

<p><i>Competition Policy Newsletter</i></p>	<p>Competition Policy Information and Research Center, Fair Trade Commission Publisher: Tang Jinn-Chuan Editor-in-Chief: Shin Chih-Chung</p>
<p>Issue 1, Volume 11</p>	<p>February 28, 2007</p>
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◆ **Special Topics**

◎ **The Sixth Term of FTC Commissioners Inducted into Office**



The Sixth Term of FTC Commissioners. From left: Commissioner Lin Yi-Yu, Commissioner Huang Mei-Ying, Commissioner Chou Ya-Shu, Vice Chairman Yu Chao-Chuan, Chairman Tang Jinn-Chuan, Commissioner Chang Yie-Yun, Commissioner Chen Chih-Min (Andy), Commissioner Hsieh Yi-Hong and Commissioner Lin Hsin-Wu (Xin-Wu).

The new FTC commissioners were inducted into office on February 1, 2007. Among the nine commissioners, Vice Chairman Yu Chao-Chuan, Commissioner Chou Ya-Shu and Commissioner Huang Mei-Ying were appointed to a succeeding term. There are six new commissioners: Chairman Tang Jinn-Chuan, Commissioner Lin Yi-Yu, Commissioner Chen Chih-Min (Andy), Commissioner Hsieh Yi-Hong, Commissioner Chang Yie-Yun and Commissioner Lin Hsin-Wu (Xin-Wu). Five of the commissioners are experts in law, and four are experts in finance and economics. Information on the academic backgrounds and work experiences of Chairman Tang, Vice Chairman Yu, and the other commissioners are as

follows:

■ **Mr. Tang, Jinn-Chuan, Chairman**

Education:

- Master, College of Law, National Taiwan University
- LL. B., Law School, Fu-Jen Catholic University

Experience:

- Deputy Mayor, Kaohsiung City
- Political Deputy Minister, Ministry of Justice
- Legislator, the Legislative Yuan
- City Representative, Kaohsiung City
- Judge, Taiwan Chiayi District Court
- Public Prosecutor, Chiayi and Kaohsiung District Prosecutors Office
- Adjunct Lecturer, Central Police University

■ **Dr. Yu, Chao-Chuan, Vice Chairman**

Education:

- Ph.D., Business Administration, National Chengchi University
- MBA, National Chengchi University
- B.S., School of Science, National Taiwan University

Experience:

- Commissioner, Fair Trade Commission (2004 February-2005 March)
- Advisor to the President
- Dean, School of Business, Soochow University
- Director, Graduate Program of Accounting, Soochow University
- Professor, Business Administration, Soochow University
- Secretary, Taipin County, Taichung
- Sales Supervisor, Great Wall Enterprise Co., Tainan
- Consultant, China Productivity Center
- Commissioner, Taiwan Stock Exchange Corporation
- Director, China Shipbuilding Corporation
- Visiting Scholar, Columbia University, U.S.A.

■ **Ms. Chou, Ya-Shu, Commissioner**

Education:

- LL.B., Department of Law, National Taiwan University

Experience:

- Councilor of Taipei County Council
- Supervisor of Hsichih City, Taipei County
- Legislator, Legislative Yuan

■ **Dr. Huang, Mei-Ying, Commissioner**

Education:

- Ph.D., Economics, University of Georgia, U.S.A.
- M.S., Agricultural Economics, National Taiwan University
- B.S., Agricultural Economics, National Taiwan University

Experience:

- Director, Department of Economics, National Taipei University
- Director, Taiwan Development and Research Center, National Taipei University
- Professor, Department of Economics, National Taipei University

- Professor, Department of Economics, National Chung Hsing University
- Councilor, Council for Economic Planning and Development, Executive Yuan (the Cabinet)

■ **Mr. Lin, Yi-Yu, Commissioner**

Education:

- M.A., Agricultural Economics, National Chung-Hsing University
- B.A., Agricultural Economics, National Chung-Hsing University

Experience:

- Chief Secretary (2001 February-2007 January), Director (1996 October-2001 January), Deputy Director (1992 January-1996 September), Fair Trade Commission, Executive Yuan (the Cabinet)
- Director (1988 October-1991 December), Deputy Director (1987 February –1988 September), Senior Specialist (1984 September-1987 January), Section Chief (1980 March-1984 August), Specialist (1978 July-1980 February), Commodity Price Supervisory Board, Ministry of Economic Affairs

■ **Dr. Chen, Chih-Min (Andy), Commissioner**

Education:

- SJD, School of Law, Northwestern University, U.S.A.
- LL.M., School of Law, Duke University, U.S.A.
- LL.M., School of Law, Soochow University
- LL.B., Department of Law, National Taiwan University

Experience:

- Associate Professor of Law, Tamkang University
- Assistant Professor of Law, Tamkang University
- Adjunct Professor of Law, National Chiao Tung University
- Adjunct Professor of Law, Soochow University
- Advisor and Consultant, Competition Policy Information and Research Center of the Fair Trade Commission

■ **Dr. Hsieh, Yi-Hong, Commissioner**

Education:

- J.S.D., School of Law, Stanford University , U.S.A.
- LL.M., School of Law, Stanford University , U.S.A.
- LL.B., Department of Law, National Taiwan University

Experience:

- Associate Professor, School of Law, Soochow University
- Lecturer, Training Institute for Judges and Prosecutors
- Lecturer, Taipei Bar Association
- Associate, Cleary Gottlieb Steen & Hamilton, New York
- Commissioner, The Bankruptcy Law Revision Committee, Judicial Yuan, Taiwan

■ **Dr. Chang, Yie-Yun, Commissioner**

Education:

- Ph.D., Law school, University of Munich, Germany
- LL.B., Law school, Fu-Jen Catholic University

Experience:

- Professor of Law, Fu-Jen Catholic University

■ **Dr. Lin, Hsin-Wu (Xin-Wu), Commissioner**

Education:

- Ph.D, Economics, National Taiwan University
- M.A., Economics, National Taiwan University
- B.A., Business Administration, National Chen-Chi University

Experience:

- Researcher and Director of Research Division III, Taiwan Institute of Economic Research
- Associate Researcher and Director of Research Division III, Taiwan Institute of Economic Research
- Associate Researcher and Deputy Director of Research Division III, Taiwan Institute of Economic Research
- Visiting Scholar, Washington College of Law at American University, U.S.A.
- Visiting Scholar, University of Chicago, U.S.A.

◆ **News Section**

◎ **2006 Multi-Level Sales Enterprise Survey Results**

In order to understand the actual operating situations of those multi-level sales enterprises reporting to the FTC, the FTC has since 1996 requested that local competent authorities conduct a comprehensive survey within their respective jurisdictions on an annual basis. The FTC has consolidated the survey results for the year 2006 (650 businesses) as follows:

1. Number of enterprises that had filed applications for company dissolution, rescission, or a cessation of business operations/cancellation or else had been ordered to cancel registrations: 30
2. Number of enterprises that had filed registrations for business discontinuation: 48
3. Number of enterprises that had relocated to an unknown location: 91
4. Number of enterprises showing no evidence of operation at their present offices: 28
5. Number of enterprises that had ceased conducting multi-level sales activities: 65
6. Number of enterprises that are currently participating in multi-level sales activities: 388

Based upon the survey results listed above, the FTC will proceed with the following actions:

1. With those 30 enterprises that had filed applications for company dissolution, rescission, or a cessation of business operations/cancellation or had been ordered to cancel registrations, the FTC will revoke their records and remove their names from the roster.
2. The FTC will follow up the survey with the following measures:
 - (1) With regard to those 119 enterprises that had either relocated to an unknown location or had not showed any evidence of operations at their present offices, the FTC will send letters to the local competent authorities and request that they trace these enterprises in accordance with the Company Act or Business Registration Act. If applicable, the local competent authorities shall submit requests for orders for dissolution or cancellation of registrations. After these enterprises are dissolved or their registrations cancelled, the local competent authorities shall submit letters to the FTC in order to revoke these enterprises' recorded with the FTC.
 - (2) With regard to those 48 enterprises that had filed registrations for business discontinuation, the FTC will also request that the local competent authorities, upon the expiration of discontinuation, trace these enterprises pursuant to the procedure mentioned above.
3. With regard to those enterprises that had ceased conducting multi-level sales activities but had not yet reported doing so to the FTC, the FTC will send letters to these enterprises, if they have no intention of continuing to engage in multi-level sales activities, to request

their prompt filing for record.

4. With regard to those enterprises that had moved to another county/city without reporting to the FTC in accordance with the regulations, the FTC will find out these enterprises' current addresses. In the event that any enterprise did move its principal place of business without reporting such a change to the FTC, the FTC will create a case and commence an investigation.

◎ **The FTC Enacts “Fair Trade Commission Guidelines on Selling Gas Safety Equipment”**

The FTC passed the “Fair Trade Commission Guidelines on Selling Gas Safety Equipment” (hereafter called “the Guidelines”) based on its resolution passed at the 787th Commissioners’ Meeting on December 7, 2006. The related promulgation matters will be handled by the FTC in accordance with the legal procedure in the near future. The said enactment will also be published in the Executive Bulletin and posted on the FTC’s website for relevant enterprises to follow and avoid any violation of the Fair Trade Law and to protect trading order and consumers’ rights and interests.

Since the formation of the FTC, many complaints have been filed by the public regarding improper sales by gas safety equipment enterprises. Upon investigation, the FTC found that these gas safety equipment enterprises often take advantage of the consumer’s fear for gas hazards and lack of knowledge regarding gas safety and the functions of the equipment in question to sell equipment. They also try to induce consumers to purchase their equipment by conducting gas safety inspections in the name of some natural gas enterprise or by using gas safety propagation as their excuse. This type of case obviously has sufficient evidence to prove these enterprises’ violation. In addition, even though the FTC has imposed administrative fines and ordered such enterprises to cease their unlawful acts, some enterprises still continue to form new companies or change their company names and responsible persons in order to continue marketing their equipment. Such acts surely have a great impact on consumer’s rights and interests. This type of case frequently occurs within the industry, and merely meting out punishments for individual violations is not sufficient to maintain trading order. In order to allow relevant enterprises to follow the law and avoid trading disputes, the FTC decided to enact the Guidelines, which are expected to maintain trading order and protect consumers’ interests.

After consolidating the related cases handled by the FTC from 2000 to 2005, it was found that the types of violation by and large included the adoption of gas safety inspection and propagation to sell gas safety equipment. Since the gas safety equipment enterprises constantly change their marketing methods, which has had a great impact on market competition and the public interest, the enactment of the Guidelines is quite necessary. The nature of the Guidelines is such that they merely list several common and possible violations involving gas safety equipment enterprises. Therefore, the procedures for individual cases shall still be handled according to the actual facts.

◎ **Selected FTC Decisions**

Four Domestic Airlines’ Application for Concerted Action in Selling Taipei-Kaohsiung Free Endorsement Tickets is Approved

Far Eastern Air Transportation, TransAsia Airways, Mandarin Airlines, and Uni Air filed an application for a concerted action to sell Taipei-Kaohsiung free endorsement tickets that was subsequently approved by the 781st Commissioners’ Meeting on October 26, 2006 in accordance with the proviso of Article 14, Paragraph 1 and Article 15 of the Fair Trade Law. In addition, since the actual information regarding the impact to be brought to the western transportation market by the High Speed Rail was still unavailable, the FTC reduced the

permit period from 3 years to 2 years, so that it would expire on October 31, 2008. The application will be further reviewed in the future based upon the actual impact brought to the domestic air transportation industry and other kinds of transportation by the operation of the High Speed Rail.

Based on a consultation with the competent air transportation authority, the Civil Aeronautics Administration of the Ministry of Transportation and Communications, as well as a thorough deliberation by the FTC's Commissioners, it was found that by selling Taipei-Kaohsiung free endorsement tickets, the overall economic benefits and public interest should be positively improved. Such benefits include shortening flight intervals, increasing the passenger load rate, lowering costs, improving operating efficiency and facilitating travel convenience. As for the competition restraints or unfair competition, such as entry barriers, price freezes, the impact on the upstream and downstream markets as well as consumers' rights and interests, no obvious impact was found.

Furthermore, in order to prevent the applicants from employing such a concerted action to proceed with competition restraints or unfair competition and to ensure that the overall economic benefits will outweigh competition restraints, the FTC also applied the following conditions to the approval in accordance with Article 15, Paragraph 1 of the Fair Trade Law:

1. No applicant shall reject another applicant's request to withdraw from or revise the provision of "Split Profits" stated in the free Endorsement Ticket Agreement without any just reason.
2. Other than issuing and selling Taipei-Kaohsiung free endorsement tickets, the applicants shall also issue and sell "Non-Endorsable" tickets subject to the market competition mechanism and preferential prices.
3. Without just reason, no applicant shall prevent another business, with reasonable conditions, from participating in this concerted action.
4. Each applicant shall independently decide the transportation service prices and trading conditions of the Taipei-Kaohsiung route. Such a decision shall not be a result of the approval of this concerted action.
5. During the permitted period for this concerted action, the applicants shall not reduce the number of flights on the Taipei-Kaohsiung route by more than 20% of the number of flights approved at the time of the application.
6. The applicants shall submit relevant trading information to the FTC every six months. Such trading information shall include the agreed split profits, actual net profits split and amortized, seats provided, number of passengers, passenger load rate, face value, average sales price, total sales amount, and the sales ratio of endorsable tickets to non-endorsable tickets.

Four Domestic Ferry Operators' Application for Concerted Action in Jointly Arranging Shifts, Selling Dunggang-Hsiau Liouchiou Line Tickets and Using Unified Tickets is Approved

Fei Ma Ferry Co., Ltd., Chun Yi Ferry Co., Ltd., Tung Hsin Ferry Co., Ltd. and Ching Chiang Ferry Co., Ltd. filed an application for a concerted action for jointly arranging shifts, selling Dunggang-Hsiau Liouchiou Line Tickets, and using unified tickets that was approved by the 784th Commissioners' Meeting on November 16, 2006 in accordance with the proviso of Article 14, Paragraph 1 of the Fair Trade Law. The permit period will expire on July 1, 2009.

Based upon a consultation with the competent transportation authority, the Port of Kaohsiung of the Ministry of Transportation and Communications and the Consumer Protection Commission of the Executive Yuan, as well as a thorough deliberation by the FTC's Commissioners, it was found that by jointly arranging shifts, selling Dunggang-Hsiau

Liouchiou Line Tickets, and using unified tickets, the overall economic benefits and public interest should be positively improved. Such benefits include shortening passengers' wait time, improving service quality and transportation service efficiency, lowering cost, maintaining the provision of transportation services and adding more choices for the consumer. As for the competition restraints or unfair competition, such as entry barriers, the impact on the upstream and downstream markets as well as consumers' rights and interests, no obvious impact was found.

Furthermore, in order to prevent the applicants from employing such a concerted action to proceed with competition restraints or unfair competition and to ensure that the overall economic benefits will outweigh the competition restraints, the FTC also applied conditions to the approval in accordance with Article 15, Paragraph 1 of the Fair Trade Law:

1. Without just reason, no applicant shall prevent another business, with reasonable conditions, from participating in or withdrawing from this concerted action.
2. No applicants shall employ contracts, agreements or other types of consent to jointly decide the transportation prices and trading conditions of the Dunggang-Hsiau Liouchiou line through this approved concerted action.
3. During the permitted period for this concerted action, the applicants shall not reduce the number of voyages on the Dunggang-Hsiau Liouchiou route by more than 10% of the 16 voyages approved at the time of application.

Hon Hai Precision Industry Violates Article 24 of the Fair Trade Law by Stating or Disseminating Patent Right Disputes

During its 785th Commissioners' Meeting on November 23, 2006, the FTC determined that Hon Hai Precision Industry (hereinafter called "the Respondent") had violated Article 24 of the Fair Trade Law by consecutively publishing improper words, by stating or disseminating patent right disputes, on its website to degrade its competitor's business reputation. The Respondent's acts were obviously unfair and sufficient to affect trading order. Thus, the FTC ordered the Respondent to immediately cease these unlawful acts mentioned above and imposed an administrative fine of NT\$1,560,000 on the Respondent.

From June 24 to November 7, 2006, the Respondent posted a message on the Market Observation Post System saying that Lotes Co., Ltd. (hereinafter called "Lotes") was involved in several lawsuits of patent right infringement. After the investigation, it was found that the message in question consecutively alleged that Lotes was "counterfeiting," "infringing upon intellectual property rights (of another business)," "maliciously competing," "purposely confusing the market," "an illegal speculative company," and "an unworthy counterfeiter." These words are commonly known by the general public to be sufficient to be libelous and to defame Lotes' reputation. Since 2000, the Respondent has not received any decisions issued by relevant courts regarding Lotes' infringement of the patent of the Respondent's connector product. However, the words that the Respondent used in the message in question affirmatively claimed or implied that Lotes had infringed upon the Respondent's patent rights. Such a message was not a statement of facts and was used consecutively and considerably. Therefore, the contents of such a message published by the Respondent were obviously inappropriate.

Due to Respondent's advantageous position in the connector market, the message it published on the Market Observation Post System was broadly covered by newspaper, magazine and electronic media, which quoted the contents of the message in their reporting. It allowed the trading counterparts or potential trading counterparts of Lotes to know of the message in question through the media. The Respondent further published another message on November 25, 2006 not only to repeat the statements that the Respondent filed for a provisional detainment and patent right infringement litigation against Lotes but also to claim

that “any and all relevant companies that are still using the product involved in the infringement will be the next target deterred by us.” Based on the Respondent’s market position, which was way more advantageous than that of the complainant, Lotes, the Respondent’s acts to publish such messages were sufficient to cause doubt in Lotes’ trading counterparts and potential trading counterparts and cause them to cease trading with Lotes. Upon the FTC’s investigation, it was found that the trading relationship between some of Lotes’ trading counterparts and Lotes was affected after these trading counterparts learned about the Respondent’s messages and decided to avoid being involved in the patent right disputes to protect their own products. Thus, it was proved that the Respondent’s acts were sufficient to affect trading order.

After taking into account the motive, objective, expected improper benefits, degree of damage to trading order, duration of the actions, benefits obtained, scale of business, business operations, whether the competent authority had previously corrected or warned against such action, the type, number and interval of previous violations and punishment, remorse shown after the violation, cooperation during the investigation and other factors, the FTC imposed the above-mentioned punishment in accordance with the forepart of Article 41 of the Fair Trade Law.

Sanyo Taiwan Violates Article 21, Paragraph 1 of the Fair Trade Law by Employing False and Misleading Representations Regarding Its Product Quality

During its 787th Commissioners’ Meeting on December 7, 2006, the FTC determined that the newspaper advertisement of Sanyo Taiwan (hereinafter called “the Respondent”), which had claimed that the Respondent’s DC variable-frequency air conditioners, SAP-E/C286UVH, could provide a “59% savings in electricity consumption,” was inconsistent with actual conditions. The advertisement was thereby determined to be a violation of Article 21, Paragraph 1 of the Fair Trade Law. Thus, in addition to ordering the Respondent to immediately cease the unlawful act mentioned above, the FTC also imposed an administrative fine of NT\$750,000.

The Respondent placed an advertisement on page E3 of the April 19, 2005 issue of the *Apple Daily*. The advertisement said that the Respondent’s DC variable-frequency air conditioners could provide a “59% savings in electricity consumption” compared with regular fixed-frequency air conditioners. The representations of the advertisement mainly showed a comparison of the DC variable-frequency air conditioners in question with the Respondent’s regular fixed-frequency air conditioners and the test result provided by the Electronics Testing Center Taiwan (“ETC”) based on a test carried out under the conditions set by the Respondent. The advertisement used a comparative statement to emphasize the effect of a “59% Savings in Electricity Consumption.” However, according to the Bureau of Standards, Metrology and Inspection, MOEA (hereinafter called “BSMI”), the test conditions set by the Respondent were inconsistent with not only the national standards, but also very different from the way air conditioners are normally used in buildings. Based on the test method of the ratio of the air conditioner’s cooling capacity and power efficiency subject to the national standards, the air conditioner to be tested should have functioned continuously until a stable stage before the test under the conditions that the temperature and humidity of the inside and outside of the room were balanced. According to the data employed in the Respondent’s advertisement, the temperatures and humidity inside and outside the testing room were allowed to reach the level determined by the Respondent (that were different from the standard test condition set by national standards) and the air conditioner inside the room was turned off. Then, the air conditioner to be tested was turned on for measurements. In other words, the heat source used to balance the testing conditions (dry/ wet-ball temperatures) was shut off. During this time, there was neither a heat source inside the room nor air convection between the inside and

outside of the room, and thus heat transfer was minimal (equal to a room with no humans or other heat sources existing and excellently isolated from the outside world). Since the temperature and humidity conditions no longer remained balanced, the air conditioner to be tested would have the least workload for most of the time. Therefore, these conditions were obviously different from the actual usage conditions of air conditioners in buildings and inconsistent with the Respondent's statement that the testing conditions were based on "real life" conditions. The test result used in the advertisement could have misled the consumer.

In general, consumers regard whether or not an air conditioner could save on electricity consumption as a very important factor before they decide to buy one. Therefore, if an advertiser were to employ a test method that is different from the daily usage conditions of normal air conditioners (or that cannot possibly happen in daily lives) in the advertisement, it would definitely influence the general consumer's decision to make such a purchase. The Respondent not only employed a test method that was inconsistent with the national standards but also one that was different from the general usage conditions. Therefore, the physical meaning of this test result had lost its representation. However, the Respondent still employed such a test result in its advertisement to attract consumers who were unaware of the situation. This was sufficient to determine that the advertisement was false, untrue or misleading and that the advertisement violated Article 21 of the Fair Trade Law.

After taking into account the motive, objective, expected improper benefits, degree of damage to trading order, duration of the actions, benefits obtained, scale of business, business operations, market position, whether the competent authority had previously corrected or warned against such action, the type, number and interval of previous violations and punishment, remorse shown after the violation, cooperation during the investigation and other factors, the FTC imposed the above-mentioned punishment in accordance with the forepart of Article 41 of the Fair Trade Law.

☐ Wyeth Pharmaceuticals (Asia) Violates Article 21, Paragraph 1 of the Fair Trade Law by Employing False and Misleading Representations Regarding Its Product Quality

During its 787th Commissioners' Meeting on December 7, 2006, the FTC determined that the "'Acid Test Result' Training Information" employed by Wyeth Pharmaceuticals (Asia) Co., Ltd., Taiwan Branch (hereinafter called the "Respondent") at its mother's classroom claiming that the "S-26 Gold Formula which contains mostly lactalbumin forms very fine curds and causes no burden on infants' digestion" was a false and misleading representation and violated Article 21, Paragraph 1 of the Fair Trade Law. In addition to ordering the Respondent to immediately cease the aforesaid unlawful act, the FTC also imposed an administrative fine of \$440,000.

The aforesaid "acid test" was a protein test conducted by the Respondent's nursing staff comparing the Respondent's product with the formula of another two anonymous brands. The origin of the "'Acid Test Result' Training Information" was the photos and descriptions regarding the acid test results of adding vinegar to the Respondent's formula and the formula of the other brands. To promote its own product, the Respondent's nursing staff and salespersons used the above-mentioned information in their briefs represented at the mother's classroom and diagrammed in the same way at the hospitals to disseminate such information. Though the Respondent did not directly deliver the said written information to the consumers, its acts were already sufficient to allow a non-specific party to learn about the messages contained in such information. Therefore, it was determined that the Respondent employed a way of making known its claims to the public as prescribed in Article 21 of the Fair Trade Law.

Moreover, in addition to using favorable prices and information regarding nutrition to

strive to gain trading counterparts, firms that compete using different types of formula also focus on infant digestion. Due to its importance to the safety and growth of an infant, the digestion issue has been one of the major concerns of the consumer. Since the Respondent employed the size of the curds formed by its formula containing lactalbumin as important training content for its trainees, the Respondent should not have avoided providing a complete and truthful representation regarding the subject matter. The Respondent directly disclosed the names of other brands in its “‘Acid Test Result’ Training Information” without constructively explaining the definition of “no burden” and used a comparative method to claim that its product “forms very fine curds and causes no burden on infants’ digestion” which could easily have misled consumers into believing that their infants would not have any digestion issues if they were to use “S-26 Gold Formula.” Upon the Respondent’s explanation at the FTC, the Respondent only claimed that “no burden” was merely a general term and could not provide any medical or scientific proof to support its aforesaid claim. However, upon the opinions given by the professional group referred by the Department of Health, Executive Yuan, the lactalbumin contained in breast milk and cow’s milk should be different. Cow’s milk contains a lot of beta-lactalbumin, which can easily cause infants to have allergies and further cause digestion problems. There is no medical proof to support the Respondent’s claim that the formula containing lactalbumin forms very fine curds and causes no burden on infants’ digestion. Thus, the advertisement in question was obviously false and misleading and violated Article 21, Paragraph 1 of the Fair Trade Law.

After taking into account the motive, objective, expected improper benefits, degree of damage to trading order, duration of the actions, benefits obtained, scale of business, business operations, market position, whether the competent authority had previously corrected or warned against such action, the type, number and interval of previous violations and punishment, remorse shown after the violation, cooperation during the investigation and other factors, the FTC imposed the above-mentioned punishment in accordance with the forepart of Article 41 of the Fair Trade Law.

Six Financial Institutes Violate Article 24 of the Fair Trade Law by Adding an Acceleration Clause in the Loan Contracts or Requiring that Borrowers abide unspecific catch-all clauses

During its 788th Commissioners’ Meeting on December 14, 2006, the FTC determined that 6 financial institutes, Singfor Life Insurance Company (hereinafter called “Singfor Life”), China Life Insurance Company (hereinafter called “China Life”), Sinon Life Insurance (hereinafter called “Sinon Life”), Metropolitan Life Insurance Company (hereinafter called “MetLife”), Cathay United Bank, and Hsinchu International Bank (hereinafter called “HiBank”), violated Article 24 of the Fair Trade Law by adding an acceleration clause in the loan contracts or requesting that borrowers follow unspecific catch-all clauses. In addition to ordering the above-mentioned 6 businesses to immediately cease the aforesaid unlawful acts, the FTC also imposed administrative fines of NT\$1,300,000 on Singfor Life, \$1,000,000 on China Life, NT\$1,300,000 on Sinon Life, NT\$1,000,000 on MetLife, NT\$1,500,000 on Cathay United Bank and NT\$1,100,000 on HiBank, which came to a total amount of NT\$7,200,000 in fines.

Compared to a financial institute, an individual borrower obviously has a disadvantageous position in terms of having the ability to negotiate. In addition, the loss of benefits in terms of time has a respectable impact on the borrower’s rights and interests. If any financial institute improperly adds an acceleration clause or requests that a borrower follow unspecific catch-all clauses, this should put many borrowers at a great disadvantage. In light of this major issue, the FTC initiated a case, *ex officio*, to investigate the applicability of the content of loan contracts provided by the banking and insurance industries. Upon the FTC’s

promulgation of the “Fair Trade Commission Policy Statements on the Business Practices of Financial Industry ” on November 6, 2002, it was stipulated that in circumstances where it may become necessary for a financial enterprises to take protective measures such as accelerating the maturity of a debt in the event of a deficiency in the borrower’s credit, it is advisable to reach an agreement with the borrower in advance defining what constitutes a deficiency in credit: e.g.

1. failure to repay the principal of any single debt as stipulated ;.....
6. failure to repay the interest on any single debt as stipulated ;
7. where security is attached or security is destroyed or lost, declines in value, or is insufficient to secure the creditor’s rights ;
8. where the actual use to which the party puts the borrowed funds is different from the purpose approved by the financial enterprise ;
9. where there is a likelihood the financial enterprise will not be repaid because of a disposition for compulsory execution, injunction, or other precautionary measures.

For an acceleration clause based on reasons in points 6 to point 9, the party should be given a reasonable period of advance notification or prompting. Apart from the above nine kinds of grounds that may trigger an acceleration clause as set out above, an enterprise may negotiate and stipulate other grounds on a case-by-case basis if it is really necessary for the protection of the creditor’s rights. It is advisable to specify such grounds in the contract in a prominent manner such as in bold font or in differently colored font, and to expressly state the effect of accelerating the term to maturity (with notice or without notice). A financial enterprise that fails to disclose information under this paragraph sufficient to affect trading order, is likely to be in violation of Article 24 of the Fair Trade Law.

Upon examination of the various loan contracts provided by the aforesaid businesses, the types of violations found were as follows:

1. Article 5, Page 7 of Singfor Life’s Housing Loan Contract; Article 2 of China Life’s Housing Mortgage Loan Contract; Article 12 of Sinon Life’s Credit Facility Agreement; Article 10 of MetLife’s Loan Contract; Article 6 of Cathay United Bank’s Diamond Card Contract; Article 11 of HiBank’s Credit Facility Agreement and Article 4 of Hibank’s Loan Agreement Provisions. These provisions changed the advance notice/notification from required to not required prior to the exercise of the acceleration clause which deprived the borrowers from remedying the situation before the maturity of the loan and gave rise to an obvious imbalance between both parties to the contract. Such provisions obviously formed an unfair act sufficient to affect trading order and violated Article 24 of the Fair Trade Law.
2. Article 9 of Sinon Life’s Credit Facility Agreement, Cathay United Bank’s Loan Contract and Article 4, Chapter 3 of its Auto Loan Contract. These provisions employed a catch-all clause to describe the reasons giving rise to a deficiency in credit under the acceleration clause. In light of the financial business’s advantageous position in terms of market information compared with the borrower, although there may have been an additional agreement or advance notice had been provided, the financial business could still have involved its trading counterparts in an uncertain situation regarding their obligations by unilaterally interpreting or applying the catch-all clause in question. By taking into account the imbalance of rights and interests between the two parties to the contract, the above-mentioned provisions were determined to be a violation of Article 24 of the Fair Trade Law.
3. Article 12, Page 8 of Singfor Life’s Housing Loan Contract read, “Applicability of other laws and regulations: Unless otherwise provided herein, the borrower hereby agrees to follow relevant laws and regulations and all rules stipulated by Singfor Life, the Life Insurance Association and the Bankers’ Association to deal with his/her debt. The

borrower further agrees that the above-referenced rules are a part of this Contract.” An unspecific catch-all clause could have many explanations, which could make the trading counterpart bear uncertain liabilities. By taking into account the principle of good faith and honesty, this act by the financial business of unilaterally restraining the contract contents was obviously unfair and violated Article 24 of the Fair Trade Law.

After taking into account the motive, objective, expected improper benefits, degree of damage to trading order, duration of the actions, benefits obtained, scale of business, business operations, market position, whether the competent authority had previously corrected or warned against such action, the type, number and interval of previous violations and punishment, remorse shown after the violation, cooperation during the investigation and other factors, the FTC imposed the above-mentioned punishment in accordance with the forepart of Article 41 of the Fair Trade Law.

◆ FTC Activities

- ◎ On November 16, the FTC organized a seminar in Taipei city for responsible persons from 6 industrial and commercial associations.
- ◎ On November 17, the FTC organized an orientation seminar at the NTUH International Convention Center to discuss its multi-level sales professional assessment system.
- ◎ On November 21, 24 and 27, the FTC organized orientation seminars in Tainan City, Hualien City, and Taoyuan City to explain the FTC’s guidelines on building developing enterprises.
- ◎ On November 21, the FTC organized an orientation seminar at I-Shou University to discuss multi-level sales.
- ◎ On November 24 and 27, the FTC organized separate orientation seminars in Kaohsiung City and Taichung City to discuss its multi-level sales professional assessment system and the reform of its multi-level sales administration system.
- ◎ On November 28, the Competition Policy Information and Research Center of the FTC held the 14th symposium on competition policy and the Fair Trade Law.
- ◎ On December 1, the FTC organized an orientation seminar on cable television at the Splendor in Taichung City.
- ◎ On December 4, the Competition Policy Information and Research Center of the FTC organized the Fair Trade Law Camp.
- ◎ On December 5 and 12, the FTC organized separate orientation seminars in Chiayi County and Tainan City to explain the FTC’s guidelines on concerted actions.
- ◎ On December 6, the FTC organized an orientation seminar at the Taiwan Academy of Banking and Finance to explain the FTC’s guidelines on Banking Industry Advertising.
- ◎ On December 6, the FTC organized an orientation seminar on the applicability of the Fair Trade Law regarding liquefied petroleum gas for southern Taiwan at Han-Hsien International Hotel in Kaohsiung City.
- ◎ On December 8 and 15, the FTC organized orientation seminars in Taichung City and Kaohsiung City to explain the FTC’s guidelines on insurance enterprises.
- ◎ On December 12, the FTC organized an orientation seminar at Han-Hsien International Hotel in Kaohsiung City to explain the FTC’s guidelines on cases of weight loss & body care activities.
- ◎ On December 12, the FTC organized an orientation seminar on development and competition policy in regard to digital content industry at the Competition Policy Information and Research Center of the FTC.
- ◎ On December 15, the FTC visited Fa-Han Co., Ltd.
- ◎ On December 19, the FTC visited the Taichung Station of Taiwan High Speed Rail and the Bureau of High Speed Rail.

- ◎ On December 22, the FTC hosted a workshop on its multi-level sales assessment trial results at the FTC's Commissioners' meeting room.

◆ International Exchanges

- ◎ On November 8, Senior Specialist Mr. Hu, Tzu-Shun attended the Taiwan-Japan Coordination Committee of the 31st Taiwan-Japan Economic and Trade Conference, which was hosted by the East Asia Relations Commission.
- ◎ From November 13 to 17, Deputy Director Mr. Hu, Kuang-Yu and Inspector Ms. Chen, Ying-Ju attended the cartel meeting held by the ICN in The Hague, the Netherlands.
- ◎ From November 20 to 28, the Director General of the Vietnam Competition Administration Department, Ms. Dinh Thi My Loan, and five officials visited Taiwan to receive technical assistance training in competition law, consumer protection law and anti-dumping.
- ◎ On November 30, the Assistant Chief of the International Affairs Section of the Fair Trade Commission Japan, Mr. Keichi Iwase, visited the FTC to exchange opinions regarding the enhancement of cooperation between both countries.
- ◎ From December 6 to 8, Specialist Ms. Chen, Jen-Ying participated in the OECD Regional Center for Competition Symposium : Regional Antitrust workshop on Competition Cases in Seoul, South Korea.
- ◎ On December 11, the Manager of the Ministry of Economy, Trade and Industry Japan, Mr. Daisuke Nakayama, and members of the TMI Law Firm Japan visited the FTC.
- ◎ On December 18, the Commissioner of the Intellectual Property Division of the Interchange Association Japan, Mr. Kenji Sakai (the President of Sony Taiwan), visited the FTC.

◆ Statistics

From January through December 2006, the FTC received 1,438 cases involving fair trade issues. Of these, 1,307 were complaints, 8 were applications for concerted action, 80 were notifications of mergers, and 43 were requests for interpretation. As of the end of December 2006, the FTC had finished processing 28,818 of the 29,240 cases it had received, or 98.56% of the total.

Cases Received and Processed by the FTC

Unit: cases

Year	Total	Complaints	Applications for Concerted Action	Applications for Mergers	Requests for Interpretation
Total	29,240	20,457	142	6,269	2,372
1992	1,296	1,039	12	13	232
1993	1,567	1,243	9	112	203
1994	2,020	1,499	11	262	248
1995	2,486	1,768	2	435	281
1996	2,234	1,636	12	334	252
1997	2,277	1,480	23	561	213
1998	2,444	1,335	13	863	233
1999	2,757	1,522	7	1,064	164
2000	2,697	1,372	12	1,187	126
2001	2,556	1,381	4	1,089	82

2002	1,387	1,186	8	132	61
2003	1,100	999	12	50	39
2004	1,148	1,058	2	33	55
2005	1,833	1,632	7	54	140
2006	1,438	1,307	8	80	43

Note: The Fair Trade Law was amended on February 8, 2002, at which time the merger regulation was changed to the pre-merger notification system. Of the 132 merger cases between January and December 2002, 43 were pre-merger notifications.

◆ Achievements of the Competition Policy Information and Research Center of the FTC in 2006

The Competition Policy Information and Research Center of the FTC (hereinafter called "the Center"), established on January 27, 1997, is now more than ten years old. During these past ten years, the Center has adhered to its objectives, which are (1) to provide professional information services upon enquiry to all sectors of the economy; (2) to provide access to the collection of resources to both the business and academic sectors; (3) to assist the business sector in formulating business strategies consistent with the spirit of the competition law; and (4) to encourage the academic sector to conduct in-depth research. The Center aims to execute its duties and compile comprehensive information on domestic and foreign competition policies so as to provide wide-ranging information services to all sectors. The following are the achievements of the Center in 2006:

1. The Center organized the "Taiwan 2006 International Conference on Competition Laws/ Policies -The Role of Competition Law/Policy in the Socio-economic Development" on June 20-21, 2006. Fifteen countries and three international organizations (OECD, WTO and APEC) were invited to the conference. A total of thirty officials of competent competition laws/policies authorities, important administration officers of international organizations, scholars and professionals participated in the conference and published their papers regarding the "International Trend of Competition Policy," "Competition and the Development of Regional Economies," "Technical Assistance and Capacity Building in Competition Laws," and "International Integration of Competition Laws." It was hoped that international socio-economic development would be improved by the deliberation and opinions exchanged regarding a series of relevant issues at the conference.
2. The Center collected information on competition policies and laws to provide professional information services.
 - (1) It compiled more than 18,000 volumes of books, more than 150 periodicals, and 5 CD-ROM databases on domestic and foreign competition laws.
 - (2) It utilized an automated information system to manage books and periodicals, and provided an on-line book indexing service for speedy access to information from the Center.
 - (3) It updated and maintained 14 categories of information regarding the 21 APEC member economies in the APEC Competition Policy and Law Database and upgraded the search system of the Database.
 - (4) It updated and maintained the database for Fair Trade Law media clippings.
3. The Center improved research on competition policies and provided training.
 - (1) Academic symposiums: It organized annual academic symposiums on the Fair Trade Law and competition policy. The 14th Symposium on the Fair Trade Law and Competition Policy was held on November 28, 2006. A total of eight papers were presented at the symposium, which attracted 252 attendees.

- (2) Speeches on special topics: It organized monthly events where scholars or entrepreneurs were invited to speak and people from all sectors were invited to attend. A total of 12 such events were organized in 2006, and attracted 600 attendees.
- (3) Seminar on major Fair Trade Law cases: To improve the efficiency of FTC law enforcement and the FTC's theoretical and practical expertise on the Fair Trade Law, the Center organized a seminar on May 9, 2006 to discuss major Fair Trade Law cases.
4. Publication of the Competition Policy Newsletter: The Center published the bimonthly Competition Policy Newsletter (the Chinese-language edition in odd-numbered months, and the English-language edition in even-numbered months). A total of 6 issues of Volume 10 were published in 2006. The newsletter reports focused on current affairs and developments within the FTC and foreign law-enforcement agencies, summaries of major cases, and summaries of speeches on special topics. The newsletter was sent free-of-charge to domestic and foreign subscribers. The newsletter was likewise made available on-line.
5. Management of FTC publications: The Center handled the relevant publication number applications, their exhibition and sale and delivery, and maintained the content of Government Publications Net (GPNet).
6. Editing and distribution of relevant publications: The Center published (1) Cases and Materials on the Fair Trade Law of the Republic of China Vol. 8(2004); (2) The Compilation of Papers from the 13th Academic Symposium on Competition Policy and the Fair Trade Law; (3) The Compilation of Speeches on Special Topics in 2005 at the Center; (4) The 5th Fair Trade Commissioners' Commemorative Album; (5) The Catalog of FTC Publications in 2006; and (6) The Fair Trade Law and Relevant Rules.