



NO 088

# TAIWAN FTC NEWSLETTER

2019.8

## ▶ Selected Cases

- ▶ Merger of Yungtay Engineering and Japan-based Hitachi not Prohibited
- ▶ 5 Domestic Premixed Concrete Suppliers Violated the Fair Trade Act by Engaging in Price Fixing
- ▶ LG Electronics Taiwan Posted False Advertisements on Energy Efficiency in Violation of the Fair Trade Act
- ▶ Tengyun Violated the Multi-level Marketing Supervision Act for Failing to Report Changes to its Marketing Systems
- ▶ Hongyu in Violation of the Fair Trade Act for False and Misleading Advertisement

## ▶ Regulation Report

Revision of Coordination Between the Fair Trade Commission and National Communications Commission

## ▶ FTC Statistics

Statistics on Cases Involving Illegal Concerted Actions

## ▶ FTC Activities

FTC Activities in May and June 2019

## ▶ FTC International Exchanges

FTC International Exchanges in May and June 2019

## Merger of Yungtay Engineering and Japan-based Hitachi not Prohibited

The FTC decided at the 1,432<sup>nd</sup> Commissioners' Meeting on April 17, 2019 not to prohibit the merger involving Japan-based Hitachi, Ltd. (hereinafter referred to as "Hitachi") and Yungtay Engineering Co., Ltd (hereinafter referred to as "Yungtai Engineering") through Hitachi's subsidiary Taiwan Hitachi Elevator Co., Ltd. in accordance with Article 13(1) of the Fair Trade Act.

The FTC stated that the participating enterprises in the merger all had their private-brand elevator products and provided parts for assembly or maintenance that constituted the upstream and downstream supply relationship. Both horizontal and vertical merger forms were involved in this case. For the elevator products, the merger between Hitachi and Yungtay Engineering would result in a limited increase in overall market power and there would still be several major competitors within the market. It was difficult to assert whether the merger would result in a significant unilateral effect or coordinated effects. As for the maintenance market, there were multiple upstream component material suppliers for Yungtay Engineering, while Hitachi only provided some technology and components to Yungtay Engineering. Therefore, the merger would not affect the rights of the consumer. Besides, there would be no doubts regarding obvious restraints of competition because there were many competitors providing maintenance and the competition was fierce in the market.

The FTC noted that the decision to approve or prohibit a merger is determined by whether the overall economic benefits outweigh the likely disadvantages resulting from competition restraint. The FTC had consulted with the competent authority,

the professional associations, and upstream and downstream business entities and concluded that it would not prohibit the merger after evaluating and considering the aforementioned elements in accordance with Article 13(1) of the Fair Trade Act. [↗](#)

## 5 Domestic Premixed Concrete Suppliers Violated the Fair Trade Act by Engaging in Price Fixing

The FTC decided at the 1,433<sup>rd</sup> Commissioners' Meeting on April 24, 2019 that Goldsun Co., Ltd (hereinafter referred to as "Goldsun"), Taiwan Cement Ltd. (hereinafter referred to as "Taiwan Cement"), Ya Tung Ready Mixed Concrete Co., Ltd (hereinafter referred to as "Ya Tung"), Universal Cement Corporation (hereinafter referred to as "Universal") and Tiancheng Ready Mixed Concrete Co., Ltd. (hereinafter referred to as "Tiancheng") had engaged in a concerted action by notifying the downstream counterparts in mid-December of 2018 by means of a written notice of a price increase for premixed concrete starting from January 1st, 2019. The act was in violation of the prohibition set forth in Article 15(1) of the Fair Trade Act. Therefore, the FTC imposed administrative fines of NT\$ 20 million on Goldsun, NT\$ 20 million on Taiwan Cement, NT\$ 11 million on Ya Tung, NT\$ 8 million on Universal, and NT\$ 1 million on Tiancheng, citing Article 40 (1) of the Act. The total fine amounted to NT\$60 million.

The FTC stated that this case occurred during November 2018 with the 5 companies in question when southern regions suffered a temporary gravel shortage. The companies issued notices to downstream companies in mid-December detailing a price increase for ready-mixed concrete from NT\$200 to NT\$280 per cubic meter starting January 1, 2019. The 5 companies were uniform in appearance when they coordinated a price increase beginning on the same date with similar increases and provided notice within a short period of time. The consistent appearance of these 5 ready-mixed concrete suppliers was unlikely to have been reached independently

and had no economic justification. In addition, in order to avoid a loss of clientele, the 5 companies increased their prices gradually in small increments before January 1, 2019 because their ready-mixed concrete is highly similar. However, the 5 companies simultaneously drastically increased prices by between nearly 17% and 18% after January 1, 2019, indicating that the act was not merely a reflection of increased costs.

The FTC also stated that the 5 companies in this case accounted for more than 75% of the premixed concrete market in the vicinity of Tainan City and Kaohsiung City. While facing the pressure of a short-term increase in cost, they would face a decrease in profits or a loss of profits if they did not increase prices. However, if a single company had increased prices significantly, it would have surely resulted in a loss of clientele. Thus, there were incentives for engaging in a concerted price increase for ensuring mutual profits.

Moreover, in general, premixed concrete suppliers often acquired clients through price competition because of the simple processing technology involved and high degree of product similarity. For example, the selling prices of 3,000-lbs of concrete mix for the 5 concrete suppliers gradually increased from NT\$1,400 to NT\$1,500 per cubic meter in 2018. However, the prices increased dramatically starting from January 1st, 2019. It was different from the previous price increase pattern and obviously went against common sense. It was clearly irrational.

The business activity of these 5 companies had

no economic justification. First, the 5 companies in question claimed that the increase in prices for ready-mixed concrete starting January 1, 2019 reflected increased costs. However, the price increases which reflected their costs should have been different due to the amounts of the increases in cost and connotations not being the same for each company. In addition, not only did the price rise exceed their increases in cost, but the 5 companies also issued notices within a short time frame for a price increase of similar amounts beginning on the same date, showing consistency in appearance. It is not possible to interpret these acts as being independent business activities. Second, the 5 companies in question have large scale operations with some enjoying the advantage of vertical integration with production but the degree and amount of their price increases for ready-mixed concrete was more than twice that for smaller operators in identical markets, signaling abnormal behavior. Finally, the price increase or the amount of the increase in the price of gravel, the raw material used by the 5 companies in question, was not yet confirmed, but the companies still released an increase for the price of ready-mixed concrete. This behavior had no economic justification and, in addition, the collective announcement of a change in price allowed mutual

monitoring and was able to promote a consensus as well as coordinated actions.

Therefore, this case cites Article 14 (3) of the Fair Trade Act in reviewing the various factors claimed by the 5 companies for the price increase. It was determined that the action of notifying downstream operators in mid-December of 2018 of an impending price increase for ready-mixed concrete starting January 1, 2019 was a concerted action capable of affecting supply and demand in the ready-mixed concrete markets in Kaohsiung and Tainan. This was in violation of Article 15 of the Fair Trade Act that prohibited concerted actions.

Finally, the FTC stated that the Commission's role in enforcing the Fair Trade Act would result in an assertive investigation in the event of abnormal fluctuations in the prices of critical raw materials such as gravel and ready-mixed concrete. The Commission will closely observe market conditions and prevent companies from using these opportunities to participate in illegal concerted actions. Companies found to be in violation of the Fair Trade Act will be punished accordingly to deter future violations, thereby maintaining competitive order in markets, and protecting consumers' rights. 

## LG Electronics Taiwan Posted False Advertisements on Energy Efficiency in Violation of the Fair Trade Act

The FTC decided at the 1,415<sup>th</sup> Commissioners' Meeting on December 19, 2018 that LG Electronics Co., Ltd. (hereinafter referred to as "LG Electronics Taiwan") had violated the Fair Trade Act by posting online advertisements for the "Bouquet Flower Series" refrigerator models GR-BL68M and 6 others. The advertisements falsely claimed "energy efficiency grade 5", "energy efficiency grade 4" and posted labels with the efficiency grading. The advertisements were false and misleading representations with regard to product quality and sufficient to affect trading decisions in violation of Article 21(1) of the Fair Trade Act. Therefore, the FTC imposed an administrative fine of NT\$300,000.

The FTC stated that during the period from January 1st, 2018 to April 30th, 2018, LG Electronics Taiwan posted advertisements for the refrigerator models GR-BL68M and GR-HL68M of the "Bouquet Flower Series", model GN-V292S of the "Fresh Series Top/

Bottom Panel Mini Fridge" and models GN-L492NP, GN-L562NP, GN-L602NP of the "Lifestyle Series Top/Bottom Panel Fridge". The advertisements claimed "energy efficiency grade 5" with the energy efficiency grading label. Moreover, the model GN-L392NP of the "Lifestyle Series Top/Bottom Panel Fridge" only displayed "energy efficiency Grade 4" in text along with the energy efficiency grading label. Advertisements for the 7 refrigerator models gave the impression that the energy efficiency levels were grade 4 or grade 5 for the products and were superior to similar refrigerators due to their low energy consumption. However, the FTC conducted investigations and found out that the energy efficiency grading of the 7 refrigerator models was invalid. Besides, LG Electronics Taiwan admitted that certification documents required for submission were invalid and they were unable to apply for new energy efficiency labeling. The advertisements for the 7 product models were false and misleading and were in violation of Article 21(1) of the Fair Trade Act. 

## **Tengyun Violated the Multi-level Marketing Supervision Act for Failing to Report Changes to its Marketing Systems**

The FTC decided at the 1,419<sup>th</sup> Commissioners' Meeting on January 16th, 2019 that Tengyun Life Co., Ltd. (hereinafter referred to as "Tengyun") had violated the Multi-level Marketing Supervision Act. The violations were: failing to submit a prior report before changes to its multi-level marketing system were in effect; conducting false or misleading representations regarding the system before recruiting participants; failing to sign written contracts with participants when joining the organization; failing to obtain the written consent of legal representatives and including them in the contracts when recruiting individuals with limited capacity; and failing to handle goods returned within the legitimate period after the rescission or termination of a participant's contract. Tengyun had violated Articles 7 (1), 10 (1) (2), 13 (1), 16 (2), 20 (2), and 21(2) of the Multi-level Marketing Supervision Act and the FTC imposed on it an administrative fine of NT\$1.15 million.

The FTC stated that Tengyun had applied for a record before engaging in multi-level marketing in the sale of products such as food and accessories in January 2017. The FTC conducted an ex officio business inspection of Tengyun's main office on November 13th, 2017 and found that Tengyun had violated Article 7(1) of the Multi-level Marketing Supervision Act for failing to submit a prior report before making changes to the marketing system of its "Turn2Shop" website that was in operation. In December 2017, Tengyun advertised on its "Turn2Shop" website claiming that

customers could "Choose Products Freely from 300+ Shops," yet there were only 24 shops at that time. It made false and misleading presentations concerning the multi-level marketing system and violated Article 10 (1)(2) of the Multi-level Marketing Supervision Act. In addition, Tengyun had recruited 5 individuals with limited capacity as participants in 2017 without obtaining written consent from their legal representatives and including them in the contracts in violation of Article 16(2) of the Multi-level Marketing Supervision Act.

In addition, the FTC found out that Tengyun had failed to enter into written participation contracts with 3 participants when joining the multi-level marketing plan or organization. The contracts for 6 of the participants were dated later than the receipt dates for product purchasing. This meant that some of Tengyun's participants had joined without written contracts and thus the firm was in violation of Article 13(1) of the Multi-level Marketing Supervision Act. Furthermore, Tengyun received contract termination notices within thirty days after entering into contracts from 10 participants between December 14th, 2017 and February 22nd, 2018 and from 23 participants between December 21, 2017 and April 13, 2018. Parts of the refunds were not completed on October 17th, 2018 and exceeded the 30 legitimate days. This amounted to a violation of Articles 20(2) and 21(2) of the Multi-level Marketing Supervision Act, respectively. 

## Hongyu in Violation of the Fair Trade Act for False and Misleading Advertisement

The FTC decided at the 1,425<sup>th</sup> Commissioners' Meeting on February 27, 2019 that Hongyu Construction & Development Co., Ltd (hereinafter referred to as Hongyu) had violated Article 21 (1) of the Fair Trade Act by selling the "MyOcean" construction project located in Anping District of Tainan City. The advertisement booklet "MyOcean Magazine" and the website's text and images published "3D pool view", "35-meter swimming pool", and "unit A blueprint". A sample house was constructed where the scenic pool, balcony of unit A, and kitchen were planned for use as the pool, bathroom of the master bedroom, and bedroom, significantly impacting the transactions of products due to a false and misleading advertisement regarding the use and contents of these products. Therefore, the FTC imposed an administrative fine of NT\$800,000 on Hongyu.

The FTC received complaints from private citizens about the "MyOcean" project sold by Hongyu. The company printed advertisement booklets with the title "MyOcean Magazine" and set up a website during the marketing of sample homes and after completion of the project. Advertisements included text and images of a "3D pool view", "35-meter swimming pool", and the "unit A blueprint" which was used to construct a physical sample home. The advertisements could have misled consumers into believing that unit

A's swimming pool, the bathroom of the master bedroom, and bedrooms could be utilized as in the advertisement. However, based on suggestions provided by the Tainan City Government, the "35-meter swimming pool" and bedrooms in the "unit A blueprint" of the "MyOcean" project were originally approved for use as a "scenic pool" and "kitchen" but the construction company did not apply for changes in compliance with the guidelines of Article 73 in the Building Act. In addition, the bathroom of the master bedroom found within the "unit A blueprint" was originally approved for use as a "balcony," but the construction company violated Article 25 (1) of the Building Act by building additional structures through the unauthorized conversion of the balcony into an indoor space.

The FTC concluded that the advertisements for the swimming pool, bathroom in the master bedroom, and bedrooms of unit A did not comply with their approved usage and that transaction counterparts could not enjoy the public facilities and indoor space as originally advertised. The false and misleading advertisements were sufficient to mislead the public in regard to the usage and contents of the project and caused disorder in market competition, resulting in unfair market competition in violation of Article 21 (1) of the Fair Trade Act. 

## Revision of Coordination Between the Fair Trade Commission and National Communications Commission

### Background

Public viewership rights have been heavily impacted by disputes arising from the listing and delisting of channels. In order to effectively investigate disputes, the “Coordination Between the Fair Trade Commission and National Communications Commission” was established between the FTC and the National Communications Commission ((hereinafter referred to as the NCC) in 2010. Revisions to the Cable Radio and Television Act and Satellite Broadcasting Act announced on January 6, 2016 established guidelines for differential treatment and refusal of transactions by system operators and satellite or cable providers. These revisions are in competition with Article 20 (1) (2) of the Fair Trade Act and thus require renewed discussions of relevant cases to clearly establish the scope of responsibility for both commissions. Both parties convened the meeting to revise the original agreement.

### Focus of Revision

There were 2 major focuses in this revision. First, while Article 20 (1) (2) of the Fair Trade Act states that businesses may not participate in preferential behavior without justifiable reasons or for the purpose of boycotting, the announcement of revisions to the Cable Radio and Television Act on January 6, 2016 included Article 37 (1) (4) which stated that cable television system providers must apply fair and reasonable listing/delisting regulations equally to satellite broadcasting channels, channels from

other businesses, foreign satellite broadcasting channels, and terrestrial television channels. Second, the revisions of Article 25 (1) (2) of the Satellite Broadcasting Act providing guidelines to satellite broadcasting television service providers and their foreign branch companies must not provide differential treatment to foreign subsidiaries or distributors without giving proper reasons. In addition, satellite broadcasting service providers and foreign subsidiaries may not provide differential treatment to cable television systems providers (including cable television broadcasting systems), satellite television broadcasting providers, or other platforms that provide public broadcasts. Therefore, the FTC and NCC will target these 2 types of cases and coordinate them to handle them according to Article 37 of the Cable Radio and Television Act and Article 25 of the Satellite Broadcasting Act. If any boycott, differential treatment, tied sales, joint behavior (monopoly purchases, syndication), mergers, or other violations of the Fair Trade Act occur that are not covered by NCC regulations, the FTC will process cases according to the Fair Trade Act.

These revisions by the FTC and NCC focus on working with current regulations in the Cable Radio and Television Act and Satellite Broadcasting Act to allow the NCC to regulate boycotting and preferential treatment in the radio and television industry. The cooperation between our 2 commissions will help realize the joint goal of maintaining free and fair competition in the radio and television industry. 

## Statistics on Cases Involving Illegal Concerted Actions

The term “concerted action” as used in this Act means that competing enterprises at the same production and/or marketing stage, by means of a contract, agreement or any other form of mutual understanding, jointly determine the price, 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 the supply of and demand for services. The FTC has placed an emphasis on cases involving concerted actions by including policies such as terms of forgiveness (Article 35 of the Fair Trade Act) and increasing the maximum fine (Article 40 (2) of the Fair Trade Act) against monopolies or concerted actions since November 2011; these changes are an attempt to stop concerted actions that impact market competition and affect the overall economy and the public benefit.

Statistics show that the FTC issued and maintained penalties for 4,578 cases between 1992 and the end of June 2019 with total fines of NT\$17,988,170,000. Of these, 1,230 companies were penalized in 186 cases (4.06%) involving concerted actions with total fines of NT\$13,142,210,000 (accounting for 73.06% of all fines). Each penalty averaged 6.61 companies with each company on average being fined NT\$10,680,000 (Fig. 1, Table 1).

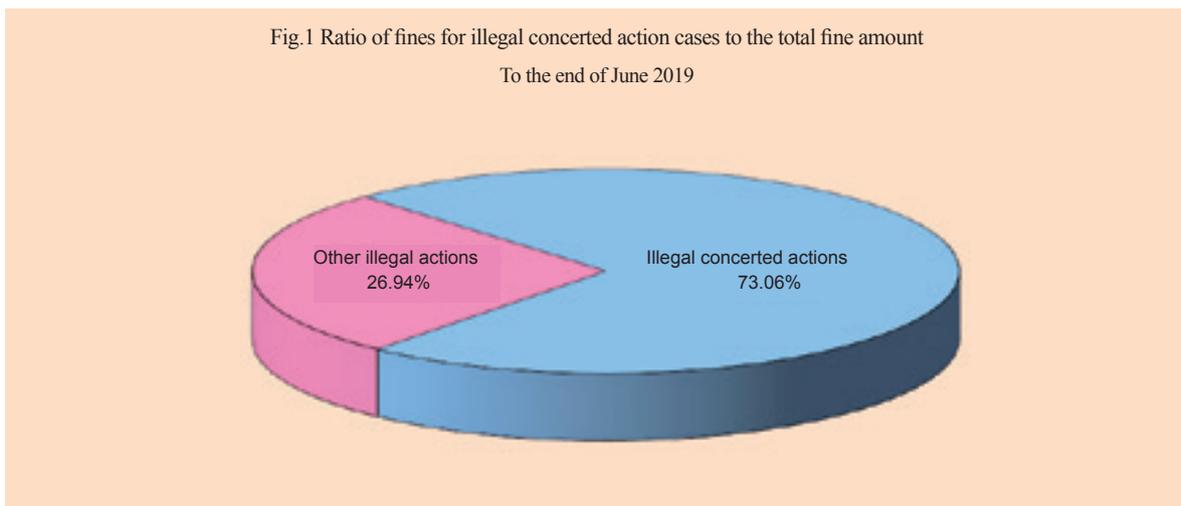


Table 1 Illegal concerted action cases – Breakdown by fine amount  
To the end of June 2019

Fine Amount	Number of Cases		Number of Companies		Fine Amount (10 thousand NT\$)		Average Number of Companies Per Case (b)/(a)	Average Fine Per Company (10 thousand NT\$) (c)/(b)
	(a)	Percentage (%)	(b)	Percentage (%)	(c)	Percentage (%)		
Total	186	100.00	1,230	100.0	1,314,221	100.0	6.61	1,068.47
Less than NT\$1 million	108	58.06	497	40.41	1,770	0.14	4.60	3.56
NT\$1 million ~ NT\$10 million	45	24.19	386	31.38	12,650	0.96	8.58	32.77
NT\$10 million ~ NT\$100 million	25	13.45	280	22.76	77,276	5.88	11.20	275.99
NT\$100 million and above	8	4.30	67	5.45	1,222,525	93.02	8.38	18,246.64

Notes: 1. Penalties maintained for cases include unconfirmed cases that are still in the administrative litigation.  
2. This table includes cases where no fines were imposed.

Judging by the distribution of fine amount, as of the end of June 2019, the majority of 108 cases (58.06%) had fine amount of less than NT\$1 million followed by 45 cases (24.19%) had fine amount between NT\$1 million and NT\$10 million. The total of the above cases were accounted for up to 82% of all cases. In addition, there were only 8 cases for fine amount of NT\$100 million and above, totaling NT\$12,225,250,000 and accounting for 93.02% of all fine amount (Table 1).

When observing cases involving industries engaging in illegal concerted actions, other service industries accounted for the most cases (49 cases, 26.34%) followed by manufacturing industries (41 cases, 22.04%). The electricity and gas supply industries accounted for the highest penalties with NT\$6,496,040,000 (49.43%) followed by the manufacturing industry with NT\$6,266,060,000 (47.68%) (Table 2).

Table 2 Illegal Concerted Action Cases — by industry  
To the end of June 2019

Unit: Case; Company; 10thousand

Disposition	Total	Agriculture, Forestry, Fishing and Animal Husbandry, Mining and Quarrying	Manufacturing	Electricity and Gas Supply	Water Supply and Remediation Activities	Construction	Wholesale and Retail Trade	Transportation and Storage	
Number of Cases	186	5	41	13	3	11	19	14	
Number of Companies	1,230	64	370	169	24	119	213	74	
Fine Amount	1,314,221	6,825	626,606	649,604	1,940	890	5,883	9,129	
Disposition	Information and Communication	Financial and Insurance Activities	Professional, Scientific and Technical Activities	Support Service Activities	Public Administration and Defense; Compulsory Social Security	Education	Human Health and Social Work Activities	Arts, Entertainment and Recreation	Other Service Activities
Number of Cases	10	4	5	2	1	4	1	4	49
Number of Companies	29	10	5	17	3	39	4	18	72
Fine Amount	8,896	200	90	214	-	274	20	500	3,150

Notes:1. Penalties maintained for cases include unconfirmed cases that are still in the administrative litigation.

2. This table includes cases where no fines were imposed.

3. Other service industries include professional or similar organizations, the repair of individual and home products, laundry, hair styling, spa treatments, and home cleaning services.

## FTC Activities in May and June 2019

- ▲ On May 2, the teachers and students of Takming University of Science and Technology studying in the Department of Public Finance and Taxation attended the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the FTC.
- ▲ On May 4, the FTC conducted a presentation on “False and Misleading Advertising and Regulations on Multi-level Marketing” in Hualien County.
- ▲ On May 7, the FTC conducted the “Various Aspects of Trading Traps” at the Seniors Association in Zhongpu Township, Chiayi.
- ▲ On May 9, 13, 15, and 22, the FTC visited the Department of Economic and Financial Law at the National University of Kaohsiung, the Department of Agriculture and Management at the National Pingtung University of Science and Technology, the Department of Marketing & Distribution Management at National Pingtung University, and the College of Finance and Banking foreign languages program at National Kaohsiung University of Science and Technology to hold the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp”.
- ▲ On May 23, Associate Professor Su-Hua Lee from the College of Law at National Taiwan University gave a lecture on “Exercising Intellectual Property Rights and Competition Law: Focus on Patent Rights”.
- ▲ On May 24, the FTC conducted a Presentation on the “Fair Trade Commission Regulations on Home Appliances Advertising” in Taipei City.
- ▲ On May 27, the FTC held a seminar on “Current Competition and Future Development Trends in the Gas Station Market” in Taipei City.
- ▲ On June 5, the FTC held the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Tainan County Business Association.
- ▲ On June 12, the FTC conducted the “Various Aspects of Trading Traps” at the Dong-Ning Community Development Association in Jiuru Township, Pingtung as well as the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Accounting at National Pingtung University.
- ▲ On June 21, the FTC conducted a presentation on the “Online Operation of Multi-level Marketing Systems and Things to Note” at the FTC.
- ▲ On June 28, the FTC conducted a presentation on “Fair Trade Commission Regulations on Real Estate Advertising” in Kaohsiung City.
- ▲ On June 18 and 19, the FTC held the “2019 Taiwan International Conference on Competition Policy/Law”.



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1.The FTC conducting a presentation on “False and Misleading Advertising and Regulations on Multi-level Marketing” in Hualien County  
 2.The FTC conducting the “ Various Aspects of Trading Traps” at the Seniors Association in Zhongpu Township, Chiayi



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3. The FTC holding the "Fair Trade Act and Multi-level Marketing Supervision Act Training Camp" at the College of Finance and Banking foreign languages program at National Kaohsiung University of Science and Technology
4. Associate Professor Su-Hua Lee from the College of Law at National Taiwan University giving a lecture on "Exercising Intellectual Property Rights and Competition Law: Focus on Patent Rights"
5. The FTC holding a seminar on "Current Competition and Future Development Trends in the Gas Station Market" in Taipei City
6. The FTC holding the "2019 Taiwan International Conference on Competition Policy/Law"

## FTC International Exchanges in May and June 2019

- ✦ From May 7 to May 9, the FTC attended the Workshop on “Competition Policy for Regulating Online Platforms in the APEC Region” in Mexico City, Mexico.
- ✦ From May 14 to May 17, Chairperson Huang Mei-Ying led a delegation to attend the ICN Annual Conference and related meetings in Cartagena, Colombia.
- ✦ From June 3 to June 7, the FTC attended the OECD Competition Committee’s routine and related meetings.
- ✦ On June 4 to June 5, the FTC attended the “1st Taiwan-EU Dialogue in Digital Economy” in Brussels, Belgium.
- ✦ On June 20, the FTC and Canada’s Competition Bureau co-hosted the “Taiwan-Canada Bilateral Meeting on Competition Law”.
- ✦ From June 23 to June 28, the FTC attended the “Economics Institute for Competition Enforces” hosted by George Mason University’s School of Law’s “Global Antitrust Institute” in California.



1. FTC Chairperson Huang Mei-Ying (third from right) having a conversation with the Chair of the ICN Steering Group Mr. Andreas Mundt (third from left) at the ICN Annual Conference
2. FTC Chairperson Huang Mei-Ying (on the right) having a conversation with the Assistant Attorney General of United States Department of Justice Antitrust Division Makan Delrahim (on the left) at the ICN Annual Conference
3. The FTC and Canada’s Competition Bureau co-hosting the “Taiwan-Canada Bilateral Meeting on Competition Law”
4. The FTC attending the “Economics Institute for Competition Enforces” hosted by George Mason University’s School of Law’s “Global Antitrust Institute” in California

# Taiwan FTC Newsletter

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