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TAIWAN FTC NEWSLETTER

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DWS, CPT and TWT Cable TV Services in Violation of Fair Trade Act by Signing with Apartment Building Management Committees Agreements Including Exclusionary Terms

The Fair Trade Commission decided at the 1,344th Commissioners' Meeting on Aug. 9, 2017 that the practice of signing agreements that included exclusionary terms with management committees of apartment buildings adopted by Daan Wenshan Cable Television Co., Ltd. (hereinafter referred to as DWS), Chin Ping Tao Cable Television Co., Ltd. (hereinafter referred to as CPT) and Tian Wai Tian Communication Inc. (hereinafter referred to as TWT) was an illegitimate way to impede competitors from entering or competing in the market where they operated. In addition to ordering the three companies to correct the unlawful act within two months after receiving the disposition, the FTC also imposed on them administrative fines of NT\$900,000, 1.2 million and 1.6 million, respectively.

The FTC's investigation indicated that DWS was currently the cable TV service provider in Daan District of Taipei City and CPT in Zhongshan and Songshan Districts of Taipei City, that respectively accounted for 51.1% and 47.7% of the corresponding markets. Starting in November 2014 and December 2015, the two companies signed cable TV service agreements with apartment building management committees that included exclusionary terms to prevent such committees from seeking cable TV services from other cable TV service providers; otherwise, related special price offers would be canceled while undue fees would also be collected as breach-of-contract penalties. In the meantime, TWT, operating in Sanchong and Luzhou Districts of New Taipei City where the company claimed 41.9% of the market, also adopted the same practice beginning

in 2012. Starting in June 2015, letters were sent to apartment building management committees having signed cable TV service agreements to warn them against allowing other cable TV service providers to set up reception equipment in the community or to demand that they remove equipment already set up.

The purpose behind DWS, CPT and TWT signing agreements that included exclusionary terms with apartment building management committees and even sending warning letters to them was to impede competitors (especially those new to the market) from competing, while the practice adopted was neither necessary for the companies' business operations nor justifiable. Moreover, the stipulated imposition

of punitive breach-of-contract fines would jack up competitors' management costs and at the same time reduce their capacity to engage in price competition, whereas the interests of residents (consumers) who chose not to transact with DWS, CPT or TWT or decided to switch to different trading counterparts would thus be jeopardized. Since DWS, CPT and TWT had a certain dominating status in the relevant markets, their adoption of the illegitimate practice to impede competitors from entering or competing in the market obviously had negative effects on competition in the relevant markets and the interests of consumers. The conduct was likely to restrict competition in violation of Subparagraph 3 of Article 20 of the Fair Trade Act. 

Merger between China Development Financial and China Life Insurance Not Prohibited

The Fair Trade Commission decided at the 1,346th Commissioners' Meeting on Aug. 23, 2017 to cite Article 13 (1) of the Fair Trade Act and not to prohibit the merger between China Development Financial Holding Corporation (hereinafter referred to as China Development Financial) and China Life Insurance Co., Ltd. (hereinafter referred to as China Life Insurance).

China Development Financial intended to acquire 25.33% of the issued shares of China Life Insurance with a takeover bid. After the takeover, China Development Financial would be in possession of between 34.63% and 34.96% of the total shares of China Life Insurance, after including the shares that the company held through KGI Securities Co., Ltd. The condition met the type of merger prescribed in Subparagraph 2 of Article 10 (1) of the Fair Trade Act. Meanwhile, the sales of both merging parties in 2016 also achieved the merger-filing threshold specified in Subparagraph 3 of Article 11 (1) set forth in the same act, whereas the proviso in Article 12 of the same act was inapplicable. Hence, the two companies filed a merger notification with the FTC.

The case involved both a conglomerate merger (personal insurance) and a vertical merger (between an insurance company and an insurance broker).

China Development Financial had no subsidiaries engaging in personal insurance business and there was no evidence to show that China Development Financial had had any intention, before the merger, to set up a life insurance company to operate in the personal insurance market. In other words, China Development Financial and its subsidiaries were not potential competitors of China Life Insurance, and it was a conglomerate merger. Meanwhile, it was also a vertical merger. Although KGI Commercial Bank Co., Ltd. (hereinafter referred to as KGI Bank), a subsidiary of China Development Financial, and KGI Insurance Brokers Co., Ltd. (hereinafter referred to as KGI Insurance Brokers), an affiliate of China Development Financial, both sold China Life Insurance's policies, most insurance companies marketed their products through their own sales channels. Hence, it was difficult to conclude that China Life Insurance would, after the merger, make exclusive dealing arrangements with KGI Bank and KGI Insurance Brokers to block other insurance companies. After reviewing the merger case, the FTC decided that the merger would not lead to any significant competition restraint and did not prohibit the merger by citing Article 13 (1) of the Fair Trade Act. 

Nextgen Mediatech Imposed Resale Price Restrictions on Distributors in Violation of Fair Trade Act

The Fair Trade Commission decided at the 1,322nd Commissioners' Meeting on Mar. 9, 2017 that Nextgen Mediatech Inc. (hereinafter referred to as Nextgen Mediatech) had violated Article 19 (1) of the Fair Trade Act by restricting the resale prices of distributors for Chimei electrical appliances, depriving retailers of their freedom to make price decisions and weakening price competition between distribution channels. In addition to ordering the company to immediately cease the unlawful act, the FTC also imposed on it an administrative fine of NT\$500,000.

Nextgen Mediatech was a subsidiary of Chimei Corporation. Besides producing and marketing electrical appliances, the company also sold its products through distributors. The FTC's investigation indicated that certain distributors had been penalized for failing to abide by Nextgen Mediatech's price regulations. The emails that the FTC acquired during the investigation contained a list of such distributors as well as the reasons for punishment (selling at prices lower than the suggested rates for example) and the penalties imposed (such as supply disconnection). Nextgen Mediatech did not deny disconnecting supply to certain distributors during the periods specified in the emails and also admitted the measure had been taken because the distributors had sold the company's products at prices lower than their purchasing prices. The investigation revealed that the distributors that had had supply disconnected had indeed sold

products at prices lower than the rates suggested by Nextgen Mediatech, but they by no means constituted all the distributors placed on the watch list by Nextgen Mediatech as being likely to result in bad debts. In the meantime, the FTC also requested that Nextgen Mediatech present the justification for its imposition of resale price restrictions, but the company merely stated that they had been intended to prevent price competition from affecting service quality, to provide before-sales services, to minimize the acquisition of products from dubious sources or through unusual means, and to reduce the risk of bad debts. However, the company was unable to provide concrete evidence to support its contestation. In other words, the imposition of resale price restrictions could not be justified.

The resale price restriction imposed by Nextgen Mediatech on its distributors deprived businesses of their freedom to make price decisions, making them unable to set prices in accordance with the competition they faced and their management strategies. The result would weaken intra-brand competition between different distributors while it could not be justified in terms of promoting competition. Hence, the conduct was in violation of Article 19 (1) of the Fair Trade Act and the FTC therefore handed down the sanction according to the first section of Article 40 (1) of the same act. 

Greeting the Era of the Internet of Things—Consolidated Applications in the Chip Market

US-based Qualcomm Incorporated (hereinafter referred to as Qualcomm) intended to acquire 100% of the shares of Dutch company NXP Semiconductors N.V. (hereinafter referred to as NXP). The condition met the merger pattern prescribed in Subparagraph 2 of Article 10 (1) of the Fair Trade Act; in addition, the sales of both companies in the previous fiscal year also achieved the merger-filing threshold specified in Subparagraph 3 of Article 11 (1) of the Fair Trade Act. Hence, Qualcomm filed a merger notification with the FTC.

A major international cell phone chip maker, Qualcomm produced four types of important chips, namely, standard baseband chips, radio frequency chips, application processors and wireless communications chips. Meanwhile, NXP was one of the largest manufacturers of automotive chips for in-vehicle infotainment and driver assistance systems, automotive applications analog ICs, in-vehicle microprocessors, and control and sensing devices. Other products made by the company included near-field communications and safety component chips, embedded processors for wire and wireless communications, devices for audio signal quality improvement, and various types of microcontrollers and microprocessors.

Most of the products made by Qualcomm and NXP were applied in different fields and no substitutability existed. Only a small portion of products overlapped, including Bluetooth Low Energy (BTLE) chips, in-vehicle infotainment microprocessing units (MPUs), speech enhancement devices and smart amplifiers. As the main products of the merging parties were applied in different fields, mostly cell phone chips

and automotive chips and only a handful of products overlapped, the merger was considered both horizontal and conglomerate.

After the proposed merger, the market share increase of the two companies in the BTLE, in-vehicle infotainment MPU and smart amplifier markets would be less than 5%. In the meantime, since NXP did not operate in the domestic speech enhancement devices market, the impact would be limited. Even if there would be any influence, strong competitors existed and trading counterparts had the liberty to switch to different suppliers. For this reason, the post-merger effect on the relevant market would be slight.

The overlapping products of Qualcomm and NXP were not the main business items of either company and accounted for a rather small percentage of their revenues. Qualcomm mainly dealt with cell phone standard baseband chips and NXP mainly dealt with automotive chips. The products of the two companies were applied in dissimilar fields. After the merger, the structure of the cell phone chip and automotive chip markets would not be affected. Furthermore, the purpose of the merger was to get involved in innovation and new applications on the Internet of Things. The focus would be set on the intercrossing and integration of mobile device chips and automotive chips. The industry chain associated with the Internet of Things would be immense and the range of applications would also be very extensive. Through information collection, online transmission and data computation and analysis, automobiles and electrical appliances would all be connected to the Internet in the future. However, further innovative efforts and cooperation between related businesses

would be needed to overcome certain barriers existing at the terminal of various networks in order to set up networking equipment to promote cross-brand, cross-style and cross-platform operations. As a consequence, many big manufacturers had already started to form industrial alliances to construct and deploy biological systems associated with the Internet of Things. Major international semiconductor producers, including Intel, Samsung, Broadcom, etc., were already making active efforts to get into related fields. In other words, after the merger was completed,

fierce competition between international businesses would continue and the effect of the merger on the domestic market would be limited.

The merger would have no significant impact on relevant markets and there appeared to be no intention to affect competition in the domestic market and neither did such a likelihood exist. Therefore, the FTC concluded that the merger would have no direct, substantial or reasonably expectable impact on relevant markets in the country and decided not to exercise its jurisdiction. 

Ino Advertising in Violation of Multi-level Marketing Supervision Act

The Fair Trade Commission decided at the 1,325th Commissioners' Meeting on Mar. 29, 2017 that Ino Advertising Marketing Co., Ltd. (hereinafter referred to as Ino Advertising), a multi-level marketing business, had violated Article 7 (1) of the Multi-level Marketing Supervision Act by changing its sales system without filing with the FTC in advance and also article 24 of the same act by failing to process participant withdrawals and refunding within the statutory period after contract cancellation, and termination and 20 (2) and 21 (2) were applicable mutatis mutandis. The FTC imposed an administrative fine of NT\$1 million for the violation of Article 7 (1) of the Multi-level Marketing Supervision Act as well as an administrative fine of NT\$1.5 million for each of the violations of Article 24 by citing Article 20 (2) and Article 21 (2) mutatis mutandis. The fines totaled NT\$4 million.

When performing a business inspection on Ino Advertising, the FTC discovered that an overseas travel incentive activity organized by the company in 2016 had involved the issuance of bonuses and cash prizes. It was part of the sales system but the company had never filed in advance with the FTC the content of the activity, conditions and methods of calculation of bonuses and cash prizes to be issued and the ratio of the amount issued to the company's total revenue. Meanwhile, the original information filed with the FTC did not include any upper limit on participant management rights. Yet, starting on Oct. 31, 2016, each participant could only purchase seven management rights and the new regulation was not registered with the FTC beforehand. At

the same time, originally there was an upper limit on the "social networking bonus" to be issued, but the cash prizes that Ino Advertising issued during the aforesaid activity exceeded the limit. In other words, the company's actions in changing its sales system, holding the overseas travel incentive activity and restricting the number of management rights participants could purchase, as well as the standard for issuance of the "social networking bonus" were all inconsistent with the filed information and the company never registered with the FTC in advance. The conduct was in violation of Article 7 (1) of the Multi-level Marketing Supervision Act. Moreover, when inspecting the participant withdrawal application list provided by Ino Advertising, the FTC found out that, as of Jan. 4, 2017, applications for withdrawal turned in within 30 days after contract signature involved 475 management rights, whereas the ones presented 30 days after contract signature involved 241 management rights. Ino Advertising had to complete processing the withdrawal applications and refunding on Feb. 3, 2017 at the latest. However, the company admitted that the refunding remained uncompleted as of Feb. 15, 2017. Therefore, by failing to complete processing withdrawal applications and refund participants within 30 days after contract cancellation or termination, Ino Advertising violated Article 24 of the Multi-level Marketing Supervision Act and Article 20 (2) and Article 21 (2) of the same act were applicable mutatis mutandis.

Ino Advertising had already filed with the FTC that it would suspend its multi-level marketing operations

and the FTC therefore removed the company from the list of multi-level marketing businesses registered with the FTC. If Ino Advertising was engaged in illegitimate multi-level marketing, it would be in violation of Article 18 of the Multi-level Marketing Supervision Act.

Therefore, acting according to Article 29 of the same act, the FTC transferred the case to the prosecutorial agency to investigate the case because it would involve criminal responsibility. 

Cheng Ming Construction and Bo Gen Development Posted False Housing Project Advertisements in Violation of the Fair Trade Act

The Fair Trade Commission decided at the 1,338th Commissioners' Meeting on Jun. 28, 2017 that Cheng Ming Construction and Development Co., Ltd. (hereinafter referred to as Cheng Ming Construction) and Bo Gen Development Co., Ltd. (hereinafter referred to as Bo Gen Development) had violated Article 21 (1) of the Fair Trade Act by indicating that there would be a gym, a lounge bar, an aerobics room and a pool room in the print advertisements "Line Generation Small Capital Style MRT Intelligent Homes" and "Fashionable Bobo Small Capital Style MRT Intelligent Homes" and also displaying the "13F layout", "gym 3D schematic", "bar area 3D schematic", "Aerobics room 3D schematic" and "pool room 3D schematic" on electronic signage. It was a false and misleading representation with regard to content and use of product to give the wrong impression that the aforesaid facilities were legal and also could affect transaction decisions in violation of Article 21 (1) of the Fair Trade Act. The FTC imposed administrative fines of NT\$1 million and NT\$450,000 on the two companies, respectively.

The overall content of the advertisements put up by Cheng Ming Construction and Bo Gen Development was able to mislead consumers to believe that the

gym and other facilities on the rooftop terrace could be used legally. However, Cheng Ming Construction never built the facilities and the area where the facilities were supposed to be located was indicated in the as-built drawings as the "terrace". In the meantime, according to the Taoyuan City Government, as set forth in Article 1, Chapter 1 of the Building Technique Regulation, a flat surface with no shelter overhead was called a terrace. In Paragraph 1 of Article 25 of the Building Act, it was specified, "Without a review conducted by and the building permit issued by the municipal or county (city) (bureau) competent authority of construction, no one may construct, use or demolish any building". In other words, any structure constructed on a rooftop terrace would be illegal. Therefore, the information presented in the advertisements for the "Fashionable Bobo" housing project was inconsistent with reality and was able to cause the general public to have wrong perceptions about the content and use of the housing project and make wrong transaction decisions as a consequence. The competition and order in the relevant market would lose their functions as a result and unfair competition could be created. Hence, the conduct was in violation of Article 21 (1) of the Fair Trade Act. 

Statistics on False Advertising Cases

To improve sales, businesses often design all kinds of eye-catching advertisements containing information such as promotional prices, special offers of limited amounts within specified periods, proven reputation, outstanding product functions, etc. to attract consumers. However, do some of them involve false advertising?

Statistics show that the FTC closed 1,667 cases, including the ones reported by informers and those on which the FTC initiated ex officio investigations, between January and October this year (2017). 787 (47%) of the cases involved false advertising. Judged by the type of informer, 83.7% of the cases were reported by private citizens and 11.3% by government agencies. Between 2012 and the end of October this year (hereinafter referred to as the five recent years), 3,529 of the closed cases, including reported cases and cases on which ex officio investigations were initiated, involved false advertising. The ones reported by private citizens accounted for 70.7% and those by government agencies for 21.7% (Table 1).

Table 1 Statistics on Cases Involving False Advertising—by Type of Informer

Year	Total	Private Citizen	Company	Juristic Person	Trade Association	Public Representative	Government Agency	Others
Total (2012- Oct 2017)	100.0	70.7	5.8	0.3	0.3	0.1	21.7	1.1
2012	100.0	53.0	5.3	0.3	0.3	0.3	37.4	3.5
2013	100.0	55.1	6.1	0.8	0.3	-	37.4	0.3
2014	100.0	56.8	7.5	0.4	0.4	-	33.9	1.1
2015	100.0	71.2	6.3	0.4	-	0.1	20.6	1.3
2016	100.0	76.9	6.5	-	0.5	0.1	15.0	1.0
Jan.-Oct. 2017	100.0	83.7	4.2	0.3	0.3	-	11.3	0.3

Unit: %

787 of the cases that the FTC processed between January and October this year involved false advertising. After subtraction of the ones confirmed as not belonging to the jurisdiction of the FTC, those in which the investigation or review was suspended because of procedural inconsistency and cases reported repeatedly, there remained 93 cases involving false advertising. Sanctions were administered in 41 of them and non-disposition was decided in the other 52 cases. 3,529 of the cases closed in the five recent years involved false advertising and sanctions were handed down in 464 of them (483 dispositions issued). No sanctions were given in 674 cases and administrative disposal was decided in 11 cases. Review was suspended in 2,321 cases that were concluded as involving criminal cases, civil cases, the jurisdiction of other agencies, or procedural inconsistency. Meanwhile, 59 cases were determined so as to be consolidated and processed with other cases (Table 2).

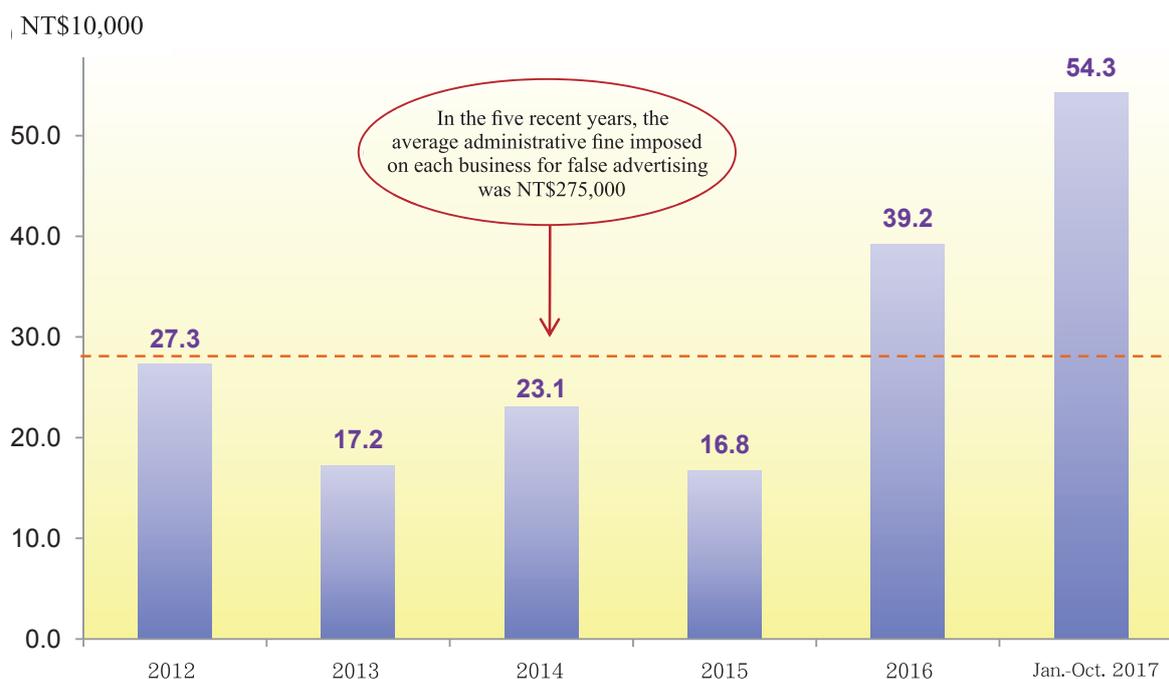
Table 2 Statistics on the Handling Results of False Advertising Cases

Unit: case; %

Year	No. of Cases Involving False Advertising	Ratio to Total Cases Processed (%)	Handling Result					
			Sanctions		No. of Cases with Sanctions Given	Administrative Disposal	Suspension of Review (Investigation)	Consolidation with Other Cases
			No. of Cases	No. of Dispositions Issued				
Total (2012-Oct. 2017)	3,529	30.6	464	483	674	11	2,321	59
2012	398	17.5	104	110	169	10	103	12
2013	361	17.9	105	108	177	-	65	14
2014	280	14.3	71	74	99	1	98	11
2015	775	44.8	71	73	83	-	615	6
2016	928	48.8	72	77	94	-	754	8
Jan.-Oct. 2017	787	47.2	41	41	52	-	686	8

The FTC administered sanctions and issued dispositions in 97 of the cases processed between January and October this year. 117 businesses were sanctioned. 41 of the cases (42.3%) involved false or misleading advertising, with 61 businesses sanctioned and NT\$33.1 million of administrative fines in total imposed. On average, each business was fined NT\$543,000. In the five recent years, the FTC issued dispositions in 483 cases that involved false advertising. 649 businesses were sanctioned and the administrative fines imposed totaled NT\$178.25 million. On average, each business was fined NT\$275,000 (Fig. 1).

Fig. 1 Statistics on the Average Administrative Fine Imposed on Each Business for False Advertising in the Five Recent Years



FTC Activities in September and October 2017

- ▲ On Sep. 1 and 8, the FTC conducted a presentation on “Laws and Regulations Related to Multi-level Marketing” in Taitung County and Miaoli County, respectively.
- ▲ On Sep. 12 and 15, the FTC presented “An Overview of the Fair Trade Act and the Multi-level Marketing Supervision Act” at the Pingtung County Government and Hsinchu County Government.
- ▲ On Sep. 12, the FTC conducted a presentation on “Various Aspects of Trading Traps” in New Taipei City.
- ▲ On Sep. 15, the FTC conducted a presentation on “International Antitrust Promotion—Regulations on Vertical Competition Restrictions and Law Compliance by Enterprises” in Taichung City.
- ▲ On Sep. 18, the FTC held the “2017 Antitrust Economics Workshop” at the College of Social Sciences of National Taiwan University.
- ▲ On Sep. 18, the FTC conducted a presentation on “Laws and Regulations Related to Multi-level Marketing” in Taipei City.
- ▲ On Sep. 18, 27 and 28, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Financial and Economic Law of Overseas Chinese University, the Department of Money and Banking of National Kaohsiung First University of Science and Technology and the Department of Marketing and Service Management of Chienkuo Technology University, respectively.
- ▲ On Oct. 5, the FTC conducted the “Fair Trade Commission Presentation on the Business Conduct of Public Natural Gas Enterprises” in Taichung City.
- ▲ On Oct. 6, the FTC conducted a presentation on the “Various Aspects of Trading Traps” at the Third Senior Citizens Association in Fangliao, Pingtung County.
- ▲ From Oct. 7 to 10, the FTC conducted a presentation on the Fair Trade Act in Tainan City.
- ▲ On Oct. 23, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Economics of Feng Chia University.
- ▲ On Oct. 31, Professor and Vice Dean Wan Li-Dar of the College of Law of National Chengchi University gave a lecture on “Platform Economy and Sharing Economy to Be Taken into Account in the Establishment of Competition Regulations” at the invitation of the FTC.



1. The FTC conducting a presentation on “Laws and Regulations Related to Multi-level Marketing” in Taitung County

2. The FTC conducting a presentation on “International Antitrust Promotion—Regulations on Vertical Competition Restrictions and Law Compliance by Enterprises” in Taichung City



3.The FTC holding the “2017 Antitrust Economics Workshop” at the College of Social Sciences of National Taiwan University

4.The FTC conducting the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Money and Banking of National Kaohsiung First University of Science and Technology

5.The FTC conducting the “Fair Trade Commission Presentation on the Business Conduct of Public Natural Gas Enterprises” in Taichung City

6.Professor and Vice Dean Wan Li-Dar of the College of Law of National Chengchi University giving a lecture on “Platform Economy and Sharing Economy to Be Taken into Account in the Establishment of Competition Regulations” at the invitation of the FTC

FTC International Exchanges in September and October 2017

- ▲ On Sep. 6 and 7, the FTC Chairperson Huang Mei-Ying led a delegation to attend the 13th East Asia Top Level Officials' Meeting on Competition Policy and the 10th East Asia Conference on Competition Law and Policy on Bali Island, Indonesia.
- ▲ From Sep. 12 to 15, the FTC's representatives attended the "Competition Law Workshop—Going after Bid-Rigging Cartels" held by the OECD-Korea Centre, Competition Programme in Ulaanbaatar, Mongolia.
- ▲ On Sep. 26 and 27, the FTC held the "Regional Antitrust Regional Seminar on Economic Analysis in Competition Enforcement" in Singapore.
- ▲ On Oct. 24 and 25, the FTC Commissioner Hong Tsai-Lung attended the "2017 Second Jakarta International Competition Forum" in Jakarta, Indonesia.
- ▲ From Oct. 24 to 26, the FTC's representatives attended the "Competition Law Workshop—Best Practices in Cartel Procedures" hosted by OECD/KPC in New Delhi, India.



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1. The FTC Chairperson Huang Mei-Ying leading a delegation to attend the 13th East Asia Top Level Officials' Meeting on Competition Policy and the 10th East Asia Conference on Competition Law and Policy on Bali Island, Indonesia
2. The FTC's representatives attending the "Competition Law Workshop—Going after Bid-Rigging Cartels" held by the OECD-Korea Centre, Competition Programme in Mongolia
3. The FTC holding the "Regional Antitrust Regional Seminar on Economic Analysis in Competition Enforcement" in Singapore
4. The FTC Commissioner Hong Tsai-Lung attending the "2017 Second Jakarta International Competition Forum" in Jakarta, Indonesia

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