



NO 095  
TAIWAN FTC  
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► Selected Cases

- Extension of Concerted Action of Zhongyi Shipping and Five Other Companies Approved with Undertakings Attached
- Chunjing Fire Industry Posted False Advertisements in Violation of the Fair Trade Act
- Merger between Applied Materials and Kokusai Electric Corp. Not Prohibited
- Merger between Upjohn and Mylan Not Prohibited
- Motostar Posted False Advertisements in Violation of the Fair Trade Act
- Jieli Construction and Yuyin International Posted False Housing Project Advertisements in Violation of the Fair Trade Act

► FTC Statistics

Statistics on Cases with Sanctions Administered

► FTC Activities

FTC Activities in July and August 2020

► FTC International Exchanges

FTC International Exchanges in July and August 2020

**Extension of Concerted Action of Zhongyi Shipping and Five Other Companies Approved with Undertakings Attached**

The FTC decided at the 1,493<sup>rd</sup> Commissioners' Meeting on Jun. 17, 2020 to approve the application from Zhongyi Shipping Co., Ltd. (hereinafter referred to as Zhongyi Shipping), Feima Shipping Co., Ltd., Dongxin Shipping Co., Ltd., Jingqiang Shipping Co., Ltd., Guanguang Shipping Co., Ltd. and Chengxiang Shipping Co., Ltd. for permission to extend their joint scheduling and sales of tickets for their boats operating on the Donggang (Yanpu) – Xiao Liuqiu Route by citing Subparagraph 1 of the proviso set forth in Paragraph 1 of Article 15. However, the FTC also attached undertakings to the approval in accordance with Article 16 of the Fair Trade Act. The concerted action was extended for five years from Jul. 2, 2020 to Jul. 1, 2025.

In 2006, the FTC approved the application from Zhongyi Shipping and the rest of the companies for permission to engage in joint scheduling and sales of tickets for their boats operating on the Donggang – Xiao Liuqiu Route. Later, the aforesaid companies applied for approval of extension of the concerted action respectively in 2009, 2012 and 2015 and the FTC approved each application. However, on Jun. 25, 2015, the FTC attached undertakings to the approval for the concerted action to be extended until Jul. 1, 2020 via Approval Decision Kong-Lian-Tzu No. 104004. This year, as the extended period was about to expire, these companies applied for approval of extension of the concerted action for the fourth time. After reviewing the case, the FTC concluded that since there was

no road connecting Xiao Liuqiu, an offshore island, with Taiwan and there was no airport on the island, transportation between the island and the outside world completely depended on shuttle boats; no alternative transportation tools existed. When the six shipping companies conducted joint scheduling and sales of tickets to be used for all the boats, they could back one another up and dispatch additional boats when necessary. As a consequence, boat schedule management would be more efficient, personnel costs would be reduced and service quality would be upgraded. For consumers, there would be more sailings to choose from and it would be more convenient for the residents on the island and tourists. Thus, consumer interests would be enhanced, passenger rates would increase and the shipping companies could improve their management efficiency and invest the saved personnel cost and the docking fees to acquire new equipment. All these would be positive benefits to transportation businesses. Meanwhile, consumers could also choose Liuxing Co., Ltd., a shipping company controlled by the Liuqiu Township Office of Pingtung County or Taifu International Shipping Co., Ltd., a private company.

Therefore, there would be no significant concern about competition restraints occurring. The concerted action could benefit the overall economy and public interest. For this reason, the FTC approved the extension application.

However, to ensure the protection of the overall economic benefit and public interest, the FTC cited Paragraph 1 of Article 16 of the Fair Trade Act and attached the following undertakings:

1. Without justification, the applicants may not prevent any enterprises from joining or withdrawing from this concerted action.
2. The applicants may not take advantage of this concerted action approval and jointly decide the "Donggang (Yanpu) – Xiao Liuqiu" shipping prices or other transaction terms by establishing contracts, agreements or mutual understandings of any form.
3. During the period the concerted action is permitted, the applicants' fixed sailings between Donggang and Xiao Liuqiu each day may not be less than 16 sailings and the fixed sailings between Yanpu and Xiao Liuqiu each day may not be less than two sailings.



## Chunjing Fire Industry Posted False Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1,488<sup>th</sup> Commissioners' Meeting on May 13, 2020 that Chunjing Fire Industry Co., Ltd. (hereinafter referred to as Chunjing Fire Industry) had violated Article 25 of the Fair Trade Act by using the name of the Health Management Society of Taiwan, which was not yet legally registered, to claim it was collaborating with a government agency to promote people's health. In reality, the company was using the pretext to push its products. The practice was deceptive conduct able to affect trading order. The FTC imposed an administrative fine of NT\$200,000 on the company.

Chunjing Fire Industry admitted that the Health Management Society of Taiwan's "healthy workplace promotion plan letter" and the "2018 Workplace Health Plan" promotion information that it distributed had been produced and sent to different business entities by the company. Moreover, the Health Management Society of Taiwan founded by the company's person in charge had not yet been registered. In phone interviews with businesses and the promotion letter, Chunjing Fire Industry concealed the fact that it was actually a company marketing hydrogen water. In the meantime, it was indicated in Point 4 of the promotion letter that "This promotion project is conducted in collaboration with the Health Promotion Administration (hereinafter referred to as the HPA) and it is intended to improve public welfare and is free of charge." The purpose was apparently to mislead people to believe the promotion project was conducted by a public welfare group in collaboration with a government agency, so that they would allow the party executing the project to send personnel to conduct the promotion in business units. The real intention, however, was to

use the pretext of promoting public welfare to market products.

The FTC's investigation revealed that the phone interviewers of Chunjing Fire Industry used the name of the Health Management Society of Taiwan on several occasions to claim they were collaborating with the HPA and requested approval to enter the plants to conduct the promotion. Some business units even chose to verify with the HPA as a consequence. Meanwhile, Chunjing Fire Industry also confessed that using its own company name to market products had not turned out well; therefore, the company copied the marketing pattern adopted in China earlier to use the name of the Health Management Society of Taiwan, despite its not having been legally registered, and adopted the pretext of promoting people's health in collaboration with a government agency to market its products. The practice misled potential trading counterparts to believe the project was really the result of collaboration with a government agency and agreed to let the company's personnel enter their plants and market the company's products. It was deceptive conduct intended to cause others to make wrong decisions and enter into transactions with the company.

During the period of more than one year when Chunjing Fire Industry was selling hydrogen water, the company adopted the aforementioned illegitimate marketing approach to promote its products on many occasions to create transaction opportunities, and a large number of unspecific parties were targeted. The overall marketing practice was deceptive conduct able to affect trading order. It was in violation of Article 25 of the Fair Trade Act.



## Merger between Applied Materials and Kokusai Electric Corp. Not Prohibited

The FTC decided at the 1,478<sup>th</sup> Commissioners' Meeting on Mar. 4, 2020 not to prohibit the merger between US company Applied Materials Inc. (hereinafter referred to as Applied Materials) and Japanese company Kokusai Electric Corporation (hereinafter referred to as Kokusai Electric Corp.) by citing Paragraph 1 of Article 13 of the Fair Trade Act.

Applied Materials intended to acquire the shares of Kokusai Electric Corp. held by KKR HKE Investment L.P. The condition complied with the merger patterns described in Subparagraphs 2 and 5 of Paragraph 1 of Article 10 of the Fair Trade Act. At the same time, the market shares of the merging parties in the relevant market and their domestic sales in the previous fiscal year also achieved the merger-filing thresholds prescribed in Subparagraphs 2 and 3 of Paragraph 1 of Article 11 of the Fair Trade Act, whereas the exemption regulation set forth in Article 12 of the same act was inapplicable. Hence, a merger notification was filed with the FTC.

Both Applied Materials and Kokusai Electric Corp. were wafer fabrication equipment suppliers, except that each company was dedicated to the production

of certain equipment for specific production processes and the production and application of such equipment also varied. As far as the horizontal competition between the merging parties was concerned, the case involved the market for rapid thermal processing applied during thermal processing. Although the post-merger market share of the merging parties would increase by a small margin, as wafer fabrication equipment products were highly customized products, there would still be competitors with considerable business scales in the relevant market while countervailing buyer power would also exist. In other words, the post-merger market would remain rather competitive and, therefore, it was difficult to consider that the merger would arouse concerns about competition restraints.

After obtaining the opinions of the competent authority of the industry of concern, related guilds and trade associations, competitors and upstream and downstream trading counterparts as well as studying the aforementioned factors, the FTC cited Paragraph 1 of Article 13 of the Fair Trade Act and did not prohibit the merger.



## Merger between Upjohn and Mylan Not Prohibited

The FTC decided at the 1,490<sup>th</sup> Commissioners' Meeting on May 27, 2020 not to prohibit the merger between US company Upjohn Inc. (hereinafter referred to as Upjohn) and Dutch company Mylan N.V. (hereinafter referred to as Mylan) by citing Paragraph 1 of Article 13 of the Fair Trade Act.

Upjohn was a wholly-owned subsidiary of US company Pfizer Inc. (hereinafter referred to as Pfizer). Upjohn intended to acquire 100% of the shares of Mylan immediately after its separation from Pfizer. After the merger, Mylan would be completely owned by Upjohn. The condition complied with the merger patterns described in Subparagraphs 2 and 5 of Paragraph 1 of Article 10 of the Fair Trade Act. At the same time, each of the merging parties accounted for over one quarter of the domestic relevant market and achieved the merger-filing threshold specified in Subparagraph 2 of Paragraph 1 of Article 11 whereas the exemption regulation in Article 12 of the same act was inapplicable. Therefore, a merger notification was filed with the FTC.

Both merging parties were pharmaceutical companies

and sold high blood pressure and antianginal drugs, erectile dysfunction drugs, antipsychotic drugs and anticholesteremic agents in the domestic market. The two horizontal competitors could only see limited market increase after the merger. They would still have to face many domestic and foreign competitors. In addition, there were no particular entry barriers in the relevant market while countervailing buyer power also existed. Hence, the market would remain rather competitive after the merger. Furthermore, the products of concern were either not patented or had lost patent protection, while most of them were covered by National Health Insurance and, therefore, the prices would be subject to the National Health Insurance payment standard changes. In other words, it was difficult to consider that the merger could arouse concerns about competition restraints.

After obtaining the opinions of competitors and downstream trading counterparts as well as assessing the aforesaid considerations, the FTC cited Paragraph 1 of Article 13 of the Fair Trade Act and did not prohibit the merger.



## Motostar Posted False Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1,492<sup>nd</sup> Commissioners' Meeting on Jun. 10, 2020 that Motostar Co., Ltd. (hereinafter referred to as Motostar) had violated Article 21 (1) of the Fair Trade Act by posting the wording of "German bike lock ABUS...Taiwan general agent Motostar Co., Ltd." on its website and in the product catalog. The practice was a false and misleading representation with regard to content of product and could also affect transaction decisions. Therefore, the FTC imposed an administrative fine of NT\$50,000 on the company.

The FTC received complaints that Motostar changed the cover photo and head pictures on its Facebook wall and added the wording "Motostar, General agent in Taiwan officially authorized by the original manufacturer" and kept posting the text "ABUS... General agent in Taiwan Motostar" in Nov.2019. The company also released on YouTube a film to introduce the "ABUS Granit Detecto X-plus 8077 alarm disc lock series" with "General agent in Taiwan Motostar" displayed in the upper left corner. In addition, the company's product catalog carried the wording

"ABUS General agent in Taiwan: Motostar" as well. The overall advertising content gave consumers the impression that Motostar was the general agent in Taiwan for the products of the German brand ABUS and in charge of the communication with ABUS, importation, promotion and marketing of products from ABUS, and after-sales service. In other words, Motostar had been appointed by ABUS to be the sole representative in Taiwan. In reality, however, other domestic companies had also been officially authorized by ABUS as its agents and none of them was a subagent or regional agent of Motostar. There was not any cooperative relationship in between. Therefore, the wording posted by Motostar on its website and in the product catalog claiming the company was the general agent for ABUS in Taiwan was apparently an aberration of the fact. It could have resulted in trading counterparts having wrong perceptions or making wrong decisions, causing market competition order to lose its function and leading to unfair competition. The practice was in violation of Article 21 (1) of the Fair Trade Act. 

## Jieli Construction and Yuyin International Posted False Housing Project Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1,482<sup>nd</sup> Commissioners' Meeting on Apr. 1, 2020 that Jieli Construction Co., Ltd. (hereinafter referred to as Jieli Construction) and Yuyin International Enterprise Co., Ltd. (hereinafter referred to as Yuyin International) had violated Article 21 (1) of the Fair Trade Act by using a model home with a mezzanine design and decorated as a residential home to market the "Nyuyue Shishang (transliteration)" housing project located in Guishan District of Taoyuan City. The practice was a false and misleading representation with regard to content and use of product and could also affect transaction decisions. Therefore, the FTC imposed administrative fines of NT\$800,000 on Jieli Construction and NT\$600,000 on Yuyin International.

The FTC was informed by private citizens that the "Nyuyue Shishang" housing project was to be used for offices. However, the model home at the reception center was decorated as a residential home. It gave consumers the wrong impression that the units could be used as residential homes. As a result, the FTC sent staff members on May 28, 2019 to the reception center of the housing project to investigate. Led by salespeople to have a look at the model home with a mezzanine design on the 6th floor of Building A7, they were told the ceiling height of every floor was 4.28 meters and a mezzanine could be constructed in each unit to create a bedroom. The model home gave the impression that the units of the housing project could be used as regular homes and a mezzanine could be

constructed in each unit.

According to the opinion of the Taoyuan City Government and the information indicated on the building license and building use permit issued by the Taoyuan City Government, all the units from the second floor to the eleventh floor were meant to be regular office spaces. Hence, they could not be used as residential homes. In addition, no application had been filed for permission to include a mezzanine design. If a change in the original purpose of use was made without following the procedure specified in the Building Act, related penalty and disposal provisions were specified in Subparagraph 1 of Paragraph 1 of Article 91 of the Building Act. When the salespeople at the reception center showed potential homebuyers the model home with the mezzanine design and decorated as a residential home, it could have misled them to believe that a mezzanine structure could be put in each unit and each unit could be used as a residential home. Nonetheless, such potential homebuyers had no idea that constructing a mezzanine and using a unit as a residential home was in violation of building regulations. Later on, they could be fined or ordered to dismantle the mezzanine, stop using the unit or restore the unit to its original condition. In other words, the practice adopted by Jieli Construction and Yuyin International was a false and misleading representation with regard to content and use of product. It was in violation of Article 21 (1) of the Fair Trade Act.



## Statistics on Cases with Sanctions Administered

As the competent authority, the FTC investigates activities likely to involve the Fair Trade Act or the Multi-level Marketing Supervision Act and imposes sanctions on enterprises or individuals if violations are confirmed in order to maintain trading order and protect fair competition in the market. Statistics show that the FTC handled and closed 43 cases by giving out sanctions between January and July in 2020. Seven of them were informed cases and the FTC launched ex officio investigations in the remaining 36 cases (Fig. 1). 44 dispositions were issued and 58 enterprises were sanctioned. The fines imposed totaled NT\$17.35 million.

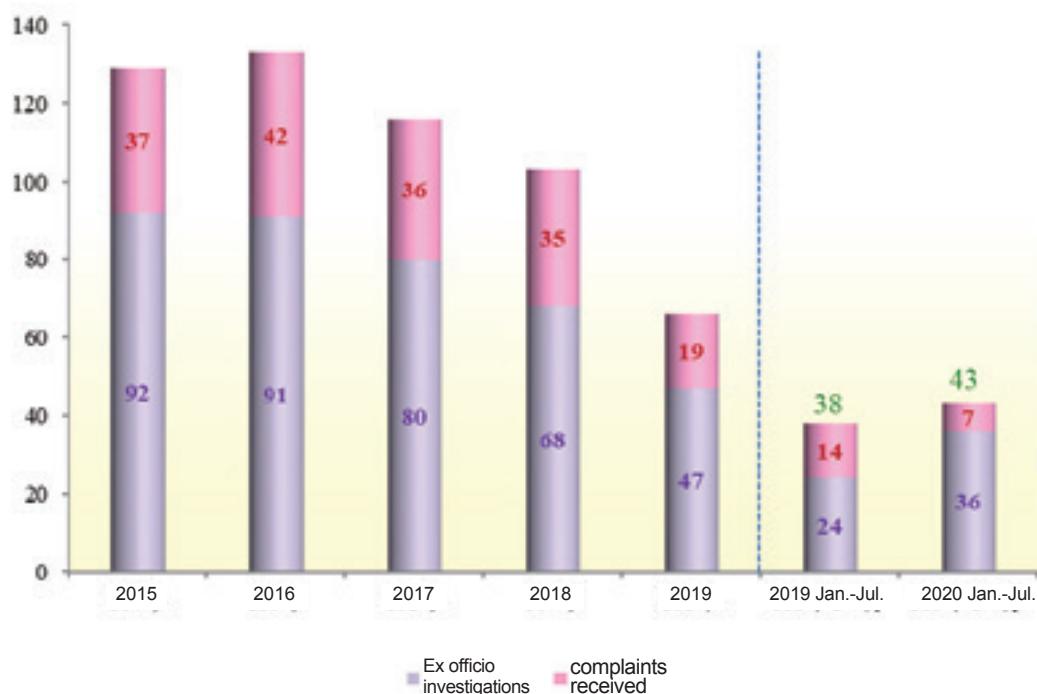


Fig. 1 Cases with Sanctions Administered—by type

From 2015 to the end of July this year (2020) (hereinafter referred to as recent years), the FTC issued in total 631 dispositions to enterprises found in violation of regulations belonging to the jurisdiction of the FTC. In 625 of these cases, the sanctions were sustained. Observed by industry, the 386 cases (61.8%) involving wholesale and retail businesses formed the largest group, followed by the 116 cases (18.6%) associated with real estate enterprises (Fig. 2). In recent years, the sustained fines imposed added up to NT\$7.77211 billion. The NT\$7.35961 billion (94.7%) imposed on manufacturing businesses was the largest amount, followed by the NT\$145.90 million (1.9%) imposed on publishing, audio-video production, communication and information communications service businesses.

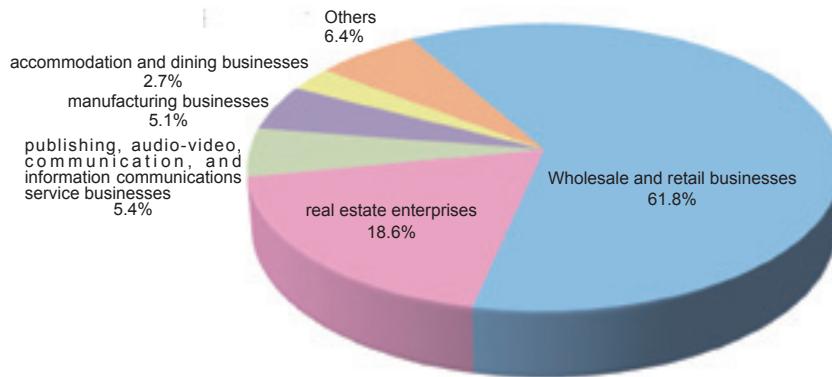


Fig. 2 Cases with Sanctions sustained in Recent Years – by Type of Industry  
To the end of Jul. 2020

In recent years, there were 625 cases in which the sanctions were sustained and fines were imposed in 615 cases. Observed by level of fine, a fine below NT\$1 million was imposed in 514 cases (83.6%) and the fines imposed in these cases totaled NT\$150.2 million. There were 86 cases (14.0%) in which the fine imposed was more than (including) NT\$1 million but less than NT\$5 million and the fines imposed in these cases amounted to NT\$145.74 million. In five cases, the fine imposed exceeded NT\$100 million and the fines imposed in these cases were NT\$7.17630 billion in total, or 92.3% of all the fines imposed (Table 1).

Table 1 Cases with Fines Sustained in Recent Years – by Type of Violation as Indicated in the Disposition  
To the end of Jul. 2020

Fine Bracket	Fine (10 thousand)	No. of Dispositions Issued						Multi-Level Marketing	Others
			Competition Restriction	Concerted Action	Unfair Competition	False or Misleading Advertising	Deceptive or Obviously Unfair Conduct		
Total (2015 to Jul. 2020)	777,211	615	57	17	343	293	51	215	1
Less than NT\$1 million	10,502	514	24	5	296	251	46	194	1
NT\$1 million to less than 5 million	14,574	86	19	3	46	41	5	21	-
NT\$5 million to less than 9.99 million	500	1	-	-	1	1	-	-	-
NT\$10 million to less than 100 million	34,005	9	9	5	-	-	-	-	-
More than NT\$100 million	717,630	5	5	4	-	-	-	-	-

Notes:

- The number of cases is inconsistent with the total number of different types of violations because some of the cases involved two or more violations.
- Others refer to cases with consecutive sanctions imposed and those in which the offenders avoided, obstructed or refused investigation.

## FTC Activities in July and August 2020

- ↗ On Jul. 2, 11 and 15, the FTC conducted the 2020 “Various Aspects of Trading Traps” activity respectively at the Congregation Hall of Taibao Village, Chiayi County, the Kaohsiung City International New Immigrants Association and the Old Folks Welfare Promotion Association of Guantian District, Tainan City.
- ↗ On Jul. 10, the FTC held the “Presentation on Online Operation of the Fair Trade Commission Multi-level Marketing Management System and Things to Note”.
- ↗ On Jul. 13, the FTC held the “Presentation on the Law Observance and Competition in the Paper Container Manufacturing Industry” in Taichung City.
- ↗ On Jul. 24, Commissioner Tsai Wen-Jen gave a lecture on “Cartel Detection and Damage Estimation” at the invitation of the FTC.
- ↗ On Jul. 31, Aug. 7 and Aug. 28, the FTC conducted the “Presentation on the Online Advertising Regulations of the Fair Trade Commission and Related Cases” respectively in Hualien County, Kaohsiung City and Taipei City.
- ↗ On Aug. 3, the FTC held the “Presentation on the Tendency in Enforcement of International Competition Law and Related Lawsuits” in Taipei City.
- ↗ On Aug. 6 and 7, the FTC conducted two sessions of the “Workshop on Promotion of Competition in the Bottled LPG Industry and Revision of the Disposal Directions” in Taichung City.
- ↗ On Aug. 14, the FTC held the “Presentation on the Regulations of the Fair Trade Commission for Real Estate Advertising and Related Cases” in Taichung City.
- ↗ On Aug. 14 and 28, the FTC held the “Presentation on the Development of the Pharmaceutical Industry and Fair Trade Act Regulations” respectively in Tainan City and Hsinchu City.
- ↗ On Aug. 20 and 21, the FTC held the “2020 Fair Trade Commission-Local Government Coordination Meeting” in Toufen City, Miaoli County.
- ↗ On Aug. 25, Professor Yang Zhi-Jie of the Graduate School of Science and Technology Law of National Yunlin University of Science and Technology gave a lecture on “E-Commerce and Competition Law: A Study of the Cases in the EU in Recent Years” at the invitation of the FTC.



1.The FTC giving a presentation on “Various Aspects of Trading Traps” at the Congregation Hall of Taibao Village, Chiayi County

2.The FTC holding the “Presentation on Online Operation of the Fair Trade Commission Multi-level Marketing Management System and Things to Note”



- 3.The FTC inviting Commissioner Tsai Wen-Jen to give a lecture on "Cartel Detection and Damage Estimation" at the invitation of the FTC
- 4.The FTC conducting the "Presentation on the Online Advertising Regulations of the Fair Trade Commission and Related Cases" in Hualien County
- 5.The FTC conducting the "Presentation on the Online Advertising Regulations of the Fair Trade Commission and Related Cases" in Kaohsiung City
- 6.The FTC holding the "Presentation on the Development of the Pharmaceutical Industry and Fair Trade Act Regulations" in Tainan City
- 7.The FTC holding the "2020 Fair Trade Commission-Local Government Coordination Meeting" in Toufen City, Miaoli County
- 8.The FTC holding the "Presentation on the Development of the Pharmaceutical Industry and Fair Trade Act Regulations" in Hsinchu City

## FTC International Exchanges in July and August 2020

- ↗ On Jul. 9, the FTC attended the “Meeting on Reporting the Main Results of the OECD-ICN Joint Initial Report on International Enforcement Cooperation” jointly held by the OECD and ICN through videoconferencing.
- ↗ On Jul. 15, the FTC attended the “Meeting of High Level Representatives of Asia-Pacific Competition Authorities” held by the OECD Competition Committee through videoconferencing.
- ↗ On Jul. 16 to 21, the FTC attended the Webinar on the Role of Competition Law in the Medical Industry held by the OECD/Korea Centre Competition Programme (KPC).
- ↗ On Jul. 28, the FTC attended the “Informal Meeting on Renewed APEC Agenda for Structural Reform” held by the APEC Economic Committee through videoconferencing.
- ↗ On Aug. 13 to 14, the FTC attended the “Second Meeting of the Economic Committee” held by APEC at the National Development Council through videoconferencing.



- 1.The FTC attended the “Meeting on Reporting the Main Results of the OECD-ICN Joint Initial Report on International Enforcement Cooperation” jointly held by the OECD and ICN through videoconferencing
- 2.Commissioner Hong Tsai-Lung making an oral report on behalf of the FTC at the “Meeting of High Level Representatives of Asia-Pacific Competition Authorities” held by the OECD Competition Committee on Jul. 15
- 3.The FTC attended the Webinar on the Role of Competition Law in the Medical Industry held by the OECD/Korea Centre Competition Programme (KPC). Director Ho-tae Kim of the OECD KPC delivered a welcome speech.

Dear Readers,

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

Regards  
Fair Trade Commission

## Taiwan FTC Newsletter Reader's Survey

- Nationality : \_\_\_\_\_
  - Category of your organization
    - Government
    - Private Corporation
    - Embassy
    - NGO
    - Media
    - Scholars
    - Other (please specify)\_\_\_\_\_
1. What do you think of the design of the Taiwan FTC Newsletter, including style and photos?
- Very Good     Good     Average     Bad     Very Bad
2. Are the articles clear and understandable or difficult to understand?
- Very Clear     Clear     Average     Difficult     Too Difficult
3. Are you satisfied with the contents of the Taiwan FTC Newsletter, including choice of subjects, length and thoroughness of articles?
- Very satisfied     Satisfied     Average     Dissatisfied     Very Dissatisfied
4. Which section is your favorite one?
- Selected Cases     FTC Statistics     FTC International Exchanges
5. What more would you like to see in the Taiwan FTC Newsletter, e.g. different subjects? Do you have any other suggestions?
- Your advice : \_\_\_\_\_



# Taiwan FTC Newsletter

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