinafter referred to as “the ad in question”). In the meantime, through Asus Technology Incorporation (hereinafter referred to as “Asus Technology”), the cell phone in question was distributed to be sold by Senao International Co., Ltd (hereinafter referred to as “Senao International”) while the ad in question was also given to Uitox International Pte. Ltd. Taiwan Branch (hereinafter referred to as “Uitox Taiwan”), a marketing channel of Senao, to be uploaded to the ASAP shopping website and broadcasted. However, after mobile payment platforms were launched in the country, many consumers who had purchased the cell phone in question because they are attracted by the electronic wallet function later realized that the cell phone did not support electronic wallet functions. Hence, false advertising was suspected.

2. Grounds for disposition:

(1) Asus Computer, Asus Technology, Uitox Taiwan and Senao International were all advertisers in this case:

(i) The cell phone in question was designed and manufactured by Asus Computer which, based on its expertise and experience, must have been perfectly aware of the quality and functions of the product. The company also provided the funds to have the ad in question produced, as well as reviewed and made the final decision for the ad at issue to be posted to market the said cell phone. In other words, Asus Computer alone decided the production and posting of the ad in question. Meanwhile, Asus Computer provided distributors with the electronic files of the ad in question for them to use. Even businesses that had not signed contracts with Asus Computer could ask Asus Computer for the ad in question to market the said cell phone. This means Asus Computer had had the ad in question produced and provided it to be used by Uitox Taiwan in order to market its own product and gain profits. For this reason, there was no doubt that Aus Computers was an advertiser of the ad in question.

(ii) Asus Technology was responsible for marketing the products of Asus Computer. In addition, Asus Technology was the source of information for Senao International regarding which distributors to sign contracts with as well as the supplier of the cell phone in question for Senao International. Asus Technology issued the invoice for every cell phone in question sold to Senao and made a profit from it. Meanwhile, according to Item (3) of Point 3 of Article 6 in the distribution contract signed between Asus Technology and Senao International, Senao required the written consent of Asus Technology before it could use any advertising materials to market the products from Asus Computer. If the content of any advertising material was inconsistent with the reality, Senao had the obligation to inform Asus Technology and wait for Asus Technology to make corrections before it could use such advertising materials. Based on the above facts, it was evident that Asus Technology had the rights to supervise, review and correct the contents of advertisements used by retailers. Therefore, Asus Technology was an advertiser in this case.

(iii) Asus Computer provided the ad in question for Uitox Taiwan to upload it to the ASAP shopping website and on that website, the ad in question was labeled with a text and symbols to indicate that it belongs to ASAP, whereas Uitox Taiwan would issue invoices to consumers purchasing the product in question. Therefore, from consumers' point of view, they were doing business with Uitox Taiwan that managed the ASAP shopping website and posted the ad in question. In the meantime, Uitox Taiwan admitted that the company could take a certain cut from the sale of each said cell phone and the cut would become bigger with the increase of sales. Under such circumstances, Uitox Taiwan had to be considered an advertiser in this case.

(iv) Senao International bought the cell phone in question from Asus Technology, acquired the products and then provided it to be sold by Uitox Taiwan on consignment. In other words, it used the e-commerce channel of Uitox Taiwan to market its products. It was the provider of the cell phone in question, participated in the marketing process and earned a profit when each cell phone was sold. Therefore, Senao International was deemed an advertiser in this case.

(2) The claim posted in the ad at issue that the cell phone in question was a "smartphone with brand new functions allowing near field communication,

contactless transaction and data switch, officially integrating your wallet in your cell phone" deliver the impression to the consumers that the cell phone in question had the functions of an electronic wallet. Once it was integrated with the right software and credit cards, it could be used to make electronic payments. However, Asus Computer contested that the wording had been misplaced. Due to the consideration of market maturity, during the design and production processes there had been no plan to equip the phone with electronic wallet functions or future upgrade for the cell phone in question. In other words, the cell phone in question indeed did not equipped with electronic wallet functions. However, the ad in question had been posted on the company's website from July 8, 2014 to January 7, 2015 until the company announced that the cell phone in question did not support electronic wallet functions. Although the company announced on its website on February 4, 2015 that consumers who had purchased the cell phone in question could return it at designated locations, it had been half year after the company posted the correction message. During that period of time, the false advertising had led consumers to make wrong decisions and in turn caused them damages. Obviously, the false advertising had created unfair competition. Despite that Asus Computer later posted the correction message, the company still had to be held responsible for the unfair competition it had created in the market by posting the false advertisement.

(3) To have electronic wallet functions, a smartphone has to be equipped with an NFC sensing antenna on its motherboard. In addition, related software and a third party payment environment such as the TSM platform the basic requirements. The special law on third party payment in the country, "the Act Governing Electronic Payment Institutions", was not enacted until January 16, 2015, six months after the cell phone at issue was marketed. For this reason, it was questionable whether the cell phone at issue had electronic wallet functions when it was released and whether, objectively, the NFC mobile payment environment was available to allow it to be equipped with electronic wallet functions. Asus Computer, Asus Technology, Uitox Taiwan and Senao International marketed the cell phone at issue with the ad in question alleging that electronic wallet functions was equipped before the special regulation on third party payment was enacted without confirming whether

the cell phone in question really had the functions as claimed. It was a failure to fulfill the obligation of advertisers in violation of Article 21(1) of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$2 million on Asus Computer, NT\$600,000 on Asus Technology, and NT\$450,000 on each of Senao International and Uitox Taiwan.

Appendix:

Asustek Computer Incorporation's Uniform Invoice Number: 23638777

Asus Technology Incorporation's Uniform Invoice Number: 70353815

Senao International Co., Ltd.'s Uniform Invoice Number: 12228473

Uitox International Pte. Ltd. Taiwan Branch's Uniform Invoice Number: 53672104

Summarized by Tseng, Huei-Yi; Supervised by: Yang, Hsiu-Yun

Cang Zhen Construction Co., Ltd.

1276th Commissioners' Meeting (2016)

Case: Cang Zhen Construction violated the Fair Trade Law when marketing the units of its "Cang Mei One" presale housing project

Key Word(s): Presale house, important transaction information, deposit, read the contract

Reference: Fair Trade Commission Decision of April 20, 2016 (the 1276th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105033

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC's staff members paid a visit to the site where the presale house units of

"Cang Mei One" housing project of Cang Zhen Construction Co., Ltd. (hereinafter referred to as "Cang Zhen Construction") were marketed and discovered the sales personnel did not provide important presale house transaction information in writing to its potential buyers. When the potential buyers asked for a copy of the purchase contract to read, the sales personnel either expressed that they had to pay a deposit to review the contract or simply said the contract was not available. The conduct was in violation of Article 25 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) Dong Li International Advertising Co., Ltd. (hereinafter referred to as "Dong Li Advertising") was delegated by Cang Zhen Construction to market the units of the "Cang Mei One" project. Dong Li Advertising would get paid for the service as specified in the agreement signed by both sides. Also, Dong Li Advertising hired sales personnel by itself for this sale project.

(2) When the FTC's staff visited the site, they found that the sales personnel did not provide important transaction information, such as the site location map, the site plan, the general list of shares held by the owner of each unit and a photocopy of the building permit. Later, they performed a questionnaire survey on people who had made purchases and the outcome confirmed that the sales personnel indeed had not provided the aforementioned important transaction information and the sales personnel demanded the potential buyers to pay a deposit before they would be given a copy of the purchase contract.

3. Grounds for disposition:

(1) The FTC's staff members paid two visits to the site where the presale houses were marketed. The sales personnel did not provide the presale housing project base map, the site plan or the general list of shares held by the owner of each unit to the potential buyers and the said documents were not openly displayed either. As for the photocopy of the building permit, it was not provided the first time but enclosed in the contract the second time. The questionnaire survey conducted by the FTC's staff members revealed that nearly half of the respondents confirmed that the sales

personnel had not provided photocopies of the building permit, the site location map, the site plan and the general list of share held by the owner of each unit. These buyers also commented in the survey sheet that that fact the important transaction information had been withheld had an effect on their transaction decision. For this reason, the FTC concluded that the practice of Cang Zhen Construction and Dong Li Advertising to withhold important presale house transaction information during the marketing process had indeed had an effect on homebuyers' transaction decision; therefore, it was obviously unfair conduct.

(2) The sales personnel demanded a deposit of NT\$100,000 before they would provide a copy of the contract to the FTC's staff members or simply replied that the contract could be provided. Three of the eight survey respondents who had made purchases confirmed that they had been requested to pay a deposit to review the contract. This made it evident that Cang Zhen Construction and Dong Li Advertising had indeed demanded a deposit before a copy of contract would be given to the potential buyers. Some of the buyers also expressed that the sales personnel's demand for a deposit before a copy of the contract could be provided had really made it difficult for them to make transaction decisions. The demand for a deposit was obviously unfair conduct that put its potential buyers in a disadvantageous position and the illegal practice obviously had not been a single event. Moreover, for competitors who would provide interested parties with purchase contracts as statutorily required, it did constitute unfair competition. In other words, the illegitimate restriction on the right of the potential buyers to read the contract before making their decisions was obviously unfair conduct able to the affect trading order.

(3) The conduct of Cang Zhen Construction and Dong Li Advertising was in violation of Article 25 of the Fair Trade Law. After assessing the duration of the unlawful act, the business scale of each company, the sales already made in this case and the company's cooperative attitudes throughout the investigation, the FTC imposed administrative fines of NT\$150,000 and NT\$80,000 on the two companies respectively for failing to provide important presale house transaction information in writing. In addition, NT\$150,000 and NT\$80,000 administrative fines were imposed on the two companies respectively for demanding homebuyers to pay a deposit to

obtain the contract and an order was issued to both companies to immediately cease the unlawful act. The fines totaled to NT\$460,000.

Appendix:

Cang Zhen Construction Co., Ltd.'s Uniform Invoice Number: 53915030

Dong Li International Advertising Co., Ltd.'s Uniform Invoice Number: 24683362

Summarized by Tsai, Hui-Chi; Supervised by: Ho, Yen-Jung

Formosa Television Inc.

1278th Commissioners' Meeting (2016)

Case: FTV was complained for violating the Fair Trade Law for announcement of the audience rating for its "Dowry" series

Key Word(s): TV series, audience rating, advertisement

Reference: Fair Trade Commission Decision of May 4, 2016 (the 1278th Commissioners' Meeting)

Industry: Television Broadcasting and Subscription Programming (6020)

Relevant Law(s): Articles 21 and 25 of the Fair Trade Law

Summary:

1. A private citizen filed a complaint about Formosa Television Inc. (hereinafter referred to as "FTV") claiming in TV commercials and on Facebook that its series "Dowry" had the "highest audience rating, way ahead of the shows of other stations" without disclosing any audience rating statistics to support the above claim. Therefore, a violation of the Fair Trade Law was suspected.

2. Findings of the FTC after investigation:

According to the results of Nielsen ratings, the 179 episodes of "Dowry" were aired from December 16, 2014 to August 24, 2015. Besides December 16, 2014 the day the show was first aired and July 22, 23, 24 and 27, 2015 on which the "Shi Jian Qing" series on SETTV had the best rating, "Dowry" was the most popular show (about 97%). Meanwhile, the DVDs recording of "Dowry" episodes provided by the National Communications Commission indicated that when its audience rating was No. 2, FTV still broadcasted the wording with the narration of "No. 1 in the country" and "Dowry--No. 1 in the country." On the Facebook wall for "Dowry", FTV also posted the wording of "Highest audience rating in the country, way ahead of the shows of all other stations" from July 1, 2015 until August 5 the same year. To collect further information, the FTC sent written requests to businesses buying commercials on the show to express their opinions. All the advertisers replied that their commercial purchase decisions and budget arrangements had never been affected by the temporary audience rating fluctuations or the audience rating claim broadcasted.

3. Grounds for disposition:

(1) When FTV broadcasted the claim of "No. 1 in the country" in July 2015, it was televised together with preview footages of the "Dowry" series with narration saying "No. 1 in the country, Dowry." It did deliver the impression to its audience that the show had the highest audience rating in the country. In this aspect, the TV station did not fulfill its obligation as the advertiser to assure the authenticity of the commercial content. In July 2015 when the audience rating of the show dropped to the second place and the wording posted on TV commercials and Facebook remained unchanged, it was false advertising. However, the results of audience measurement surveys from the Nielsen Company indicated that the Audience rating of "Dowry" did rank No. 1 for 97% of the time in the six-month period. In other words, the long-term audience rating of the show was indeed ahead of the shows broadcasted by other TV stations. There were four days in July 2015 when the audience rating of "Dowry" fell behind that of "Shi Jian Qing" but the margin was slight. Therefore, the difference between the claim from FTV and the reality was still acceptable to the public. Finally,

the main advertisers on "Dowry" all expressed that their decisions to buy commercial time on the show and budget arrangements had never been affected by the short-term audience rating fluctuations or the content of the claim posted by FTV. For this reason, the FTC could not conclude that the advertisers had been misled by the claim at issue when making their decisions on transactions with FTV. In other words, there was no need to cite Article 21 of the Fair Trade Law to sanction FTV.

(2) To maintain trading order in the audience rating survey market and prevent enterprises from lying about or concealing audience rating survey results to engage in unfair competition and in turn affect the audience rating survey market as well as to ensure the sound development of the TV industry, the FTC has specifically promulgated the "Fair Trade Commission Disposal Directions (Guidelines) on the Release of TV Ratings." It is set forth in Point 6 that the release of TV rating survey results shall include the name of the survey company, the time, range, objects and method of survey, the margin of error and the number of valid samples, so that when an enterprise announces TV survey results, all related information and data are available and the interests of competitors will not be affected and TV viewers will not be misguided. The findings of the FTC's investigation revealed that FTV had indeed failed to disclose the related TV rating survey results when announcing the audience rating of the show on its TV and Facebook. Nevertheless, as mentioned earlier, all the major advertisers confirmed that their decisions to purchase commercials on the show and budget arrangements had not been affected by the claim about the audience rating of "Dowry" at all. Therefore, the FTC found it difficult to conclude that FTV had engaged in any deceptive or obviously unfair conduct that was able to affect trading order in violation of Article 25 of the Fair Trade Law.

Summarized by Pan, Min-Hui; Supervised by: Chiou, Shwu-Fen □

Audi Volkswagen Taiwan Co., Ltd.

1281st Commissioners' Meeting (2016)

Case: Audi Volkswagen Taiwan violated the Fair Trade Law by posting in car catalogs with regard to quality of product likely to affect transaction decision

Key Word(s): Exhaust emission standard, EU5, EU6

Reference: Fair Trade Commission Decision of May 25 (the 1281st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105057

Industry: Manufacture of Motor Vehicles (3010)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Audi Volkswagen Taiwan Co., Ltd. (hereinafter referred to as "Audi Volkswagen Taiwan") posted in the Audi A6 Sedan/A6 Avant catalog the wording of "The fuel common-rail high-pressure injection technique developed with Audi's TDI engine performance technology once again enhances the TDI performance...using clean diesel technology to reduce emissions of nitrogen oxides to meet EU6 exhaust emission standards" and also in the Caddy Maxi catalog, "Caddy's environmental protection measures...reducing emissions of other types of exhaust (CO, NO_x and particulate matter) and upgrading the emission performance from EU4 to EU5." The wording led consumers to believe the said exhaust emission data had been established as a result of normal and reasonable tests and the exhaust emissions complied with EU5 and EU6 standards. It was false advertising in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

Audi Volkswagen Taiwan imported diesel cars equipped with the EZ189 engine on which the software called as "Defeat Device" by the US Environmental Protection Agency was installed to assure the NO_x discharged during lab tests could be less than the NO_x discharged when the car was running on the road. The software was installed in all the Volkswagen, Audi, Volkswagen CV and SKODA models available

in the country. After its sensing element assessed whether the car was in a lab or on the road, the software could apply different control on discharge of NO_x and the results of NO_x emissions would be different when in a lab or on the road. To improve the situation, Audi Volkswagen Taiwan recalled cars to upgrade the engine control software.

3. Grounds for disposition:

(1) The wording of "The fuel common-rail high-pressure injection technique developed with Audi's TDI engine performance technology once again enhances the TDI performance...using clean diesel technology to reduce emissions of nitrogen oxides to meet EU6 exhaust emission standards" in the Audi A6 Sedan/A6 Avant catalog and "Caddy's environmental protection measures...reducing emissions of other types of exhaust (CO, NO_x and particulate matter) and upgrading emission performance from EU4 to EU5" in the Caddy Maxi catalog gave consumers the impression that the exhaust emission figures had been obtained as a result of normal tests and the exhaust emissions complied with EU5 and EU6 standards. In reality, however, Audi Volkswagen Taiwan used the aforementioned software to make assessments. When tests were run in a lab, NO_x emissions were reduced to comply with statutory standards and exhaust emission test results were thus inaccurate. Viewed in this way, the wording in the car catalogs misled consumers or concerned parties to believe that the vehicles had been duly tested and the results complied with established standards. In addition, the application of the said software by Audi Volkswagen Taiwan to pass exhaust emission tests was unfair competition for competitors who followed normal procedures and passed exhaust emission tests without using any software to manipulate the exhaust emission figures. Therefore, the claims made by Audi Volkswagen Taiwan had caused wrong perceptions or decisions in consumers or concerned parties. It was a misleading representation with regard to quality of product and able to affect transaction decision in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and objective of the unlawful conduct of Audi Volkswagen and the improper profits expected, the level of damage incurred to

trading order, the duration of such damage, the profits Audi Volkswagen Taiwan obtained from the unlawful conduct, the scale, management condition and market status of the company, the types and numbers of the company's violations in the past, the intervals of such violations and penalties received, as well as the remorse and cooperative attitudes of the company throughout the investigation, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$5 million on the company.

Appendix:

Audi Volkswagen Taiwan Co., Ltd.'s Uniform Invoice Number: 29060646

Summarized by Tsao, Hui-Wen; Supervised by: Wu, Ding-Hong

Sheng Jun Construction Co., Ltd. & Xin Yue Advertising Co., Ltd.

1283rd Commissioners' Meeting (2016)

Case: Sheng Jun Construction and Xin Yue Advertising violated the Fair Trade Law for posting false advertisements for the "OH! 1796" housing project

Key Word(s): False and untrue, misleading, false advertising

Reference: Fair Trade Commission Decision of June 8, 2016 (the 1283rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105061

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. Yilan County Government sent a letter to inform the FTC that Sheng Jun Construction Co., Ltd. (hereinafter referred to as “Sheng Jun Construction”) was building the "Oh! 1796" presale home project and the infinity pool marked on the layout for the rooftop garden was supposed to be just a rooftop terrace as indicated in the building permit. Since the company had never applied for approval to build a swimming pool there, false advertising was suspected.

2. Findings of the FTC after investigation:

Sheng Jun Construction built the "Oh! 1796" project but the advertising and marketing for this project were delegated to Xin Yue Advertising Co., Ltd. (hereinafter referred to as “Xin Yue Advertising”). Xin Yue Advertising could get a percentage of the home prices for its service and also part of the share of the sale profits. Therefore, both Sheng Jun Construction and Xin Yue Advertising were considered advertisers in this case.

3. Grounds for disposition:

(1) Sheng Jun Construction and Xin Yue Advertising marked an area on the rooftop garden layout for the use of an infinity pool and also had the picture of a swimming pool attached to it. However, as indicated in the building permit, the area had been approved to be used as a rooftop terrace only. If Sheng Jun Construction wanted to build a swimming pool, the company had to apply for a miscellaneous license. Otherwise, the facility would be considered as a violation of related regulations. Yet the company never applied for a miscellaneous license to build the swimming pool at issue and both Sheng Jun Constructed and Xin Yue Advertising admitted this was true. Besides, there were also the comments from Yilan County Government and drawings in the building permit to serve as evidences. As whether the housing project included a swimming pool could influence homebuyers' decision, the way the project was advertised was false, untrue and misleading in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive behind the unlawful conduct, the level of harm incurred, the seriousness of the violation, the scale of each of the two companies and the attitude of the offenders, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$800,000 on Sheng Jun Construction and NT\$450,000 on Xin Yue Advertising.

Appendix:

Sheng Jun Construction Co., Ltd.'s Uniform Invoice Number: 54540882

Xin Yue Advertising Co., Ltd.'s Uniform Invoice Number: 28472326

Summarized by Lee, Wan-Chun; Supervised by: Lai, Mei-Hua

Taiwan Yubo Co., Ltd.

1284th Commissioners' Meeting (2016)

Case: Taiwan Yubo violated the Fair Trade Law for posting false and untrue or misleading advertisements on driver recruitment

Key Word(s): False advertising, online advertisement, recruitment advertisement

Reference: Fair Trade Commission Decision of June 15, 2016 (the 1284th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105065

Industry: Other Bus Transportation (4939)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. Taiwan Yubo Co., Ltd.(hereinafter referred to as “Taiwan Yubo”) posted on driveuber.tw the wording of "Drive your own car and join the hottest sharing

platform; work according to your own schedule and make maximum an extra NT\$10,000 each week" and specified the requirements for joining the UberX elite as "21 years of age or older, having a driving license, a vehicle complying with the requirements, and no criminal and serious accident record. " False advertising was suspected due to the above wording used in the advertisement.

2. Findings of the FTC after investigation:

(1) The website driveuber.tw was registered by Uber Group but managed by Taiwan Yubo to serve as a platform to promote Uber apps. All the postings were managed and reviewed by Taiwan Yubo before they could be uploaded. The UberX elite recruitment conditions and documents required were posted in 2015.

(2) The wording of "Drive your own car and join the hottest sharing platform; work according to your own schedule and make maximum an extra NT\$10,000 each week" posted on driveuber.tw meant people joining Uber could use their own resources (cars) and arrange their own schedules to provide service to users of the Uber app platform and earn extra money.

(3) The driver requirements posted on driveuber.tw were conditions set by the Uber app platform as part of the consideration for passenger safety. The Uber app platform adopted strict standards to review the backgrounds of would-be Uber drivers. Therefore, people intending to join Uber had to present their valid driving licenses, car registrations, proof of insurance, proof of no accidents issued by the Department of Motor Vehicles and police clearance certificates from the police department. Otherwise, they could not become Uber drivers. Nevertheless, it was not Taiwan Yubo who specified the required documents and the requirements as Uber drivers.

3. Grounds for disposition:

(1) The said advertisement delivered the impression to the public that people complying with the requirements, submitting all the required documents and joining the Uber App platform could legally use their own cars and get passengers through the Uber app platform to earn maximum an extra NT\$10,000 every week. According

to the Ministry of Transportation and Communications, however, car owners accepting assignments from the Uber app platform could face a fine no less than NT\$50,000 but no more than NT\$150,000 and have their license plates impounded for two to six months, according to Article 77(2) of the Highway Act. Meanwhile, in the 2015 Su Tzu Judgment No. 1022 from the Taipei High Administrative Court, it was also confirmed that drivers using Uber apps to get passenger were in violation of Article 77(2) of the Highway Act. Therefore, people who were attracted by the driver recruitment advertisement on driveuber.tw and joined the Uber app platform to get passengers would be in violation of the aforesaid regulation in the Highway Act even if they complied with all the requirements and submitted all the required documents.

(2) Taiwan Yubo was a registered company in the country. Since the advertisements thereon were intended to attract passengers legally, they should have reviewed the content of service to avoid making false and untrue or misleading representations before the advertisements were posted. In addition to matching passengers and drivers through the Uber app platform, Taiwan Yubo also advertised to promote passenger service. In so doing, it not only misled unspecific parties to believe providing such service was legal, the transaction opportunities it created also had an impact on taxi operators and even deprived them of opportunities to get business. It therefore constituted unfair competition.

(3) The said advertisement misled consumers or concerned parties to believe people complying with the requirements, submitting all the required documents and joining the Uber app platform could legally use their own cars and get passengers through the Uber app platform to earn maximum an extra NT\$10,000 every week. Private owners accepting assignments through the Uber app platform had no idea that they were in violation of related regulations in the Highway Act and could be subject to fines and license plat impoundment or revocation. Taiwan Yubo had never disclosed the risk at issue. Consequently, the wording posted on driveuber.tw that people complying with their requirements and able to present all the documents specified could join Uber to provide service legally was inconsistent with existing regulations. The difference from reality was beyond what the general or specific public could accept. It could lead to wrong perceptions or decisions and also create

unfair competition. The FTC concluded that the conduct was a false and untrue or misleading representation with regard to content of service and able to affect transaction decision in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same Article was applicable.

Appendix:

Taiwan Yubo Co., Ltd.'s Uniform Invoice Number: 54343159

Summarized by Chuang, Ching-Yi; Supervised by: Chen, Jen-Ying

Hua Run Construction Co., Ltd.

1285th Commissioners' Meeting (2016)

Case: Hua Run Construction violated the Fair Trade Law by posting false advertisement to market the "Fen Jiao Xi" housing project

Key Word(s): False and untrue, misleading, false advertising

Reference: Fair Trade Commission Decision of June 22, 2016 (the 1285th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105069

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. Yilan County Government sent a letter to inform the FTC that Hua Run Construction Co., Ltd. (hereinafter referred to as "Hua Run Construction") was building a presale home project called "Fen Jiao Xi" and marketing the units. On the layouts the company marked the balconies, the vacant lot outside the ground floor, the space for the management committee office and the terrace on the first-level rooftop for the use of a public bath, hot spring pool or swimming pool, a steam room

and a sauna room, and foot-soaking pool respectively. It was inconsistent with the details specified in the building permit and therefore false advertising was suspected.

2. Findings of the FTC after investigation:

The FTC sent staff members to check out the “Feng Jiao Xi” housing project. It was confirmed that the arrangement and use of space indicated on the layouts and floor plans were indeed as described above and thus inconsistent with the details indicated in the building permit. Since Hua Run Construction was the builder and marketer of the housing project to make a profit. The company was regarded the advertiser in this case.

3. Grounds for disposition:

(1) Hua Run Construction marked some areas on the layouts for the use of a public bath, hot spring pool or swimming pool, a steam room and a sauna room, and a foot-soaking pool and floor plans and also displayed photos of some model homes with such facilities to demonstrate the intended use of space. However, in the building permit, these areas were approved as to be used as balconies, a vacant lot outside the ground floor, the management committee office and a terrace on the first-level rooftop. If Hua Run Construction actually made the changes as advertised without applying for any permission, such facilities would be illegal. In fact, Hua Run Construction confessed that it did not apply for any permission on the change. At the same time, the comments from Yilan County Government and the plans attached to the building permit could serve as evidences. The problem was that whether there would be a public bath, hot spring pool or swimming pool, a steam room and a sauna room, and a foot-soaking pool could really be a decisive factor in consumers’ purchasing decision. For this reason, the company’s advertising practice had to be regarded as false, untrue and misleading in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive of Hua Run Construction to engage in such unlawful conduct, the level of harm incurred, the seriousness of the violation, the scale of the company and the company's attitude after the violation, the FTC cited the

first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$1.5 million on the company.

Appendix:

Hua Run Construction Co., Ltd.'s Uniform Invoice Number: 53761393

Summarized by Lin, Yu-Ching; Supervised by: Lai, Mei-Hua

Smartking Digital Cultural and Creative Co., Ltd.

1288th Commissioners' Meeting (2016)

Case: Smartking Digital violated the Fair Trade Law by falsely claiming purchases of the company's books for children and teaching software would be subsidized by the government

Key Word(s): Unlawful marketing approach, government subsidy, teaching software

Reference: Fair Trade Commission Decision of July 13, 2016 (the 1288th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105077

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. Some media reported that the salespeople of Smartking Digital Cultural and Creative Co., Ltd. (hereinafter referred to as "Smartking Digital") falsely claimed that purchases of the company's books for children and teaching software would be subsidized by the government. The false claim was made in order to attract consumers to purchase the products during a parent-child activity held in Taichung in June 2015. Therefore, the FTC initiated an ex officio investigation to find out whether the company had engaged in any unlawful marketing practice by claiming purchases

of its products would be subsidized by the government.

2. Findings of the FTC after investigation:

During the aforementioned activity, a salesperson, surnamed Yan, of Smartking Digital told consumers that subsidies would be provided for purchases of the books for children and teaching software. In a meeting for consumers to file appeals with consumer protection officers conducted in Nantou County, he also said that the company and the Parenting Association would provide subsidies for purchases of the said products. Meanwhile, another salesperson, Mr. Mai, of Smartking Digital told consumers that purchases of the company's products would be subsidized because the products had been rated as outstanding teaching materials by the government. Therefore, the prices were cheaper. Later, when giving its statement at the FTC, Smartking Digital admitted that the company had no cooperative relations with the Parenting Association and the latter never provided any subsidies to its sale of the said products. The claim was actually made with the purpose to attract people to attend the activity so that the company could obtain potential customers' personal information which the company's salespeople could use in the future to promote its products. For this reason, the company listed the Parenting Association and other public interest groups as the organizers in the fliers it handed out at the venue of the activity to attract consumers to attend. That was why the salespeople of the company thought there were subsidies from the government and the Parenting Association and further told consumers the products were cheaper because of government subsidies. With the above-mentioned as the factual basis of this case, it could be proven that the salespeople of Smartking Digital had indeed falsely claimed there were government subsidies in order to promote the company's products.

3. Grounds for disposition:

As a matter of fact, neither the government nor the Parenting Association or any public interest group provided any subsidies for purchases of Smartking Digital's books for children and teaching software. However, as the salespeople used the said claim to promote the company's products, consumers would have the impression

that "the contents of books and software approval by the government must be better" and "the prices would be higher if there were no subsidies" when they made transaction decisions accordingly. In other words, Smartking Digital took advantage of consumers' confidence in government credibility and their tendency to grasp the opportunity when there were discounts because of government subsidies to market its products. It was a deceptive practice using unlawful sales promotion means to mislead consumers into making purchases. The salespeople of Smartking Digital lied about purchases of the company's books for children would be subsidized to mislead consumers into buying the products and, as a result, most trading counterparts were affected. Based on the above facts, the FTC concluded that the conduct of Smartking Digital was able to affect trading order in violation of Article 25 of the Fair Trade Law.

After assessing the sales of Smartking Digital in 2015, the motive and purpose behind the unlawful act, the duration of the unlawful act, the violation being the first ever, the company's cooperativeness throughout the investigation and its promise to reinforce personnel training, the FTC cited the first section of Article 42, ordered the company to immediately cease the unlawful act and imposed on it an administrative fine of NT\$150,000.

Appendix:

Smartking Digital Cultural and Creative Co., Ltd.'s Uniform Invoice Number:
2460404

Summarized by Wu, Meng-Zhou; Supervised by: Chiou, Shwu-Fen

Mr. Shieh

1293rd Commissioners' Meeting (2016)

Case: Mr. Shieh violated the Fair Trade Law by posting false advertisements for the "Leyun Estate" villas

Key Word(s): Countryside villa, farmhouse, the Regional Planning Act, false advertising

Reference: Fair Trade Commission Decision of August 17, 2016 (the 1293rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105094

Industry: Real Estate Activities for Sale and Rental with Own or Leased Property (6811)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received complaints from consumers about a Mr. Shieh posting in newspapers and on unju.com.tw advertisements for the countryside villas in the "Leyun Estate". In addition to the wording of "American-style countryside villas each on a 756-ping lot" and "each villa built on a flat lot of land measuring 756 ping and selling for NT\$7.88 million and up," signs put up at the estate also indicated that "each wooden house on a 380-ping lot of land and selling for NT\$3.8 million and up." The properties were being marketed as regular housing units, but the area where they were built was hillside land reserved for agricultural purposes. Therefore, false advertising was suspected.

2. Findings of the FTC after investigation:

The aforementioned advertisements in newspapers and unju.com.tw carried the wording of "American-style countryside villas each on a 756-ping lot" and "each villa built on a flat lot of land measuring 756 ping and selling for NT\$7.88 million and up." The advertisements also showed pictures of the wooden houses. At the estate, there were signs indicating each wooden house was on a 380-ping lot of land and selling for NT\$3.8 million and up," also showing pictures of wooden houses. Meanwhile,

the website indicated in the news advertisements for the "Leyun Estate" included the wording of "American countryside villas each built with wood on a 756-ping lot of land and selling for NT\$7.88 million and up," "community style," "with neighbors around," and "each one a dream house to be owned" while pictures of wooden houses and the kitchen, living room and bedrooms were also posted. The advertisements delivered the impression to the public that the wooden houses were in a community and the kitchen, living room and bedrooms in each unit had been designed and built according to law and there would be neighbors around. However, according to the Tainan City Government, the area where the units were constructed was hillside land reserved for agricultural purposes. As specified in Table 1 attached to Article 6(3) of the Regulations on Non-urban Land Use Control enacted in accordance with Article 15(1) of the Regional Planning Act, farmhouses could be built on land reserved for agricultural purposes (unless it is located in an industrial zone or a river area; collective farmhouses also may not be constructed in a specified agricultural area or forest area) under the condition that "the farmhouses are constructed with an approval obtained according to the Regulations Governing Building of Farmhouses on Agricultural Land or the Regulations Governing Construction in Areas under Regional Planning." However, no building license application for the wooden houses shown in the advertisements had ever been filed. In other words, the units had been built in violation of Article 25 of the Building Act and the city government had already made the decision to tear them down.

3. Grounds for disposition:

(1) In general, the structures depicted in real estate advertisements and the usages of the land they are on can be an important factor in consumers' decision on whether they would make purchases. Normally, the perception of consumers is that they can use the properties in accordance with the usages specified in such advertisements. In other words, if consumers have no way of knowing the usages described in the advertisements, the advertisements are actually in violation or related laws and regulations. Even if the object handed over by the advertiser is consistent with the content of the advertisements, there remains the risk that the buyer may be fined or

the property may be torn down after the competent authority finds out that it is built illegally. When producing and posting the said advertisements, Mr. Shieh already knew he had not applied for permission to build the houses. However, he continued to market them by using the wording of "each an individual villa," "community style," "with neighbors around," and "a dream house to be owned," while showing pictures of the kitchen, living room and bedrooms to attract consumers. He never disclosed that the land the units were built on was a hillside area reserved for agricultural purposes and the use had to comply with the Regional Planning Act, the Agricultural Development Act, and the Regulations Governing Building of Farmhouses on Agricultural Land. Nor did he reveal that the applicants had to be farmers who had registered the land registration at least two years ago. The intention to mislead consumers was obvious and the conduct was likely to cause consumers to have erroneous perceptions or make wrong decisions. It was a false and misleading representation with regard to the content and use of the product and could also affect transaction decision. It was therefore in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and purpose of Mr. Shieh and the expected illegitimate profit from the unlawful act, the level and duration of harm incurred to trading order, the profit obtained therefrom, the scale of business, management condition and market status, whether the illegal conduct had been corrected or admonished by the central competent authority, the types, number of times and intervals of past violations and the penalties received, the level of remorse of the offender and the degree of cooperativeness throughout the investigation, and other factors, the FTC cited the first section of Article 41 of the Fair Trade Law and imposed NT\$2 million on Mr. Shieh.

Summarized by Chen, Jian-Yu; Supervised by: Chang, Chan-Chi □

Mr. Weng

1294th Commissioners' Meeting (2016)

Case: Mr. Weng violated the Fair Trade Law by posting false advertising for the plantation of Half Acre Field Construction II

Key Word(s): Half Acre Field, false advertising, illegal use of farmland

Reference: Fair Trade Commission Decision of August 24, 2016 (the 1294th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105090

Industry: Real Estate Activities for Sale and Rental with Owned or Leased Property (6811)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received complaints stating that the wording of "community-style management, with water, power, roads and Internet connection all in place, plus cabins, screen houses and Canadian-style information material room...., no more worries about home safety," "independent safe community planning," and "independent community access control" while pictures of wooden cabins and pavilions were posted by Mr. Weng to market the "Half Acre Field" plantation on 591.com.tw in 2014 probably was false advertising.

2. Findings of the FTC after investigation:

In general, the structures depicted in real estate advertisements and the usage of the land they are on can become an important factor for consumers to decide on whether they would make purchases. Normally, the perception of consumers is that they can use the properties in accordance with the usages specified in such advertisements. In other words, consumers have no way of knowing the usages described in the advertisements are actually in violation of related laws and regulations. Even if the object handed over by the advertiser is consistent with the content of the advertisements, there remains the risk that the buyer may be fined or the property may be torn down after the competent authority finds out it is illegal. In this case, the advertisement posted on the webpage showed the wording of "community-

style management, with water, power, roads and Internet connection all in place, plus cabins, screen houses and Canadian-style information material room...., no more worries about home safety," "independent safe community planning," and "independent community access control." In addition, pictures of wooden cabins and pavilions were posted in the online advertisement. The overall impression it delivered to consumers was the structures could be used by buyers as homes. However, according to the Miaoli County Government, it had never approved the housing project and it constituted illegal use of farmland, including the gate, concrete roads, structures and pavilions, in violation of Article 15(1) of the Regional Planning Act. In other words, the advertisement was a false and misleading representation and could affect consumers' transaction decisions in violation of Article 21(1) of the Fair Trade Law.

3. After assessing the motive and purpose of Mr. Weng and the expected illegitimate profit from the unlawful act, the extent and duration of harm incurred to trading order, the profit obtained therefrom, the scale of business, management condition and market status, whether the illegal conduct had been corrected or admonished by the central competent authority, the types, number of times and intervals of past violations and the penalties imposed on the offender, the level of remorse of the offender and the degree of cooperativeness throughout the investigation, and other factors, the FTC cited the first section of Article 41 of the Fair Trade Law and imposed NT\$300,000 on Mr. Weng.

Summarized by Wang, Horng-Shiuan; Supervised by Chen, Jun-Ting □

Taiwan Rakuten Ichiban Co., Ltd.

1299th Commissioners' Meeting (2016)

Case: Taiwan Rakuten violated the Fair Trade Law by posting false advertising for "Lola Handmade Jams" on Yahoo! Kimo

Key Word(s): Handmade jam, keyword search, false advertising

Reference: Fair Trade Commission Decision of September 28, 2016 (the 1299th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105103

Industry: Retail Sale via Mail Order Houses or via Internet (4871)

Relevant Law(s): Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 applied *mutatis mutandis*

Summary:

1. Taiwan Rakuten Ichiban Co., Ltd. (hereinafter referred to as "Taiwan Rakuten") posted on the Yahoo! Kimo shopping website an advertisement for "Lola Handmade Jams" (hereinafter referred to as "the advertisement in question") which included the wording of "lowest prices ever for the besting-selling Lola Handmade Jams; order online to enjoy the feedback!" When consumers clicked on the link to enter the "Foods and Sweets" webpage on Taiwan Rakuten website, however, there were no Lola Handmade Jams. A false advertising was therefore suspected.

2. Grounds for disposition:

(1) Taiwan Rakuten financed the advertisement and www.Rakuten.com.tw, the URL of Taiwan Rakuten, was also indicated on the webpage. The company had the right to review, revise and post the advertisement in question. When Internet users clicked on the advertisement carrying the wording of "lowest prices ever for the besting-selling Lola Handmade Jams; order online to enjoy the feedback", they were redirected to the "Foods and Sweets" webpage on the Rakuten website maintained by Taiwan Rakuten. As a result, the number of clicks on the advertisement, the rate of exposure of the Taiwan Rakuten website, and the number of visits all increased and consequently business opportunities for the online shops on the "Foods and Sweets"

webpage were created. For this reason, Taiwan Rakuten was considered the advertiser in this case.

(2) The characteristic of the advertisement in question was when an Internet user entered the keyword, the search engine would simultaneously display the advertisement associated with the keyword and the webpage found to attract the user to click on the link to connect to the webpage posted by the advertiser. In other words, Taiwan Rakuten posted the advertisement in question and defined the keyword for the search engine to show the search result so that Internet users were drawn to visit the webpage. As a result, the exposure rate of its website and the number of visits which meant business opportunities for the sellers thereon increase. That is to say that the content displayed after the keyword search was intended to attract trading counterparts, either specific or non-specific consumers, to make transactions. Hence, the authenticity of the content was subject to Article 21 of the Fair Trade Law when it was false or misleading.

(3) The FTC received a letter from Lola Life Enterprise Corporation. The enclosed notarization dated July 31, 2015 stated that Taiwan Rakuten posted an advertisement for "Lola Handmade Jams" with the claim of "lowest prices ever for the besting-selling Lola Handmade Jams; order online to enjoy the feedback!" and this was enough to create in viewers the perception that Lola Handmade Jams were being promoted at low prices on the Rakuten website. Viewers would be attracted by the advertisement and click on the link to enter the "Foods and Sweets" of the website, but there would be no Lola Handmade Jams, not to mention the lowest prices ever.

(4) The FTC's investigation revealed that President Transnet Corporation (hereinafter referred to as "President Transnet") had placed orders to purchase Lola Handmade Jams from Chili Enterprises and set up a virtual store on the Taiwan Rakuten website to market the products between 2009 and 2011. But the company has stopped the operation in 2011. However, Taiwan Rakuten continued to post the advertisement in question between November 20, 2013 and August. 5, 2015. The advertisement made people believe that Lola Handmade Jams were still available at the lowest prices ever on the Rakuten website. The content was inconsistent with the

reality and the difference exceeded what consumers could accept. Besides causing consumers to have wrong perceptions and decisions, it could also create unfair market competition situation for competitors who worked hard to win transaction opportunities. The conduct was a false and misleading representation with regard to service and could affect transaction decision. It was in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same Article was applicable *mutatis mutandis*. Therefore, the FTC imposed an administrative fine of NT\$50,000 on Taiwan Rakuten.

Appendix:

Taiwan Rakuten Ichiban Co., Ltd.'s Uniform Invoice Number: 28847204

Summarized by Tai, Yu-I; Supervised by: Tsao, Hui-Wen

Shi En Enterprise Co., Ltd. & United Giants Estate Marketing Group

1308th Commissioners' Meeting (2016)

Case: Shi En Enterprises and United Giants violated the Fair Trade Law by adopting false advertising to market "Bai Nian Mu Le" housing project

Key Word(s): False, misleading, false advertising

Reference: Fair Trade Commission Decision of November 30, 2016 (the 1308th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105129

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. On the floor plans for the "A1 2F" and "A1 3F" of the Bai Nian Mu Le" housing project (hereinafter referred to as "the housing project in question") in Neihu District, Taipei City posted on the 591 property transaction website on February 24, 2016, Shi En Enterprise Co., Ltd. (hereinafter referred to as "Shi En Enterprises") and United Giants Estate Marketing Group (hereinafter referred to as "United Giants Estate") used dotted lines to mark the balconies as part of the interior. It was false advertising.

2. Findings of the FTC after investigation:

(1) Shi En Enterprise and United Giants Estate were requested to present their statements and explanations at the FTC. Apparently, Shi En Enterprise built and sell the housing project in question but delegated United Giants Estate to be in charge of advertising and sale planning. United Giants Estate would then receive a certain percentage of the sale prices for its services and would also be allocated a cut of the sales profit. Therefore, both Shi En Enterprise and United Giants Estate were considered advertisers in this case.

(2) At the request of the FTC, the Taipei City Government provided its opinion and confirmed that the housing project in question included 4-story private buildings and the outward extension of the living room balconies as indicated on the floor plans was in violation of Article 5 of the "Taipei City Illegal Construction Handling Regulations".

3. Grounds for disposition:

(1) In general, the structures depicted in real estate advertisements and the usages of the land they are on can be an important factor in consumers' decision on whether they would make purchases. When marketing the housing project in question on the 591 property transaction website, Shi En Enterprise and United Giants Estate used dotted line to mark the balconies as part of the interior on the floor plans for "A1 2F" and "A1 3F" units. The advertisement gave the public an overall impression that the space where the balconies should have been could be

used as part of the interior as indicated. However, according to the Taipei City Government, the outward extension of the balconies as indicated on the floor plans for the housing project in question was in violation of Article 5 of the “Taipei City Illegal Construction Handling Regulations”. Moreover, Shi En Enterprise and United Giants Estate, when presenting their statements at the FTC, confessed that they had not applied to the building authority for permission to make the design changes. Hence, the representation provided by Shi En Enterprise and United Giants Estate in the advertisement was false and misleading. This could cause general or specific consumers to have erroneous perceptions or even make wrong decisions. It was in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive behind the unlawful act, the level of harm, the seriousness of the violation, the business scales of the two companies and their attitudes after the violation, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$700,000 on Shi En Enterprise and NT\$450,000 on United Giants Estate.

Appendix:

Shi En Enterprise Co., Ltd.’s Uniform Invoice Number: 80189912

United Giants Estate Marketing Group’s Uniform Invoice Number: 54367692

Summarized by Yang, Hsiang-Yu; Supervised by: Lai, Mei-Hua □

Full Wang International Development Co., Ltd.

1308th Commissioners' Meeting (2016)

Case: Full Wang International violated the Fair Trade Law by posting false advertisements to market the "Wings of the World" housing project

Key Word(s): False advertising, housing project advertisement, public facility

Reference: Fair Trade Commission Decision of November 30, 2016 (the 1308th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105130

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The floor plans for all the 1F and 2F units in an advertisement posted by Full Wang International Development Co., Ltd. (hereinafter referred to as "Full Wang International") for the "Wings of the World" housing project indicated that there would be public facilities including "Yi Sen Gym," "Ju Yue Swimming Pool," "Shui Yang Spa," "a sauna for men and a changing room," "a sauna for women and a changing room," and a "pool for children." As the FTC suspected that the design might be inconsistent with the building permit for the housing project and false advertising might be involved, it initiated an ex officio investigation.

2. Findings of the FTC after investigation:

The said advertisement and layout inserts "floor plans for all 1F units" and "floor plans for all 2F units" indicated there would be public facilities including the "Yi Sen Gym," "Ju Yue Swimming Pool," "Shui Yang Spa," "a sauna for men and a changing room," "a sauna for women and a changing room," and a "pool for children." Consumers would easily be misled into believing that the above public facilities could be used legally and then make purchase decisions based on this perception. However, according to the Taichung City Government, among the said public facilities, the "Yi Sen Gym" was inconsistent with the "smoke exhaustion

room" indicated in the building permit, the "Ju Yue Swimming Pool" and the "Shui Yang Spa" were inconsistent with the "reservoir" indicated in the building permit, the "sauna and changing room for men" and the "sauna and changing room for women" were inconsistent with the "elevator hall" indicated in the building permit, and finally the "swimming pool for children" was inconsistent with the "landscaping pool" indicated in the building permit. The builder should have acted according to Article 39 of the Building Act and applied for approve for change of design before it can make the above change. Otherwise, the builder would be considered in violation of Article 39 of the Building Act and fined in accordance with Article 87 of the same Act.

3. Grounds for disposition:

In general, the public facilities depicted in real estate advertisements can be an important factor in consumers' decision on whether they would make purchases. Normally, what consumers can understand from such advertisements is that they will be able to enjoy the public facilities indicated in the advertisements. They would have no way of knowing the public facilities indicated in the advertisements were actually built in violation of building regulations. Full Wang International claimed that it had considered changing the design to move the "Yi Sen Gym" from the "smoke exhaustion room" indicated in the building illustration to the space on the left for the management committee office and consolidate it with the yoga room. However, even if the change had been made in compliance with building regulations, the result would have been inconsistent with the location and space indicated in the advertisement. Furthermore, Full Wang International also admitted it would not be able to deliver the "Ju Yue Swimming Pool," "Shui Yang Spa," the "sauna and changing room for men," "sauna and changing room for women" and the "swimming pool for children" in the future. In other words, when the housing project was completed and the units were turned over, buyers would not be able to have or legally enjoy the public facilities indicated in the advertisement. Consequently, the advertisement was a false and misleading representation and could have an effect on transaction decision in violation of Article 21(1) of the Fair Trade Law.

The FCT therefore imposed an administrative fine of NT\$1.8 million on Full Wang International.

Appendix:

Full Wang International Development Co., Ltd.'s Uniform Invoice Number: 97447647

Summarized by Chuang, Ching-Yi; Supervised by: Chen, Jen-Ying

Chang Qun Construction Co., Ltd.

1309th Commissioners' Meeting (2016)

Case: Chang Qun Construction violated the Fair Trade Law by posting false advertisements to market the "Jin Xi Yu Pin" housing project

Key Word(s): Floor plan, statutory balcony space, interior space, false advertising

Reference: Fair Trade Commission Decision of December 7, 2016 (the 1309th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105134

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC found out on March 15, 2016 that Chang Qun Construction Co., Ltd. (hereinafter referred to as "Chang Qun Construction") indicated some of the balcony space as part of the master bathroom in the A2 unit floor plan included in the advertisement it posted for the "Jin Xi Yu Pin" housing project in Taishan District, New Taipei City. It was false advertising and the FTC therefore launched an investigation.

2. Findings of the FTC after investigation:

The said housing project was built and marketed by Chang Qun Construction. The company admitted that, besides the A2 unit floor plan, it had also drawn up the floor plans for A1, B1 and B2 units and the space planning was the same as what was indicated in the A2 unit floor plan. That is, some of the statutory balcony space was used as part of the interior. Meanwhile, according to the New Taipei City Government, if the housing project was engineered according to the aforesaid floor plans to include statutory balcony space as part of the interior, it would be in violation of Article 25 of the Building Act and the builder could be fined or the parts illegally constructed could be torn down in accordance with Article 86(1) of the same Act.

3. Grounds for disposition:

In general, the structures depicted in real estate advertisements and the usage of the land they are on can be an important factor in consumers' decision on whether they would make purchases. What consumers understand is that they can use the properties in accordance with the usages specified in such advertisements. In other words, consumers have no way of knowing the usages described in the advertisements are actually in violation of related laws and regulations. If they knew the structures and their usages as advertised might be inconsistent with the structures and usages approved and there existed the risk for them to get fined or receive orders to tear down the illegal parts, have them reconstructed, or stop using such parts or restore them to the original conditions, they would not decide to make the purchases. The inclusion of balcony space as part of the interior on the floor plans for the housing project was inconsistent with the usage approved by the competent authority and the result of the practice was able to cause consumers to have erroneous perceptions about the content and usage of space or make wrong decisions. Consequently, market competition and market order would lose their functions, competitors would lose customers and unfair competition would be created. It was in violation of Article 21(1) of the Fair Trade Law. Therefore, the FTC cited the first section of Article 41 of the Fair Trade Law and imposed an administrative fine of NT\$1 million on Chang Qun Construction

Appendix:

Chang Qun Construction Co., Ltd.'s Uniform Invoice Number: 97387606

Summarized by Lai, Chien-Sheng; Supervised by: Tsao, Hui-Wen

Lian Li Construction Co., Ltd. & Lian Yong Advertising Co., Ltd.

1315th Commissioners' Meeting (2017)

Case: Lian Li Construction and Lian Yong Advertising violated the Fair Trade Law by posting false advertisements for the "Lain Shang Hu Aesthetics" housing project

Key Word(s): Housing project, hotel land, the Urban Planning Act, false advertising

Reference: Fair Trade Commission Decision of January 18, 2017 (the 1315th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106005

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received complaints from a number of private citizens who had purchased the units of the "Lian ShangHu Aesthetics Phase 1" housing project (hereinafter referred to as "the housing project in question") built and advertised by Lian Li Construction Co., Ltd. (hereinafter referred to as "Lian Li Construction") as "lightweight mansions," yet they were later notified by the Public Works Bureau of Kaohsiung City Government in May 2016 that the housing project had been constructed in an area defined as hotel land according to the urban planning design of Kaohsiung City and was in violation of the Urban Planning Act. Therefore, they thought Lian Li Construction had violated Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

The advertisements for the housing project in question included the related information on Lian Li Construction's website and on advertising flyers distributed. The housing project in question was claimed as "fashionable and tasteful residences built for comfort," "the most beautiful and fashionable lightweight mansions around the Cheng Ching Lake," "the delicate 2-room layout?? a warm hotel-like home to belong to you," "clean and simple design, a hotel-like home where you can be at ease," "every bathroom has a window?? a fashionable hotel-like home to provide you with comfort" and "clean water, living water system to provide water supply for all the units." There were also pictures showing different decorated quarters with furniture and facilities just like regular homes. The project particularly featured "leisure (recreation): Cheng Ching Lake Golf Course; daily life functions: Wenshan and Cheng Ching Road shopping area, Chang Gung Hospital, school district including Wenshan Senior High School, Wende Elementary School and Niaosong Elementary School." The contents gave consumers the impression that the housing project was for residential purposes. However, according to the Kaohsiung City Government, the housing project in question was located in an area defined as land for hotels in the urban planning design and could only be used for "hotels and affiliated hotel facilities and facilities approved by the tourism authority of the city. Violations of the aforesaid regulation would be dealt with in accordance with Article 79 of the Urban Planning Act.

3. Grounds for disposition:

(1) Lian Li Construction and the marketing agent Lian Yong Advertising Co., Ltd. (hereinafter referred to as "Lian Yong Advertising") repeatedly contested the wording of "Zoning: hotel zone" had been clearly indicated on the flyers and the website and the term "hotel-like home" was adopted. However, the term "hotel-like home" did not suggest the housing project in question could be used for residential purposes. Whether the position and content of the wording of "zoning: hotel zone" on the flyers were easily identifiable, an advertisement had to be viewed for the overall message to be conveyed and not to be interpreted only according to any specific

part of the content. Moreover, advertising was to attract unspecific parties before transactions were concluded. It is true that consumers thus attracted by advertisement to contact the advertiser would negotiate before (during) transaction and sign contract while there would be different factors involved during the while process. Despite that trading counterparts had been informed of the project in question being in a "hotel zone," the advertisements were still false. For this reason, the claim in the advertisements from Lian Li Construction and Lian Yong Advertising saying that the housing units in a hotel zone could be used as residences and the pictures showing decorated quarters and facilities like those in regular homes were a false and misleading representation with regard to use of product and could affect transaction decision in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and objective of Lian Li Construction and Lian Yong Advertising for the unlawful act, the illegitimate profit expected, the level of harm of the unlawful act to trading order and the duration, the profit thus gained, the business scale, management condition and market status of the offenders, whether the offenders had been corrected or warned by the central competent authority for similar violations, the types and number of times and intervals of past violations and the punishments received, the level of remorse, the evidences provided and cooperativeness throughout the investigation, and other factors, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed administrative fines of NT\$800,000 on NT\$200,000 on Lian Li Construction and Lian Yong Advertising respectively.

Appendix:

Lian Li Construction Co., Ltd.'s Uniform Invoice Number: 80365966

Lian Yong Advertising Co., Ltd.'s Uniform Invoice Number: 24991207

Summarized by Wang, Horng-Shiuan; Supervised by: Chang, Chan-Chi

Yi Mao Construction Co., Ltd.

1321st Commissioners' Meeting (2017)

Case: Yi Mao Construction violated the Fair Trade Law by posting false advertisements for the "Min Sheng Wan Ji" housing project

Key Word(s): False, misleading, false advertising

Reference: Fair Trade Commission Decision of March 1, 2017 (the 1321st Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106011

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received from a private citizen a complaint about Yi Mao Construction Co., Ltd. (hereinafter referred to as "Yi Mao Construction") indicating the balconies as part of the bedrooms on the A3 unit layout shown at the reception center of the "Min Sheng Wan Ji" housing project in West Central District of Tainan City the company was marketing. False advertising was suspected.

2. Findings of the FTC after investigation:

The FTC sent staff members to investigate at the site of the "Min Sheng Wan Ji" housing project and confirmed the layout was inconsistent with the original design indicated in the building license and use permit. Since Yi Mao Construction invested the capital needed to build, marketed the housing project and also put in the money to produce and distribute the flyers, the company was the advertiser in this case.

3. Grounds for disposition:

(1) On the layout in question displayed both on TV and flyers distributed at the reception center, the balconies were marked with dotted lines as part of the interior space. Overall, the advertisement made consumers think the space where the balconies should have been could be used legally as suggested on the layout. Yi Mao Construction expressed there was no more floor area to allow any change of design in the housing project. The company admitted it was illegal use of space if

changes were made as indicated in the advertisement. In addition, the reply from the Tainan City Government and the drawings attached to the use permit could prove the conduct as unlawful. Since whether the balcony space could be legally used as part of the interior was a decisive factor when consumers decided whether they would make their purchases, the advertisement posted by Yi Mao Construction was therefore considered a false and misleading representation in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive behind the unlawful act, the level of harm, the seriousness of the violation, the business scale of the company, and the company's attitude after the violation, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$800,000 on Yi Mao Construction.

Appendix:

Yi Mao Construction Co., Ltd.'s Uniform Invoice Number: 54088116

Summarized by Lin, Yu-Ching; Supervised by: Lai, Mei-Hua

Kimberly-Clark Taiwan

1327th Commissioners' Meeting (2017)

Case: Kimberly-Clark Taiwan violated the Fair Trade Law by posting a false advertisement of "Huggies Mama Laboratory"

Key Word(s): False advertising, comparative commercial, paper diaper

Reference: Fair Trade Commission Decision of April 12, 2017 (the 1327th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106025

Industry: Manufacture of Domestic and Sanitary Paper Products (1591)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Proctor and Gamble Taiwan (hereinafter referred to as "P&G Taiwan") filed a complaint against Kimberly-Clark Taiwan as Kimberly-Clark Taiwan posted on Facebook and YouTube an advertising film called "Huggies Mama Laboratory' Unveiling the Secret behind Dry Baby Butts" in which 600cc test solution was used to compare the absorbance of Pampers made by P&G Taiwan and its own Purple Huggies. The experiment was not performed in accordance with normal use of diapers and the claim of "90% of mothers are willing to switch to Huggies after seeing the experiment" had no support of related evidences or information. Therefore, P&G Taiwan believed the conduct of Kimberly-Clark Taiwan was in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) In the commercial titled "Huggies Mama Laboratory Dryness Challenge," a 600cc test solution was poured into a Purple Huggies diaper and a Pampers diaper. The diapers were then turned over to see if there was any dripping of the test solution. The advertisement gave the impression that the Purple Huggies had better absorbance and thus it could keep babies' butts dry longer. Kimberly-Clark Taiwan provided the results of tests conducted by its own laboratory and reports from SGS Taiwan after performing tests on the "urine absorbance multiple," "urine volume and retained amount" and "backflow amount in diapers."

(2) The claim that "90% mothers are willing to switch to Huggies after seeing the experiment" posted in the commercial suggested nine out of ten parents would choose to use Huggies as a result of the experiment. However, Kimberly-Clark Taiwan admitted that the claim was merely based on the result of the interviews with the 21 consumers present at the experiment and the company never conducted any further surveys or interviews.

3. Grounds for disposition:

(1) Despite that Kimberly-Clark Taiwan did provide the results of its own

tests and the test report from SGS Taiwan, according to the opinion offered by the Bureau of Standard, Metrology and Inspection, those were the test results on "urine absorbance multiple," "urine volume and retained amount," and "backflow amount in diapers" performed according to standards for adult urine pads and diapers and thus they could not be adopted to evaluate the absorbance of baby diapers. Meanwhile, the surface dryness (backflow amount) test report from Kimberly-Clark Taiwan was established by its laboratory in accordance with the standards specified and samples provided (including product brands, models and specifications) by Kimberly-Clark Taiwan. It was doubtful whether they were enough to compare the quality of the two products. In other words, the data adopted by Kimberly-Clark Taiwan in the comparison were inadequate to support its claims in the advertisement. Therefore, it was an inappropriate interpretation and a false and misleading representation in violation of Article 21 (1) of the Fair Trade Law.

(2) In the meantime, Kimberly-Clark Taiwan only interviewed the 21 consumers present at the experiment and did not carry out further surveys or interviews. It was questionable whether the opinions of the 21 consumers were representative enough. Moreover, eight of the 21 consumers were found just before the film was shot and they were given transportation fees and bags of trial diapers. From the commercial, the public would not know this unusual sampling method for the interview. Besides lacking objective data and survey reports, the difference between the claims and reality exceeded what common consumers could accept. Therefore, the FTC concluded that the commercial was a misleading representation in violation of Article 21 (1) of the Fair Trade Law.

(3) In conclusion, an inappropriate interpretation was adopted in the comparative commercial to show the diapers made by Kimberly-Clark Taiwan were better than those from its competitor in urine absorbance and dryness. In addition, the company made the claim of "90% mothers are willing to switch to Huggies after seeing the experiment." This conduct was a false and misleading representation with regard to the quality and content of product and could affect the transaction decisions of its consumers in violation of Article 21 (1) of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$800,000 on Kimberly-Clark Taiwan.

Appendix:

Kimberly-Clark Taiwan's Uniform Invoice Number: 70805542

Summarized by Chuang, Ching-Yi; Supervised by: Chen, Jen-Ying

Fu Li Di Construction Co., Ltd.

1335th Commissioners' Meeting (2017)

Case: Fu Li Di Construction violated the Fair Trade Law by posting false advertising for the "Fu Li Di-Queen's Secret" housing project

Key Word(s): Agricultural land, authorized sales agent, housing project, false advertising

Reference: Fair Trade Commission Decision of June 7, 2017 (the 1335th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106041

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The site of the "Fu Li Di-Queen's Secret" housing project (hereinafter referred to as "the housing project") that Fu Li Di Construction Co., Ltd. (hereinafter referred to as "Fu Li Di Construction") was building and marketing was located in an agricultural zone of an urban planning area and non-urban Type A construction land. However, in the "surrounding environment schematic," "building spread schematic" and "B Zone layout" (together hereinafter referred to as "the advertisement"), the adjacent area of agricultural land was indicated as to include a landscape garden, a pond, community roads, parking space, etc. It was inconsistent with the usage of normal agricultural use. Therefore, false advertising was suspected.

2. Findings of the FTC after investigation:

(1) The housing project was built by Fu Li Di Construction and the company was also the agent authorized by the landowners to sell the adjacent agricultural land and farmhouses. According to the sales agent agreement signed between both parties, Fu Li Di Construction was responsible for the advertising design and expenses but would collect 5% of the amount of sales for its service.

(2) In the advertisement the agricultural land was indicated as to include a landscape garden, a pond, community roads, parking space, etc. However, according to the Yilan County Government, the area to include the landscape garden, pond, community roads, parking space, etc. had been defined as non-urban land for agricultural purposes whereas the area for the B Zone parking space and community roads had been defined as agricultural land under urban planning. Use of such land for nonagricultural purposes would be in violation of Article 69 of the Agricultural Development Act and could be sanctioned in accordance with Article 21 of the Regional Plan Act.

3. Grounds for disposition:

(1) The advertisement was produced by an advertising company after Fu Li Di Construction consolidated the advertisement for its own housing project and the advertisement for the agricultural land and newly built farmhouses the company was authorized by the landowners to sell. It was reviewed, finalized and used by Fu Li Di Construction. It is also Fu Li Di Construction who paid for the cost and posted the advertisement. The company decided and supervised the matters with regard to the advertisement. Therefore, Fu Li Di Construction was the advertiser.

(2) The housing project was located in the non-urban land for agricultural purposes and agricultural land under urban planning. The consolidation of the "surrounding environment schematic," "building spread schematic" and "B Zone layout" with the images of "the landscape garden, pond, community roads and parking space" was inconsistent with the facts revealed in this case. The difference was too great for the general public to accept and could cause the general public to have wrong perceptions and decisions. It was therefore a false and misleading

representation in violation of Article 21 (1) of the Fair Trade Law. After assessing Fu Li Di Construction's motive for the unlawful act, the level of harm caused to the trading order on the marketplace, the duration, the business scale, management condition and market status of the company, past violations and cooperativeness throughout the investigation, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$400,000 on the company.

Appendix:

Fu Li Di Construction Co., Ltd.'s Uniform Invoice Number: 54782229

Summarized by Chuang, Ching-Yi; Supervised by: Chen, Jen-Ying

Cheng Ming Construction Development Co., Ltd. & Bo Gen Development Co., Ltd.

1338th Commissioners' Meeting (2017)

Case: Cheng Ming Construction and Bo Gen Development violated the Fair Trade Law for marketing the "Fashion Bobo" housing project

Key Word(s): Illegal building, false advertising

Reference: Fair Trade Commission Decision of June 28, 2017 (the 1338th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106050

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The Taoyuan City Government forwarded to the FTC a complaint from a private citizen accusing that Cheng Ming Construction development Co., Ltd. (hereinafter

referred to as “Cheng Ming Construction”) and Bo Gen Development Co., Ltd. (hereinafter referred to as “Bo Gen Development”) of using false advertising to market the "Fashion Bobo (originally called Line Generation)" housing project (hereinafter referred to as “the housing project”) located in Bade District, Taoyuan City by indicating in an advertisement entitled "Line Generation, Small Capital Style MRT Intelligent Homes" that the housing project would include "a gym and a lounge bar" and also marked on the 13F layout that there would be facilities including "an aerobics room, a gym, a bar and pool tables," yet these facilities were never built.

2. Findings of the FTC after investigation:

(1) The FTC requested Cheng Ming Construction and Bo Gen Development to provide written statements and also to give their oral statements at the FTC. The statements revealed that Cheng Ming Construction built and marketed the housing project and commissioned Bo Gen Development to plan the advertising as well as help sell the units. Bo Gen would get a certain percentage of the sales for its service and also certain part of the profit from the units it sold. Therefore, both Cheng Ming Construction and Bo Gen Development were both considered advertisers in this case.

(2) At the request of the FTC, the Taoyuan City Government provided its opinion and pointed out that according to Article 1, Chapter 1 of the Building Technical Regulations, a flat area with no shelter above is called a terrace. Meanwhile, as Article 25(1) of the Building Act provides that "without review made by and the building permit issued by the municipal or county (city) (bureau) competent authority of construction, anyone may not construct, use or demolition any building," any structures constructed on the terrace without the permission of the competent authority would become illegal buildings.

3. Grounds for disposition:

(1) The uses of buildings described in home-marketing advertisements are important factors that may have an effect on consumers when they decide whether they will make their purchases or not. When marketing the housing project, Cheng Ming Construction and Bo Gen Development posted the wording of "gym and lounge

bar" in the advertisements entitled "Line Generation, Small Capital Style MRT Intelligent Homes" and "Fashion Bobo Small Capital Style MRT Intelligent Homes" and also displayed the "13F layout," "3D gym schematic," "3D bar schematic," "3D aerobics room schematic" and "3D pool room schematic" on the electronic billboard at the reception center for the salespeople to describe the facilities and market the units. The overall advertising gave consumers the impression that the facilities on the rooftop terrace could be legally used as advertised. However, the Taoyuan City Government pointed out that the structures constructed on the terrace without the permission of the competent authority would be considered illegal buildings. In other words, the facilities were not provided as advertised and homebuyers could not enjoy the facilities advertised; the positions where the facilities were supposed to be built were also inconsistent with the uses indicated in the as-built drawings. The inconsistency between the advertisement contents and the reality could cause concerned consumers to have wrong perceptions or even make wrong decisions. The conduct was in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive of Cheng Ming Construction and Bo Gen Development for the unlawful act, the level of harm, the seriousness of the violation, the business scale of the two companies, and their attitude after the violation, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$1 million on Cheng Ming Construction and NT\$450,000 on Bo Gen Development.

Appendix:

Cheng Ming Construction Development Co., Ltd.'s Uniform Invoice Number:
80735291

Bo Gen Development Co., Ltd.'s Uniform Invoice Number: 54534241

Summarized by Yang, Hsiang-Yu; Supervised by: Lai, Mei-Hua

Jie Shun Construction Ltd., Quan Yue Advertising Co., Ltd. & An Jia International Co., Ltd.

1342nd Commissioners' Meeting (2017)

Case: Jie Shun Construction, Quan Yue Advertising, and An Jia International violated the Fair Trade Law by posting false advertisements to market “An Jia MOre+” housing project

Key Word(s): Mezzanine design, presale home, false advertisement, intentional joint implementation

Reference: Fair Trade Commission Decision of July 26, 2017 (the 1342nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106058

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. A private citizen complained to the FTC about Jie Shun Construction Ltd. (hereinafter referred to as “Jie Shun Construction”) and Quan Yue Advertising Co., Ltd. (hereinafter referred to as “Quan Yue Advertising”) engaging in false advertising by indicating on Floor Plan A and Floor Plan B and in the advertisements for the “An Jia MOre+” housing project in Wanhua District of Taipei City that the B1 parking space could be used for other purposes while the mezzanine design in the model home was also inconsistent with the description in the building permit.

2. Findings of the FTC after investigation:

(1) Jie Shun Construction provided the capital and built the housing project in question and signed presale property agreements with consumers in its business name. On August 1, 2013, the company signed an advertising and marketing contract with Quan Yue Advertising for the latter to be in charge of advertisement production and sales of the units of the housing project. However, on Floor Plan A and Floor Plan B and in the advertisements for the housing project, it was indicated “Investor

and builder: An Jia International” while Floor Plan A also showed the wording of “An Jia International, a creative builder,” “An Jia International founded in 1988, having gone through good and bad times in the past 24 years...” and “It is our aspiration that every home we build will be a memorable beautiful construction in the contemporary era.” A list of works produced by An Jia International since 2004 was also provided. Another finding of the investigation revealed that Jie Shun Construction was founded in 2009 and An Jia International Enterprise Co., Ltd. (hereinafter referred to as “An Jia International”) in 1988. Among the 13 housing projects listed, only one housing project was built by Jie Shun Construction and two housing projects were by other companies. The other 10 housing projects were constructed by An Jia International.

(2) An Jia International and Jie Shun Construction shared their employees. When the housing project was marketed, An Jia International’s personnel were responsible for application of the company seal and contract signature. In the meantime, a description of the housing project was also posted on the website of An Jia International, carrying the text of “An Jia International has a firm grasp of the rare quality of the capital city and releases An Jia MOre+ after the units of An Jia 2MOre were sold out in no time.”

(3) Floor Plan A and the advertisements showed the wording of “a schematic 3D perspective of the second lobby for automobiles” and the wording of “B1 space like the guest reception hall on the ground floor...a multifunction communal space and the second lobby for automobiles.” However, according to the Taipei City Government, if the first basement level originally approved to be “air raid shelter and parking space” was turned into public facilities such as a “lobby” or a “multifunction room” after the housing project was completed, it would be inconsistent with the legal use of the building in violation of the Building Act.

(4) There was a mezzanine structure in the toilet area in the model home for the housing project. Clothes were hung and boxes were placed in the upper level and lighting was also provided to allow people to use the space. In addition, through the bedroom window, another mezzanine space with sofas, a small tea table and bookcases could be seen. Yet according to the Taipei City Government, the original drawings attached to the application for permission for installation of the model

home showed no platform space above the toilet; therefore, the model home had to be considered an illegal structure. At the same time, the as-built drawings attached to the building permit and building use license also had no indication of any platform space. In other words, installation of mezzanine structures without permission after obtaining the building permit would be investigated and sanctioned according to law.

3. Grounds for disposition:

(1) Jie Shun Construction provided the capital and built the housing project, and commissioned Quan Yue Advertising to produce the advertisements and sell the units. Hence, both Jie Shun Construction and Quan Yue Advertising were considered the advertisers in this case and had to be held responsible for false advertising when the advertisements posted to market the housing project involved untruthfulness.

(2) As for the wording of “Investor and builder: An Jia International” shown on Floor Plan A and Floor Plan B and in the advertisements, the overall impression for consumers was the housing project was built by An Jia International. However, the investigation indicated that Jie Shun Construction, not An Jia International, provided the capital and built the housing project. The name of the construction company posted in the advertisements was inconsistent with reality; therefore, it was a false and misleading representation in violation of Article 21(1) of the Fair Trade Law. Although An Jia International was not an advertiser in this case, according to Article 14(1) of the Administrative Penalty Act, “Persons who act jointly and intentionally in the commission of an act in breach of duty under administrative law shall be punished separately depending upon the seriousness of the situation in which the act committed by each of them has resulted.” The investigation indicated that An Jia International did participated in marketing the housing project, was aware of its name being used for the housing project, and knowingly posted the advertisements in collaboration with Jie Shun Construction. The name of An Jia International was applied to advertise the housing project because the company had a better reputation and associations could be made with the better image of the company. The practice would definitely have a significant effect on the results of the false advertisements. An Jia International obviously played an important role in the

false advertising and the participation could be considered an objective constituent element in the joint implementation of the false advertising with the advertisers. In other words, An Jia International intentionally worked with the advertisers to post the false advertisements carrying the false statement of “Investor and Builder: An Jia International.” Therefore, An Jia International also violated Article 21(1) of the Fair Trade Law.

(3) The wording of “B1 space...a multifunction communal space and the second lobby for your automobiles” in Floor Plan A and the advertisements gave the impression that the first level in the basement could be used as a space for “multiple functions” and the “second lobby.” However, according to the Taipei City Government, the approved use of the first level in the basement was “air raid shelter and parking space” and could not be used for other public facilities. In other words, the indication in Floor Plan A and the advertisement that the first level of basement could be used for public facilities was inconsistent with reality and a false and misleading representation in violation of Article 21(1) of the Fair Trade Law.

(4) As for the mezzanine design displayed in the model home, according to the Taipei City Government, the model home had not been set up in accordance with the original drawings approved. Hence, it was an illegal structure. In the meantime, the as-built drawings associated with the building permit and building use license did not include any platform space, either. If the mezzanine above the toilet was constructed after completion of the housing project, it would be in violation of building regulations. That meant the display in the model home to mislead consumer to believe a mezzanine structure could be installed was incompliant with the fact in violation of Article 21(1) of the Fair Trade Law.

(5) As described above, the wording of “B1 space...a multifunction communal space and the second lobby for your automobiles” in Floor Plan A and the advertisements posted by Jie Shun Construction and Quan Yue Advertising for the housing project, the mezzanine design in the model home and the collaboration with An Jia International to indicate the latter as the investor and builder of the housing project were a false and misleading representation able to affect transaction decision in violation of Article 21(1) of the Fair Trade Law. The FTC imposed an

administrative fine of NT\$1.8 million on Jie Shun Construction, NT\$900,000 on Quan Yue Advertising and NT\$600,000 on An Jia International in accordance with the first section of Article 42 of the Fair Trade Law.

Appendix:

Jie Shun Construction Ltd.'s Uniform Invoice Number: 29076675

Quan Yue Advertising Co., Ltd.'s Uniform Invoice Number: 53527833

An Jia International Co., Ltd.'s Uniform Invoice Number: 23009622

Summarized by Chang, Wei-Chih; Supervised by: Chen, Jen-Ying

Shin Ruenn Development Co., Ltd. & Hai Yue International Development Co., Ltd.

1348th Commissioners' Meeting (2017)

Case: Shin Ruenn Development and Hai Yue International violated the Fair Trade Law by posting false advertisements to market the “Shin Ruenn Feng Cai” housing project

Key Word(s): Real estate, advertisement, balcony moved outward

Reference: Fair Trade Commission Decision of September 6, 2017 (the 1348th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106075

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. A private citizen complained to the FTC about Shin Ruenn Development Co., Ltd. (hereinafter referred to as “Shin Ruenn Development”) and Hai Yue International

Development Co., Ltd. (hereinafter referred to as “Hai Yue International”) using adhesive tapes to form dotted lines in the model home to mark the area created after the balcony was moved outward when marketing the “Shin Ruenn Feng Cai” housing project. A desk, bookcases and a raised floor were put in to indicate the area as part of the interior to mislead consumers to make wrong associations. The conduct was in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

The FTC sent a written request to the complainant for further evidence and also issued written requests for Shin Ruenn Development and Hai Yue International to present their arguments in writing and also provide their statements at the FTC. Opinions and related evidence were also requested from the Public Works Department of New Taipei City Government.

3. Grounds for disposition:

(1) Dotted lines were applied in the model home to include the balcony space as part of the interior. Consumers without knowledge about building regulations had no idea that use of the original balcony space as part of the interior would be in violation of building regulations. Their only impression from the overall advertising was the area indicated with dotted lines could be legally used as interior space. Shin Ruenn Development admitted the area marked as part of the interior space with dotted lines was originally a balcony in the engineering drawing approved. Hence, the advertisement was inconsistent with the approved engineering drawings. The change of design did not comply with related building regulations and the company never applied to the building authority for approval to change the balcony space into part of the interior. Meanwhile, the opinion and related information from the Public Works Department of New Taipei City Government indicated that as set forth in Articles 39 and 87 of the Building Act, if the engineering conducted at the construction site did not comply with the engineering drawings approved, the builder had to act in accordance with the aforementioned regulations to make changes to be consistent with the approved engineering drawings or apply for approval of change of design.

The statutory floor area ratio of the housing project was 400% and the design floor area ratio was 399.99%. Change of the original balcony space to become part of the interior would involve increase of total floor area, but, according to the approved drawings, there was no extra floor space to accommodate the change. Therefore, the units of the project could not be handed over for homebuyers to use the space as advertised. Besides being inconsistent with the original engineering drawings approved, the advertising also would mislead consumers to believe they could use the space as planned by the builder. The difference between the representation and reality exceeded what the general public could accept. It could also cause consumers to have wrong perceptions or make wrong decisions. In consequence, market competition and order would lose its original function and unfair competition would be resulted. Hence, the conduct was a false and misleading representation in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and purpose of Shin Ruenn Development and Hai Yue International for engaging in the unlawful act, the inappropriate profit expected, the level of harm of the unlawful act to trading order, the duration of harm occurring to trading order, the profit gained as a result of the unlawful act, the scale of business of the offenders, their management conditions and market status, types of violation in the past, intervals and penalties received, the level of remorse and cooperativeness throughout the investigation and other factors, the FTC cited the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$700,000 on Shin Ruenn Development and NT\$500,000 on Hia Yue International.

Appendix:

Shin Ruenn Development Co., Ltd.'s Uniform Invoice Number: 16318881

Hai Yue International Development Co., Ltd.'s Uniform Invoice Number: 22624873

Summarized by Wu, Jia-Lin ; Supervised by: Chang, Chan-Chi

Xin Bao Construction Co., Ltd. & Mei Li Sheng Realty Co., Ltd.

1349th Commissioners' Meeting (2017)

Case: Xin Bao Construction and Mei Li Sheng Realty violated the Fair Trade Law in marketing the "Xin Bao Xi Yue" housing project

Key Word(s): Illegal structure, false advertising

Reference: Fair Trade Commission Decision of September 13, 2017 (the 1349th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106077

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. In an advertisement on 591.com for its "Xin Bao Xi Yue" housing project (hereinafter referred to as "the housing project") in Sanchong District, New Taipei City, Xin Bao Construction Co., Ltd. (hereinafter referred to as "Xin Bao Construction") posted the wording of "public facilities:...gym, KTV, cooking classroom..." as well as the "1F floor plan" and pictures of "top floor; Cloud Gym with panoramic views and Starlight KTV" and "2F Prince Pool Room and Life Cooking Classroom." The FTC's personnel visited the site in April 2017 for inspections and found out Mei Li Sheng Realty Co., Ltd. (hereinafter referred to as "Mei Li Sheng Realty") was delegated to market the housing project. During marketing, Mei Li Sheng Realty also used print advertising material, including the "1F floor plan," to introduce the housing project, but false advertising was involved.

2. Findings of the FTC after investigation:

(1) The FTC sent written requests for Xin Bao Construction and Mei Li Sheng Realty to present their written statements and also provide oral statements at the FTC. The results indicated that Xin Bao Construction built and marketed the housing project and also delegate Mei Li Sheng Realty to be in charge of advertising planning

and sell the units. Mei Li Sheng Realty could get a certain percentage of the sales amount for its services as well as receive a part of the sales premiums for profit. Therefore, both Xin Bao Construction and Mei Li Sheng Realty were considered advertisers in the case.

(2) In answer to the FTC's request, the New Taipei City Government opinion was that the area for the gym and KTV on the top floor would take up two thirds of the open structure indicated in the as-built drawings. If the space was surrounded by French windows and a glass roof, there would be an increase of floor space and it would become an illegal structure. As for the area for the pool room and cooking classroom on the second floor, it was the space to be used by the management committee as indicated in the as-built drawings. According to Article 3 of the New Taipei City Regulations for Use, Management and Maintenance of Space in Apartment Buildings, the space was for the duty room for management and service personnel, other necessary facilities, the management committee office and a meeting room. Pool rooms and cooking classrooms were not items included in the regulations. In other words, unauthorized change of use was involved and the conduct was in violation of Article 73(2) of the Building Act.

3. Grounds for disposition:

(1) The use of buildings described in home marketing advertising is a decisive factor when homebuyers consider whether they will make the purchase. Xin Bao Construction posted the wording of "public facilities:...gym, KTV, cooking classroom..." the "1F floor plan" and pictures of the "top floor; Cloud Gym with panoramic views and Starlight KTV" and "2F Prince Pool Room and Life Cooking Classroom" in the advertisement on 591.com. Mei Li Sheng Realty, which was delegated to sell the units, also adopted the "1F floor plan" and other print advertising material for the personnel at the reception center to introduce the units. The overall advertising was able to mislead consumers to believe the gym, KTV, pool room and cooking classroom respective on the top floor and the second floor could be legally used as advertised. Nonetheless, according to the New Taipei City Government, the gym and KTV on the top floor were illegal structures whereas the pool room and

cooking classroom involved unauthorized change of use. Both were in violation of Article 73(2) of the Building Act. Hence, the representation in the advertisement was inconsistent with reality and could mislead consumers to have wrong perceptions and decisions with regard to the content and use of the housing project. In subsequence, market competition and order would lose functions and unfair competition would be resulted. The conduct was in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive of Xin Bao Construction and Mei Li Sheng Realty for engaging in the unlawful act, the level of harm created, the seriousness of violation, the scale of business of both companies and the attitude of the two companies after the violation, the FTC imposed an administrative fine of 1 million on Xin Bao Construction and NT\$450,000 on Mei Li Sheng Realty in accordance with the first section of Article 42 of the Fair Trade Law.

Appendix:

Xin Bao Construction Co., Ltd.'s Uniform Invoice Number: 53127885

Mei Li Sheng Realty Co., Ltd.'s Uniform Invoice Number: 96929836

Summarized by Yang, Hsiang-Yu; Supervised by: Lai, Mei-Hua

Asia Pacific Telecommunications Co., Ltd.

1361st Commissioners' Meeting (2017)

Case: Asia Pacific Telecom violated the Fair Trade Law by posting false advertising for its Nationwide Network

Key Word(s): Advertising, charge, unlimited use

Reference: Fair Trade Commission Decision of December 6, 2017 (the 1361st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106112

Industry: Wireless Telecommunications Activities (6102)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The FTC inspected an audio-video advertisement posted on the Internet by Asia Pacific Telecom Co., Ltd. (hereinafter referred to as "APT") for a promotional charge plan (hereinafter referred to as "the promotional plan") for the Nationwide Network. The narration in the advertisement stated "unlimited phone calls and Internet access" and the wording of "unlimited phone calls + Internet access" was also displayed simultaneously. However, at the bottom of the image, restrictions on the quantity of phone numbers called to and total call minutes were shown in smaller and inconspicuous characters. The FTC suspected it was a violation against Article 21 of the Fair Trade Law and therefore initiated an ex officio investigation. At the same time, both the FTC and the National Communications Commission also received from private citizens complaints that it was emphasized in the advertisement that the promotional plan offered unlimited calls but the total call minutes was limited; they thought false advertising against Article 21 of the Fair Trade Law was involved.

2. Findings of the FTC after investigation:

The investigation showed that the promotional plan of APT offered unlimited phone calls and Internet access for NT\$999 each month. APT posted the promotional plan advertisement on TV, digital network media, on the frame of display screen and cross inserted card inside the vehicles of Taiwan Taxis, on the display screen inside the vehicles of Taiwan Taxis, on the media tower on top of Syntrend Building and on the banners at APT outlets and the cover of the APT periodical and posters. The advertisement displayed the wording of "unlimited phone calls and Internet access" and "unlimited phone calls and Internet access for a monthly charge of NT\$999; unlimited mobile and intranet access!" According to APT, the promotional plan offered unlimited online transmission, but phone calls were limited to 300 different numbers for landline calls and mobile calls each and the maximum call minutes of 1,900 for both landline and inter-net calls was also imposed because of the consideration of preventing abusive use for commercial purposes.

3. Grounds for disposition:

(1) The misleading representation in the audio-video advertisement broadcasted on TV and inside the vehicles of Taiwan Taxis: In the advertisement broadcasted on major TV channels and inside the vehicles of Taiwan Taxis was a misleading representation. There was the narration stating "unlimited phone calls and Internet access" while the wording of "unlimited phone calls + Internet access for a month charge of NT\$900; unlimited landline, mobile and intranet calls" was displayed synchronously. The audio-video advertisement broadcasted inside the vehicles of Taiwan Taxis also had the narration saying "unlimited phones and Internet access for NT\$999 per month" and the synchronous display of the wording of "unlimited phone calls + Internet access for NT\$999 each month; landline, mobile, intranet and internet calls all included." However, in the advertisement the restriction was shown at the bottom of the image in smaller characters, "There are upper limits on the quantity of phone numbers called to and the total minutes of free phone calls made to other networks (including landlines)." The audio-video advertisement gave the impression that phone calls, including landline, mobile, inter-net and intranet, and Internet access were unlimited. According to APT, the company did offer unlimited Internet access, but the limit of 300 phone numbers and the maximum of 1,900 minutes of inter-net and landline calls had to be imposed to prevent abusive use for commercial purposes. Apparently, the narration and display of the wording of "unlimited phone calls and Internet access for NT\$999 per month" in the audio-video advertisement was meant to emphasize the special offer. However, the small characters disclosing the restriction were disproportionate to the size of the text showing the special offer in the advertisement and too inconspicuous for consumers to notice the content of restriction. For this reason, the FTC concluded the promotional plan advertisement was a misleading representation.

(2) The misleading representation posted in other media: APT posted the advertisement on the UDN network and other digital networks, on the frame of the display screen and cross inserted card inside the vehicles of Taiwan Taxis, on the medial tower on top of Syntrend Building and at the company's outlets across the country. In the advertisement, the claim of "unlimited phone calls + Internet access,

landline, mobile, intranet and inter-net calls all included, for NT\$999 per month" was posted, with no restriction indicated. It gave consumers the overall impression that the offer was unlimited phone calls, including landline, mobile, inter-net and intranet calls, without any restriction. However, the quantity of phone numbers called to and the total call minutes were limited as mentioned earlier, yet the limitation was not disclosed in the advertisement. Hence, the advertisement was indeed a false and misleading representation.

(3) As described above, the wording of "unlimited phone calls + Internet access; landline, mobile, intranet and inter-net calls all included" posted in the advertisement was a false and misleading representation with regard to content of service and could also affect transaction decision in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same Article was applicable *mutatis mutandis*. After assessing the motive and purpose of APT for engaging in the unlawful act, the inappropriate profit expected, the level of harm resulted from the unlawful act to trading order and the duration of the harm, the profit gained from the unlawful act, the scale of business, management condition and market status of the company, past violation types, frequency, intervals and penalties received, level of remorse and cooperativeness throughout the investigation, the FTC imposed an administrative fine of NT\$600,000 on APT in accordance with the first section of Article 42 of the Fair Trade Law.

Appendix:

Asia Pacific Telecom Co., Ltd.'s Uniform Invoice Number: 70771579

Summarized by Huang, Li-Ming; Supervised by: Tsao, Hui Wen

Fubon Multimedia Technology Co., Ltd.

1363rd Commissioners' Meeting (2017)

Case: Fubon multimedia violated the Fair Trade Law by posting false advertising for the "streamlined KYMCO GP125 scooter with drum brakes"

Key Word(s): Market price, momo Shopping Site

Reference: Fair Trade Commission Decision of December 20, 2017 (the 1363rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106111

Industry: Retail Sale via Mail Order Houses or via Internet (4871)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. A private citizen filed with the FTC a complaint about momo Shopping Site claiming the market price of the "streamlined KYMCO GP125 scooter with drum brakes" being sold on the website was 73,000 dollars New Taiwan dollars but the promotional price was only 54,500 dollars, and yet the price for the same product on the website of Kwang Yang Motor Co., Ltd. was 47,600 dollars. Fubon Multimedia Technology Co., Ltd. (hereinafter referred to as "Fubon Multimedia") was suspected of violating Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

Between March 7 and July 28, 2017, Fubon Multimedia posted an advertisement on its momo Shopping Site for the "streamlined KYMCO GP125 scooter with drum brakes" and claimed the market price of the product was 73,000 dollars, giving the impression that the product had been sold for 73,000 dollars on the market during the period the advertisement was posted. However, Fubon Multimedia could not present any record or evidence that the product had ever been sold for 73,000 dollars. The company expressed the market price had been calculated by its planning personnel according to the data collected in 2016 before it was posted on the momo Shopping Site. Although Fubon Multimedia contested that it had failed to change the price after

market price fluctuations in 2017 and therefore the shopping website continued to use the 2016 market price, the company was unable to present any record or evidence that the product had ever been sold for 73,000 in 2016. Hence, the representation in the advertisement was inconsistent with reality. In addition, Fubon Multimedia was selling the product for 54,500 dollars on the momo Shopping Website, significantly lower than the market price of 73,000 dollars posted, giving the impression that a large discount was being offered and likely to cause consumers to have wrong perceptions and decisions.

3. Grounds for disposition:

(1) Consumers obtained price information about the product in question from the momo Shopping Site, placed their orders and paid the money. Fubon Multimedia was the payee, issued the invoice and provided after-sale service. For consumers, Fubon Multimedia was the trading counterpart they did transactions with and the manager of the website. The company was the seller of the product in question and profited from the sales. Plus, Fubon Multimedia also admitted the advertisement that the product was being sold for 73,000 dollars had been produced and posted by its planning personnel although the company could not produce any record or evidence that the product had ever been sold for 73,000 dollars. Moreover, Fubon Multimedia was selling the product for 54,500 dollars which was significantly lower than the market price of 73,000 dollars posted. The impression that the momo Shopping Site was giving a rather considerable discount was likely to cause consumers to have wrong perceptions and decisions. Therefore, it was a false and misleading representation in violation of Article 21(1) of the Fair Trade Law.

(2) After assessing the motive and purpose of Fubon Multimedia for engaging in the unlawful act, the inappropriate profit expected, the level of harm of the unlawful act to trading order, the duration of the harm to trading order, the profit gained as a result of the unlawful act, the business scale, management condition and market status of the company, whether the company had been corrected or warned by the central competent authority for the same type of violation, past violation types, frequency, intervals and penalties received, the level of remorse after the unlawful act and

cooperativeness throughout the investigation and other factors, the FTC imposed an administrative fine of 150,000 dollars on Fubon Multimedia in accordance with the first section of Article 42 of the Fair Trade Law.

Appendix:

Fubon Multimedia Technology Co., Ltd.'s Uniform Invoice Number: 27365925

Summarized by Wu, Bo-Yu; Supervised by: Chang, Chan-Chi

Bo Yuan Construction Co., Ltd.

1364th Commissioners' Meeting (2017)

Case: Bo Yuan Construction violated the Fair Trade Law by posting false advertising for its "Zhong Shan Kai Yan" housing project

Key Word(s): Public facility, housing project, false advertising

Reference: Fair Trade Commission Decision of December 27, 2017 (the 1364th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106116

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. When marketing the "Zhong Shan Kai Yan" housing project (hereinafter referred to as "the housing project") it built, Bo Yuan Construction Co., Ltd. (hereinafter referred to as "Bo Yuan Construction") indicated in the advertising flyers and on the "1F," "RF" and "B1" floor plans shown in electronic advertisements that there would be public facilities, including a lounge bar, a pool room, a multifunction recreation area, a gym and motorcycle parking space. However, the claim was inconsistent with

the description in the as-built drawings. Therefore, false advertising was suspected.

2. Findings of the FTC after investigation:

(1) Bo Yuan Construction built the housing project and delegated Ju Feng Hotel Management Consultancy Co., Ltd. (hereinafter referred as “Ju Feng Consultancy”) to plan the advertising and sell the units. Besides the personnel expenses and management cost from marketing the housing project, Bo Yuan Construction would also pay Ju Feng Consultancy for the advertising and marketing, as well as the miscellaneous expenses, utilities and phone bills of the reception center and the model home.

(2) It was claimed in the advertisements that the housing project would include public facilities, namely a lounge bar, a pool room, a multifunction recreation area, a gym and space for parking 34 motorcycles. The FTC's investigation revealed the public facilities were respectively located on the ground floor, the first and second rooftop levels and the first level in the basement. However, these areas were indicated in the as-built drawings and the corresponding floor plans as a motorcycle parking area, landings and the machine room, and the parking space for 4 cars and 3 motorcycles respectively. According to the Ministry of the Interior and the Taipei City Government, if changes were to be made to turn the areas into a lounge bar, a pool room and the parking space for 34 motorcycles, application for approval of change of building use license would be required. Otherwise, it would be a violation Article 73(2) of the Building Act and a fine could be imposed according to Article 91 of the same Act. As for the first and second rooftop levels, they were originally approved as for landings and the machine room. A gym and a multifunction recreation area were indoor spaces and had to be installed on a separate floor. If additional structures were put in as described in Article 9 of the Building Act, the builder had to apply for a building permit according to Article 28 of the Building Act. Otherwise, it would be in violation of Article 25 of the Building Act and sanctions could be imposed in accordance with Article 86 of the Building Act.

3. Grounds for disposition:

(1) Bo Yuan Construction provided the capital and built the housing project, and also signed property transaction agreements with the buyers. It was evident that, besides putting out the money and building the housing project, Bo Yuan Construction also sold its own products. Although the company delegated Ju Feng Consultancy to produce the advertising and market the units, the investigation showed the advertising contents and related information were all provided by Bo Yuan Construction and it also paid for the advertising. Therefore, Bo Yuan Construction was considered the advertiser in the case.

In the advertisements for the housing project, the motorcycle parking space on the first floor, the landing on the first rooftop level and the machine room on the second rooftop level were respectively indicated as a lounge bar, a pool room, a multifunction recreation area, a gym and the space for parking 34 motorcycles.

(2) The difference was hard for consumers to accept and likely to cause consumers to have wrong perceptions and decisions. It was a false and misleading representation in violation of Article 21(1) of the Fair Trade Law. After assessing the motive behind the unlawful act, the level of harm of the unlawful act to trading order, the duration of the harm to trading order, the business scale, management condition and market status of the company, past violations and the level of cooperativeness throughout the investigation, the FTC imposed an administrative fine of NT\$1.9 million on Bo Yuan Construction in accordance with the first section of Article 4 of the Fair Trade Law.

Appendix:

Bo Yuan Construction Co., Ltd.'s Uniform Invoice Number: 27543652

Summarized by Tai, Yu-I; Supervised by: Tsao, Hui-Wen □

7.2 Judicial Cases

Yi Yi Construction Co., Ltd.

Taipei High Administrative Court (2017)

Case: Taipei High Administrative Court overruled administrative litigation filed by Yi Yi Construction over the FTC's decision

Key Word(s): Presale home, advertising, floor plan

Reference: Taipei High Administrative Court (2017) Su Tzu No.54

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Articles 21(1) of the Fair Trade Law

Summary:

1. On March 9, 2016, the defendant (FTC), after an investigation, concluded that the plaintiff Yi Yi Construction Co., Ltd. had adopted a false and misleading representation with regard to the use and content of its product that gave rise to the result of affecting transaction decision in violation of Article 21(1) of the Fair Trade Law, by marking the statutory parking spaces, balconies and terraces as part of the interior space, such as the living room, kitchen, bedroom and bathroom on the floor plans for A5, A10, B1, B3 and B6 units, as well as by indicating bedrooms, bathrooms, terraces and balconies could be built on the statutory vacant lot, in an advertisement posted on Taichung.housetube.tw for its "Yuan Shan Shui" presale home project. Therefore, the FTC imposed an administrative fine of NT\$1.2 million via Disposition Kung Ch'u Tzu No.105126 dated November 17, 2016. The plaintiff found the sanction unacceptable and filed this administrative litigation.

2. On the floor plans in the advertisement described above, the plaintiff used dotted lines to mark the statutory parking spaces, balconies and terraces as part of the living room, kitchen, bedroom and bathroom; it also marked the statutory vacant lot with dotted lines to indicate bedrooms, bathrooms, terraces and balconies could be built thereon without mentioning at all its intention to act according to Article 39 of the

Building Act to apply for an approval to change the floor plans. Later in its statement made on April 29, 2016 and the statement record dated July 7, 2016, the plaintiff again did not disclose its intention to apply for changes of floor plans according to Article 39 of the Building Act. In other words, the plaintiff's contestation that the dotted lines on the floor plans were part of a "schematic of legal changes that can be made in the future" could not be accepted. Even if the plaintiff had really filed an application for changes of its building use license, the competent authority would not have necessarily given approval on the application. Consumers could have been misled to believe the areas marked with dotted lines on the floor plans were legal and made purchases. That meant the advertisement had put consumers in a position with the "risk of facing fines for violating the Building Act." Apparently, that was not what consumers could foresee while they bought the homes. In other words, the advertisement had indeed involved use of "a representation or symbol to cause concerns about misunderstanding or erroneous decisions of the general or the relevant public" specified in Point 6 of the Fair Trade Commission Disposal Directions on Handling Cases Governed by Article 21 of the Fair Trade Law.

3. According to Article 42 of the Fair Trade Law, the competent authority may impose on an enterprise in violation of Article 21 an administrative penalty no less than NT\$50,000 and no more than NT\$25 million. The original sanction of NT\$1.2 million in this case was determined according to the type of violation committed by the plaintiff (construction of structures inconsistent with the floor plans approved and false description of the legality of the floor plans in the advertisement), the business capital of the plaintiff and its sales in the three recent years, the fact that the housing project at issue included 14 units and the sale revenues reached approximately NT\$134.88 million. The sanction was not excessively heavy or inconsistent with the principle of proportionality.

4. As described above, the original sanction was not against the law. The plaintiff's appeal for revocation of the original sanction was ungrounded and therefore overruled by the court.

Appendix:

Yi Yi Construction Co., Ltd.'s Uniform Invoice Number: 27483227

Summarized by Lai, Chia-Ching; Supervised by: Chen, Chun-Ting

Far Eastern Ai Mai Co., Ltd.

Supreme Administrative Court (2017)

Case: Supreme Administrative Court overruled the administrative litigation filed by Far Eastern regarding its violation of the Fair Trade Law

Key Word(s): Advertising, misleading

Reference: Supreme Administrative Court Judgment (2017) Pan Tzu No. 299

Industry: Department Stores (4712)

Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. Earlier, the appellee the Fair Trade Commission (hereinafter referred to as “the FTC”) received complaints accusing the appellant Far Eastern Ai Mai Co., Ltd., the enterprise operating the A.Mart Chain, purchasing a keyword advertisement in violation of the Fair Trade Law. After an investigation, the FTC concluded that the appellant's claim of "buying from A.Mart Taiwan Online is cheaper than from Save&Safe Online" (hereinafter referred to as “the advertisement in question”) posted in the keyword advertisement had been a false and misleading representation with regard to content of product in violation of Article 21(1) of the Fair Trade Law and, therefore, imposed on it an administrative fine of NT\$500,000. The appellant found the sanction unacceptable and filed an administrative litigation that was later overruled. Hence, the appellant appealed to the Supreme Administrative Court.

2. The appellant purchased a keyword advertisement claiming "buying from A.Mart Taiwan Online is cheaper than from Save&Safe Online." However, a comparison of the prices of the Sunflower Lemon Sandwich Cookies Bucket, Chung Hsiang Family Package Natural Series Seaweed Soda Crackers, Sensodyne Complete Protection Toothpaste, Weilih Yi Du Zan Beef Noodles, Philips micro-computer-controlled 4-person Rice Cooker and Magic Amah Lemon-flavored Bathroom Cleaner Spray, for example, revealed that they were cheaper at the Save&Safe Online Store. The FTC therefore concluded it was not necessarily cheaper to buy from A.Mart Taiwan Online than from Save&Safe Online and made the decision accordingly. In the advertisement in question, the appellant posted the claim of "buying from A.Mart Taiwan Online is cheaper than from Save&Safe Online" without presenting any concrete evidences and comparison standards. The practice could cause consumers to have the misunderstanding that shopping with A.Mart Taiwan Online would be cheaper than buying from Save&Safe Online and the trading order on the marketplace would be therefore affected. It was a false and misleading representation with regard to products and could affect transaction decisions. The FTC's original decision of the appellant having violated Article 21 (1) of the Fair Trade Law was consistent with the aforesaid regulation.

3. Based on the above facts, the decision that sustained the original sanction made by the FTC and overrule the appellant's administrative litigation over the ruling made at the first instance was legitimate. The appellant's accusation that the original decision was in violation of related regulations and to be revoked was groundless and therefore had to be rejected.

Appendix:

Far Eastern Ai Mai Co., Ltd.' Uniform Invoice Number: 05714195

Summarized by Chang, Wei-Chih; Supervised by: Chen, Jen-Ying

Chapter 8

Improper Offerings of Gifts or Prizes

VeeTime Corp.

949th Commissioners' Meeting (2010)

Case: VeeTime Corp. violated the Fair Trade Law for its promotional plan of “subscribing to fiber optic Internet connection and getting free cable TV service”

Key Word(s): Cable TV, fiber optic Internet connection, upper limits of gift and prize value

Reference: Fair Trade Commission Decision of May 13, 2015 (1227th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104036

Industry: Cable and Other Subscription Programming (6022)

Relevant Law(s): Article 23 of the Fair Trade Law

Summary:

1. The FTC received complaints that VeeTime Corp.'s offer of promotional plan of “subscribing to fiber optic Internet connection and getting free Cable TV service” could be unlawful. According to the flyers distributed by the company and the information posted on the company's website, one month of free cable TV service would be given to customers who subscribe to the “15M/4M” or “30M/8M” fiber optic broadband Internet connection service for one month, two months of free cable TV service to those who subscribe to the “15M/4M” or “30M/8M” fiber optic broadband Internet connection service for two months, and so on. The value of the gifts (free cable TV service) exceeded the value of each type of fiber optic broadband Internet connection service by several fold. Violation of Article 23 of the Fair Trade Law was thus suspected.

2. Findings of the FTC after investigation:

The value of the gift would be about 54% to 71% of the value of the service for

customers subscribing to the “15M/4M” speed connection service for three months to one year, and it would be 53% to 63% of the value of the service for customers subscribing to the “30M/8M” speed connection service for four months to one year. In both situations, the gift value already exceeded one half of the service value. For customers subscribing to the “15M/4M” or “30M/8M” speed connection service for two years, the worth of the gifts would be around 75% or 66% of the value of service. The gift value in each case described above also surpassed one half of the service value that is the upper limit set forth in Article 4 of the Regulations Governing the Amount of Gifts and Prized Offered by Businesses.

3. Grounds for disposition:

The value of the gifts offered by VeeTime Corp. along with its promotional plan of “subscribing to fiber optic Internet connection and getting free cable TV service” exceeded one half of the service value. It was an inappropriate practice of giving gifts to obtain trading opportunities in violation of Article 23 of the Fair Trade Law. After assessing the duration of the illegal practice, the sales of the company, the number of customers subscribing to the aforementioned services, the violation being the first ever, the fact that the company already showed its remorse, provided information and being cooperative during the investigation, and the competition conditions resulted from the company’s cross-region cable TV service operation, the FTC applied Article 42 of the Fair Trade Law, imposed on it an administrative fine of NT\$50,000, and also ordered it to cease the unlawful act at issue immediately after receiving the disposition.

Appendix:

VeeTime Corp.’s Uniform Invoice Number: 97176790

Summarized by Su, Min-Huang; Supervised by Yeh, Tien-Fu

Chapter 9

Other Deceptive or Obviously Unfair Conducts

9.1 Decisions

Chunghwa Telecom Co., Ltd.

1218th Commissioners' Meeting (2015)

Case: Chunghwa Telecom violated the Fair Trade Law for posting false comparative ads regarding charges for “100M Internet Access Speed + TV Channels”

Key Word(s): False and untrue, misleading

Reference: Fair Trade Commission Decision of March 11, 2015 (the 1218th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104021

Industry: Telecommunications (6100)

Relevant Law(s): Paragraph 4 of Article 21 and Paragraph 1 of the same Article applicable mutatis mutandis and Article 25 of the Fair Trade Law

Summary:

1. The FTC received complaints that Chunghwa Telecommunications Co., Ltd. (hereinafter referred to as “Chunghwa Telecom”) posted in the Pingtung region an ad in which charges for “100M Internet access speed + TV channels” were compared. The comparison was made between the NT\$1,184 plan of Chunghwa Telecom and the NT\$1,448 plan of “another business.” However, the “high definition channels,” “upload speed” and “daily life information” comparisons were false and untrue.

2. Findings of the FTC after investigation:

(1) Chunghwa Telecom claimed in the ad at issue that its NT\$1,184 plan offered 83 high definition channels but in reality the number of such channels was 77. As

the number of high definition channels was listed as a compared item, Chunghwa Telecom apparently considered it a key advantage in its service. Whether TV programs are run on high definition channels have a direct effect on their picture qualities. It would be an important factor when consumers make their decision as to whether they would subscribe to such service. For this reason, the untruthful statement in the said ad was a false, untrue and misleading representation in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same Article was applicable *mutatis mutandis*.

(2) The comparison in the advertisement posted by Chunghwa Telecom was “10M” of upload speed, yet the fact was the broadband access speed of the “NT\$1,448 plan” that “another business” business offered was 100M/20M, meaning download speed 100M and upload speed 20M. In addition, Chunghwa Telecom claimed in the ad that the NT\$1,448 plan” offered by “another business” did not include provision of daily life information. However, the “Daily Life Information Service” of the digital network TV services included in the “NT\$1,448 plan” did provide “EZ movie ticker booking,” “weather forecasts,” “High Speed Rail Schedules,” “Taiwan Railways Schedules” and “Lunar Calendar.” Consequently, Chunghwa Telecom obviously had made false statements about the upload speed and daily life information service included in the “NT\$1,448 plan” offered by “another business.” It was obviously unfair conduct in violation of Article 25 of the Fair Trade Law.

3. Grounds for disposition:

After assessing the motive behind the unlawful conduct of Chunghwa Telecom, the damage thus created, the seriousness of the violation, the business scale of the company, and the company’s attitude after the violation, the FTC applied the first section of Article 42 of the Fair Trade Law and imposed an administrative fine of NT\$300,000 on Chunghwa Telecom for its violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same Article was applicable *mutatis mutandis*, as well as another administrative fine of NT\$500,000 for its violation of Article 25 of the same law. The fines totaled NT\$800,000.

Appendix:

Chunghwa Telecom Co., Ltd.'s Uniform Invoice Number: 96979933

Summarized by Lee, Wan-Chun; Supervised by Lai, Mei-Hua

Zen Far Architecture Co., Ltd.

1229th Commissioners' Meeting (2015)

Case: Zen Far Architecture Co., Ltd. violated the Fair Trade law for demanding payment of deposits or certain fees to view presale home purchase contracts when marketing “Zen Far Da Du Hui” housing project

Key Word(s): Presale home, deposit, viewing contract

Reference: Fair Trade Commission Decision of May 27, 2015 (the 1229th Commissioners’ Meeting); Disposition Kung Ch’u Tzu No.104041

Industry: Real Estate Development (6700)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. On May 30 and June 19, the FTC’s staff members assumed the identity of regular consumers and visited the site where Zen Far Architecture Co., Ltd. (hereinafter referred to as “Zen Far Architecture”) was selling the presale home units named “Zen Far Da Du Hui” housing project. After conversation, the FTC’s staff members requested for a copy of the contract to take home and read. The salesclerk replied that a deposit of 200,000 NT dollars (same currency applies hereinafter) was required before the contract could be given to the consumers. Since such a sales practice was in violation of Article 25 of the Fair Trade Law, the FTC initiated an ex officio investigation to look into the matter.

2. Findings of the FTC after investigation:

(1) Zen Far Architecture contended that the purchase contract was placed on the counter at the reception center and homebuyers could ask for a copy to read at any time without paying a deposit. Payment of a deposit or a fee was for homebuyers intending to reserve their priority privileges to purchase a unit. It was no meant to restrict the right of homebuyers to view the contract. Homebuyers could just fill out the “contract-viewing request form” to acquire a copy without paying a deposit. In other words, Zen Far Architecture claimed that paying a deposit or not had nothing to do with homebuyers’ access to the contract. Moreover, it claimed that if any homebuyer decided not to make purchases after reading the contract and requested for contract cancellation, the deposit paid would be returned to the homebuyer unconditionally.

(2) According to the records of 315 already sold units provided by Zen Far Architecture, 300 of these homebuyers either paid deposits and acquired the contract on the same day or paid deposits on dates before acquiring the contract. To further investigate whether Zen Far Architecture had provide the purchase contract to homebuyers in the sales process and whether the company demanded homebuyers to pay a deposit or a certain fee to view the contract, the FTC conducted a questionnaire on the homebuyers. Seven of the homebuyers surveyed expressed that they had been unable to view the contract before paying deposits and such conduct had an effect on their interests.

3. Grounds for disposition:

(1) Compared to other consumer products, presale homes have the characteristic of being “high in value.” Moreover, since presale homes have not taken shape and their ownership is not yet registered, when the transaction on presale homes is conducted, related information available to homebuyers before signing of purchase contract is rather limited. Real estate developers undoubtedly are in a more advantageous position as far as information is concerned. In addition, real estate developers have unilaterally drafted the purchase contract, in which the facts about the object of transaction and the rights and obligations of both parties can

fully disclose. Under such circumstances, when a real estate developer demands homebuyers to pay a deposit (or a certain fee under any title to reserve priority to purchase a unit) before the provision of the said contract, the collection of such a deposit or fee will be obviously unfair as it puts homebuyers in a disadvantageous position when they make their purchase decisions. At the same time, such conduct will also constitute unfair competition for competitors who act according to the law and provide homebuyers with the contract. In other words, such a practice is obviously unfair conduct of unjustifiable restriction on the right of homebuyers to view the contract. If deemed likely to affect trading order, it is in violation of Article 25 of the Fair Trade Law.

(2) The sales of presale homes of the “Zen Far Da Du Hui” housing project started in August 2013. More than half of the homebuyers paid deposits and were provided the contract on the same day or paid deposits before they were given the contract. Furthermore, in the aforementioned questionnaire survey conducted by the FTC, 7 out of 12 homebuyers who responded to the questionnaire survey expressed that Zen Far Architecture had indeed asked for a deposit before providing them with the contract. This means that not a small percentage of homebuyers attested that they had been unable to view the contract before paying a deposit and this had made it impossible for them to understand related information and their rights. Even if the company promised to return their deposits, having paid a deposit already became a constraining factor in their negotiating capacity in terms of entering into the contract or when they made their final decisions. In other words, it was impossible that the homebuyers’ transaction decisions had not been affected by the practice at issue.

(3) Although Zen Far Architecture contended that even if homebuyers had requested to cancel the reservation after paying a deposit and reading the contract, the company would return the deposit in full. However, there was no relation between the company’s returning deposits to homebuyers and homebuyers’ reading the contract beforehand. The provisions in the presale home purchase contract had been standardized contract information established by Zen Far Architecture unilaterally. They could best present the facts about the presale homes and the rights and obligations of the seller and the buyer. However, such provisions included

professional terminology and complicated regulations. Viewing the content in advance would give trading counterparts the opportunity to seriously consider whether they would make the purchase. Only by doing so, the information asymmetry between the buyer and the seller could be balanced and the risk of homebuyers could be reduced. On the other hand, when homebuyers had to pay a deposit in order to view the contract, even if the deposit could be returned, they might still have to cope with the cost of time spent on negotiation and communication when the seller tried to save the deal. In other words, they could not be as free to come and go as when they had not paid the deposit. Zen Far Architecture could use the deposit in its hand as leverage to negotiate with the trading counterparts over and over again for an extended period of time. For law-abiding competitors who provided homebuyers with purchase contracts without asking for deposit payment, the practice of Zen Far Architecture constituted unfair competition.

(4) When marketing its presale homes, Zen Far Architecture demanded homebuyers to pay a deposit before the company would allow them to view the purchase contract. It took advantage of the information asymmetry it had over homebuyers to restrict without justification the right of homebuyers to read the contract. Moreover, the practice also constituted unfair competition to competitors who allowed homebuyers to read the purchase contract as required by the law. Zen Far Architecture adopted the said practice without complying with the business ethics in effective competition on the market and was therefore obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$800,000 on the company.

Appendix:

Zen Far Architecture Co., Ltd.'s Uniform Invoice Number: 13173721

Summarized by Tsai, Hui-Chi; Supervised by Ho, Yen-Jung

Cement Manufacturers

1230th Commissioners' Meeting (2015)

Case: Taiwan Cement Corporation, Asia Cement Corporation and Southeast Cement was complained for violating the Fair Trade Law

Key Word(s): Type II Portland cement, Taiwan Cement, Southeast Cement, Asia Cement

Reference: Fair Trade Commission Decision of June 3, 2015 (the 1230th Commissioners' Meeting)

Industry: Manufacture of Cement (2331)

Relevant Law(s): Articles 14, 19, and 24 of the Fair Trade Law in effect at the time of the conduct (Articles 15, 20, and 25 of the current version)

Summary:

1. An informer stated that before participating in a tender put up by BES Machinery Co. Ltd. for procurement of Type II Portland cement in June, 2012, he had made an agreement with Southeast Cement Corporation (hereinafter referred to as "Southeast Cement") for the latter to supply cement that will meet the quality requirements indicated in the test report as well as provide a sample to be presented with his bid.
2. On August 6, 2012, the informer won the tender by offering the price of NT\$2,600 per ton and signed a contract with BES Machinery Co. Ltd. However, Southeast Cement refused to supply the cement and the informer had to purchase the cement needed from Asia Cement Corporation (hereinafter referred to as "Asia Cement") at a higher unit price. The informer thought Southeast Cement had refused to supply the cement as agreed earlier because a downstream distributor of Taiwan Cement Corporation (hereinafter referred to as "Taiwan Cement") had not been awarded the contract and Taiwan Cement therefore had threatened to "stop buying slag from Southeast Cement" and "stop supplying cement clinker and cement products to Southeast Cement" so that Southeast Cement will be coerced into

compliance. For this reason, the informer filed the complaint with the FTC.

3. Grounds for non-disposition:

(1) Regarding the allegation that Taiwan Cement, Southeast Cement and Asia Cement had violated Article 14 of the Fair Trade Law at the time: The informer accused the three cement businesses of holding a meeting with respect to the Type II cement procurement project in question on August 14, 2012 and Southeast Cement refused to do transact with the informer consequently. The informer also provided the recordings of his five telephone calls with the staff members of Southeast Cement between August 14 and September 3 in 2012. However:

A. It was difficult to prove whether the consultation held between the three cement businesses on August 14, 2012 as mentioned in the telephone call recordings had really taken place. The FTC questioned Southeast Cement about the matter and the reply was the statement had been made to stop the informer from bothering the company any further. In addition, the three cement businesses all denied having had any consultation with regard to the Type II cement procurement project in question that caused Southeast Cement to refuse to do the transaction with the informer.

B. The telephone call recordings showed that the contents of the conversation had mostly been about hypothetical questions brought up by the informer and the staff members of Southeast Cement responded accordingly. In other words, the informer employed leading questions to express his subjective thinking and the replies given were mostly to brush him off. Therefore, it was difficult to use the telephone call recordings as evidence that the accused had really consulted to establish any concerted action.

C. After Southeast Cement refused to supply any cement, the informer turned to Asia Cement, who gave him a price quotation. Nevertheless, the informer decided not to purchase Type II cement from Asia Cement due to business considerations. If the three cement businesses had really held the alleged consultation regarding the Type II cement procurement project on August 14, 2012 that rendered the informer unable to fulfill his contract, Asia Cement's offering the price quotation to the informer would have been contradictory to the alleged content of the telephone call recordings. In

addition, Southeast Cement had never signed any Type II cement supply contract with the informer. Therefore, Southeast Cement did not have the obligation to supply Type II cement to the informer. This was pointed out in the related decision made by Kaohsiung District Court.

D.The FTC thought about checking whether a lot of telephone calls had been made between the above companies before and after August 14, 2012 in order to gather more evidences with regard to the alleged concerted action in question but no telephone call recordings could be obtained because it had been too long. Under such circumstances, the recordings of five telephone calls between the informer and the staff members of Southeast Cement were insufficient for the FTC to conclude that the contents of the said telephone call recordings were true.

(2) Regarding the allegation that Southeast Cement and Asia Cement had violated Article 19(ii) of the Fair Trade Law at the time:

A.The informer accused Southeast Cement of refusing to supply the Type II cement needed for the procurement project but having no trouble supplying it to Bing Guang Co., Ltd. on the same conditions. The FTC's investigation revealed that Southeast Cement had not signed any contract with the informer and therefore had not supplied any cement to the informer. This was pointed out in the above decision made Kaohsiung District Court. On top of that, the informer was a cement distributor, operating on a different competition level from Bing Guang Co., Ltd. In other words, no issue of discriminatory treatment was involved here and thus there was no violation of Article 19(ii) of the Fair Trade Law at the time.

B.As for the informer's accusation that Asia Cement had raised the price to NT\$2,850 per ton which included transportation fee NT\$300 and was NT\$200 more than the usual price without any justification, as well as the statement that the company had not charged Li Hong Premixed Cement Co., Ltd. for transportation, the FTC's investigation showed that Asia Cement had quoted the informer NT\$2,550 per ton if handed over at its Taichung Plant (delivery to the construction site requiring the transportation fee of NT\$300 per ton) or NT\$2,600 per ton if delivered to the construction site from its Hualien Plant. The informer had chosen that it was to be delivered to the construction site from the Taichung Plant and the price was NT\$2,850

per ton. The evidence showed that the agreement reached between Li Hong Premixed Cement Co., Ltd. and Asia Cement had been delivery to the construction site from the Hualien Plant at NT\$2,650 per ton which was the same offer Asia made to the informer. As no discriminatory treatment was involved, it is impossible for the FTC to reach the conclusion that Asia Cement had violated Article 19(ii) of the Fair Trade Law at the time.

(3) Regarding the allegation that Southeast Cement and Asia Cement had violated Article 24 of the Fair Trade Law at the time: The key issue in this case was whether the three cement businesses had engaged in any illegal concerted action or discriminatory treatment. These were practices likely to lead to competition restrictions as stated in Articles 14 and 19(ii) of the Fair Trade Law at the time. As the above provisions already provided sufficient criteria for the determination of whether the conduct involved in this case had been unlawful, there was no need to make any further exploration under Article 24 of the Fair Trade Law.

Appendix:

Taiwan Cement Corporation' s Uniform Invoice Number: 11913502

Asia Cement Corporation 's Uniform Invoice Number: 03244509

Southeast Cement Corporation 's Uniform Invoice Number: 83078600

Summarized by Hung, Chin-An; Supervised by Liou ,Chi-Jung

Da Tong Water Co., Ltd.

1255th Commissioners' Meeting (2015)

Case: Da Tong Water violated the Fair Trade Law by adopting unlawful practices to market water purifier related products

Key Word(s): Water purifier, filter, raffle

Reference: Fair Trade Commission Decision of November 25, 2015 (the 1255th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104127

Industry: Manufacture of Other Domestic Appliances (2859)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. A private citizen filed with Taichung City Government a complaint that he had not been on the prize winner list posted by Da Tong Water Co., Ltd. (hereinafter referred to as "Da Tong Water") on its website but had been notified as having won a water purifier. Then, after the water purifier was installed with his consent, Da Tong Water pushed to sell him filters. He suspected the raffle was an excuse the company used to sell the filters and such conduct was in violation of Article 25 of the Fair Trade Law.

2. Findings of the FTC after investigation:

The Taipei City Government and Da Tong Water were invited to make statements. It was said that Da Tong Water had set up a stand at the "2015 Chinese New Year Celebration in Taipei" organized by Taipei City Office of Commerce and held a raffle. The raffle tickets distributed did not carry the name of the party responsible for the raffle but the activity had nothing to with any government agency. Da Tong Water admitted that it had never purchased any of the prize items, such as motor scooters, refrigerators and tablet computers that were listed among the indicated on the raffle tickets. It had prepared the microwave ovens, electronic rice cookers and LCD TVs but the quantities had been far less than the numbers of such prizes to be given. The

company claimed it had given out mops, mosquito lamps and dolls as prizes but was unable to present the list of winners. It could only provide a list of water purifier winners. Therefore, it was doubtful whether Da Tong Water had really carried out the raffle. Furthermore, when informing water purifier winners over the phone, Da Tong Water did tell them the value of the water purifier and those agreed to have the water purifier installed would have to pay 10% of the value (Da Tong clarified that the charges were to cover the expenses for the raffle activity and had nothing to with taxes on prizes). However, the investigation revealed that the actual cost of the water purifier was significantly lower than the 10% a prize winner was required to pay. Then, after installing the water purifiers, the company would push a filter replacement package on the prize winners who did not know the cost of the filters until then. At the same time, there was no way to compare the prices of different filters when they made the transaction.

3. Grounds for disposition:

(1) If a company holds a raffle activity but informs people they have luckily won prizes without really conducting the raffle and is out of the intention to make such people do business with the company, or does not disclose that its real purpose is to sell products or services, while these people make purchases psychologically unprepared, the seller's use of systematic marketing practices will put the people in the disadvantageous position in information asymmetry compared to the seller.

(2) Da Tong Water set up a stand at an event organized by a government agency to mislead the public into believing it was associated with the government agency. Then, the company held a raffle to attract people without any intention to make business transactions and took advantage of people's mentality of hoping to be the lucky winners and acquired their personal information. Later, it notified some people that they had won prizes even if their names were not on the prize winner list. Moreover, the cost of the water purifier was significantly lower than the amount that people agreed to have the purifier installed had to pay. Da Tong Water apparently had overestimated the value of the water purifier and the people did not know better due to their information asymmetry, thinking it was worthwhile to pay a small amount to

have the water purifier installed. However, they were later pushed to purchase filters. The overall marketing practice was deceptive and obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. According to the first section of Article 42 of the same law, the FTC ordered the company to cease its unlawful act and also imposed on it an administrative fine of NT\$150,000.

Appendix:

Da Tong Water Co., Ltd.'s Uniform Invoice Number: 54048810

Summarized by Ma, Ming-Ling; Supervised by Wu, Lieh-Ling

Zhong Wei Enterprise Co., Ltd.

1262nd Commissioners' Meeting (2016)

Case: Zhong Wei Enterprise violated the Fair Trade Law for adopting unlawful practices in franchisee recruitment

Key Word(s): Franchise, important information

Reference: Fair Trade Commission Decision of January 13, 2016 (the 1262nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105001

Industry: Wholesale of Frozen Prepared Foods (4544)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The Taiwan Chain Stores and Franchise Association organized the "16th Taipei International Chain and Franchise Spring Exhibition" in March 2014. The FTC sent staff members to understand the recruitment results of the participating franchise

businesses. After examining the advertising flyers, recruitment brochures and website information of Zhong Wei Enterprise Co., Ltd. (hereinafter referred to as “Zhong Wei Enterprise”), the FTC’s staff members discovered that the recruitment flyers for the chain stores on southern island carried the wording of “average gross margin achieving 50~55%” as information regarding financial forecast. However, there was no indication of how the figure had been established or any supporting evidences and neither did the company provide any other important franchise information for potential trading counterparts to review. Therefore, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

The FTC has reviewed the written information provided by Zhong Wei Enterprise to the potential franchisees including franchise contract, franchise advertising flyers for southern island, notices for franchisees, order forms, the preliminary operation manual, the addresses of the franchisees in all counties and cities, the menus of existing franchisees, and gross margin analyses on a few main product items. Besides, the company was also invited to make its statement at the FTC. However, the FTC concluded that it was obvious that the company did not fully disclose the important franchise information regarding contents of the rights of franchisees to use its trademark, the length of time they could use the trademark, and the number of franchisees in each county (city) and their addresses.

3. Grounds for disposition:

(1) The contents of the rights of franchisees to use the trademark, the length of time franchisees can use the trademark, and the number of franchisees in each county (city) and their addresses are important franchise information regarding use of trademark rights, brand growth stability, market scale changes, expected business performance and risks. These are information that potential franchisees need in their assessment of whether they will sign the contract or choose other franchisers. As the party with the status of information superiority, Zhong Wei Enterprise took advantage of the information asymmetry and signed contracts with its trading counterparts

without fully disclosing important information. As a result, it was obviously unfair conduct as stated in Article 25 of the Fair Trade Law. Moreover, Zhong Wei Enterprise applied the practice repeatedly to sign contracts with unspecific trading counterparts and the practice could have an effect on many potential victims in the future if it was not stopped. Furthermore, it might also cause the company's competitors to lose their opportunity to sign contracts with potential franchisees. The above practices would therefore result in unfair competition. The conduct was able to affect trading order in the franchise market and was in violation of Article 25 of the Fair Trade Law.

(2) After assessing the duration that Zhong Wei Enterprise did not fully disclose important trading information, the company's net income from 2012 to 2014, the total franchise fees (not including equipment expenses) collected between 2012 and 2014, the total number of franchisees, the attitude of cooperation throughout the investigation, and the violation being the first offense of the company, the FTC imposed on the company an administrative fine of NT\$150,000.

Appendix:

Zhong Wei Enterprise Co., Ltd.'s Uniform Invoice Number: 16366980

Summarized by Wu, Cheng-Tao; Supervised by Ho, Yen-Jung

Bai Mian Dong Industry Co., Ltd.

1263rd Commissioners' Meeting (2016)

Case: Bai Mian Dong Industry violated the Fair Trade Law by adopting unlawful practices in franchisee recruitment

Key Word(s): Franchise, advertising, important information

Reference: Fair Trade Commission Decision of January 20, 2016 (the 1263rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105005

Industry: Beverage Service Activities via Stalls (5632)

Relevant Law(s): Articles 21 and 25 of the Fair Trade Law

Summary:

1. A former worker of Bai Mian Dong Industry Co., Ltd. (hereinafter referred to as "Bai Mian Dong Industry") filed with the FTC a complaint claiming that after joining the "Bai Mian Dong Top Quality Carambola Juice" franchise through the special deal for employees, he found out the contents in the advertisement posted on the company's website were inconsistent with those in the brochure provided by the company. In addition, the company was prosecuted that it had not disclosed important franchise information before the franchise contract was signed. The informer believed that the company had violated Articles 21 and 25 of the Fair Trade Law.

2. Findings of the FTC after investigation:

Bai Mian Dong Industry claimed on its website that "Currently there are over 60 franchisees and all of them are making profits." In its franchisee brochure it was also stated that "Presently there are over 60 franchisees and all of them are making profits," "There are close to 70 franchisees at present and everyone is making money," and "Presently, there are nearly 100 franchisee and they are all making profits." Apparently, the numbers of franchisees revealed in the above documents were inconsistent. Bai Mian Dong Industry admitted that the numbers of profit-making franchisees had been established according to the Carambola juice concentrate orders placed by franchisees. In reality, the company had no objective figures to support such information. Meanwhile, the written information that Bai

Mian Dong Industry provided to prospective franchisees before the contract was signed did not include the numbers of existing franchisees in different counties and cities and their addresses or the ratios of contract cancellation and termination in the previous year.

3. Grounds for disposition:

(1) The numbers of franchisees and the claim that every franchisee was making profits as advertised on the website of Bai Mian Dong Industry and in its franchisee brochure were inconsistent. The difference was unacceptable to trading counterparts and was likely to lead to wrong perceptions and decisions of parties interested in joining the franchise. It was in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 applicable *mutatis mutandis*.

(2) The numbers of existing franchisees in different counties and cities and their addresses and the ratios of contract cancellation and termination in the previous year were important information concerning the scale of the market and intra-brand competition condition that potential franchisees needed to assess management performance and risks before deciding whether they would join the franchise or choose other franchisers. As the party having information advantage, Bai Mian Dong Industry took advantage of the information asymmetry and signed contracts with its trading counterparts without fully disclosing important information. It was obviously unfair conduct as stated in Article 25 of the Fair Trade Law. Moreover, Bai Mian Dong Industry applied the practice repeatedly to signed contracts with unspecific trading counterparts and the practice could have an effect on many potential victims in the future if it was not stopped. Furthermore, it might also cause the company's competitors to lose their opportunity to sign contracts with prospective franchisees and thus would result in unfair competition on the market. The conduct was able to affect trading order in the franchise market and in violation of Article 25 of the Fair Trade Law.

(3) After assessing the duration of the advertisement, the number of franchisees recruited during the duration, the duration in which the company did not fully disclose important franchise information, the total sales of the company from 2012 to

2014, the number of franchisees recruited each year from 2013 to July 2015, the total number of new franchisees, the aggregate of franchise fees collected, the attitude of cooperation by the company throughout the investigation, and the first offense by the company for having corrected the false information in the advertisement, etc., the FTC imposed an administrative fine of NT\$100,000 on the company for its violation of Paragraph 4 of Article 21 by applying mutatis mutandis Paragraph 1 of the same article as well as NT\$50,000 for the company's violation of Article 25 of the same law. The fines totaled NT\$150,000.

Appendix:

Bai Mian Dong Industry Co., Ltd.'s Uniform Invoice Number: 53981707

Summarized by Lin, Cheng-Yu; Supervised by Ho, Yen-Jung

Float-Tek International Co., Ltd.

1267th Commissioners' Meeting (2016)

Case: Float-Tek International was complained for violating the Fair Trade Law by unjustifiably sending warning letters

Key Word(s): Warning letter, patent

Reference: Fair Trade Commission Decision of February 17, 2016 (the 1267th Commissioners' Meeting)

Industry: Manufacture of Boilers, Metal Tanks and Pressure Containers (2531)

Relevant Law(s): Article 19(i) in effect at the time of the conduct and Article 25 of the Fair Trade Law

Summary:

1. Full Most Co. Ltd. (hereinafter referred to as "Full Most") filed a complaint about Float-Tek International Co., Ltd. (hereinafter referred to as "Float-Tek

International”) sending a warning letter on November 14, 2015 to its agent Beijing Rongxin Heda Technology Co., Ltd. (hereinafter referred to as “Beijing Heda”) in Mainland China concerning the brick-style honeycomb floating discs Beijing Heda has purchased from Full Most in 2012. The letter accused that Beijing Heda had no right to purchase and use without the consent of Float-Tek International because the patent in China for such "oil tank floating roof" devices was owned by Float-Tek International. Full Most thought Float-Tek had violated the Fair-Trade Law by sending the warning letter.

2. Findings of the FTC after investigation and grounds for disposition:

Inventor and patentee are two different concepts. Only patentees may claim to own patents. The patent in question was issued in Mainland China and the representative of Full Most and a third party were registered as the patentees. Float-Tek International was not one of the registered patentees at all. Even if Float-Tek International contested that Full Most had obtained the patent illegally, the dispute would be over the ownership of the said patent and both parties should have taken measures stipulated in the Patent Act to seek the resolution and related remedies. Such matters were not subject to the Fair Trade Law. Since Float-Tek International was not the owner of the patent in question, the "Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights" should not apply in this case. Another finding revealed that Float-Tek International had sent the warning letter on November 14, 2014 to protect its own rights. As there were still many competitors in the relevant product market, Float-Tek International only had limited market power and would not be able to impose any restriction on market competition. Besides, Full Most did not provide any concrete evidence to show Beijing Heda, its trading counterpart in the Mainland China market, had refused to do further business after receiving the warning letter from Float-Tek International. In fact, Full Most admitted that Beijing Heda was still its general agent. For this reason, the FTC found it difficult to conclude the warning letter was able to affect the trading order in the relevant market. In other words, with existing evidences, it was impossible to conclude that Float-Tek International had violated Article 19(i) of the

Fair Trade Law in effect at the time of the said conduct and Article 25 of the current Fair Trade Law by sending the warning letter. However, to prevent the company from breaking the law or affecting the trading order on the relevant, the FTC still issued a written warning to remind Float-Tek International to abide by regulations set forth in the Fair Trade Law.

Summarized by Wu, Chien-Hsing; Supervised by: Chi, Hsueh-Li

Formosa Television Inc.

1278th Commissioners' Meeting (2016)

Case: FTV was complained for violating the Fair Trade Law for announcement of the audience rating for its "Dowry" series

Key Word(s): TV series, audience rating, advertisement

Reference: Fair Trade Commission Decision of May 4, 2016 (the 1278th Commissioners' Meeting)

Industry: Television Broadcasting and Subscription Programming (6020)

Relevant Law(s): Articles 21 and 25 of the Fair Trade Law

Summary:

1. A private citizen filed a complaint about Formosa Television Inc. (hereinafter referred to as "FTV") claiming in TV commercials and on Facebook that its series "Dowry" had the "highest audience rating, way ahead of the shows of other stations" without disclosing any audience rating statistics to support the above claim. Therefore, a violation of the Fair Trade Law was suspected.

2. Findings of the FTC after investigation:

According to the results of Nielsen ratings, the 179 episodes of "Dowry" were

aired from December 16, 2014 to August 24, 2015. Besides December 16, 2014 the day the show was first aired and July 22, 23, 24 and 27, 2015 on which the "Shi Jian Qing" series on SETTV had the best rating, "Dowry" was the most popular show (about 97%). Meanwhile, the DVDs recording of "Dowry" episodes provided by the National Communications Commission indicated that when its audience rating was No. 2, FTV still broadcasted the wording with the narration of "No. 1 in the country" and "Dowry--No. 1 in the country." On the Facebook wall for "Dowry", FTV also posted the wording of "Highest audience rating in the country, way ahead of the shows of all other stations" from July 1, 2015 until August 5 the same year. To collect further information, the FTC sent written requests to businesses buying commercials on the show to express their opinions. All the advertisers replied that their commercial purchase decisions and budget arrangements had never been affected by the temporary audience rating fluctuations or the audience rating claim broadcasted.

3. Grounds for disposition:

(1) When FTV broadcasted the claim of "No. 1 in the country" in July 2015, it was televised together with preview footages of the "Dowry" series with narration saying "No. 1 in the country, Dowry." It did deliver the impression to its audience that the show had the highest audience rating in the country. In this aspect, the TV station did not fulfill its obligation as the advertiser to assure the authenticity of the commercial content. In July 2015 when the audience rating of the show dropped to the second place and the wording posted on TV commercials and Facebook remained unchanged, it was false advertising. However, the results of audience measurement surveys from the Nielsen Company indicated that the Audience rating of "Dowry" did rank No. 1 for 97% of the time in the six-month period. In other words, the long-term audience rating of the show was indeed ahead of the shows broadcasted by other TV stations. There were four days in July 2015 when the audience rating of "Dowry" fell behind that of "Shi Jian Qing" but the margin was slight. Therefore, the difference between the claim from FTV and the reality was still acceptable to the public. Finally, the main advertisers on "Dowry" all expressed that their decisions to buy commercial time on the show and budget arrangements had never been affected by the short-

term audience rating fluctuations or the content of the claim posted by FTV. For this reason, the FTC could not conclude that the advertisers had been misled by the claim at issue when making their decisions on transactions with FTV. In other words, there was no need to cite Article 21 of the Fair Trade Law to sanction FTV.

(2) To maintain trading order in the audience rating survey market and prevent enterprises from lying about or concealing audience rating survey results to engage in unfair competition and in turn affect the audience rating survey market as well as to ensure the sound development of the TV industry, the FTC has specifically promulgated the "Fair Trade Commission Disposal Directions (Guidelines) on the Release of TV Ratings." It is set forth in Point 6 that the release of TV rating survey results shall include the name of the survey company, the time, range, objects and method of survey, the margin of error and the number of valid samples, so that when an enterprise announces TV survey results, all related information and data are available and the interests of competitors will not be affected and TV viewers will not be misguided. The findings of the FTC's investigation revealed that FTV had indeed failed to disclose the related TV rating survey results when announcing the audience rating of the show on its TV and Facebook. Nevertheless, as mentioned earlier, all the major advertisers confirmed that their decisions to purchase commercials on the show and budget arrangements had not been affected by the claim about the audience rating of "Dowry" at all. Therefore, the FTC found it difficult to conclude that FTV had engaged in any deceptive or obviously unfair conduct that was able to affect trading order in violation of Article 25 of the Fair Trade Law.

Summarized by Pan, Min-Hui; Supervised by: Chiou, Shwu-Fen □

Taiwan Star Telecom Co., Ltd.

1284th Commissioners' Meeting (2016)

Case: Star Telecom violated the Fair Trade Law by using the names of other enterprises in its keyword advertising activity

Key Word(s): Telecommunications services, keyword advertising

Reference: Fair Trade Commission Decision of June 15, 2016 (the 1284th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105064

Industry: Wireless Telecommunications Activities (6102)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. Sometime in August 2015, Taiwan Mobile Co., Ltd. (hereinafter referred to as “the informer”) entered "Taiwan Mobile" as the keyword to search on Google. At the top of the links that popped up was the caption of "Exclusive: 50% discount on 'Taiwan Mobile' monthly fees for subscribers registering within a given period of time" and the corresponding website was indicated as "tstarel.com" below the caption. Google Taiwan (the operator of the Google website in Taiwan; hereinafter referred to as “Google”) received a complaint from the informer and immediately removed the advertisement. The said practice of Taiwan Star Telecom Co., Ltd. (hereinafter referred to as “Taiwan Star Telecom”) was intended to direct consumers to the company's website and subscribe to its services. In this way, the informer would suffer loss of its potential customers. The advertisement could also mislead consumers to believe the special offer mentioned earlier was made by the informer (in fact it wasn't) and therefore confuse consumers. In consequence, the informer would lose the opportunity to engage in fair competition on the market and online trading order would be affected. In other words, it was deceptive and obviously unfair conduct able to impact trading order in violation of Article 25 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) Bizin Digital Marketing Co., Ltd. (hereinafter referred to as “Bizin

Digital”), the company commissioned by Taiwan Star Telecom to post the keyword advertisement, stated that the keyword advertising had been produced according to its copy proposal. The proposal included display of the wording about the special offer by using Google's "keyword insertion function." The advertising and marketing personnel of Taiwan Star had reviewed and approved the said copy before Bizin Digital purchased the right to post a few pieces of keyword advertising, including the keyword advertising that became controversial in this case. Normally Bizin suggested all the advertisers it serves to use Google's keyword insertion function in accordance with the properties of the advertising texts. Therefore, it had also recommended Taiwan Star Telecom to do the same and Taiwan Star Telecom agree to do so. In other words, Taiwan Star Telecom was aware of and understood how the said keyword insertion function worked.

(2) Bizin Digital stated that the number of words in the ad group posted by using the keyword insertion function was large and most of the words came from the keywords list that had been confirmed by Taiwan Star Telecom. However, Google told Bizin Digital later that the keyword advertising had been suspended because the copy posted by using keyword insertion function included the trademarks of the competing products (names of competitors) and it could easily cause confusion to consumers. As a result, Bizin Digital removed the said piece of keyword advertising.

(3) However, Taiwan Star Telecom stated it had never instructed Bizin Digital to use the keyword insertion function and asserted that the problem had been a result of serious negligence of Bizin Digital because the company had used the keyword insertion function by mistake when drawing up the advertising proposal. Taiwan Star Telecom contested that it had not expected such serious negligence and thus it had not prepared to exercise any control. Taiwan Star Telecom insisted that it had merely received the keyword advertising copy proposal and its knowledge of the undertaking had been limited to the content of the proposal, therefore the conduct of Bizin had been in violation of the delegation agreement and what Bizin has done had nothing to do with Taiwan Star Telecom. In other words, Taiwan Star Telecom asserted that Bizin alone had to take the legal responsibility.

3. Grounds for disposition:

(1) According to the advertising needs of Taiwan Star Telecom, Bizin Digital drew up a keyword advertising copy proposal. After Taiwan Star Telecom reviewed the proposal and gave its approval, Bizin Digital purchased the right to post the keyword advertising. In other words, Taiwan Star Telecom had the authority to review and revise the keyword advertising copy produced by Bizin Digital. In this way, Taiwan Star Telecom has the ultimate control over the decision as to whether the advertising should be posted.

(2) After comparison, the FTC confirmed that the keyword advertising copy from the keyword advertising copy proposal had been meant to be posted by using Google's keyword insertion function. As for the ad group in which the default texts could be replaced, according to the keyword accounts framework that Bizin Digital and Taiwan Star Telecom had been using during their cooperation, the ad group consisted of keywords that were abbreviations of the names of other telecom businesses, including Far Eastone, Far Eastone Telecom, Asia Pacific, Asia Pacific Telecom, Taiwan Mobile, Chunghwa, and Chunghwa Telecom. Therefore, it was easy to replace the keyword advertising in this case and insert the abbreviation of the name of another telecom business through Google's keyword insertion function after an Internet user entered the abbreviation of the name of a telecom business in the ad group. Then, the keyword advertising for Taiwan Star Telecom would appear and the user would be directed to its website. In so doing, the number of visits to the website of Taiwan Star Telecom would increase and the likelihood of successful transactions would also be higher. On the other hand, the informer who had not released any package deals would be misunderstood by consumers because of the advertising text and lose its potential trading counterparts. Therefore, the practice had to be considered conduct intended to exploit the efforts of others. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law.

(3) After assessing the sales of Taiwan Star, the duration the keyword advertising was posted, the fact that it was the first violation of the company and its cooperation throughout the investigation, the FTC cited the first section of Article 42 of the Fair

Trade Law and imposed an administrative fine of NT\$600,000 on the company.

Appendix:

Taiwan Star Telecom Co., Ltd.'s Uniform Invoice Number: 70769567

Summarized by Lin, Hsueh-Liang; Supervised by: Kuo, An-Chi

Venus International Co., Ltd.

1285th Commissioners' Meeting (2016)

Case: Venus International violated the Fair Trade Law for illegitimately purchasing keyword character strings

Key Word(s): Shapewear, keyword character string, exploitation of results of others' efforts

Reference: Fair Trade Commission Decision of June 22, 2016 (the 1285th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105071

Industry: Manufacture of Wearing Apparel (1210)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. Marilyn International Co., Ltd. (hereinafter referred to as “Marilyn International”) and Venus International Co., Ltd. (hereinafter referred to as “Venus International”) both sold custom-made shapewear for women and, therefore, competed in the same market. On August 10, 2015, Marilyn International found out that Venus International had adopted the registered trade mark "Marilyn" of Marilyn International in its keyword character strings. When consumers keyed in "Marilyn" for their online search, "Venus Marilyn, make your husband love you even more" and "Help you become a perfect Marilyn" would pop up and they would be directed to

the website of Venus International. As a result, more consumers would then have the chance to browse Venus International's website. It was exploitation of the efforts of others to promote its own products or services. The obviously unfair conduct could have an effect on trading order.

2. Findings of the FTC after investigation:

Venus International commissioned AdGeek Marketing Consultancy Co., Ltd. (hereinafter referred to as "AdGeek Marketing Consultancy") to work out all its keyword character strings posted between July 1 and August 31, 2015. AdGeek Marketing Consultancy adopted Google's keyword suggestion tool and keyword insertion function to produce and post the character strings. However, AdGeek Marketing Consultancy misused the keyword insertion function by ticking all the keywords suggested by Google's keyword suggestion tool. As a consequence, the controversial wording of "Venus Marilyn, make your husband love you even more" and "Help you become a perfect Marilyn" popped up when the above search was conducted. When Venus International found out about the keyword character strings on August 11, 2015, the company immediately demanded AdGeek Marketing Consultancy to make corrections.

3. Grounds for disposition:

According to Marilyn International, the name "Marilyn" and the company logo had been registered with the Ministry of Economic Affairs and publicly announced in 2004. Marilyn International also invested a large amount of money to advertise its shapewear. Therefore, "Marilyn" could be regarded the business symbol of Marilyn International which had put in a lot of effort to run business. Venus International used "Marilyn" to produce keyword character strings, display the wording of "Venus Marilyn, make your husband love you even more" and "Help you become a perfect Marilyn" and direct visitors to the company's own website. Consumers entering the word "Marilyn" on Google would end up with the search results that included both Venus International and Marilyn International. Apparently, the practice was intended to take advantage of the efforts that the company's competitor had invested

to promote services in the market. Venus International used the name of Marilyn International to lead people to visit its own website. The two companies were the two top contenders in the female shapewear market and each had its market power. The market competition was intense. Hence, by using a competitor's business symbol to produce keyword character strings, Venus International affected trading order in the female shapewear market. It constitutes exploitation of the efforts of others in violation of Article 25 of the Fair Trade Law. Citing the first section of Article 42 of the same law, the FTC imposed an administrative fine of NT\$50,000 on Venus International.

Appendix:

Venus International Co., Ltd.'s Uniform Invoice Number: 70368325

Summarized by Wu, Hsin-Te; Supervised by: Yang, Chia-Hui

Taiwan FamilyMart Co., Ltd.

1297th Commissioners' Meeting (2016)

Case: Taiwan FamilyMart violated the Fair Trade Law by failing to disclose important franchise information in writing before franchise contract signature

Key Word(s): Franchise, important information, order restriction

Reference: Fair Trade Commission Decision of September 14, 2016 (the 1297th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105104

Industry: Convenience Stores, Chain (4711)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC received complaints from franchisees of Taiwan FamilyMart Co., Ltd. (hereinafter referred to as “FamilyMart”) stating that FamilyMart demanded they had to follow the company’s order placement instructions and their sales could not exceed a certain percentage of the supplies obtained (which FamilyMart called product procurement-sales ratio). If a franchisee failed to place orders according to the stipulated amounts or the product procurement-sales ratio was higher than a certain rate, it would have to attend training courses, be given admonitions or get a fine. However, franchisees had not been given such information before they entered into the franchise contract with FamilyMart.

2. Findings of the FTC after investigation:

The FTC administered a questionnaire survey on the franchisees of FamilyMart and also interviewed some of them. Most franchisees expressed that FamilyMart had not provided the aforesaid information but, after they began operation, often demanded them to keep fixed amounts of inventories or certain inventory ratios. Some franchisees also mentioned that FamilyMart would set order targets for some specific products. Meanwhile, related documents presented by FamilyMart indicated that the company had sent written notices to demand franchisees with excessively high product procurement-sales ratios to make improvements. If the same thing happened again, the company would regard it a breach of contract and take action accordingly.

3. Grounds for disposition:

(1) Restrictions set by franchisers on franchisees, such as those on items and minimum amounts of products or raw materials to be ordered, are closely associated with intra-brand competition, funds to be invested by franchisees, as well as management performance and risks. For instance, the regulations regarding minimum suggested amounts of orders or product procurement-sales ratios FamilyMart imposed on its franchisees would have an effect on the amounts of scrap losses because the franchisees had to absorb product scrap losses. In addition, the

regulations also restricted the business activities of franchisees. Consequently, they would be a huge concern for parties interested in joining the franchise. As a matter of fact, such regulations were important information that would-be franchisees needed to assess if they wanted to become part of the franchise or choose a different franchiser.

(2) The FTC carefully reviewed the documents and the franchisee contract FamilyMart provided to parties interested in joining the franchise. They only mentioned that franchisees were required to place the right amounts of orders at the right time and to follow management instructions from the company. Nothing about minimum suggested amounts of orders or product procurement-sales ratios that meant restrictions on franchisees was disclosed in the franchise contract. For this reason, the FTC concluded that the minimum suggested amounts of orders or product procurement-sales ratios set by FamilyMart had constituted restrictions on its franchisees but the company had never disclosed them in writing before the contract was signed by both parties; the conduct was therefore in violation of Article 25 of the Fair Trade Law.

(3) After assessing the sales of total number of outlets of FamilyMart for the past three years, the number of new franchisees recruited in the past two years, the duration of the unlawful practice, the amounts of money invested by franchisees, the direct impact of the unlawful practice on the judgment of trading counterparts about shop management and on the loss of contract signing opportunities by competitors, the level of cooperativeness throughout the investigation and the violation being the first ever, the FTC cited Article 42 of the Fair Trade Law while ordering FamilyMart to correct the unlawful act within two months after receiving the disposition and at the same time imposed an administrative fine of NT\$3 million on the company.

Appendix:

Taiwan FamilyMart Co., Ltd.'s Uniform Invoice Number: 23060248

Summarized by Tsai, Jing-Hui; Supervised by: Ho, Yen-Jung

Da Tong Water Co., Ltd.

1298th Commissioners' Meeting (2016)

Case: Da Tong Water violated the Fair Trade Law by adopting unlawful practices to market water purifier filters

Key Word(s): Water purifier, filter, raffle activity

Reference: Fair Trade Commission Decision of September 21, 2016 (the 1298th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.105105

Industry: Manufacture of Other Domestic Appliances (2859)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC Service Center received complaints from private citizens stating that Da Tong Water Co., Ltd. (hereinafter referred to as “De Tong Water”) continued to use deceptive practices to market water purifier filters after it had been sanctioned by the FTC earlier for engaging in deceptive and obviously unfair marketing practices in violation of Article 25 of the Fair Trade Law because it held raffle activities to acquire personal information of participants then lying about them having won prizes but concealing important transaction information to mislead consumers into purchasing water purifier filters. Therefore, the FTC initiated an ex officio investigation. The FTC later received more complaints that Da Tong Water had conducted raffle activities during the Agricultural Specialty Product Exhibition held both at the Chinese New Year product market in the Cultural China Community in New Taipei City (hereinafter referred to as “the Cultural China Specialty Exhibition) and the 2016 Lantern Festival Show organized by the Taoyuan City Government (hereinafter referred to as “the Lantern Festival Show”), and then called prize winners to be ready to have their water purifiers installed at home. Since the practices were similar, the FTC consolidated both cases for the purpose of investigation.

2. Findings of the FTC after investigation:

At the request of the FTC, the Management Committee of Cultural China Building

described how the raffle activity was conducted during the Cultural China Specialty Exhibition and the Taoyuan City Government also briefed the FTC on Da Tong Water's participation in the Lantern Festival Show. Meanwhile, Da Tong Water was requested to give its statement at the FTC as well. Afterwards, the FTC interviewed some of the prize winners at the Cultural China Specialty Exhibition and the Lantern Festival Show and found out that Da Tong Water was unable to produce the proof of inventories and winner lists for any items other than the water purifiers indicated in the posters and raffle tickets for the two aforementioned raffle activities. The prize winners all admitted that they would not have had water purifiers installed if they had not received the prize-winning notices.

3. Grounds for disposition:

(1) Earlier, Da Tong Water had already been sanctioned for engaging in deceptive and obviously unfair marketing practices in violation of Article 25 by holding raffle activities to acquire the personal information of participants then lying about them having won prizes but concealing important transaction information to mislead consumers into purchasing water purifier filters.

(2) The prizes listed on the posters for the Cultural China Specialty Exhibition included Tatung TVs, bicycles, small household appliances, etc. However, Da Tong Water was unable to produce the proof of inventories for the TVs and bicycles or the lists of winners of these items. Meanwhile, it was indicated on the tickets for the raffle activity held during the Lantern Festival Show that "3C household appliances to be given for free." However, the company could only produce an invoice for some cooking ware purchased before the activity. In other words, it was doubtful whether Da Tong Water had really conducted the raffle and gave 3C household appliances as prizes. In addition, the content of the phone calls made to notify prize winners could mislead people into believing the calls were associated with the raffle activity held during the Lantern Festival Show. Most prize winners expressed they would not have had the purifiers installed had they not been notified. In addition, they mentioned that Da Tong Water exaggerated about the price of the water purifier which made them overestimate the value of the water purifier and then agree to purchase the filters.

(3) Da Tong Water participated in activities organized by government agencies or organizations to give the public the impression that the company had something to do with the government agency or the organization. Then, the company held raffles and notified the so-called winners to entice people who originally had no plan to make any transactions and took advantage of their mentality to be happy about being lucky as well as exaggerated the cost of the water purifier to make the prize winners think it was worthwhile to spend a relatively small amount of money to purchase the filters under information asymmetry. Therefore, the practices of Da Tong Water to hold raffle activities to market water purifier filters was deceptive and obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. In addition, the company never stopped the unlawful act even after it was sanctioned by the FTC. Therefore, the FTC decided to cite the second section of Article 42 of the Fair Trade Law as the basis of ordering the company to immediately cease the unlawful act while imposed on Da Tong Water an administrative fine of NT\$200,000.

Appendix:

Da Tong Water Co., Ltd.'s Uniform Invoice Number: 54048810

Summarized by Ma, Ming-Ling; Supervised by: Wu, Lieh-Ling

JK Foods Co.

1307th Commissioners' Meeting (2016)

Case: JK Foods violated the Fair Trade Law by failing to disclose important franchise information in writing to franchisees before the contract was signed

Key Word(s): Franchise, important information, information disclosure

Reference: Fair Trade Commission Decision of November 23, 2016 (the 1307th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 105127

Industry: Beverage-serving Activities via Shops (5631)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC received complaints from "Rainbow Snow" franchisees accusing the franchiser of violating the Fair Trade Law by failing to provide important franchise information during the franchisee recruitment process.

2. Findings of the FTC after investigation:

During the process of franchisee recruitment, JK Foods Co. (hereinafter referred to as "JK Foods") had the company's trademark registration and the addresses of existing franchisees posted on the company website but never provided the important information regarding the contents of trademark rights, the total number of its franchisees and their addresses to trading counterparts in writing.

3. Grounds for disposition:

(1) Before it entered into the contract with the franchisees, JK Foods did not disclose in writing the "contents of trademark rights licensed to franchisees and the duration of the franchise agreement" and "the number of franchisees of the same franchise in each city (county), their addresses and the ratios of contract cancelation and termination in the preceding year." However, such information was closely

associated with the use of trademark rights, intra-brand competition condition and expected business performance and risks. People interested in joining the franchise needed the said information to evaluate whether they wanted to become part of the franchise or choose a different franchiser.

(2) JK Foods contested that it had already posted the trademark rights registration and addresses of existing franchisees on the company website. However, information posted on websites could be updated any time. If a franchiser failed to maintain and update the contents of web pages due to some kind of negligence, there could be problems later when both sides had discrepancies over the website contents and whether the information the trading counterparts had actually received was unclear.

(3) Therefore, the FTC's final decision was the failure of JK Foods to disclose important franchise information in writing constituted a practice to take advantage of the important transaction information in its possession. Yet, without full disclosure of the important information, its trading counterparts would be unable to make the right transaction decisions while its competitors would also lose opportunities to have new franchisees. Therefore, the practice obviously constituted unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law.

(4) After assessing the duration of the unlawful act, the total amount of franchise fees the company received, the trading counterparts affected, the level of its cooperativeness throughout the investigation, and the violation being the first ever, the FTC cited Article 42 of the Fair Trade Law and ordered JK Foods to cease the unlawful act. In addition, FTC imposed an administrative fine of NT\$50,000 on the company.

Appendix:

JK Foods Co.'s Uniform Invoice Number: 10106122

Summarized by Tsai, Jing-Hui; Supervised by: Ho, Yen-Jung

President Chain Store Corp.

1323rd Commissioners' Meeting (2017)

Case: President Chain Store Corporation violated the Fair Trade Law during its franchisee recruitment practice

Key Word(s): Convenience store, franchise, important information

Reference: Fair Trade Commission Decision of March 15, 2017 (the 1323rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106016

Industry: Convenience Stores, Chains (4711)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. In order to understand whether President Chain Store Corporation (hereinafter referred to as "President Chain Store Corp. ") disclosed to parties interested in joining the franchise important information regarding the placement of products orders before the contract was signed when recruiting franchisees, the FTC launched an investigation. Later, the FTC received complaints from former franchisees of President Chain Store Corp. pointing out President Chain Store Corp. had not explained matters about product orders and purchases during talks associated with franchise relationship establishment. Moreover, after the franchisees began operation, staff members of President Chain Store Corp. would check whether the store had achieved the sales targets set by the company and would give pressure over the phone or in person by reprimanding the store operators had no ambition and also applied giving low performance evaluation grades, sending legal attest letters or not renewing the contract as a threat. As a result, the stores had to spend tens of thousands of dollars to scrap products.

2. Findings of the FTC after investigation:

The results of a survey administered by the FTC indicated that 23 franchisees had opinions about the items or quantities of products that the headquarters requested

them to order and 11 expressed that the headquarters refused to accept complains or take action accordingly (48%). Meanwhile, of the 15 franchisees who ticked off the item of having the experience of refusing to place orders because President Chain Store Corp. had not made any stipulations regarding quantities of product orders or maintenance of stock quantities but would often or sometimes request or instruct them to place orders, 4 people expressed they had been penalized by the headquarters (27%), and 6 had received warnings without penalties (40%), and 5 had never been warned or penalized (33%). Several franchisees interviewed concurred if they had not placed orders as requested, staff members from the headquarters would visit their stores to express their concerns or increase the number of visits, or the franchisees would have to attend review meetings (exchange meetings and workshops), and inspections would become stricter or the result of performance evaluation would not be so good, or stock deficiency inspections indicating product shortages would be listed as anomalies or defects and recorded.

3. Grounds for disposition:

(1) The quantities of products to be ordered by franchisees or the standards of product orders set or requested by President Chain Store Corp. were not merely suggestive. Some franchisees expressed having been penalized for failing to comply with the request of the headquarters and others were warned or had to attend review meetings while their franchisee performance evaluation could also be affected and it would have an effect on their bonuses. All the above did not come from only one of the franchisees interviewed. Such conduct could only restrain the freedom of franchisees to decide their product orders and quantities. It was a restriction imposed on the product orders and quantities, yet President Chain Store Corp. had never fully disclosed such information in writing before the contract was signed.

(2) The conduct of President Chain Store Corp. taking advantage of its information superiority and continuing to sign contracts with unspecific parties interested in joining the chain was repeated over and again. The use of its information superiority and the information asymmetry that was disadvantageous to its trading counterparts could only impede parties interested in joining the chain from making

the right decisions. The practice already had an impact on most existing franchisees and was obviously unfair to parties intending to join the chain as well. At the same time, it could also cause its competitors to lose opportunities to get new franchisees. It was enough to create certain negative influence on the trading order of the marketplace. If such conduct had not been stopped, it would continue to affect other potential trading counterparts and bring greater harm to the trading order on the marketplace. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law.

(3) After assessing the sales of President Chain Store Corp., the total number of stores of the chain, the number of new franchisees, the duration of the company's failure to disclose important trading information, the amount of capital franchisees invested between 2013 and 2015, as well as the company's cooperativeness throughout the investigation, the FTC, citing Article 42 of the Fair Trade Law, ordered President Chain Store Corp. to immediately cease the unlawful act and to make necessary corrections within two months after receiving the disposition. At the same time, an administrative fine of NT\$5 million was imposed on the company.

Appendix:

President Chain Store Corp.'s Uniform Invoice Number: 22555003

Summarized by Lin, Cheng-Yu; Supervised by: Ho, Yen-Jung

Nan-I Book Enterprise Co., Ltd.

1324th Commissioners' Meeting (2017)

Case: Nan-I Book violated the Fair Trade Law by foretelling to offer certain gift items as an attempt to have its textbooks selected during the period of elementary school textbook selection in 2016

Key Word(s): textbook, trading order

Reference: Fair Trade Commission Decision of March 22, 2017 (the 1324th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106018

Industry: Book Publishing (5813)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC received complaints from private citizens about Nan-I Book Enterprise Co., Ltd. (hereinafter referred to as "Nan-I Book") distributing a list of gifts to be given out of the attempt to increase the opportunity of having its textbooks selected before the 2016 elementary school textbook selection. The list indicated that five gift items would be provided if its Chinese and Math textbooks were selected. The practice was illegitimate and constituted a violation of the Fair Trade Law. The Fair Trade Commission therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) Nan-I Book admitted the person surnamed Chen distributing the list was indeed its employee, the list was given to ten grade directors of Jiushe Elementary School and five other elementary schools in Changhua County and, in addition to the item of "guided composition practice sheet and manuscript paper" which was associated with Chinese language teaching, the four other gifts offered, namely the teacher-parent communication notebook with a jacket, dictionary, math table game and desk name tag production and classroom decoration kit, had no direct connection with teaching purposes. Nan-I Book also confessed that, despite the items on the list were decided by the employee, the company indeed had to be responsible for

the conducts its employees that was within the scope of execution of duties for the company.

(2) In 2016, the elementary school Chinese and math textbooks published by Nan-I Book had 47.3% market share in the southern region of Changhua County. Compared to the textbooks for the second, fourth and sixth grades sold in 2015 and the textbooks for the first, third and fifth grades in 2016, the Chinese textbook market share of the company increased from 18.1% to 31.2% and the math textbook market share remained 61.6%.

3. Grounds for disposition:

(1) Article 25 of the Fair Trade Law provides that "In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order." At the same time, the FTC has also established the "Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks" to point out potential patterns of illegal conduct of textbook publishers for related businesses to refer to. According to Paragraph 1 and Subparagraph 2 of Paragraph 2 of Point 8 of the aforesaid disposal directions, if a publishing business offers and foretells to offer supplementary teaching aids that are irrelevant to the uses of textbooks, such teaching aids are not necessary for teaching and the practice would constitute illegitimate marketing described in the disposal directions and is therefore in violation of Article 25 of the Fair Trade Law.

(2) Among the gift items on the list, the "teacher-parent communication notebook with a jacket" was for teachers to inform students' parents of the homework assignments for students, the jacket was to protect the notebook, while the desk name tag production and classroom decoration kit was to help teachers remember the names of students and to facilitate decoration of the classroom. Neither of them had anything to do with the uses of any specific textbooks. As for the dictionary and the math table game, the former could be considered a reference book for the Chinese class and the latter perhaps could make math learning more interesting. However, it would be difficult to regard either of them as a necessary teaching-aid tool. Nan-I

Book asserted that the guided composition practice sheet and manuscript paper" were associated with teaching. According to the Taipei High Administrative Court Su Tzu Decision No.503 in 2009, however, if an item was really related to teaching, it should have been included in the textbook, so that all the teachers and students could use it. In reality, they were only offered to the elementary schools in certain areas, suggesting that not all the teachers and students would have the opportunity to use them. Therefore, they could only be considered gift items the company inappropriately offered to increase the opportunity of having its textbooks selected.

(3) During the elementary textbook selection period in May 2016, Nan-I Book foretold to offer certain gift items in certain areas in Changhua County. The practice was likely to affect the textbook selectors' decision making and accordingly the results. In consequence, competitors not making any offers of gift items might lose transaction opportunities because of such unfair competition conduct. In other words, the aforementioned practice of Nan-I Book could jeopardize the fairness in textbook selection and the market competition. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. The FTC therefore imposed an administrative fine of NT\$1 million on Nan-I Book.

Appendix:

Nan-I Book Enterprise Co., Ltd.'s Uniform Invoice Number: 68461979

Summarized by Chen, Wei; Supervised by: Yang, Chia-Hui

Wu Hang Communications Co., Ltd.

1334th Commissioners' Meeting (2017)

Case: Wu Hang Communications violated the Fair Trade Law during recruiting franchisees to sell the "WOW" cell phones

Key Word(s): Franchise, important information

Reference: Fair Trade Commission Decision on May 31, 2017 (the 1334th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106038

Industry: Retail Sale of Telecommunications Equipment in specialized Stores (4832)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC received from a private citizen (hereinafter referred to as “the informer”) a complaint accusing Wu Hang Communications Co., Ltd. (hereinafter referred to as “Wu Hang Communications”) of violating the Fair Trade Law by not revealing its intention to open another franchised store in the area where the informer was operating, not disclosing the total number of its franchisees, and demanding each franchisee to sell at least 60 phones each month or a fine of NT\$500 for each cell phone short would be imposed.

2. Findings of the FTC after investigation:

(1) Wu Hang Communications admitted that in addition to the franchise contract for parties interested in joining the franchise to sign, it did not provide any franchise brochure, franchise agreement draft or any written information, and the rights and obligations of both parties were as defined in the contract. An inspection of the contract showed Wu Hang Communications did not fully disclose in writing important franchise information, including the company's management plan and the number of franchised stores it intended to set up in the same operating area, the number of franchisees in all counties and cities, their addresses and the ratios of contract cancellation and contract termination in the previous year, and the minimum

quantity of products to be sold or other restrictions during the contract period. As a result, the FTC concluded the conduct was obviously unfair.

(2) Wu Hang Communications began to recruit franchisees to sell the "WOW" cell phones in September 2013 and currently had nine franchised stores. Apparently, the company repeatedly took advantage of its information superiority to recruit and signed contracts with unspecific trading counterparts and such counterparts were unable to make correct transaction decisions because of the information asymmetry that put them in a disadvantageous position. The practice not only was unfair to the trading counterparts but also caused the company's competitors to lose the opportunity to find business partners. The effect on the trading order on the marketplace was no doubt apparent and would continue to influence other potential trading counterparts and bring more harm to the trading order if the conduct was not stopped.

3. Grounds for disposition:

(1) When recruiting franchisees to sell the "WOW" cell phones, Wu Hang Communications did not fully disclose to its trading counterparts in writing before the contract was signed important franchise information, including the company's management plan or the number of franchised stores it intended to set up in the same operating area, the number of franchisees in all counties and cities and their addresses, the ratios of contract cancellation and contract termination in the previous year, and the minimum quantity of products to be sold or other restrictions during the contract period. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law.

(2) After assessing the duration of the unlawful act of Wu Hang Communications (since September 2013), the total number of franchisees, the scale of business in 2015, the violation being the first, and its cooperativeness throughout the investigation, the FTC cited the first section of Article 42 of the Fair Trade Law to impose an administrative fine of NT\$150,000 on the company and at the same time ordered it to cease the aforesaid unlawful act.

Appendix:

Wu Hang Communications Co., Ltd.'s Uniform Invoice Number: 54208436

Summarized by Lin, Hsueh-Liang; Supervised by: Kuo, An-Chi

KQ Tea Dining Co., Ltd.

1336th Commissioners' Meeting (2017)

Case: KQ Tea violated the Fair Trade Law by failing to fully disclose important franchise information to its trading counterparts in writing before the franchise contracts were signed

Key Word(s): Franchise, important information, product purchase, material cost

Reference: Fair Trade Commission Decision of June 14, 2017 (the 1336th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106044

Industry: Beverage Serving Activities via Shops (5631)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The Association of Chain and Franchise Promotion held the "2016 Taipei International Chain and Franchise Spring Exhibition" from March 11 to 14 in 2016. In order to understand the condition of franchisee recruitment of participating businesses, the FTC sent its staff members to visit the exhibition. During the visit, the FTC's staff members found out that KQ Tea Dining Co., Ltd (hereinafter referred to as "KQ Tea") did not disclose in writing important franchise information, including the costs to purchase products and materials, during its talks with the persons interested in joining the franchise. As such conduct was in violation of Article 25 of the Fair Trade Law, the FTC initiated an ex officio investigation to understand

whether KQ Tea disclosed information regarding the costs of product and raw material purchases and related restrictions.

2. Findings of the FTC after investigation:

By administering a questionnaire survey and interviewing its franchisees, the FTC found out, before the franchise contract were signed, KQ Tea would give a briefing on the strengths of its brand name, a business startup interview, information about the franchiser and contract documents to those interested in joining the franchise. However, an inspection of such documents revealed KQ Tea did not fully disclose important franchise information with regard to the costs needed to purchase products and materials before and during the franchise operation.

3. Grounds for disposition:

(1) As a result of KQ Tea's failure to fully disclose in writing before the franchise contracts were signed important franchise information regarding the costs of product and material purchases before and during the franchise operation, persons interested in joining the franchise would find it difficult to assess the amount of the necessary capital to invest and the expenses needed to run the business. The aforesaid information was exactly what would-be franchisees needed to evaluate whether they would become part of the KQ Tea franchise or choose a different franchiser. In other words, KQ Tea was the party with the information superiority but took advantage of the information asymmetry by not fully disclosing the aforementioned franchise information before the franchise contract were signed to impede its trading partners from making correct transaction decisions. The practice was obviously unfair to the trading counterparts or unspecific potential trading counterparts, and consequently caused its competitors to lose opportunities to find franchisees. Hence, it was obviously unfair conduct able to affect the trading order on the marketplace that was in violation of Article 25 of the Fair Trade Law.

(2) After assessing the duration of the unlawful act, the sales of the company and the franchise fees received, the number of existing franchisees, the company's cooperativeness during the investigation and the violation being the first, the FTC

cited the first section of Article 42 of the Fair Trade Law to order KQ Tea to cease its unlawful act and at the same time imposed an administrative fine of NT\$100,000 on the company.

Appendix:

KQ Tea Dining Co., Ltd.'s Uniform Invoice Number: 24959430

Summarized by Jhou, You-Lin; Supervised by: Ho, Yen-Jung

Nestle Taiwan Ltd. & Orient EuroPharma Co., Ltd.

1338th Commissioners' Meeting (2017)

Case: Nestle Taiwan and Orient EuroPharma were complained for violation of the Fair Trade Law by raising prices for baby formula

Key Word(s): Baby formula, lock-in effect

Reference: Fair Trade Commission Decision of June 28, 2017 (the 1338th Commissioners' Meeting)

Industry: Manufacture of Dairy Products (0850)

Relevant Law(s): Articles 15 , 19 and 25 of the Fair Trade Law

Summary:

1. On March 1, 2017, Nestle Taiwan Ltd. (hereinafter referred to as “Nestle Taiwan”) raised the retail prices of six of its baby formulas while Orient EuroPharma Co., Ltd. (hereinafter referred to as “Orient EuroPharma”) also increased the retail prices of its 13 baby formulas. The FTC staff obtained the approval to initiate an ex officio investigation to see whether the price raises made by the two companies were in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) To find out whether the two companies had achieved a mutual understanding on the price raises, the FTC sent a written request for the two companies to give their statements at the FTC. At the same time, the FTC also requested the competent authority to provide information regarding the two companies' costs to import their baby formulas while some FTC staff members were sent to inspect pharmacies and related retail outlets to collect evidences. After examining the two companies' internal assessments, approval records, emails and price raise notices sent to retailers, the FTC thought the time points of the two companies' price raise decisions and the amounts of raises had no consistency. In addition, there were no evidences indicating the two companies had achieved a mutual understanding on the price raises. As a result, it was impossible to conclude the price adjustments made by the two companies were a concerted action. Furthermore, the FTC's investigation, statements from retailers, and the contracts signed between the two companies and their distributors also showed that the two companies had not imposed any resale price restrictions.

(2) Article 25 of the Fair Trade Law provides that "in addition to what is provided in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order." If an enterprise has a lock-in effect on its trading counterparts as a result of the particularity of its product and the trading counterparts thus become dependent on the enterprise, the enterprise has its relatively dominating market status. Under such circumstances, if the enterprise improperly takes advantage of such market status and engages in obviously unfair conduct that is able to affect the trading order on the marketplace, it is in violation of Article 25 of the Fair Trade Law.

(3) Baby formulas are the main source of food and nutrition for infants under one year old. All the baby formulas in the country are imported and importers are required to apply to the competent authority for inspections of the formulas and specifications in order to acquire importation permission. Therefore, importers of other products are unable to bring in similar products to compete with existing importers without going through such time-consuming procedures. After acquiring the permission to

import baby formulas, businesses will define their own market position and set the prices of their products. Once infants get used to the formula of a certain brand, it is quite unlikely for the parents to switch to any other brand. This was proven true by the statements offered by the pharmacies and other retailers selling baby formulas. In other words, consumers would need to take into account the cost of formulas of other brands and the possibility of their babies being unable to adapt to new formulas. Once the lock-in effect kicks in after a certain brand of baby formula is chosen and consumers get used for it for some time, it would be rather unlikely for such consumers to switch to other brands. Hence, the FTC concluded Nestle Taiwan and Orient EuroPharma indeed had their relatively dominating market status.

(4) Nestle Taiwan and Orient EuroPharma did not improperly take advantage of their market status to engage in deceptive or obviously unfair conduct in this baby formula price adjustment incident. However, in light of the dependence of consumers who have chosen baby formulas from the two companies, the FTC specifically warned the two companies to abide by the Fair Trade Law when making their price adjustments.

Summarized by Chien, Hao-Yu; Supervised by: Yang, Chia-Hui □

Le Le Gas Enterprise Co.

1343rd Commissioners' Meeting (2017)

Case: Le Le Gas Enterprise violated the Fair Trade Law for adopting inappropriate approaches to market gas safety devices

Key Word(s): Gas safety device, fraud

Reference: Fair Trade Commission Decision of August 2, 2017 (the 1343rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106062

Industry: Other Retail Sale Not in Stores or Stalls (4879)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. Earlier, the FTC decided at the 1275th Commissioners' Meeting on April 13, 2016 that Le Le Gas Enterprise Co. (hereinafter referred to as “the offender”) in the greater Taipei area had violated Article 25 of the Fair Trade Law by printing and distributing service notices that users could easily mistake as coming from their natural gas provider before the company used the pretext of making safety inspections to push its gas safety devices. The overall marketing practice was deceptive conduct able to affect trading order; hence, the FTC made the decision to transfer the case for the justice department to review the case and take the person in charge to court. Since Article 26(1) of the Administrative Penalty Act applied, it was decided at the FTC Commissioners' Meeting to order the offender to cease its unlawful act without imposing an administrative fine at the moment. Later on February 17, 2017, the FTC received the reply from Taipei District Prosecutors Office stating that the outcome of its investigation was not enough to consider the defendant Mr. Liao had deceived consumers and caused them to make wrong decisions. Plus, after the safety inspection service was provided, even though the NT\$2,900 consumers paid for a gas valve had been expensive, it was difficult to conclude the difference was not within the reasonable profit range. Furthermore, there was no evidence to prove Mr. Liao or his employees had applied deception to make consumers to make wrong decisions. Therefore, Taipei District Prosecutors Office found it difficult to consider Mr. Liao

having engaged in fraudulent practices and closed the case. However, the FTC was set to decide whether an administrative fine should be imposed on the offender for adopting the inappropriate approach to sell gas safety devices

2. Findings of the FTC after investigation:

To protect the procedural rights of the party in concern, the FTC sent a written request on May 10, 2017 and another on May 23, 2017 for the offender to come to the FTC to present statements regarding the facts and reasons provided in the Disposition Kung Ch'u Tzu No.105028. The written requests clearly indicated the FTC would review the case according to existing evidence if the offender failed to show up at the time specified. Both requests were legally delivered, but the offender did not come to the FTC to present statements on the date specified.

3. Grounds for disposition:

As set forth in Article 26(1)(2) of the Administrative Penalty Act, "If one and single act constitutes simultaneously a criminal offense or offenses as well as a breach of duty under administrative law, it shall be punishable under the criminal law. However, an administrative penalty may be additionally imposed in the case that the act is punishable by any other types of administrative penalty or that no forfeiture is pronounced by the court over the things that may be forfeited because of the act." "In the case of an act described in the preceding paragraph over which a final decision of non-prosecution or deferred prosecution is made, or over which a final judgment of acquittal, exemption from prosecution, lack of jurisdiction, not to be put on trial, not placed under protective measures, exemption from punishment or reprieve from punishment is pronounced, penalty may be imposed under the provisions with respect to breach of duty under administrative law." In this case, the offender violated Article 25 of the Fair Trade Law by adopting inappropriate approaches to market gas safety devices. The FTC gave out the sanction via Disposition Kung Ch'u Tzu No.105028 issued on April 13, 2016. However, as the person in charge of the business of the offender was suspected of committing fraud, the FTC transferred the case for the justice department to investigate and take the person in charge of the business of the

offender to court. Hence, the FTC only ordered the offender to cease the unlawful act and decided not to impose any administrative fine until the final court decision was made, whether it was no prosecution, the offender was found not guilty, or the case was dismissed, rejected or not reviewed. By then, the FTC could act according to Article 26(2) of the Administrative Penalty Act and imposed an administrative fine. After Taipei District Prosecutors Office closed the case with the conclusion that there was no concrete evidence to prosecute the offender for criminal fraud, the FTC regained the power to give its sanction since criminal penalty was no long possible. Therefore, the FTC imposed on the offender an administrative fine of NT\$100,000 for violating Article 25 of the Fair Trade Law by engaging in an inappropriate practice to market gas safety devices.

Summarized by Chen, Tse-Hsiang; Supervised by: Liu, Chi-Jung □

Shang He Water Purifier Co., Ltd.

1346th Commissioners' Meeting (2017)

Case: Shang He Water Purifier violated the Fair Trade Law by adopting illegitimate approaches to market water purifier-related products

Key Word(s): Water purifier, water purifier filter, raffle activity

Reference: Fair Trade Commission Decision of August 23, 2017 (the 1346th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106070

Industry: Manufacture of Other Domestic Appliances (2859)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC received a complaint accusing Xian Ke Le Steak House of holding raffles to market "Energy Water Resources" water purifiers and deceiving consumers in violation of the Fair Trade Law. After an investigation, the FTC discovered Xian

Ke Le Steak House had relocated without leaving any contact information and was nowhere to be found while the complainant was also unable to provide any further evidence. Hence, the FTC initiated an investigation to see whether Shang He Water Purifier Co., Ltd. (hereinafter referred to as “Shang He Water Purifier”), supplier of the "Energy Water Resource" water purifiers, had engaged in any deceptive conduct.

2. Findings of the FTC after investigation:

After Shang He Water Purifier came to the FTC to explain the raffle activities held, sources of prizes and distribution of prizes, the FTC visited and interviewed the businesses cooperating with Shang He Water Purifier in the raffle activities, the prize winners and the water purifier maker. The results indicated Shang He Water Purifier started using raffles to market products associated with the "Energy Water Resources" water purifiers in 2016 and contacted certain stores to find out their interest in cooperation in the activities. However, the wording in the flyers and on the raffle tickets could easily mislead consumers to believe the activities were organized by the stores. Shang He Water Purifier also established an agreement with the stores on the threshold for giving out 3C household appliances as prizes but never disclosed related information to the public. The company did not deny the prizes actually given out were inconsistent with the raffle description. In addition, the investigation revealed the company's water purifier purchasing price and the water purifier maker's suggested price were considerably lower than what Shang He Water Purifier told the prize winners. Most prize winners admitted they would not have purchased a water purifier and filters if they had not received the prize-winning notice.

3. Grounds for disposition:

(1) When an enterprise holds a raffle but announces the winners and prizes without actually conducting the raffle to attract people feeling happy about their luck to do business with it, or the enterprise does not make it clear the purpose of the raffle is to market products or services and consumers participating in the activities are psychologically unprepared, then the enterprise applies systematic marketing approaches to push its products or services on consumers, it will put such consumers

in a disadvantageous position in the information asymmetry, compared to the seller.

(2) The organizer of the raffle activities held by Shang He Water Purifier was never indicated. That misled consumers to believe the activities were associated with retail stores they had shopped at. The company used the raffle activities as a pretext and then notified winners to attract people who had no intention of making purchases to participate. Then, the company took advantage of people's mentality of feeling happy about being lucky and got the personal information of the prize winners. Moreover, the company concealed important trading information associated with the raffle activities and the actual raffle activities were obviously different from the description on the raffle tickets. Shang He Water Purifier also lied about the price of the water purifier. In consequence, consumers, being in the relatively disadvantageous position in the information asymmetry, made the wrong decision to purchase products related to the water purifier. The overall marketing practice was deceptive and obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. Therefore, the FTC ordered the company to immediately cease the unlawful act and also imposed on it administrative fine of NT\$100,000 in accordance with the first section of Article 42 of the Fair Trade Law.

Appendix:

Shang He Water Purifier Co., Ltd.'s Uniform Invoice Number: 53458245

Summarized by Fu, Hong-Wei; Supervised by: Wu, Lieh-Ling

Zhu Zhu Technology Co., Ltd.

1352nd Commissioners' Meeting (2017)

Case: Zhu Zhu Technology violated the Fair Trade Law for taking information from rental home service websites to use as the content of its app

Key Word(s): Mobile device app, online platform, plagiarism

Reference: Fair Trade Commission Decision of October 2, 2017 (the 1352nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106084

Industry: Data Processing, Hosting and Related Activities (6312)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The operator of 591.com, a real estate website, ADDCN Technology Co., Ltd. (hereinafter referred to as "the complainant") discovered Zhu Zhu Technology Co., Ltd. (hereinafter referred to as "Zhu Zhu Technology") had taken rental home information for 591.com and used it as the content of the "Zhu Zhu Fast Rental Home Service" cell phone app for users to make integrated queries. The complainant thought Zhu Zhu Technology had violated Article 25 of the Fair Trade Law by taking information from its rental home service website without acquiring its consent and using the information as the content of the "Zhu Zhu Fast Rental Home Service" app without disclosing the source website and, as a result, users could directly contact 591.com members who had delegated the complainant to post advertisements for their rental homes without visiting 591.com while Zhu Zhu Technology also marketed the "Rental Home Radar" notification service to collect membership fees from information browsers. The conduct of Zhu Zhu Technology was in violation of Article 25 of the Fair Trade Law.

2. Findings of the FTC after investigation:

Without acquiring the consent of the complainant, Zhu Zhu Technology used "web crawler" techniques to take rental home information from 591.com and applied it as the content of its Zhu Zhu Fast Rental Home Service app to attract users to download the app and pay for its Rental Home Radar service as well as to engage in

commercial transaction by selling advertising spots to advertising service operators to make a profit. It was plagiarism of website information that other had invested a considerable amount of effort to establish. By using such information as the content of its own website or database to increase the opportunity of business transaction, Zhu Zhu Technology exploited the achievements of others. The conduct of Zhu Zhu Technology not only reduced the number of visits paid to 591.com and exploited the effort the complainant had put in to build the website and attract rental home seekers, but also decreased the source of customers for the rental home advertisements posted on 591.com and the value of the advertising spots on 591.com. Plus, rental home websites had the characteristic of two-sided market. The damages the complainant suffered were beyond the static result created by the conduct of Zhu Zhu Technology. Also to be taken into consideration were long-term dynamic effects such as reduction of the source of customers for the rental homes posted on 591.com due to decrease of visits paid by rental home seekers to the website, depreciation of value of the advertising spots on 591.com as well as decline in rental home seekers' interest to visit the website and homeowners' interest to post advertisements on the website.

3. Grounds for disposition:

The practice of Zhu Zhu Technology had constituted obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. After assessing the impact of the company's conduct on trading order, the duration of the unlawful act, the profit gained from the unlawful act, the amount of capital and market status of the offender, the violation being the first time, the company's cooperativeness throughout the investigation and the evidence provided, the FTC imposed an administrative fine of NT\$50,000 on the company and also ordered it to immediately cease the unlawful act in accordance with the first section of Article 42 of the Fair Trade Law.

Appendix:

Zhu Zhu Technology Co., Ltd.'s Uniform Invoice Number: 60200354

Summarized by Lin, Hsueh-Liang; Supervised by: Liao, Hsien-Chou

Happy Water House International Co., Ltd., Shui Dang Dang International Co., Ltd., and Invogue Originality International Co., Ltd.

1359th Commissioners' Meeting (2017)

Case: Happy Water House violated the Fair Trade Law by failing to disclose important franchise information and give a reasonable period for contract review

Key Word(s): Franchise, important information, information disclosure

Reference: Fair Trade Commission Decision of November 22, 2017 (the 1359th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106106

Industry: Retail Sale of Other Food, Beverages and Tobacco in Specialized Stores (4729)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. The FTC received complaints about Happy Water House International Co., Ltd. (hereinafter referred to as “Happy Water House”) did not provide important franchise information and at the same time did not give a reasonable contract review period during franchisee recruitment. The conduct was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) According to Happy Water House, the company started to recruit franchisees in 2013. Between 2015 and 2018, the company respectively authorized Shui Dang Dang International Co., Ltd. (hereinafter referred to as “Shui Dang Dang”) and Invogue Originality International Co., Ltd. (hereinafter referred to as “Invogue Originality”) to be in charge of recruitment of franchisees for the "Happy Water House" brand. Therefore, the FTC requested Invogue Originality to give its statements as well as conducted a questionnaire survey on the franchisees of Happy Water House and interviewed with them. Afterwards, the FTC concluded that Happy Water House, Shui Dang Dang and Invogue Originality were the parties responsible

in this case.

(2) Happy Water House and the two other companies did give parties interested in joining the chain certain written information. Therefore, it was confirmed that the three companies did not fully disclose important franchise information, including the "contents of trademark rights licensed franchisees to use, the validity period and the range of use and restrictions," the "management plan or preliminary plan for new shops of the chain to be opened in the area where the franchisee operates," the "numbers and locations of all the franchisees of the same chain in different counties and cities," the "restrictions on franchisor-franchisee relations during the contract period," and the "conditions for contract change, termination or cancellation and handling approaches."

3. Grounds for disposition:

(1) Before the contract was signed, Happy Water House and the two other companies did not fully disclose in writing the "contents of trademark rights licensed franchisees to use, the validity period and the range of use and restrictions" and four other types of information. Parties interested in joining the chain had no basis to evaluate sufficiently their use of trademark rights, the condition of intra-brand competition, the management performance of the franchise chain, the restrictions on franchisee management, and the ways of handling if change of the rights and obligations of both sides took place. Therefore, the FTC concluded the aforesaid information was important information parties interested in joining a chain required to assess whether they would sign the contract or find another franchisor.

(2) Before the contract was signed, Happy Water House and the two other companies also did not allow a reasonable contract review period. The practice deprived parties interested in joining the chain of their opportunity to examine the contract thoroughly. As a result, such trading counterparts could not fully understand the contents of the contract to judge whether they would sign the contract.

(3) After deliberation, the FTC decided that Happy Water House and the two other companies were the side with information advantages. The fact that they did not fully disclose important transaction information and did not give a reasonable

contract review period during franchisee recruitment would impede trading counterparts from making right decisions. The practice also caused competitors to lose opportunities to sign contracts as a result. It was obviously unfair conduct sufficient to affect trading order in violation of Article 25 of the Fair Trade Law.

(4) After assessing the duration of the unlawful act of Happy Water House, the sales of the company, the number of franchisees already recruited, and the offense being the first, the FTC ordered Happy Water House and Invogue Originality to cease the unlawful act, and also imposed administrative fines of NT\$150,000, NT\$100,000 and NT\$100,000 on Happy Water House, Shui Dang Dang and Invogue Originality respectively.

Appendix:

Happy Water House International Co., Ltd.'s Uniform Invoice Number: 54225006

Shui Dang Dang International Co., Ltd.'s Uniform Invoice Number: 54217815

Invogue Originality International Co., Ltd.'s Uniform Invoice Number: 28964862

Summarized by Jhou, You-Lin; Supervised by: Ho, Yen-Jung

Mercuries and Associates Holding Ltd.

1359th Commissioners' Meeting (2017)

Case: Mercuries and Associates violated the Fair Trade Law for adopting unlawful practices during franchisee recruitment

Key Word(s): Supermarket, franchise, important information

Reference: Fair Trade Commission Decision of November 22, 2017 (the 1359th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 106107

Industry: Other Retail Sale in Non-specialized Stores (4719)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. A number of franchisees of the Simple Mart chain complained that Mercuries and Associates Holding Ltd. (hereinafter referred to as “Mercuries and Associates”) compulsorily distributed to them 4°C refrigerated beverages and desserts of short shelf life according to the arrangements made with its computer system. The company also irregularly forced its franchisees to purchase products that could not be returned and therefore the franchisees had to absorb the costs when such products were not sold out or had to be scrapped. In addition, it was complained that the franchisees had not found out there were as many as 64 penalty items only until Mercuries and Associates gave them the contracts to review.

2. Findings of the FTC after investigation:

Mercuries and Associates stated that its uniform product distribution mechanism and the computerized automatic product supply system were measures adopted to distribute products to its franchisees without their efforts of making orders. The uniform distribution mechanism was set up for the purpose of distribution of new products and promotional items. The quantity of new products was the figure indicated in the "quantity required by outlets" on the new product notification whereas the quantity of promotional items was calculated according to the quantity to be allocated through the uniform distribution mechanism indicated in the display arrangement table and each franchisee's stock amount. At the same time, the computerized automatic product supply system was mainly used for low-temperature commodities to be distributed each day. When the quantities ordered by the franchisees were inadequate, the system would calculate automatically to work out the right quantities. In other words, during the contract period, the franchisees were subject to minimum quantities or standards defined by Mercuries and Associates as a restriction on their franchise relationship. The 64 items listed in the Franchisee Operation Evaluation Table as the violations to be penalized were the detailed regulations established by Mercuries and Associates to facilitate franchisee administration. The franchisees had to abide by the administrative regulations

specified in the Franchisee Operation Evaluation Table because it was clearly stipulated in the contract that each franchisee was required to follow the regulations and rules established by Mercuries and Associates. They were part of the restriction on the franchisees.

3. Grounds for disposition:

(1) Before the franchise contract at issue was signed, Mercuries and Associates collected a draft contract viewing fee from its trading counterpart. The company would charge tens of thousands of NT dollars when a draft contract was canceled due to causes attributable to the trading counterpart. In other words, Mercuries and Associates never provided its trading counterparts with important trading information before the contract was signed.

(2) The written information Mercuries and Associates provided to its trading counterparts before the franchise contract was signed did not include any information related to the restriction of minimum quantities or quantity standards of products to be distributed according to the uniform product allocation mechanism and the computerized automatic product supply system. In the franchise contract it was stipulated that franchisees had to abide by related administrative regulations and follow other restrictive instructions included in the contract. However, Mercuries and Associates never provided the contract to those who were interested in joining the franchise to read before they signed the contract. In the written information the company provided only the wording of "the franchise relationship shall be subject to the provisions set forth in the official contract" implied the restrictions while the concrete restrictions to be imposed on the franchisees were not disclosed.

(3) During the recruitment process, Mercuries and Associates, being the side with information advantages, took advantage of the information asymmetry for its trading counterparts and did not fully disclose important trading information before the contract was signed. The practice was using information asymmetry to increase business opportunities and could impede trading counterparts from making right decisions. The contact had an effect on a large number of trading counterparts signing franchise contracts with the company. It was unfair to the trading counterparts and

also caused competitors to lose potential business partners. Unfair competition was created as a consequence. As the company had signed contracts with many trading counterparts, there was certain influence on trading order of the market. Therefore, the FTC concluded the practice at issue was obviously unfair competition able to affect trading order in violation of Article 25 of the Fair Trade Law. Citing Article 36 of the Enforcement Rules of Fair Trade Law, the FTC imposed an administrative fine of NT\$700,000 on the company.

Appendix:

Mercuries and Associates Holding Ltd.'s Uniform Invoice Number: 54397181

Summarized by Lin, Cheng-Yu; Supervised by: Ho, Yen-Jung

Kang Hsuan Educational Publishing Co., Ltd.

1360th Commissioners' Meeting (2017)

Case: Kang Hsuan violated the Fair Trade Law by organizing raffle activities for junior high school teachers in Hsinchu County and City

Key Word(s): Textbook, inappropriate object

Reference: Fair Trade Commission Decision of November 29, 2017 (the 1360th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106110

Industry: Book Publishing (5813)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. A private citizen reported to the FTC that Kang Hsuan Educational Publishing Co., Ltd. (hereinafter referred to as “Kang Hsuan”) was in violation of Article 25 of

the Fair Trade Law by offering bonuses and prizes to junior high school teachers in Hsinchu County and Hsinchu City during a Christmas celebration event. Therefore, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) The private citizen provided the "Kang Hsuan Happy Christmas Presents" event signup sheet and also a video tape filmed throughout the winning number drawing process. The prizes included NT\$5,000 vouchers for Sogo Department Store, City Steak meal coupons, Vieshow Cinemas tickets, Aveda skincare kits and Seba foot care experience kits. Participants not winning any of the aforementioned prizes would receive a consolation prize.

(2) The FTC sent a written request to Kang Hsuan asking it to explain the motive for organizing the event, the content of the event, and the prizes given out. Visits were also paid to schools with more prize winners. As of May 2017, most prize winners had received their prizes most of which were Aveda skincare kits and Seba foot care experience kits.

3. Grounds for disposition:

(1) Kang Hsuan contested the event had been held to collect the email addresses and phone numbers of teachers of different schools in order to send them messages about social events and educational information. However, since sending messages about social events and educational information was an additional service outside product marketing, Kang Hsuan should have organized the same or similar activities for all schools using the company's textbooks. Yet, the fact was that the event was only open to junior high school teachers in Hsinchu County and Hsinchu City, obviously contradictory to normal practices. Meanwhile, if Kang Hsuan had really intended to send materials for teaching aids to teachers, even if the schools had not provided their teachers' contact information, the salesmen of the company could have delivered the objects to each school or had them forwarded by the related units of the schools. In other words, there was no need to offer valuable objects to obtain the contact information of teachers.

(2) None of the prizes indicated on the flyer for the event was related to teaching and the people to receive them were either teachers or administrative personnel of different schools. In addition, all the prizes had their objective monetary value and therefore could be given to others as gifts. Even though some of the prizes were not expensive, they were not related to teaching and were given outside the textbook selection period, it could be intended to accumulate favors. The same interpretation could be found in the 2009 Judgment Su Tzu No.503 from the Taipei High Administrative Court.

(3) The time point when Kang Hsuan held the event was not during the textbook selection period. Nonetheless, the FTC's policy statements on sales of textbooks did not indicate provision of gifts during the textbook selection period as the only standard for judging whether such practices were illegal. The policy statements list money, objects and other economic benefits as gifts given to increase the opportunity of having a publisher's textbooks selected, but without doubt the legal effect had to be determined according to Article 25 of the Fair Trade Law. As described above, the Christmas raffle organized by Kang Hsuan to offer money and objects to junior high school teachers in Hsinchu County and Hsinchu City was inappropriate. The practice was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$500,000 on the company.

Appendix:

Kang Hsuan Educational Publishing Co., Ltd.'s Uniform Invoice Number: 23142092

Summarized by Chen, Ru-Ya ; Supervised by: Yang, Chia-Hui

9.2 Judicial Cases

L. G. M. Limited

Supreme Administrative Court (2015)

Case: The Supreme Administrative Court overruled the administrative litigation filed by L. G. M. Limited regarding its violation of the Fair Trade Law

Key Word(s): Overseas resort, tour membership, cash feedback

Reference: Supreme Administrative Court Judgment (2015) Pan Tzu No.737

Industry: Travel Agency, Tour Operator, Reservation Service and Related Activities (7900)

Relevant Law(s): Article 24 of the Fair Trade Law in effect at the time of the conduct (Article 25 of the current version)

Summary:

1. The appellant (L. G. M. Limited) lured consumers to purchase its overseas resort CVC membership cards by claiming that there would be cash feedback and that the company would provide resale service to attract consumers to purchase VIP Asia memberships. It was deceptive and obviously unfair conduct that was able to affect trading order in violation of Article 24 of the Fair Trade Law in effect at the time of the conduct. The appellee (FTC) sanctioned the company who found the sanction unacceptable and appealed. Reassess according to the discretion of 2013 Judgment Su Tzu No.707, the appellee concluded the case and cited the first section of Article 41 of the Fair Trade Law and issued Disposition Kung Ch'u Tzu No.103061 on May 16, 2014 to impose NT\$2.5 million on the company for its inappropriate claim of giving cash feedback to lure consumers to purchase overseas resort CVC membership cards and NT\$1.5 million for its inappropriate claim of providing resale service to attract consumers to purchase VIP Asia memberships. The fines totaled NT\$4 million. The appellant found the fines unacceptable and petitioned. But the petition was later rejected. The appellant then filed administrative litigation but it was rejected by the court of original jurisdiction via 2015 Judgment Su Tzu No.22. The appellant still found the decision unacceptable and file its appeal in this case.

2. The appellant abused its information advantage and concealed the facts significant to the transaction decision in conducting its business transactions with consumers. As a result, consumers' interests were jeopardized. Despite that the evidences showed that only five consumers suffered from the losses but if the conduct of the appellant was not stopped, it would affect other potential trading counterparts and cause greater harms to others in the future. The appellant's concealment of important trading information had already affected trading order. The results of the questionnaire survey, records of statements provided by consumers over the phone, petition contents, written complaints filed, reasons of judicial discretion and legal opinions, and why the argument of the appellant was not acceptable were all clearly described in the original decision delivered by Taipei High Administrative Court.

3. The representative of the appellant, Philip Neaves, adopted unlawful marketing practices to sell the membership cards and requested consumers to pay a deposit before viewing the purchase contract. He also claimed that the company would provide resale service to entice consumers to make purchase decisions and was convicted criminal offense for 86 counts of fraud according to Taiwan High Court 2009 Judgment Shang Chong Su Tzu No.50. The large number of victims indicated trading order had obviously been affected. In other words, the court supported the appellee's conclusion that the appellant had violated Article 24 of the Fair Trade Law in effect at the time of the conduct. Moreover, the appellant lured consumers to make transactions and gave little time for them to review the contract. The difference between the information in the written documents and the oral presentations provided by its sale representatives was difficult to distinguish without close scrutiny. This was confirmed in the original court decision as a practice intended to mislead consumers into doing transactions and concealment of important trading information to cause consumers to make wrong decisions. Undoubtedly it was deceptive conduct.

4. The Supreme Administrative Court maintained the decision of the original court and the original sanction and rejected the appellant's appeal over the ruling in the first

instance on the grounds that the appeal was merely a reiteration of reasons that the original court did not accept. The argument that the original ruling was in violation of related laws and regulations and therefore had to be discarded was groundless and the appeal was therefore rejected.

Appendix:

L.G.M. Limited's Uniform Invoice Number: 16447251

Summarized by Wang, Cheng-Chieh; Supervised by Ren, Han-Ying

Chapter 10

Multi-level Marketing Violations

Livi Life Business Co., Ltd.

1233rd Commissioners' Meeting (2015)

Case: Livi Life violated the Multi-level Marketing Supervision Act for its multi-level marketing approaches

Key Word(s): Consumption integration service, VIP consumption integration service package, Livi Life Regal service contract

Reference: Fair Trade Commission Decision of June 24, 2015 (the 1233rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.104049

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Articles 7(1) and 24 of the Multi-level Marketing Supervision Act and Article 21 of the same Act applicable *mutatis mutandis*

Summary:

1. Taipei City Office of Commerce transferred a case of refunding dispute regarding Livi Life Business Co., Ltd. (hereinafter referred to as "Livi Life") to the FTC whereas the FTC had also received since May 2014 a number of legal attest letters from private citizens deciding to terminate "consumption integration service" and "VIP consumption integration service" contracts signed with Livi Life and also complaints from others about Livi Life refusing their requests for termination of their "VIP consumption integration service" contracts. The situations involved violation of the Multi-level Marketing Supervision Act.

2. Findings of the FTC after investigation:

Beginning in April 2013, the sales system of Livi Life included issuance of rewards, commissions and other economic benefits such as lecture fees, counseling allowances, bonuses, etc. However, Livi Life did not file the system with the FTC

until January 28, 2015. Meanwhile, the company's participants could purchase the "consumption integration service" or the "VIP consumption integration service" package to obtain the right to recommend others to purchase the "Livi Life Regal service" and earn referral fees as well as receive contract fulfillment and service bonuses. Nevertheless, the company did not file with the FTC before the implementation of the system. Although Livi Life ever registered its multi-level marketing operation with the FTC but the content of its registration did not include the system at issue. By changing its sales system without filing with the FTC in advance, Livi Life violated Article 7(1) of the Multi-level Marketing Supervision Act.

3. Grounds for disposition:

Livi Life registered the prices of the "consumption integration service" and the "VIP consumption integration service" respectively as NT\$50,000 (or 60,000) and NT\$500,000, to be paid in installments. Participants purchasing the service packages had to pay the down payment of NT\$5,000 (or 6,000) or NT\$50,000 separately when signing the contracts and then a certain amount each month or each year afterwards. However, as of January 22, 2015, not one participant had paid any installment and Livi Life had never urged the participants to pay up the installments. In other words, the actual purchasing prices of the "consumption integration service" and the "VIP consumption service" must have been the NT\$5,000 and NT\$50,000 that the participants paid as down payments, yet Livi Life had set the prices as mentioned earlier in order to prevent participants from terminating the contracts and returning the products. The FTC received a number of legal attest letters from participants requesting for contract termination and refunding but Livi Life never take actions according to related regulations and processed such withdrawal and product return requests within 30 days after participants terminating their contracts. Such conduct was a violation of Article 24 of the Multi-level Marketing Supervision Act and Article 21 of the same act was applicable *mutatis mutandis*. Therefore, the FTC cited Article 32(1)(2) and Article 34 of the Multi-level Marketing Supervision Act and imposed NT\$100,000 on the company for its violation of Article 7(1) of the Multi-

level Marketing Supervision Act, and NT\$2 million for its violation of Article 24. The fines totaled NT\$2.1 million.

Appendix:

Livi Life Busibess Co., Ltd.'s Uniform Invoice Number: 53929549

Summarized by Wang, Horng-Shiuan; Supervised by Chi, Hsueh-Li

Ino Advertising Marketing Co., Ltd.

1325th Commissioners' Meeting (2017)

Case: Ino Advertising violated the Multi-level Marketing Supervision Act by failing to file with the FTC before changing its sales system and not processing within the statutory period products returned by participants upon contract cancellation and termination

Key Word(s): Multi-level marketing, filing changes, return of products upon withdrawal, business operation inspection

Reference: Fair Trade Commission Decision of March 29, 2017 (the 1325th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.106021

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Articles 7, 20, 21 and 24 of the Multi-level Marketing Supervision Act

Summary:

1. On January 17, 2017, the FTC staff members sent to the main office of Ino Advertising Marketing Co., Ltd. (hereinafter referred to as “Ino Advertising”), a multi-level marketing business, to perform business inspections discovered that the company had violated the Multi-level Marketing Supervision Act.

2. Findings of the FTC after investigation:

(1) Ino Advertising marketed the “Ino Platform Advertising Social Network Marketing Scheme (VIP members)” and the “Ino Platform Advertising Social network Marketing Scheme (regular members). “ VIP members could use Ino Advertising's cell phone shopping app “Taking Advantage” to post advertisements whereas regular members could only use the app to browse the advertisements and purchase products. Hence, the FTC concluded that Ino Advertising sold service products.

(2) Between June and August 2016, Ino Advertising held an overseas travel incentive activity during which 75 members were given cash prizes and 40 awarded a trip to Thailand. The company adopted the new regulation that each participant could purchase seven VIP memberships at the maximum but did not file with the FTC in advance.

(3) Another finding revealed that the “organization bonuses (the social networking bonuses filed)” registered on the weekly bonus sheets between June 27, 2016 and January 1, 2017 were inconsistent with the information Ino Advertising filed with the FTC. The bonuses actually issue were more than the amounts filed.

(4) As of January 4, 2017, applications for termination of 475 management rights were filed by participants of Ino Advertising within 30 days after their contracts were signed and applications for termination of 241 management rights were filed 30 days after their contracts were signed When giving its statement on February 15, 2017, however, Ino Advertising admitted that it never refunded those applicants for the products they returned.

3. Grounds for disposition:

(1) The overseas travel incentive activity held by Ino Advertising included cash prizes and overseas trips. The issuance of prize money and economic benefits was part of the company's sales system, but before its implementation Ino Advertising never filed with the FTC the contents of the incentives, conditions for issuance of such incentives, and ratio of the cost to the company's total revenue. It was in violation of Article 7(1) of the Multi-level Marketing Supervision Act.

(2) According to the original information filed by Ino Advertising, there was not an upper limit on the management rights that each participant could purchase. Starting on October 31, 2016, however, each participant could purchase at the most seven “VIP memberships” and each “VIP membership” represented one management right, and Ino Advertising had not filed with the FTC before implementing the new system. It was in violation of Article 7(1) of the Multi-level Marketing Supervision Act.

(3) As indicated in the information Ino Advertising filed with the FTC, the maximum of the “social networking bonuses” was 35% of the total sales of the period. However, the “organization bonuses (the social networking bonuses filed with the FTC)” Ino Advertising actually issued between June 27, 2016 and January 1, 2017 exceeded the above percentage. In other words, the issuance of bonuses was inconsistent with the information filed with the FTC and the company had not registered the change with the FTC beforehand. The conduct was in violation of Article 7(1) of the Multi-level Marketing Supervision Act.

(4) As of January 4, 2017, applications were filed by the company's participants for the termination of 475 management rights within 30 days after their contracts were signed. Ino Advertising was supposed to process the withdrawals and refunded the participants at the latest on February 3, 2017, yet the company admitted it had not completed the refunding before February 15, 2017. Therefore, its failure to complete the withdrawal process and refunding within 30 days after the participants canceled or terminated their contracts was in violation of Article 24 of the Multi-level Marketing Supervision Act and Article 20(2) of the same act was applicable *mutatis mutandis*. In the meantime, applications for the termination of 241 management rights were filed by participants 30 days after their contracts were signed. At the latest, Ino Advertising had to complete the withdrawal process and refund the participants on February 3, 2017, yet the company admitted it had not completed the refunding before February 15, 2017. Consequently, its failure to complete the withdrawal process and refunding within 30 days after the participants canceled or terminated their contracts was in violation of Article 24 of the Multi-level Marketing Supervision Act and Article 21(2) of the same act was applicable *mutatis mutandis*.

(5) Ino Advertising violated Article 7(1) of the Multi-level Marketing Supervision Act by failing to file with FTC before changing its sales system. The FTC imposed an administrative fine of NT\$1 million on the company. Meanwhile, the company's failures to complete the withdrawal process and refund the participants as described above also respectively violated Article 24 of the Multi-level Marketing Supervision Act while Article 20(2) of the same act was applicable mutatis mutandis and Article 24 while Article 21(2) was applicable mutatis mutandis. The FTC imposed an administrative fine of NT\$1.5 million for each of these two violations. The fines totaled NT\$4 million.

Appendix:

Ino Advertising Marketing Co., Ltd.'s Uniform Invoice Number: 54723812

Summarized by Chang, Wei-Chih; Supervised by: Chen, Jen-Ying

Appendix I

Fair Trade Law of 2017

Promulgated on February 4, 1991, Effective on February 4, 1992;
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999;
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36,
37, 40, 41, 42, 46 and 49, and added Articles 23-1, 23-2, 23-3, and 23-4.)
Amendment of Article 9 Promulgated on April 26, 2000;
Amendments Promulgated on February 6, 2002;
(The 2002 Amendments amended Articles 7, 8, 11, 12, 13, 14, 15, 16, 17, 23-4
and 40, and added Articles 5-1, 11-1, 27-1, and 42-1.)
Amendment of Article 21 Promulgated on June 9, 2010;
Amendment Promulgated on November 23, 2011
(The 2011 Amendments amended Articles 21 and 41, and added Article 35-1.)
Amendments Promulgated on February 4, 2015;
Amendment Promulgated on June 24, 2015;
(The 2015 Amendment added Article 47-1)
Amendment Promulgated on June 14, 2017
(The 2017 Amendments amended Article 11)

CHAPTER I

GENERAL PRINCIPLES

Article 1

This Law is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity

Article 2

The term "enterprise" as used in this Law refers to any one of the followings:

1. a company;
2. a sole proprietorship or partnership;
3. any other person or organization engaging in transactions through the provision of goods or services.

A trade association organized by businesses, or any other organization lawfully established to promote the interests of its members is deemed as an enterprise as referred to in this Law.

Article 3

The term “trading counterpart” as used in this Law means any supplier or purchaser that engages in or concludes transactions with an enterprise.

Article 4

The term “competition” as used in this Law means any conduct of one enterprise to compete for trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

Article 5

The term “relevant market” as used in this Law means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

Article 6

The term “competent authority” as used in this Law means the Fair Trade Commission.

For any matter provided for in this Law that involves the authorities of any other ministries or commissions, the competent authority may consult with such other ministries or commissions to deal therewith.

CHAPTER II RESTRAINTS OF COMPETITION

Article 7

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in the relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not in fact engage in price competition with each other and they as a whole have the same status as the enterprise defined in the preceding paragraph.

Article 8

An enterprise shall not be deemed a monopolistic enterprise as defined in the preceding article if none of the following circumstances exists:

1. the market share of the enterprise in the relevant market reaches one half of the market;
2. the combined market share of two enterprises in the relevant market reaches two thirds of the market; and
3. the combined market share of three enterprises in the relevant market reaches three fourths of the market.

Under any of the circumstances set forth in the preceding paragraph, where the market share of any individual enterprise does not reach one tenth of the relevant market or where its total sales in the preceding fiscal year are less than the threshold amount as publicly announced by the competent authority, such enterprise shall not be deemed as a monopolistic enterprise.

An enterprise exempted from being deemed as a monopolistic enterprise by any of the preceding two paragraphs may still be deemed a monopolistic enterprise by the competent authority if the establishment of such enterprise or any of the goods or services supplied by such enterprise to the relevant market is subject to legal or technological restraints, or there exists any other circumstance under which the

supply and demand of the market are affected and the ability of others to compete is impeded.

Article 9

Monopolistic enterprises shall not engage in any one of the following conducts:

1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification;
or
4. other abusive conducts by its market power.

Article 10

The term “merger” as used in this Law means any one of the following conditions:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions held or acquired by an enterprise that is controlled by, controlling, or affiliated with the acquiring enterprise, and by an enterprise where both it and the acquiring enterprise are controlled by the same enterprise or enterprises shall be included.

Article 11

Any merger that falls within any of the following circumstances shall be filed with the competent authority in advance:

1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the competent authority.

The threshold amount of the sales referred to in Subparagraph 3 of the preceding paragraph shall include the sales amount of an enterprise that is controlled by, controlling, or affiliated with the enterprise in the merger, and of an enterprise where both it and the enterprise in the merger are controlled by the same enterprise or enterprises. The calculation method shall be publically announced by the competent authority.

A person or a group that has controlling interest in an enterprise is deemed as an enterprise pertinent to the provisions of this Law with regards to merger.

The controlling interest as referred to in the preceding paragraph means that the person or the group, as referred to in the preceding paragraph, and their related persons, hold a majority of the total number of outstanding voting shares or the total capital of the said enterprise.

The scope of the related persons as referred to in the preceding paragraph is defined as follows:

1. the same natural person, and the natural person's spouse, as well as the person's blood relatives within the second degree of kinship.
2. an enterprise in which the person, referred to in the preceding subparagraph, holds more than one half of the total number of outstanding voting shares or total capital.
3. an enterprise in which the person, referred to in Subparagraph 1, acts as its chairman, president or the director representing a majority of directors.
4. the same group and its representative, manager, or any other person with representing authority, and his/her spouse, as well as his/her blood relatives

within the second degree of kinship;

5. The same group and the enterprise in which the natural person of the preceding subparagraph holds more than one half of the total number of outstanding voting shares or total capital.

The sales amount as referred to in Paragraph 1 Subparagraph 3 shall be announced separately by the competent authority in different industries.

Enterprises shall not proceed to merge within a period of 30 working days starting from the date the competent authority accepts the complete filing materials, provided that the competent authority may shorten or extend the period as it deems necessary and notifies in writing the filing enterprise of such change.

Where the competent authority extends the period in accordance with the proviso of the preceding paragraph, such extension may not exceed 60 working days; for cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 13.

Where the competent authority fails to notify of the extension as referred to in the proviso of Paragraph 7 or make any decision as referred to in the preceding paragraph before the period expires, the enterprises may proceed to merge provided that the merger may not proceed under any of the following circumstances:

1. where the filing enterprises consent to a further extension of the period;
2. where the filing contains any false or misleading item.

The competent authority may ask for external opinions for the merger filed, and if necessary, entrust the academic research institutions to provide the opinion of the industrial economic analysis. Provided that one of the enterprises in the merger does not agree to the merger, the competent authority shall provide the cause of the merger to it and ask for its opinion.

The competent authority shall make a decision of the merger of the proviso of the preceding paragraph in accordance with the provisions of Article 13.

Article 12

The provisions of Paragraph 1 of the preceding Article shall not apply to any of the following circumstances:

1. where any of the enterprises participating in a merger, or its 100% held subsidiary, already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise;
2. where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge;
3. where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely;
4. where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Act or Article 28-2 of the Securities and Exchange Act, redeems its shares held by shareholders so that its original shareholders' shareholding falls within the circumstances provided for in Article 10, Paragraph 1, Subparagraph 2 herein;
5. where a single enterprise reinvests to establish a subsidiary and holds 100% shares or capital contribution of such a subsidiary;
6. any other designated type of merger promulgated by the competent authority.

Article 13

The competent authority may not prohibit any of mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

The competent authority may impose conditions or undertakings in any of the decisions it makes on the filing cases referred to in Article 11, Paragraph 8 herein in order to ensure that the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

Article 14

The term "concerted action" as used in this Law means that competing enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding, jointly determine the price,

quantity, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, or any other behavior that restricts each other's business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services.

The term “any other form of mutual understanding” as used in the preceding Paragraph means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.

The mutual understanding of the concerted action may be presumed by considerable factors, such as market condition, characteristics of the good or service, cost and profit considerations, and economic rationalization of the business conducts.

The act of a trade association or other groups, as referred to in Article 2 Paragraph 2, to restrict activities of enterprises by means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, to restrict activities of enterprises is also deemed as concerted action as used in this Law.

Article 15

No enterprise shall engage in any concerted action; unless the concerted action that meets one of the following requirements is beneficial to the economy as a whole and in the public interest, and the application with the competent authority for such concerted action has been approved:

1. unifying the specifications or models of goods or services for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods, services, or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods, or services for the

- purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, because of economic downturn, that the enterprises in the same industry have difficulty to maintain their business or encounter a situation of overproduction;
 7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises ; or
 8. joint acts required for the purposes of improving industrial development, technological innovation, or operational efficiency.

After receipt of the application referred to in the preceding Article, the competent authority shall make a decision within three months, the period of which may be extended once if necessary.

Article 16

The competent authority may impose conditions or undertakings in the approval it grants pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding five years. The enterprises involved may, with justification, file a written application for an extension thereof with the competent authority within three to six months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed five years.

Article 17

After a concerted action is approved, the competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions, because the cause for approval no longer exists, the economic condition changes, the enterprises involved engage in any conduct beyond the scope of approval, or violate the conditions or undertakings which the competent authority imposed pursuant to Paragraph 1 of the preceding Article.

Article 18

The competent authority shall voluntarily make public the approvals, and their relevant conditions, undertakings, and time limits, referred to in the preceding three Articles.

Article 19

An enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale. However, those with justifiable reasons are not subject to this limitation.

The provision of the preceding paragraph shall apply *mutatis mutandis* to services provided by an enterprise.

Article 20

No enterprise shall engage in any of the following acts that is likely to restrain competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. preventing competitors from participating or engaging in competition by inducement with low price, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger, concerted action, or vertical restriction by coercion, inducement with interest, or other improper means;
5. imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement.

CHAPTER III UNFAIR COMPETITION

Article 21

No enterprise shall make or use false or misleading representations or symbols on the matter that is relevant to goods and is sufficient to affect trading decisions on goods or in advertisements, or in any other way make it known to the public.

The matter, referred to in the preceding paragraph that is relevant to the goods, and is sufficient to affect trading decisions, includes: price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, place of processing, or any other relevant item that has touting effects.

No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.

The preceding three paragraphs shall apply *mutatis mutandis* to services provided by an enterprise.

Where any advertising agency makes or designs any advertisement that it knows or should have known to be misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or should have known to be likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom. Where any endorser provides any testimonials that he knows or should have known to be likely to mislead the public, he shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. However, endorsers who are not celebrities, specialists or organizations shall be held jointly and severally liable with the advertiser for only up to 10 times of the reward they have received from the advertiser.

The endorser set forth in the preceding paragraph shall refer to any person or organization, other than the principal of the advertisement, who expresses opinions,

trust, findings, or results of personal experiences with regard to the goods or services.

Article 22

No enterprise shall have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner in the same or similar category of merchandize, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to the public, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation; or
2. using in the same or similar manner in the same or similar category of services, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or services, commonly known to the public, so as to cause confusion with the facilities or activities of the business or service of such person;

The provisions of the preceding paragraph are not applicable to the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, as referred to in the preceding paragraph, if that enterprise has obtained a legally registered trademark.

The provisions of Paragraph 1 shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or services, or the representation customarily used in the trade of the same category of goods or services; or selling, transporting, exporting or importing goods or services bearing such name or representation;
2. using in good faith one's own name, or selling, transporting, exporting or importing goods or services bearing such name;
3. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the first paragraph before such representation having become commonly known to the public, or

using such representation by any successor that acquires such representation together with the business from a bona fide user; or selling, transporting, exporting or importing goods or services bearing such representation.

Where any enterprise has any of the acts set forth in the second or third subparagraphs of the preceding paragraph which is likely to cause confusion or mistake concerning the origins of such goods or services with another enterprise, the latter enterprise may request the former to add appropriate distinctive labeling, unless the former only transports such goods.

Article 23

No enterprise shall compete for trading opportunities by means of improper offerings of gifts or prizes.

The competent authority shall enact the regulations with regard to the scope of gifts or prizes, amount of improper offering and other related matters.

Article 24

No enterprise shall, for the purpose of competition, make or disseminate any false statement that is capable of damaging the business reputation of another.

Article 25

In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

CHAPTER IV INVESTIGATION AND SANCTION PROCEDURES

Article 26

The competent authority may investigate and handle, upon complaints or ex officio, any involvement in the violation of the provisions of this Law that harms the public interest.

Article 27

In conducting investigations under this Law, the competent authority may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify the parties and any related third party to submit books and records, documents, and any other necessary materials or exhibits; and
3. to dispatch personnel for any necessary onsite inspection of the office, place of business, or other locations of the parties and any related third party.

The competent authority may seize articles obtained from the investigation that may serve as evidence. The scope, and duration of holding the seized articles are limited to the need of investigation, inspection, verification, or any other purpose of preserving evidence.

Any person, subject to an investigation conducted by the competent authority pursuant to the provisions of Paragraph 1, shall not evade, obstruct, or refuse to cooperate without justification.

An investigator carrying out his/her duties under this Law shall present the documents supporting such duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

Article 28

In conducting investigations into an enterprise's conduct that may violate the provisions of the Law, if such enterprise makes commitments to take specific measures to cease and rectify its alleged illegal conduct within the time prescribed by the competent authority, the competent authority may suspend the investigation.

In the situation referred to in the preceding paragraph, the competent authority shall monitor whether such enterprise fulfills its commitments.

If the enterprise has fulfilled its commitments by taking specific measures to cease and rectify its alleged illegal conduct, the competent authority may decide to terminate the investigation. However, under any of the following circumstances, the

investigation shall be resumed:

1. the enterprise fails to fulfill its commitments;
2. there is a significant change to the facts upon which the decision to suspend the investigation was based;
3. the decision to suspend the investigation was based on incomplete or misleading information provided by the enterprise.

The limitation on the power to impose sanctions, under the circumstance as described in Paragraph 1, interrupts on the day of suspending the investigation. Where the competent authority resumes the investigation, the limitation on the power to impose sanctions shall start on the date of the following day when the investigation is resumed, which shall be added to the period of time elapsed prior to suspending the investigation.

CHAPTER V COMPENSATION FOR DAMAGES

Article 29

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may request the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed.

Article 30

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

Article 31

In response to the request of the person being injured as referred to in the

preceding article, a court may, taking into consideration of the nature of the infringement, award compensation more than the actual damages if the violation is intentional; provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from its act of infringement, the injured may request to assess the damages exclusively based on the monetary gain to such infringing person.

Article 32

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after the lapse of ten years from the time of infringing conduct is committed.

Article 33

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expenses of the infringing party.

CHAPTER VI PUNISHMENT

Article 34

If any enterprise violating the provisions of Article 9 or Article 15 is ordered by the competent authority pursuant to paragraph 1 of Article 40 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine

of not more than one hundred million New Taiwan Dollars, or by both.

Article 35

The competent authority may grant exemption from or reduction of fines to be imposed in accordance with paragraph 1, 2 of Article 40 on enterprises in violation of Article 15 but meeting one of the following conditions:

1. the enterprise files a complaint or informs the competent authority in writing about the concrete illegal conduct of the concerted action in which it has partaken and also submits the evidence and assists the investigation before the competent authority is aware of the said illegal conduct or initiated an investigation in accordance with this Law;
2. the enterprise reveals the concrete illegal conduct as well as submits the evidence and assists the investigation during the period in which the competent authority investigates the said illegal conduct in accordance with this Law.

The competent authority shall enact the regulations with regard to the eligibility of the subjects to whom the preceding paragraph applies, the criteria of the said fine reduction and exemption and the number of enterprises to be granted the said fine reduction or exemption, evidence submission, identity confidentiality, and other matters in relation to the enforcement of the said regulations.

Article 36

If any enterprise violating the provisions of Article 19 or Article 20 is ordered by the competent authority pursuant to paragraph 1 of Article 40 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

Article 37

Shall any enterprise violate the provisions of Article 24, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

If any representative, agent, employee or other worker of a juristic person commits an offense referred to in the provisions of Article 24 while executing his/her duties, not only the actor shall be punished in accordance with the provision of the preceding paragraph, the juristic person shall also be fined as prescribed in the preceding paragraph.

No action shall be brought against the violation referred to in the preceding two paragraphs unless there is a complaint filed.

Article 38

Where any other laws provide for more severe punishment than those prescribed in Article 34, Article 36 and Article 37, the provisions of such other laws shall apply.

Article 39

Where any enterprise(s) proceeds with a merger in violation of Paragraph 1 or Paragraph 7 of Article 11 herein, or proceeds with a merger despite that the competent authority decides upon the filing to prohibit such merger, or fails to perform the undertakings required as pursuant to Paragraph 2 of Article 13, the competent authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from their positions, or make any other necessary dispositions, and may impose an administrative penalty of not less than two hundred thousand and not more than fifty million New Taiwan Dollars upon such enterprise(s).

Where any enterprise(s) proceeds with a merger under the circumstances where the filing contains any false or misleading items, the competent authority may

prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary dispositions, and may impose an administrative penalty of not less than one hundred thousand and not more than one million New Taiwan Dollars upon such enterprise(s).

Where any enterprise violates the disposition made by the competent authority pursuant to the provisions of the preceding two paragraphs, the competent authority may order for dissolution, suspension or termination of business operation.

The period for suspension of business operation ordered pursuant to the preceding paragraph shall be limited to six months each.

Article 40

The competent authority may order any enterprise that violates Article 9, Article 15, Article 19 and Article 20 to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than one hundred thousand and not more than fifty million New Taiwan Dollars. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than two hundred thousand and not more than one hundred million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

The competent authority may impose an administrative penalty up to 10% of the total sales income of an enterprise in the previous fiscal year without being subject to the limit of administrative fine set forth in the preceding paragraph if the enterprise is deemed by the central competent authority as in serious violation of Articles 9 or 15.

The competent authority shall enact the regulations with regard to the

calculation of the total sales of the previous fiscal year, definition of serious violations, and calculation of administrative penalties.

Article 41

The power to impose sanctions pursuant to the provisions of the preceding two Articles is expired upon the lapse of five years.

Article 42

The competent authority may order any enterprise that violates Article 21, Article 23 to Article 25 to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand and not more than twenty-five million New Taiwan Dollars. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand and not more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

Article 43

If any trade association or organization as referred to in Article 2 Paragraph 2 violates the provisions of this Law, the competent authority may impose a penalty on any member who participated in such violation. However, if the member is able to demonstrate that the member has no knowledge of the violation, or did not participate in the mutual understanding, did not implement, or ended such violation prior to the investigation conducted by the competent authority, the member may not be punished.

Article 44

Shall any person subject to any investigation, conducted by the competent authority pursuant to the provisions of Article 27, violate the provisions of Article 27 Paragraph 3, the competent authority may impose an administrative penalty of not less than fifty thousand and not more than five hundred thousand New Taiwan Dollars. Shall such person continue to evade, interfere or refuse to cooperate without justification upon another notice, the competent authority may continue to issue notices of investigations, and may impose consecutively thereupon an administrative penalty of not less than one hundred thousand and not more than one million New Taiwan Dollars each time until such member accepts the investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

CHAPTER VII SUPPLEMENTARY PROVISIONS

Article 45

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Act, Trademark Act, Patent Act or other Intellectual property laws.

Article 46

The Law has precedence over other laws with regards to the governance of any enterprise's conduct in respect of competition. However, this stipulation shall not be applied to where other laws provide relevant provisions that do not conflict with the legislative purposes of this Law.

Article 47

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of

China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or institution(s) and approved by the competent authority, for mutual protection.

Article 47-1

To strengthen the investigation and sanction over concerted actions and promote the healthy development of market competition, the competent authority may set up an anti-trust fund.

Capital sources of the preceding anti-trust fund are as follows:

1. 30% of the fines imposed according to the Law;
2. interests accrued on the fund;
3. budgetary allocations;
4. other relevant incomes.

The fund under Paragraph 1 shall be used for the following purposes :

1. rewards for the reporting of illegal concerted actions;
2. promotion of cooperation, investigation and communication matters with international competition law enforcement agencies;
3. subsidies to the related expenses incurred from litigations associated with the Law and rewards reporting of illegal actions;
4. deployment and maintenance of databases in relation to the competition law;
5. research and development on the systems in association with the competition law;
6. education and advocacy of the competition law;
7. other necessary expenditures to maintain the market order.

The previous paragraph governing the scope of reporting reward, the qualifications of informer, the criteria of rewarding, the procedures of rewarding, the revocation, abolishment and recovery of reward, and the maintenance of confidentiality of the informer's identity shall be determined by the competent authority.

Article 48

Where disposition or decisions made by the competent authority pursuant to this Law are objected or challenged, the procedures for administrative litigation shall apply directly.

Where administrative appeal cases are not concluded prior to the enactment of the amendment of this Law, they shall be concluded in accordance with the Administrative Appeal Act.

Article 49

The enforcement rules of this Law shall be made and promulgated by the competent authority.

Article 50

This Law takes effect on the date of promulgation, except Article 10 and Article 11, which were amended on January 22, 2015, shall take effect thirty days from the date of promulgation.

Appendix II

Enforcement Rules of Fair Trade Law of 2015

Promulgated on 24 June 1992

by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 015

Amendments Promulgated on 30 August 1999

by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 02420

Amendments Promulgated on 19 June 2002

by Fair Trade Commission Order Kung Mi Fa Tzu No.0910005518

Amendment to Article 29 Promulgated on April 18, 2014

by Fair Trade Commission Order Kung Fa Tzu No. 10315603001

Amendments Promulgated on 2 July 2015

by Fair Trade Commission Order Kung Fa Tzu No. 10415605721

Article 1

These Enforcement Rules are adopted pursuant to the provisions of Article 49 of the Fair Trade Law (hereinafter referred to as the “Law”).

Article 2

The term “trade association” in Paragraph 2 of Article 2 of the Law refers to the following:

1. industry associations and chambers of industry organized under the Industrial Association Act;
2. commercial associations, federations of commercial associations, exporter associations, and federations of exporter associations, and chambers of commerce organized under the Commercial Association Act;
3. professional bodies established according to other laws and regulations, such as bar associations, accountant associations, architect associations, doctor associations and technician associations.

The other organization lawfully established to promote the interests of its members described in Paragraph 2 of Article 2 of the Law refers to business organizations, besides those described in the last paragraph, that are established according to the Civil Organizations Act or other relevant laws to enhance their member's benefits.

Article 3

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to Article 7 of the Law:

1. the market share of the enterprise in a relevant market;
2. the possibility of substitution of the goods or services amidst changes in a relevant market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a relevant market;
4. whether formidable difficulties exist to entry to a relevant market by other enterprises;
5. import and export status of the goods or services.

Article 4

Production, sales, inventory, and import/export value (volume) data for the enterprise and the relevant market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the competent authority or that recorded by other government agencies.

Article 5

Authorized representatives of the trade associations or other organizations described in Paragraph 2 of Article 2 of the Law may be deemed as actors in concerted actions in the Law.

Article 6

The control or affiliation relation described in Paragraph 2 of Article 10 and Paragraph 2 of Article 11 of the Law refers to any of the following circumstances:

1. where an enterprise holds the shares or capital contributions of another enterprise to an extent of more than half of the total number of voting shares or total capital of such other enterprise;
2. where an enterprise directly or indirectly controls the personnel, financials or business operation of another enterprise, and thus possesses controlling power over such other enterprise;
3. where an enterprise possesses controlling power over another enterprise due to the relations between the two as described in Article 10, Paragraph 1, Subparagraph 3 or 4 of the Law;
4. where a person or a group as specified by Article 11, Paragraph 3 of the Law and their related persons hold the shares or capital contributions of another enterprise to an extent of more than half of the total number of voting shares or total capital of such other enterprise.

The control or affiliation relations may be presumed by any of the following circumstances:

1. more than half of executive shareholders or directors are the same between two enterprises;
2. more than half of the voting shares or more than half of the total capital is owned by the same shareholders for two enterprises.

Article 7

“Sales amount” in Subparagraph 3, Paragraph 1, Article 11 of the Law means the total sale or operating revenue of an enterprise.

Calculation of the total sale or operating revenue referred to in the preceding paragraph may be based on data obtained through investigation by the competent authority or recorded by other government agencies.

Article 8

A merger of enterprises as described in Paragraph 1 of Article 11 of the Law shall be filed with the competent authority by the following enterprises:

1. the enterprises participating in the merger, where an enterprise is merged into another, assigned by or leases from another enterprise(s) the operations or assets of another, jointly operates on regular basis with another, or is commissioned by another enterprise to run operation;
2. the enterprise that holds or acquires the shares or capital contributions of another enterprise. However, it shall be the enterprise with ultimate control if there are control or affiliation relations between the holding or acquiring enterprises, or the holding or acquiring enterprises are controlled by the same enterprise or a group of enterprises.
3. the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

If an enterprise required to file a merger has not yet been established, the existing enterprises participating in the merger shall file.

Financial holdings companies shall file with the competent authority if the companies or any subsidiaries in which the companies have controlling interest as specified in the Financial Holding Company Act participate in the merger.

Article 9

A report of a merger of enterprises under Paragraph 1 of Article 11 of the Law shall be filed with the competent authority with the following documents attached:

1. a report form specifying the following information:
 - (1) type and substance of the merger;
 - (2) the name and the place of office of each participating enterprise, or the name and the place of the office or business of each participating company, sole proprietorship, partnership, or association;
 - (3) the scheduled date of merger;

- (4) the name of the attorney-in-fact, if any, and the supporting document therefor;
 - (5) Other required information.
2. basic data on each participating enterprise:
 - (1) the name and residence or domicile of the responsible person or administrator, if any, of each enterprise;
 - (2) the capital and business items of each participating enterprise;
 - (3) the revenue of the preceding fiscal year for the participating enterprise, the enterprise with a control or affiliation relation with the participating enterprise, and the affiliated enterprise controlled by the same enterprise or a group of enterprises with the participating enterprise;
 - (4) the number of employees of each participating enterprise;
 - (5) the certificates of incorporation or establishment of each participating enterprise.
 3. the financial statement and operating report for the preceding fiscal year of each participating enterprise;
 4. the data such as the production or operating costs, sales prices, and production and sales values (volumes) of the participating enterprises' goods or services related to the combination applied for;
 5. an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;
 6. the major future operating plans of the participating enterprises;
 7. the overview of the long-term investments by the participating enterprises in other enterprises;
 8. the overview of voting shares or capital contributions of the acquired enterprises that are owned by the person or group as described in paragraph 3, Article 11 of the Law;
 9. the most recent prospectus or annual report of a participating enterprise's stock listed on the stock exchange or traded on over-the-counter markets;
 10. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;

11. any other documents required by the competent authority to perform a comprehensive assessment of the impact of the proposed merger on competition.

The form of the report referred to in the preceding paragraph shall be prescribed by the competent authority.

If there is any just cause why the documents or data required by the first paragraph are not being provided in the merger filings, it shall be identified and explanations shall be presented in the filing report.

Article 10

Where the materials submitted with the merger report pursuant to Paragraph 1 of Article 11 of the Law fail to comply with the requirements of the preceding article or are deficient in content, the competent authority may issue notice to require supplementation or correction within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the filing will not be accepted.

Article 11

The date accepting the complete filing of report materials referred to in Paragraph 7 of Article 11 of the Law means the filing date on which the report materials filed with the competent authority are in conformity with Article 9 and the contents thereof are also complete.

Article 12

According to the proviso clause in Paragraph 1 of Article 15 of the Law, the application for approval shall be jointly filed by the enterprises participating in the concerted actions.

If the preceding enterprises are trade associations or other organizations described in Paragraph 2 of Article 2 of the Law, such trade associations or organizations shall submit the applications.

The applications in the preceding two paragraphs may be made through an agent.

Article 13

An application for approval pursuant to the proviso of Paragraph 1 of Article 15 of the Law shall be accompanied by the following documents:

1. an application form that sets forth the following:
 - (1) the names of the goods or services to which the concerted action applies;
 - (2) the type of concerted action;
 - (3) the implementation period and area of the concerted action;
 - (4) the name of the attorney-in-fact, if any, and the supporting document therefor;
 - (5) the other required information.
2. the contract, agreement or other document evidencing agreement to the concerted action;
3. the concrete substance and implementation methods of the concerted action.
4. the basic data on the participating enterprises:
 - (1) the name and residence or domicile of each participating enterprise, or the name and the location of the office or place of business of each participating company, sole proprietorship, partnership, or association;
 - (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
 - (3) the business items, capital, and turnover in the preceding fiscal year of each participating enterprise.
5. quarterly reports for the past three years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;
6. financial statement and operating report of each participating enterprise for the preceding fiscal year;
7. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;

8. an assessment report on the concerted action;
9. the other documents as specified by the competent authority.

The form of the application referred to in the preceding paragraph shall be set by the competent authority.

Article 14

The assessment report on the concerted action referred to in Subparagraph 8, Paragraph 1 of the preceding article shall also specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on enterprises not participating;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;
6. the other required information.

Article 15

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 1, 3 or 8, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by the preceding Article, shall also present in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, rationalization of operations, industrial development, or technological innovation.

Article 16

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 2, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following

information:

1. the difference between the funding required for individual research and development and that required for joint research and development;
2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

Article 17

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 4, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise's ratio of exports to domestic sales; and
2. the anticipated concrete efficacy in promoting exports.

Article 18

The concerted action assessment report accompanying an application filed pursuant to Subparagraph 5, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

Article 19

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 6, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following

information:

1. difficulty in staying in the business or overcapacity in the same industry due to economic recession;
2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating enterprise;
3. the changes in the number of businesses in the relevant industry over the preceding three years;
4. market prospects for the relevant industry;
5. the adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
6. the anticipated results of the concerted action.

In addition to that enumerated above, the competent authority may request the provision of other related materials.

Article 20

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 7, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following information:

1. materials to show meeting the criteria to be recognized as a small or medium-sized enterprise;
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

Article 21

A small or medium-sized business as referred to in Subparagraph 7, Paragraph 1, Article 15 of the Law shall be determined in accordance with the criteria set forth in the Act for Development of Small and Medium Enterprises.

Article 22

Where an enterprise applying for approval of concerted action pursuant to the proviso clause in Paragraph 1, Article 15 submits materials that are incomplete or are deficient in content, the competent authority may issue notice to require supplementation or correction of the application within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the application will be rejected.

Article 23

The three-month period specified in Paragraph 2, Article 15 of the Law shall be calculated from the day next to the date on which the competent authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the competent authority has issued a notice to require supplementation or correction within a specified time, the period shall be calculated from the day next to the date of receipt of the supplementation or correction.

Article 24

To apply for an extension pursuant to Paragraph 2 of Article 16 of the Law, the enterprises shall prepare the following materials to file with the competent authority:

1. an application form;
2. contract, agreement or document evidencing other form of mutual understanding of the concerted action;
3. concrete details and implementation plans of the proposed concerted action;
4. basic data of participating enterprises;
5. quarterly data during the past three years of the prices and revenues/volumes of the participating enterprises' products/services associated with the concerted action;
6. the financial statement and operating report for the preceding fiscal year of

- each participating enterprise ;
7. market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
 8. the concerted action assessment report.
 9. a copy of the original approval;
 10. the reasons for applying for the extension; and
 11. the other documents or materials designated by the competent authority.

The concrete details and implementation plans of the proposed concerted action required by Subparagraph 3 of the preceding paragraph shall be consistent with the scope of approval under the original application. Re-applications are required if such details and implementation plans extend beyond the approved scope.

When participating enterprises apply for an extension of the concerted action pursuant to Paragraph 2 of Article 16 of the Law, the competent authority may require additional data or records to be submitted before set deadlines in the event of applications incomplete or deficient in content. Applications may be rejected if participating enterprises fail to present missing data before the deadlines or the data presented remain incomplete.

Article 25

The just cause stated in the proviso clause of Paragraph 1 of Article 19 of the Law shall be determined by the competent authority on the basis of the evidence presented by participating enterprises and taking into account the following factors:

1. encouragement of downstream enterprises to enhance efficiency or quality of pre-sale service;
2. prevention of free-riding effects;
3. promotion of entries of new businesses or brands;
4. stimulation of competition between brands;
5. other reasonable economic grounds concerning competition.

Article 26

The following factors shall be taken into consideration when determining

whether just cause exists as referred to in Subparagraph 2, Article 20 of the Law:

1. supply and demand conditions in the market;
2. cost differences;
3. transaction amounts;
4. credit risks; and
5. other reasonable grounds.

In determining whether the discrimination mentioned in the preceding paragraph is likely to restrain competition, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods or services, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 27

The “low price inducement” described in Paragraph 3 of Article 20 of the Law refers to the offering of the prices below costs or obviously inappropriate so as to hinder competition or prevent competitors from participating in the market.

In determining whether the low price inducement mentioned in the preceding paragraph is likely to restrain competition, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods or services, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 28

"Restrictions" as used in Subparagraph 5 of Article 20 of the Law refer to tie-ins, exclusive dealing, restrictions in regards to territory, customers, use, or other aspects of business activities.

In determining whether the restrictions mentioned in the preceding paragraph are improper and being likely to restrain competition, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods or services, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 29

In cases where actions of an enterprise violate the provisions of Paragraphs 1 or 4 of Article 21 of the Law, the competent authority may order the enterprise to publish corrective advertisements pursuant to the provisions of Article 42 of the Law.

The methods, number of appearances, and duration of the advertisements referred to in the preceding paragraph shall be determined by the competent authority, taking into consideration the degree of impact of the original advertisements.

Article 30

The competent authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

Article 31

The competent authority, when giving notice as prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, shall specify the following items in writing:

1. the name and residence or domicile of the recipient of the notice; if the notified one is a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;
2. the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter;
3. date, time, and place of required appearance;
4. the provisions concerning punishment for failure to appear without proper reason.

The preceding notice shall be served at least no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

Article 32

A person notified pursuant to the preceding article may retain an attorney-in-fact

to appear and make statements on his or her behalf, provided that when the competent authority deems necessary, it may give notice requiring appearance in person.

Article 33

After a person notified pursuant to the provisions of Article 31 has appeared and made a statement, the competent authority shall produce a written record of the statement, to be signed by the notified person. If the notified person is unable to sign the record of statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the record of statement, such facts shall be recorded.

Article 34

When issuing notice pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law, the competent authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if the notified one is a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;
2. the matter to be investigated;
3. the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party;
4. the time limit for submission;
5. the provisions concerning punishment for refusal to submit without justification.

Article 35

After the competent authority has received books and records, documents, and any other required materials or evidence provided by the party or the related party, the competent authority shall issue a receipt at the request of the provider.

Article 36

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper benefit of the acts;
2. the degree of the act's harm to market order;
3. the duration of the act's harm to market order;
4. benefits derived on account of the unlawful act;
5. scale, operating condition, and market position of the enterprise;
6. types of, number of, and intervening time between past violations, and the punishment for such violations; and
7. remorse shown for the act and attitude of cooperation in the investigation.

Article 37

These Enforcement Rules shall take effect from the date of promulgation.

Appendix III

Multi-Level Marketing Supervision Act of 2014

Multi-Level Marketing Supervision Act

*Promulgated by Presidential Decree Hua Zong Yi Yi Tzu No. 10300013741
on January 29, 2014*

CHAPTER I GENERAL PROVISIONS

Article 1

This Act is enacted for the purpose of assuring sound transaction order of the multi-level marketing, and protecting the rights and interest of participants.

Article 2

The term "competent authority" as used in this Act means the Fair Trade Commission.

Article 3

The term "multi-level marketing" as used in this Act means the marketing practice to establish multi-level organization by having participants introduce new participants into multi-level marketing enterprise, and promote and sale goods or services.

Article 4

The term "multi-level marketing enterprise" as used in this Act means the companies, sole proprietorships or partnerships, groups or individuals that conduct overall planning or the carrying out of multi-level marketing activities as referred to in the preceding article.

A participant of foreign multi-level marketing enterprise or a third party that introduces or carries out the multi-level marketing plans or organizations of such enterprise shall be deemed a "multi-level marketing enterprise" as referred to in the preceding paragraph.

Article 5

The term "participants" as used in this Act means persons who may earn commissions, bonuses and other economic benefits by taking part in the plans of a multi-level marketing enterprise and promoting or selling goods or services, and who may earn commissions, bonuses and other economic benefits by introducing other persons to participate, to promote, sell goods or services or introduce more persons.

The persons who enter into contracts with multi-level marketing enterprises that after meeting specific conditions such persons may get the qualification to promote, sell goods or services, or to introduce other persons to participate shall be deemed as participants from the time such contracts are entered into.

CHAPTER II PROCEDURES OF REPORT FILING FOR RECORD BY MULTI-LEVEL MARKETING ENTERPRISES

Article 6

Prior to engaging in multi-level marketing operations, a multi-level marketing enterprise, should prepare a report containing the following items, and apply for record by the competent authority:

1. the basic information and business places of the multi-level marketing enterprise;
2. the multi-level marketing plans, and conditions of participation;
3. the content of contracts that will be executed with participants;
4. the itemized products or services, prices, and source;
5. the evidence of marketing practice in compliance with laws or regulations

other than this Act, or having ex-ante approval issued by other authorities, where the compliance or the ex-ante approval is imposed by such laws or regulations;

6. the calculation methods, criterion, and reasons, when multi-level marketing enterprises deduct the devaluation amount from the price in repurchasing the goods or services pursuant to the later sentence of Paragraph 3 of Article 21 or Article 24 of the Act;

7. such other matters as may be required by the competent authority.

When multi-level marketing enterprises fail to provide documents and materials according to the requirements of the preceding paragraph, the competent authority may order them to provide within specific deadlines additional supplemental amendments. If multi-level marketing enterprises fail to provide within specific deadlines additional supplemental amendments, it shall be deemed to not have applied at all, and the competent authority may return their report, and order them to resubmit a complete one for record.

Article 7

Except for the following situations, when there is any change in the content of submitted documents and materials, the multi-level marketing enterprise shall report in advance:

1. for changes of enterprises' basic information as referred in subparagraph 1, paragraph 1 of preceding Article, a report is not required except for the change of enterprise's name;
2. for change of enterprise's name, it should be reported within 15 days after the change is in effect.

If multi-level marketing enterprises fail to report the change according to the preceding paragraph, when the competent authority considers it to be appropriate, it may order the enterprises to provide within specific deadlines additional supplemental amendments. If multi-level marketing enterprises fail to provide within specific deadlines such additional supplemental amendments, it shall be deemed to not have reported the changes at all, and the competent authority may return their report, and

order them to resubmit a complete one for record.

Article 8

The format and process of report referred in the preceding two Articles will be prescribed by the competent authority.

Article 9

Multi-level marketing enterprises which intend to cease their multi-level marketing operations, shall file a written report with the competent authority prior to cessation, and shall have announcement in each business place to notify participants about their rights and interests to return goods to multi-level marketing enterprises according to participation contracts.

CHAPTER III THE PRACTICE OF MULTI-LEVEL MARKETING ACTIVITIES

Article 10

Before a participant takes part in the plan or organization of a multi-level marketing enterprise, the enterprise shall inform the participant of the following particulars, and shall make no concealment, false, or misleading presentations:

1. paid-up capital and gross business volume of the multi-level marketing enterprise;
2. multi-level marketing plan, and conditions of participation;
3. laws and regulations relevant to multi-level marketing;
4. obligations and responsibilities of a participant, and conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal;
5. matters relevant to the goods or services;
6. the calculation methods, criterion, and reasons, when multi-level marketing

enterprises deduct the devaluation amount from the price in repurchasing the goods or services pursuant to the later sentence of Paragraph 3 of Article 21 or Article 24 of the Act;

7. such other matters as may be required by the competent authority.

When a participant introduces another person to participate in the organization or plan, such participant shall make no false or misleading presentations on items listed in the preceding paragraph.

Article 11

When recruiting participants by advertising or other means, a multi-level marketing enterprise shall make it clearly known that it is engaged in multi-level marketing activities; neither may it recruit participants under the disguise of recruiting employees or on other pretense.

Article 12

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level marketing enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

Article 13

A multi-level marketing enterprise shall enter into a participation contract in writing with that who intends to participate in the plan or organization, and the multi-level marketing enterprise shall give the participant an original participation contract.

The writing referred to in the preceding paragraph may not be in the form of an electronic document.

Article 14

The content of written contract should include the following:

1. matters referred in Subparagraphs 2 to 7 of Paragraph 1 of Article 10;
2. breaches of contract by the participants and the measures to the breaches;

3. the rights and obligations as referred in Articles 20 to 22, or the provisions that are more beneficial for participants;
4. the method for handling a request by a participant to return goods, when the contract is terminated because of participants' violation of business rules or plans, or breaches as referred in Paragraph 1 of Article 15.1, or other reasons attributable to participants;and
5. the conditions for renewal of contracts and the method of handling, when the contracts stipulate specific term of participation.

Article 15

Multi-level marketing enterprises shall stipulate in contract that the following are breaches of the participant, and shall prescribe methods for handling such breaches in order to prevent such breaches:

1. promoting or selling goods or services, or recruiting participants to the multi-level marketing organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level marketing enterprise or through its organization;
3. engaging in sales by means that run counter to public order or good morals;
4. affecting consumers' rights and interests by improper direct door-to-door sale;
5. engaging in sales that violate the Criminal Code or other laws or regulations governing industry and commerce.

Multi-level marketing enterprises shall enforce the handling methods referred in the preceding paragraph faithfully.

Article 16

Multi-level marketing enterprises may not recruit incapacitated persons to be participants.

A multi-level marketing enterprise recruiting a person with limited capacity to be a participant shall first obtain the written consent from the legal representative of such a person and also attach the said written consent to the contract.

The written consent referred to in the preceding paragraph may not be an electronic document.

Article 17

A multi-level marketing enterprise shall prepare the balance sheet and income statement for its multi-level marketing operations in the previous accounting year before the end of May each year and keep them in its main office.

When the capital of a multi-level marketing enterprise reaches the amount specified in Paragraph 2 of Article 20 of the Company Act or the total multi-level marketing business volume in the previous accounting year exceeds the amount announced by competent authority, the multi-level marketing enterprise shall require auditing and certification by a certified public accountant for its financial statements.

Participants may request to inspect the aforesaid financial statements of the multi-level marketing enterprise to which they belong and the multi-level marketing enterprise may not refuse such requests without justifications.

Article 18

Multi-level marketing enterprises shall have participants engaged in promoting and selling goods or services in reasonable market price as their major income, instead of earning mainly by introducing new participants.

Article 19

A multi-level marketing enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, promotion or other like activities;
2. requiring a participant to pay any security deposit, breach penalty, or other fee, which is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is

agreed that the price shall be paid only after the goods are re-sold;

4. giving specific persons preferential treatment in a manner contrary to the multi-level marketing organization or plan and therefore damaging other participants' rights and interests;
5. unduly request a participant to buy or grant a participant permission in two or more multi-level marketing organizations;
6. requiring a participant to undertake obviously unfair obligations.

Participants shall not engage in the activities referred in subparagraphs 1 through 3, 5 and 6 against the persons he or she introduce to participate.

CHAPTER IV RESCISSION AND TERMINATION OF CONTRACTS

Article 20

Any participant may rescind or terminate the participation contract by giving the multi-level enterprise a notice in writing within thirty days after entering into such contract.

Within a period of thirty days after rescission or termination of the contract takes effect, the multi-level marketing enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid to the multi-level enterprise.

In returning the payments made by the participant according to the preceding paragraph, the multi-level marketing enterprise may deduct upon the time of returning of the goods the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

Article 21

After the lapse of the period as referred to in the first paragraph of the preceding article, the participant at any time may still terminate the contract by writing and withdraw from the multi-level marketing plans or organizations, and request to return the goods. Providing that when six months lapse exceeds since the date that the products are deliverable, the participant may not request to return the goods.

Within thirty days from the termination of the contract in accordance with the preceding paragraph, the multi-level marketing enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price.

The multi-level marketing enterprise may deduct the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

If the returned goods are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

Article 22

When the participant exercises the right to rescind or terminate the contract in accordance with the two preceding Articles, the multi-level marketing enterprise may not claim damages or levy penalties against the participant for such rescission or termination.

When the sold goods are supplied by third parties, and the participants exercise the right to rescind or terminate, the multi-level marketing enterprise shall handle the returning of goods and repurchase according to the preceding two Articles, and shall pay the damages or penalties third party suppliers charge the participants.

Article 23

Multi-level marketing enterprises shall not improperly hinder a participant from returning goods according to provisions of this Act.

Multi-level marketing enterprises shall not unjustifiably withhold commissions, bonuses, or other economic benefit payable to a participant after rescission or termination of the contract.

Article 24

The regulations relevant to the goods in this Chapter shall apply *mutatis mutandis* to services.

CHAPTER V PROCEDURE OF BUSINESS INSPECTIONS AND SANCTIONS

Article 25

A multi-level marketing enterprise shall record the organization development, sales of goods or services, payment of bonuses, and handling of goods returning within the territory of the Republic of China on a monthly basis and keep such records in its primary place of business for inspection by the competent authority.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level marketing practice.

Article 26

The competent authority may at any time dispatch personnel to inspect, or order an enterprise to fill forms and provide materials about the operation and development within specific deadline in the methods and format required by competent authority, and the enterprise shall not evade, impede, or refuse.

Article 27

The competent authority may investigate and handle, upon complaints or *ex officio*, any violation of the provisions of the Act.

Article 28

In conducting investigations under the Act, the competent authority may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify the parties and any related third party to submit account books and

- records, documents, and any other necessary materials or exhibits; and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the parties or any related third party.

Things that may serve as evidence and are found during inspections referred above may be seized by competent authority, and the scope and duration of seizure shall be limited to an extent necessary for examination, inspection, verification or other purposes in connection with the preservation of evidence.

The person who is under investigation conducted according to paragraph 1 may not evade, impede, or refuse without justifications.

An investigator carrying out its duties under this Act shall present the documents supporting its duties, and the person to be investigated may refuse the investigation where the investigator fails to present such documents.

CHAPTER VI PUNISHMENT

Article 29

If any person violates the provisions of Article 18, the violator shall be punished by imprisonment for not more than seven years and at the same time may be fined not more than one hundred million New Taiwan Dollars.

Shall any representative, agent, employee or other staff of a juristic person be punished for the violation of Article 18 in conducting business, not only the violator shall be punished in accordance with the preceding paragraph, the juristic person shall also be fined as prescribed in the preceding paragraph.

Article 30

Where any other laws provide for more severe punishment than those prescribed in the preceding Article, the provisions of such other laws shall apply.

Article 31

The competent authority may order the multi-level marketing enterprise

violating the provisions of Article 18 to dissolve, suspend or terminate business operation not longer than six months.

Article 32

If any person violates the provisions of Paragraph 1 of Article 6, Paragraph 2 of Article 20, Paragraph 2 of Article 21, Article 22 or Article 23, the competent authority may order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and impose a fine 100,000 New Taiwan Dollars or more and not more than 5,000,000 New Taiwan Dollars, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, the competent authority may again order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and impose a fine of 200,000 New Taiwan Dollars or more and not more than 10,000,000 New Taiwan Dollars each time until the violator ceases therefrom, rectifies such conduct, or takes necessary corrective action. If the situation is serious, the competent authority may order the violator to dissolve, suspend or terminate business operation not longer than six months.

The provisions of preceding paragraph shall apply to the violation of Paragraph 2 of Article 20, of Paragraph 2 of Article 21, Article 22, or Article 23 when applied *mutatis mutandis* according to Article 24.

When the protection institution violates the regulations relevant to business operation methods and inspection prescribed in Paragraph 5 of Article 38, the competent authority may impose a sanction according to paragraph 1 of this Article.

Article 33

If any person violates the provisions of Article 16, the competent authority may order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine 100,000 New Taiwan Dollars or more and not more than 2,000,000 New Taiwan Dollars, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any

necessary corrective action, the competent authority may again order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine 200,000 New Taiwan Dollars or more and not more than 4,000,000 New Taiwan Dollars each time until the violator ceases therefrom, rectifies such conduct, or takes necessary corrective action.

Article 34

If any person violates Paragraph 1 of Article 7, Articles 9 to 12, Article 14, Article 15, Article 17, Article 19, Paragraph 1 of Article 25 or Article 26, the competent authority may order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine 50,000 New Taiwan Dollars or more and not more than 1,000,000 New Taiwan Dollars, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, the competent authority may again order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine 100,000 New Taiwan Dollars or more and not more than 2,000,000 New Taiwan Dollars each time until the violator ceases therefrom, rectifies such conduct, or takes necessary corrective action.

Article 35

When the competent authority conducts investigation according to Article 28, if the party under investigation violates Paragraph 3 of Article 28, the competent authority may fine 50,000 New Taiwan Dollars or more and not more than 500,000 New Taiwan Dollars. If after notice again, the party under investigation evade, impede, or refuse without justifications, the competent authority may continue to issue notice for investigation, and fine 100,000 New Taiwan Dollars or more and not more than 1,000,000 New Taiwan Dollars each time until the party accepts investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

CHAPTER VII SUPPLEMENTARY PROVISIONS

Article 36

For the enterprises not meeting the definition of multi-level marketing enterprise prescribed in Article 8 of the Fair Trade Act, but actually conducted multi-level marketing business prior to the implementation of this Act shall apply for record by the competent authority according to Article 6 within three months after this Act takes effect. Any enterprises that fail to apply shall be subject to punishment under Paragraph 1 of Article 6.

The multi-level marketing enterprises as referred in preceding paragraph shall enter into written contract with the participants having participated prior to the implementation of this Act according to Paragraph 1 of Article 13 within six months after this Act takes effect. Any enterprises that fail to enter into written contract shall be subject to punishment under Paragraph 1 of Article 13.

Participants participating multi-level marketing enterprises prior to the implementation of this Act may rescind or terminate contract according to Articles 20, 22, and 24 since the day this Act takes effect through 30 days expires after the contract referred in preceding paragraph is entered. Even after such period, participants may still terminate contract according to Articles 21, 22, and 24.

For the participants terminating contracts after this Act takes effect, the period prescribed in the exception clause of Paragraph 1 of Article 21 shall start from the day this Act takes effect.

Article 37

If any multi-level marketing enterprises have applied for record prior to the implementation of this Act, they still shall revise the filing documents according to Paragraph 1 of Article 6, and provide competent authority within two months after this Act takes effect with supplemental amendments. If any multi-level marketing enterprises do not provide supplemental amendments, the competent authority will make decision as the enterprises in violation Paragraph 1 of Article 7.

If any multi-level marketing enterprises have applied for record prior to the implementation of this Act, they still shall revise the written contract entered into with participants, notify participants the revision content in written, and make announcements in business places. If any multi-level marketing enterprises do not notify participants the revision content in written, the competent authority will make decision as the enterprises in violation Paragraph 1 of Article 13.

After receiving the notification referred in preceding paragraph, if participants do not object within specific period, it will be deemed as they accept the revision.

Article 38

The competent authority shall designate the multi-level marketing enterprises having applied for record to donate certain property in order to establish a protection institution in charge of protecting the rights and interests of multi-level marketing enterprises having applied for record, and participants, and dispute resolution. The donation amount may be deducted from the protection fund and annual fee as prescribed in Paragraph 2.

The protection institution may collect protection fund and annual fee from the multi-level marketing enterprises having applied for record. The collection methods and specific amount shall be determined by the competent authority.

If the multi-level marketing enterprises having applied for record fail to pay according the preceding two paragraphs, it will be deemed as in violation of Paragraph 1 of Article 32, and sanctioned accordingly.

The enterprises may request the protection offered by the protection institution only after paying fund and annual fee according to the rules issued by the competent authority.

The organizations, duties, fee appropriation, operation procedures, and its monitoring and management shall be determined by the competent authority.

Article 39

After this Act takes effect, the provisions relevant to multi-level marketing in the Fair Trade Act shall not apply.

Article 40

The enforcement rules of this Act shall be made and promulgated by the competent authority.

Article 41

This Act shall take effect upon promulgation.

Appendix IV

Enforcement Rules of Multi-Level Marketing Supervision Act of 2015

*Enacted and Promulgated by Order Kung Fa Tzu No. 10315602971 on April
17, 2014*

*Amendment to Article 19 Promulgated by Order Kung Fa Tzu No. 10415608581
on October 7, 2015*

Article 1

These Enforcement Rules are enacted in accordance with Article 40 of Multi-Level Marketing Supervision Act (hereinafter referred to as “the Act”).

Article 2

The basic information of the multi-level marketing enterprise stated in Article 6, Paragraph 1, Subparagraph 1 of the Act refer to the name, capital, representative or responsible person, office address, date of establishment registration, certificate of company or other kind of business entity.

The business places of the multi-level marketing enterprise stated in Article 6, Paragraph 1, Subparagraph 1 of the Act refer to the main business places and other business places.

Article 3

The multi-level marketing plans stated in Article 6, Paragraph 1, Subparagraph 2 of the Act refer to the names of each level in the multi-level marketing organization, qualifications of grant and conditions of promotion, content of commissions, bonuses, and other economic benefit, conditions of payment, calculation methods and maximum percentage of such payments on total revenue.

Article 4

The gross business volume of the multi-level marketing enterprise stated in Article 10, Paragraph 1, Subparagraph 1 of the Act refer to the gross business volume of preceding year, and if the enterprise has been operating for less than one year, it refer to the cumulative business volume for the months of operation.

The multi-level marketing plans stated in Article 10, Paragraph 1, Subparagraph 2 of the Act refer to the names of each level in the multi-level marketing organization, qualifications of grant and conditions of promotion, content of commissions, bonuses, and other economic benefit, conditions of payment, and calculation methods.

Article 5

The matters relevant to the goods or services stated in Article 10, Paragraph 1, Subparagraph 5 of the Act refer to the itemized products or services, prices, content of warranties against defects, and other related matters.

Article 6

The principle in deciding reasonable market price stated in Article 18 of the Act are as follow:

1. when there are competing products or services in the market, the price and quality of same or similar products or services in domestic or foreign markets may be the major reference, the return on investment of multi-level marketing enterprises and enterprises which are not multi-level marketing enterprises but sell same or similar products or services will be compared, the technology and service level will be considered especially, and then a decision will be made based on all above factors;
2. when there is no competing product or service in the market, reasonable market price will be decided case by case.

To be considered as major as stated in Article 18 of the Act, the criterion will be 50%, and the actual situations in the individual case such as whether there is intentional violation, damages caused, and seriousness of damages will also be considered.

Article 7

The participant stated in Paragraph 3 of Article 20 and Paragraph 3 of Article 21 of the Act refer to the party who rescind or terminate the contracts, and does not include other participants.

Article 8

The date that the products are deliverable stated in proviso Paragraph 1 of Article 21 of the Act refer to the date when multi-level marketing enterprises have prepared sufficient stocks for the products to be promoted and sold, and multi-level marketing enterprises may prove the deliverable status by producing documents or other methods.

Article 9

The organization development, sales of goods or services, payment of bonuses, and handling of goods returning stated in Paragraph 1 of Article 25 of the Act refer to the following:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in each month;
3. each participant's name or appellation, citizen's ID card number or uniform business number, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commissions, bonuses, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials stated in the preceding paragraph may be stored by documents or means of electronic data storage media.

Article 10

After a participant joins the marketing organization or plan of a multi-level marketing enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level marketing and to channels for filing complaints about infractions of law by enterprises.

Article 11

The roster of reported multi-level marketing enterprises and the important developments of the relevant information thereof shall be published on the World Wide Web site by the Competent Authority.

The roster of reported multi-level marketing enterprises and the important developments of the relevant information thereof stated in the preceding paragraph includes roster of fully reported cases, roster of cases pending for supplemental amendments, roster of enterprises relocated to an unknown location or showing no evidence of operation, and roster of enterprises which have been filed suits against or with judicial decisions, etc.

Article 12

When multi-level marketing enterprises dissolve, suspense or terminate business operation, the Competent Authority may delete their names from the roster of reported multi-level marketing enterprises stated in preceding article.

Article 13

The Competent Authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

Article 14

When issuing notice pursuant to Article 28, Paragraph 1, Subparagraph 1 of the Act, the Competent Authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if a company, sole

- proprietorship or partnership, or group, the name of the responsible person and the location of the office or place of business;
2. the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter;
 3. date, time, and place of required appearance;
 4. provisions concerning punishment for failure to appear without proper reason. The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

Article 15

A person notified pursuant to the preceding article may retain an attorney to appear and make statements on his or her behalf, provided that when the Competent Authority deems necessary, it may give notice requiring appearance in person.

Article 16

After a person notified pursuant to the provisions of Article 14 has appeared and made a statement, the Competent Authority shall produce a record of the statement, to be signed by the notified person. If the notified person is unable to sign the record of statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the record of statement, such facts shall be recorded.

Article 17

When issuing notice pursuant to Article 28, Paragraph 1, Subparagraph 2 of the Act, the Competent Authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if a company, sole proprietorship or partnership, or group, the name of the responsible person and the location of the office or place of business;
2. the matter to be investigated;
3. the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party;

4. the time limit for submission;
5. provisions concerning punishment for refusal to submit without justification.

Article 18

After the Competent Authority has received books and records, documents, and any other required materials or evidence provided by the parties or related persons, the Competent Authority shall issue a receipt at the request of the provider.

Article 19

When assessing fines in accordance with the Act, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper benefit of the violations;
2. the degree of the act's harm to trade order;
3. the duration of the act's harm to trade order;
4. benefits derived from the unlawful act;
5. scale and operating condition of the violator;
6. types of, number of, and intervening time between past violations, and the punishment for such violations; and
7. remorse shown for the act and attitude of cooperation in the investigation.

Article 20

These Enforcement Rules shall take effect from the date of promulgation.

Chronological Table of Cases

The numbers in the first column represent the times of Commissioners' Meetings at which the cases were decided. The numbers within parentheses represent the dates and the years when the Commissioners' Meetings were held. Next to the Commissioners' Meetings dates, the names of the cases are listed. The last numbers after the names of the cases represent the reference pages for the cases.

Date	Name of the Case	Page
1212(01/28/15)	Swan Panasia violated the Fair Trade Law for restricting online sales prices of its downstream businesses	83
1215(02/11/15)	Telecommunications businesses was complained for violating the Fair Trade Law for its iPhone 6 promotional plans and 4G unlimited Internet access service plan	29
1216(02/25/15)	First Bank and 7 other financial institutions applying for extension of the "Pan-public Bank Credit Card Alliance"	33
1218(03/11/15)	Chunghwa Telecom violated the Fair Trade Law by posting false comparative ads regarding charges for "100M Internet Access Speed + TV Channels"	139,241
1219(03/25/15)	Koninklijke Philips N.V. violated the Fair Trade Law for price manipulation	3
1219(03/25/15)	Bao Ning Neng and 14 other businesses violated the Fair Trade Law	36

1223(04/15/15)	The FTC initiated an ex officio investigation of suspected violation of the Fair Trade Law by domestic Japanese medicine businesses for failing to reflect foreign exchange difference after depreciation of the Japanese Yen	39
1224(04/22/15)	Han Xiang Development violated the Fair Trade Law for posting false advertisements of “Xin Jie Du” presale home project	141
1225(04/29/15)	The FTC initiated an ex officio investigation of suspected violation of the Fair Trade Law by domestic importers of baking butter and powdered milk	40
1225(04/29/15)	Dell Taiwan violated the Fair Trade Law for boycotting	107
1226(05/06/15)	Jayshelyn Construction and Jayshelyn Advertising violated of the Fair Trade Law by posting false advertisements for the “Jayshelyn Shui Li Fang” housing project	144
1227(05/13/15)	VeeTime Corp. violated the Fair Trade Law for its promotional plan of “subscribing to fiber optic Internet connection and getting free cable TV service”	239
1228(05/20/15)	IEZ Mall Co. Ltd. violated the Fair Trade Law for its TV commercial of “Bing Li mobile water-cooling AC”	146

1229(05/27/15)	Zen Far Architecture Co., Ltd. violated the Fair Trade law for demanding payment of deposits or certain fees to view presale home purchase contracts when marketing “Zen Far Da Du Hui” housing project	243
1230(06/03/15)	Taiwan Cement Corporation, Asia Cement Corporation and Southeast Cement were complained for violating the Fair Trade Law	43,110 247
1231(06/10/15)	The FTC initiated an ex officio investigation of the reasonableness of CPC’s LPG price calculation formulas and suspected concerted action of LPG businesses	47
1232(06/17/15)	Family Spa violated the Fair Trade Law for posting false advertisements claiming itself as “the largest manufacturer and wholesaler in the country” and “having in business for 20 years”	148
1245(09/16/15)	37 enterprises applied for extension of the concerted action regarding joint wheat purchases and shipment	50
1247(09/30/15)	LG Taiwan violated the Fair Trade Law for falsely advertising its upright inverter washing machines as passing “Energy Label Certification” on its company website	151
1253(11/11/15)	Nanyuan Construction violated the Fair Trade Law for posting a false advertisement on “West Lake Impression” housing project	153

1254(11/18/15)	The FTC initiated an ex officio investigation of the domestic soy sauce market	52
1255(11/25/15)	Yuanta Financial Holdings filed a pre-merger notification to the FTC regarding its intention to acquire shares of Ta Chong Bank	17
1255(11/25/15)	Ontech Corp., ERA Communications, GOMAJI, Contact Digital Integration, and Groupon Taiwan violated the Fair Trade Law by posting false advertisements	155
1255(11/25/15)	Da Tong Water violated the Fair Trade Law by adopting unlawful practices to market water purifier related products	251
1257(12/09/15)	Momo.com and Super Link violated the Fair Trade Law by posting false advertisements when marketing “Super Model Wardrobe medium and large size blouse sets with retro patterns”	158
1258(12/16/15)	Charng Shun Trading violated the Fair Trade Law for posting false advertisements when marketing the “Alstrong hex bolt extractor L wrench set”	160
1261(01/06/16)	Guan Hao Construction and Zhong Xing Xing Development violated the Fair Trade Law by posting false advertisements when marketing the “Dun Nan Guan Zhi” housing project	162

1262(01/13/16)	Zhong Wei Enterprise violated the Fair Trade Law for adopting unlawful practices in franchisee recruitment	253
1263(01/20/16)	Bai Mian Dong Industry violated the Fair Trade Law by adopting unlawful practices in franchisee recruitment	164,256
1267(02/17/16)	Float-Tek International was complained for violating the Fair Trade Law by unjustifiably sending warning letters	88,258
1268(02/24/16)	EasyCard Corp. violated the Fair Trade Law for false and untrue advertisements regarding pre-purchases of EasyCards	167
1269(03/02/16)	Sand and gravel businesses in Taichung City violated the Fair Trade Law by jointly increasing prices	55
1269(03/02/16)	Asus Computer violated the Fair Trade Law by falsely claiming its PadFone S smartphone as equipped with electronic wallet functions	169
1273(03/30/16)	Synnex Technology filed a pre-merger notification with the FTC regarding its intention to merge with BestCom Infotech	19
1276(04/20/16)	21 container terminal operators violated the Fair Trade Law for jointly deciding to collect charges for the use of machines to load and unload CFS export goods	57

1276(04/20/16)	Cang Zhen Construction violated the Fair Trade Law when marketing the units of its "Cang Mei One" presale housing project	173
1277(04/27/16)	Amendment to Point 6 of the "Fair Trade Commission Disposal Directions (Guidelines) on Concerted Petroleum Purchasing by Individual Petrol Stations"	61
1278(05/04/16)	FTV was complained for violating the Fair Trade Law for announcement of the audience rating for its "Dowry" series	177,260
1279(05/11/16)	Run Chen Investment Holding Co., Ltd. filed a pre-merger notification regarding its affiliate Nan Shan Life Insurance's intention to merge with AIG Taiwan	21
1280(05/18/16)	The FTC simplified the documents to be filed for bulk commodity procurement	62
1281(05/25/16)	Four noodle makers violated the Fair Trade Law for jointly raising prices of handmade vermicelli noodle	65
1281(05/25/16)	Audi Volkswagen Taiwan violated the Fair Trade Law by posting in car catalogs with regard to quality of product likely to affect transaction decision	178
1283(06/08/16)	Sheng Jun Construction and Xin Yue Advertising violated the Fair Trade Law for posting false advertisements for the "OH! 1796" housing project	181

1284(06/15/16)	Taiwan Yubo violated the Fair Trade Law for posting false and untrue or misleading advertisements on driver recruitment	183
1284(06/15/16)	Star Telecom violated the Fair Trade Law by using the names of other enterprises in its keyword advertising activity	263
1285(06/22/16)	Hua Run Construction violated the Fair Trade Law by posting false advertisement to market the "Fen Jiao Xi" housing project	186
1285(06/22/16)	Venus International violated the Fair Trade Law for illegitimately purchasing keyword character strings	266
1288(07/13/16)	Bionime Corp. violated the Fair Trade Law for restricting resale prices of distributors	86
1288(07/13/16)	Smartking Digital violated the Fair Trade Law by falsely claiming purchases of the company's books for children and teaching software would be subsidized by the government	188
1293(08/17/16)	Mr. Shieh violated the Fair Trade Law by posting false advertisements for the "Leyun Estate" villas	191
1294(08/24/16)	Mr. Weng violated the Fair Trade Law by posting false advertising for the plantation of Half Acre Field Construction II	194

1297(09/14/16)	Taiwan FamilyMart violated the Fair Trade Law by failing to disclose important franchise information in writing before franchise contract signature	268
1298(09/21/16)	Da Tong Water violated the Fair Trade Law by adopting unlawful practices to market water purifier filters	271
1299(09/28/16)	Taiwan Rakuten violated the Fair Trade Law by posting false advertising for "Lola Handmade Jams" on Yahoo! Kimo	196
1300(10/05/16)	Taiwan Fertilizer Co., Ltd. was complained for violating the Fair Trade Law for selling liquid ammonia at prices excessively higher than international market	6
1300(10/05/16)	Taiwan Sakura Corp. violated the Fair Trade Law by restricting prices of its products marketed through online auction websites	90
1301(10/12/16)	Chiseng Co., Ltd. violated the Fair Trade Law by imposing restrictions on distributors	93,114
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