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TAIWAN FTC
NEWSLETTER

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FTC International Exchanges in September and October 2019

Merger between Cashbox Partyworld and Holiday Prohibited

The FTC decided at the 1450th Commissioners' Meeting on Aug. 21, 2019 to prohibit the merger between Cashbox Partyworld Co., Ltd. (hereinafter referred to as Cashbox Partyworld) and Holiday Co., Ltd. (hereinafter referred to as Holiday) by citing Article 13 (1) of the Fair Trade Act.

Cashbox Partyworld intended to acquire all the shares of Holiday and gain direct or indirect control of the management or personnel appointment and dismissal of Holiday. The condition complied with the merger patterns specified in Subparagraphs 2 and 5 of Article 10 (1) of the Fair Trade Act. Since the market shares of the merging parties achieved the filing thresholds prescribed in Subparagraphs 1 and 2 of Article 11 (1) of the Fair Trade Act and the proviso set forth in Article 12 of the same act was inapplicable, Cashbox Partyworld filed a merger notification as required by law.

Since the FTC prohibited the merger between Cashbox Partyworld and Holiday in April 2009, this was the second time the FTC did not approve the merger between Cashbox Partyworld and Holiday. To review the merger, besides requesting that the relevant competent authority provide related information and its opinion, the FTC also commissioned an institution to conduct a survey on the behavior of consumers using KTV services and also held a seminar in June. Besides having representatives from Cashbox Partyworld and Holiday come to present their statements regarding the merger, the FTC also invited the competent authority for the industry,

the consumer protection authority, upstream and downstream businesses and horizontal competitors to discuss issues associated with the market definition in this case and likely post-merger influence on domestic music copyright licensing and KTV services in order to solicit opinions from different sectors.

After assessing the case, the FTC concluded that the merging parties were already the top two businesses in the market and each other's major competitors. After the merger, direct competition between them in the KTV market would cease to exist. For consumers and other competitors, competition in the KTV services market after the merger would be significantly reduced and the merging parties would have the incentive and capacity to increase prices. Consumers or competitors would lack the countervailing power to cope with such price increases. Apparently, significant disadvantages would occur as a result of competition restraints. In addition, when the FTC solicited opinions from various

sectors, upstream music companies, KTV product agents, music copyright management groups and consumer protection groups also expressed concerns that the merger could lead to competition restrictions.

By combining the above, the FTC thought that although the merger would undoubtedly bring economic benefits for the merging parties, the merging parties' promise that they would not increase prices or reduce service content could not eliminate the incentives for them to increase prices in the long run after competition between the two main competitors ceased to exist. Under such circumstances, the overall economic benefit would be insignificant. Therefore, after assessing the various factors involved, the FTC decided that the overall economic benefit would be significantly smaller than the disadvantages resulting from competition restraints after the merger and therefore prohibited the merger by citing Article 13 (1) of the Fair Trade Act. 

TSCA Restricted Security Companies' Price Quotations in Violation of the Fair Trade Act

The FTC decided at the 1448th Commissioners' Meeting on Aug. 7, 2019 that the Taoyuan Security Commercial Association (hereinafter referred to as the TSCA) had violated the regulation against concerted actions in the Fair Trade Act by restricting the freedom of security companies to decide their quotations for security guard services. The FTC imposed an administrative fine of NT\$400,000 on the TSCA.

Through a resolution achieved at its member assembly, the TSCA passed the "Regulations for Implementation of the Fundamental Rules of the Self-discipline Agreement". At the same time, during a board of directors and supervisors' meeting, the TSCA also stipulated a referential price quotation standard to be observed between 2016 and 2019 and mailed the standard to each member. Afterwards, members quoting prices below the standard would be requested to explain and give their statements to the TSCA, and a number of members were penalized for violating Subparagraph 15 of Article 3 of the Self-discipline

Agreement and were asked to donate certain amounts of money that they received to the TSCA. The practice met the description of trade associations restricting the business activities of their member enterprises by achieving a resolution through a general meeting of members or a board meeting of directors or supervisors.

By restricting its members from quoting prices lower than the referential quotation standard established, the TSCA would limit the flexibility of its members to decide prices according to the market condition as well as deprive them of the opportunity to obtain more advantageous prices. Moreover, as the total sales of the members of the TSCA accounted for close to 50% of the relevant market, the price quotation restriction imposed by the TSCA on its members was able to affect the supply-demand function in the relevant market. It was in violation of the regulation against concerted actions set forth in Article 15 (1) of the Fair Trade Act.



Merger of Merck and Versum and EMD Not Prohibited

The FTC decided at the 1446th Commissioners' Meeting on Jul. 24, 2019 not to prohibit the merger of German company Merck KGaA (hereinafter referred to as Merck) and US companies Versum Materials, Inc. (hereinafter referred to as Versum) and EMD Performance Materials Holding, Inc. (hereinafter referred to as EMD) by citing Article 13 (1) of the Fair Trade Act.

Through its subsidiary EMD, Merck intended to merge with Versum and gain indirect control of the management and personnel appointment and dismissal of the latter. The condition complied with the merger patterns described in Subparagraphs 1 and 5 of Article 10 (1) of the Fair Trade Act. In addition, after the merger, Merck would account for more than one third of the domestic semiconductor manufacturing process deposition precursor market, whereas the company's sales would also achieve the filing threshold specified in Article 11 (1) of the Fair Trade Act. Hence, Merck was required to file a merger notification with the FTC.

The products of concern in the horizontal competition in this case were the deposition precursor and photoresist stripper while the products involved in the upstream-downstream relationship were CMP grains and CMP solution. As far as the deposition precursor was concerned, the FTC thought the merging parties were unlikely to create any unilateral effect after the merger. Meanwhile, although the share of the merging

parties in the deposition precursor market would increase, European, American, Japanese, Korean and domestic suppliers would still be competing in the market. There was no positive evidence to support the view that any significant coordinated effect could occur. Furthermore, no particular market entry threshold existed and the merging parties were foreign businesses. Their main trading counterparts in the country were domestic semiconductor wafer manufacturers with considerable buyer bargaining power. If the merging parties randomly raised their product prices, the manufacturers could switch to other suppliers. In other words, they had certain countervailing power. Therefore, the merger could not lead to significant competition restraints. As for the photoresist stripper market and the CMP grain and solution market, the merging parties did not have sufficiently large market shares; hence, there would be no significant competition restraints.

By combining the above, the FTC reached the conclusion that the approval or rejection of the merger would depend on whether the overall economic benefit was greater than the disadvantages from competition restraints. After seeking the opinions of the competent authority for the industry, competitors and downstream trading counterparts, as well as by evaluating the aforesaid considerations, the FTC cited Article 13 of the Fair Trade Act and did not prohibit the merger.



Fucheng Enterprises in Violation of the Fair Trade Act by Using Unlawful Means to Recruit Domestic OEM Workers

The FTC decided at the 1433rd Commissioners' Meeting on Apr. 24, 2019 that Fucheng Enterprises had violated Article 25 of the Fair Trade Act by using deceptive means to recruit unspecific individuals to engage in domestic OEM work and adopting excuses to collect charges from the people recruited in order to make a profit. The practice was deceptive conductable to affect trading order in the market. Therefore, the FTC cited the first section of Article 42, ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of NT\$500,000 (the same currency applies hereinafter).

Fucheng Enterprises posted recruitment ads in newspapers and used cash payments, product pickup at workplaces and a loose schedule to entice OEM workers to apply. Applicants were required to sign a production and marketing agreement and also pay 12,000 NT dollars up front for the ink. Fucheng Enterprises would provide each first-time applicant with one animal-shaped hanging ornament for reference and also demonstrate how to put the ink in the syringe to color the transparent acrylic ornaments. The company claimed it would pay 50 dollars for each qualified finished product. However, for each unqualified piece, an OEM worker would have to pay 10 dollars in compensation. At the time of contract signature, Fucheng Enterprises did not disclose any information with regard to the level of difficulty of the work and the low qualifying rate. The FTC compared delivery records from the OEM workers and apparently the qualifying rate of finished products was extremely low. As a result, some of the rewards were even smaller than the amounts paid by workers

to compensate for unqualified pieces. Obviously, Fucheng Enterprises intentionally concealed the fact that the extremely high rate of failure made the work economically impractical and not worth the effort. Instead, the company adopted attractive language in the production description to mislead people into believing that they would be gainfully rewarded as a result of signing the agreement.

Fucheng Enterprises claimed that the company only purchased the ink for the workers and divided it into four sets. When workers signed the agreement, they were only given one set. The cost of the ink and the amount that each worker paid were apparently incommensurable. Although the company used buying the ink for each worker as an excuse, in reality the sales of ink were the chief source of the company's income. The FTC visited the company to investigate and found that Fucheng actually had no fixed sales channels for the finished products. At the same time, a comparison of its management cost with its sales showed that the difference was far greater than what a regular business could afford. After assessing related evidence, the FTC concluded that Fucheng Enterprises had violated Article 25 of the Fair Trade Act by adopting unlawful means to recruit unspecific individuals to do domestic OEM work.

The FTC would like to remind people interested in engaging in domestic OEM work to be cautious and to fully understand the management condition and approaches of companies recruiting domestic OEM workers before signing agreements in order to prevent disputes later on.



Yujie Co., Ltd. Violated the Fair Trade Act by Posting False Ads for Bluetooth Earphones

The FTC decided at the 1451st Commissioners' Meeting on Aug. 28, 2019 that Yujie (transliteration) Co., Ltd. had violated Article 21 (1) of the Fair Trade Act by claiming on Facebook that the company was in possession of the patents and trademark rights for its wireless Bluetooth earphone products. The claim was a false and misleading representation with regard to quality of product and could also affect transaction decisions. The FTC imposed an administrative fine of NT\$50,000 on the company.

On Jul. 25, 2018, Yujie Co., Ltd. posted on its "Ora Digital Entertainment Group—Ora i8 Ora Intelligent Technology Research Institute (translation)" fan page on Facebook the wording "The Ora i8 and previously released S3 and other product series are products with registered patents owned by our company" and "Compensation of the amount of 500 times to 1500 times the retail price will be imposed on any individual or company caught infringing the trademark rights." The language made people believe that Yujie Co., Ltd. had really obtained the trademark rights and also

the patents for the Ora i8 wireless earphone products in the country.

The FTC's investigation and the opinion of the Intellectual Property Office of the Ministry of Economic Affairs showed that Yujie Co., Ltd. had applied to the Intellectual Property Office for the design patent for its Ora i8 wireless earphones on Aug. 14, 2018. Later on Apr. 1, 2019, the company was granted the patent. Another finding indicated that Yujie Co., Ltd. applied for the trademark rights on Apr. 12 and Jul. 24, 2018 and acquired and registered the trademark rights respectively on Oct. 16, 2018 and Jan. 16, 2019. In other words, when the company posted the claim on Jul. 25, 2018, it had not yet obtained the patent and trademark rights for the product in question. The representation and symbol posted were clearly inconsistent with the fact and could cause consumers and potential trading counterparts to have wrong perceptions about the claim or make wrong decisions. It was false and misleading in violation of Article 21 of the Fair Trade Act.



Broadquan Violated the Fair Trade Act by Posting False Ads for Its LED Lights

The FTC decided at the 1445th Commissioners' Meeting on Jul. 17, 2019 that Broadquan Enterprise Co., Ltd. (hereinafter referred to as Broadquan) had violated Article 21 (1) of the Fair Trade Act by claiming that its 300W KED lights and 150W LED lights had been awarded the Atrium LED Energy Label. The claim was a false and misleading representation with regard to quality of product and could also affect transaction decisions. The FTC imposed an administrative fine of NT\$50,000 on the company.

In the ads on its company website for its 300W LED lights and 150W LED lights between August and October 2018, Broadquan posted the wording "Atrium LED Energy Label". The claim gave people

the impression that the products had been awarded the Energy Label by the Bureau of Energy of the Ministry of Economic Affairs and would consume less energy than similar products that had not been awarded the label resulting in more money being saved on power consumption. However, according to the Bureau of Energy, the products of concern had not been awarded the Atrium LED Energy Label before the period when the ads were posted. Hence, the company should not have included "Energy Label" on the products or in the ads. In other words, the ads for the two products were a false and misleading representation in violation of Article 21 (1) of the Fair Trade Act.

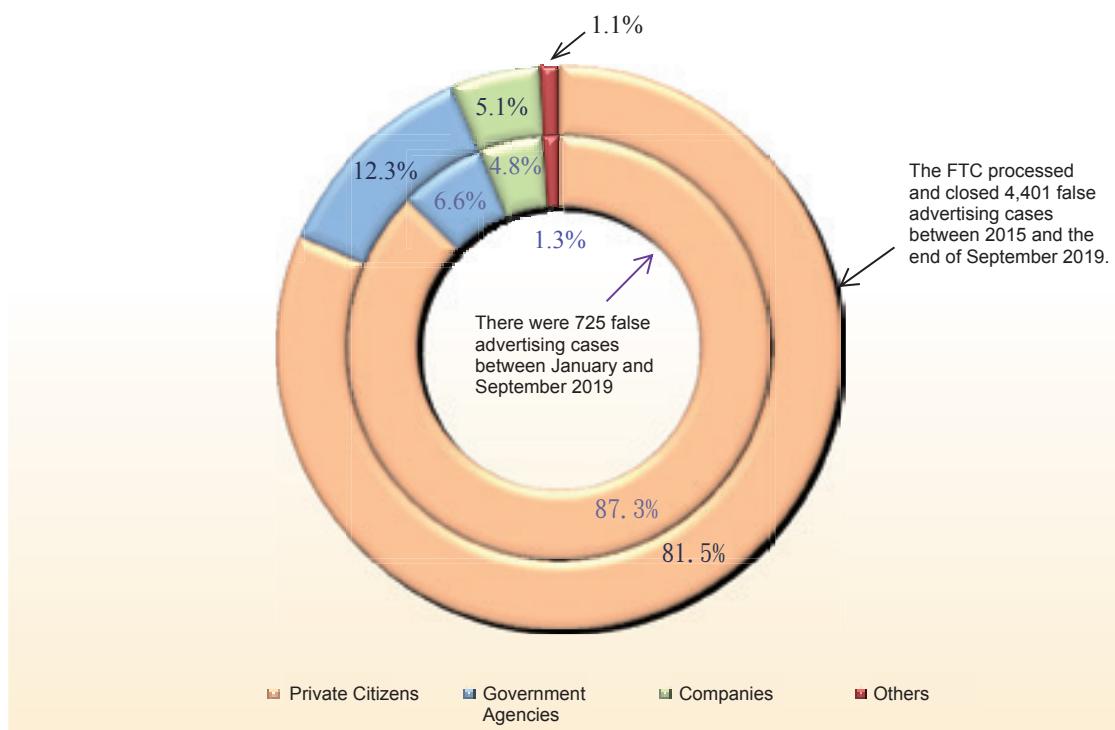


Statistics on False Advertising Cases

In order to stimulate purchases, businesses often come up with all kinds of advertisements to attract consumers, including offering promotional prices, and making special offers within a limited period and with limited quantities, while emphasizing their established reputations and pointing out particular product functions, etc. Do such approaches involve false advertising?

Statistics show that the FTC processed and closed 1,302 cases, including the ones reported by informers and those on which the FTC initiated ex officio investigations, between January and September this year (2019). 725 (56%) of the cases involved false advertising. Judged by the type of informer, 87.3% of the cases were reported by private citizens and 6.6% by government agencies. Between 2015 and the end of September this year, 4,401 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 81.5% and those by government agencies for 12.3% (Fig. 1).

Fig.1 Statistics on Cases Involving False Advertising-by Type of Informer



There were 725 false advertising cases between January and September this year. After the ones not belonging to the jurisdiction of the FTC, the ones in which the review or investigation was suspended due to procedural inconsistency, and those involving the repeated filing of complaints were deducted, there remained 53 false advertising cases. Sanctions were imposed in 17 of them (with 23 dispositions issued) and no sanctions were imposed in 36 cases. Between 2015 and the end of September this year, the FTC processed and closed 4,401 false advertising cases. Sanctions were imposed in 260 cases (with 274 dispositions issued) and no sanctions were imposed in 324 cases. The review and investigation was suspended in 3,781 cases because criminal or civil cases were involved, they came under the jurisdiction of other agencies or there was procedural inconsistency. In addition, 36 cases were consolidated to be processed with other cases (Table 1).

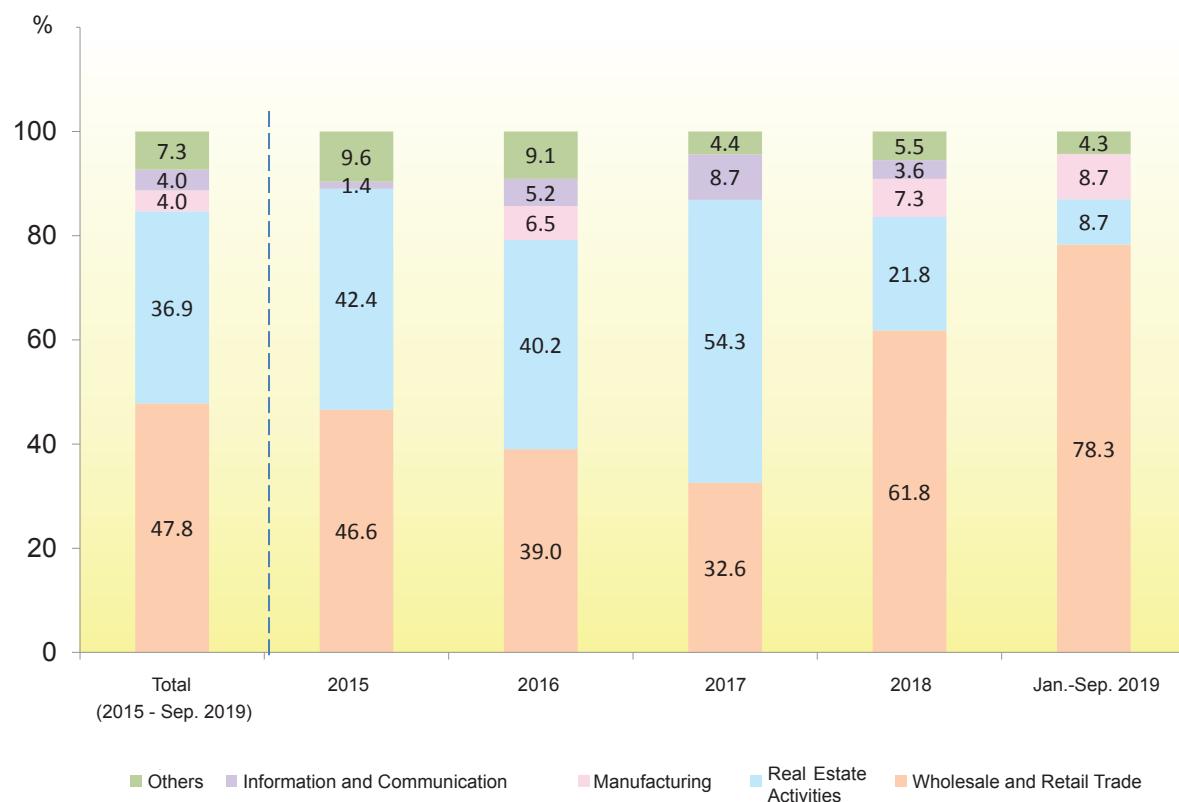
Table 1 Statistics on Cases Involving False Advertising-by Handling Result

Year	No. of Cases Involving False Advertising	Ratio to Total Cases Processed (%)	Handling Result					Unit: cases; %	
			Sanctions		No. of Cases with Sanctions Given	Suspension of Review (Investigation)	Combination with other cases		
			No. of Cases	No. of Dispositions Issued					
Total (2015-Sep. 2019)	4,401	48.3	260	274	324	3,781	36		
2015	775	44.8	71	73	83	615	6		
2016	929	48.8	73	77	94	754	8		
2017	964	46.7	46	46	57	850	11		
2018	1,008	47.8	53	55	54	891	10		
Jan.-Sep. 2019	725	55.7	17	23	36	671	1		

Note: "Combination with other cases" means that the same informer has repeatedly reported the same violation or different informers have reported the same violation and the complaints thus filed have been combined and processed together.

The FTC handed down sanctions and issued 58 dispositions in 58 cases between January and September this year. 23 cases, or 39.7%, involved false or misleading advertising. Judged by type of industry, 18 cases, or 78.3%, were related to wholesale and retail businesses, and formed the largest group. Between 2015 and the end of September this year, the FTC gave out sanctions and issued dispositions in 573 cases. 274, or 47.8%, of them involved false advertising. Judged by type of industry, 131 cases, or 47.8%, concerned wholesale and retail businesses and topped the list, followed by 101 cases, or 36.9%, involving real estate businesses. The two types totaled 85% (Fig. 2).

Fig.2 Sanctions of False Advertising - by the Type of Industry



FTC Activities in September and October 2019

- ↗ On Sep. 2, the FTC held a presentation on International Antitrust and Trade Remedy Regulations in Taipei City.
- ↗ On Sep. 5 and 6, the FTC held the "2019 Meeting on Coordination and Correspondence between the Fair Trade Commission and Local Agencies" in New Taipei City.
- ↗ On Sep. 18, 22 and 27, the FTC conducted the "Various Aspects of Trading Traps" activity at the Nanxin Community Development Association in Qishan District, Kaohsiung City, Xingzhong Community Development Association in Minxiong Township, Chiayi County and Beixing Community Development Association in Pingtung City, Pingtung County, respectively.
- ↗ On Sep. 26, the FTC held the "Presentation on the Law Enforcement Approaches of the Fair Trade Commission Regarding Cable TV Services and Related Businesses" in Taipei City.
- ↗ On Oct. 2, the FTC held the "Fair Trade Act Seed Teacher Workshop" at Xinpu Junior High School in New Taipei City.
- ↗ On Oct. 3, 7 and 16, the FTC held the "Fair Trade Act and Multi-level Marketing Supervision Act Training Camp" respectively at the Department of Marketing and Distribution Management of National Kaohsiung University of Science and Technology, the Department of Marketing and Distribution of National Pingtung University, and the Department of Finance of National Kaohsiung University of Science and Technology.
- ↗ On Oct. 4, the FTC held the "Fair Trade Commission Presentation for the Natural Gas Industry" in Taichung City.
- ↗ On Oct. 15, Assistant Professor Chuang Hung-Yu of the School of Law of National Chiao Tung University gave a lecture on "Separation and Cooperation in the Regulation of Standards, Essential Patents and Competition Law" at the invitation of the FTC.
- ↗ On Oct. 18, the FTC conducted a presentation on the "Various Aspects of Trading Traps" activity at the Pinglin Village Office in Shuangxi District, New Taipei City.
- ↗ On Oct. 21 and 22, the teachers and students of the Department of Law of Chinese Culture University and the Department of Public Finance and Taxation of Takming University of Science and Technology attended the "Fair Trade Act and Multi-level Marketing Supervision Act Training Camp" at the FTC.



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1.The FTC holding a presentation on International Antitrust and Trade Remedy Regulations in Taipei City

2.The FTC holding the "2019 Meeting on Coordination and Correspondence between the Fair Trade Commission and Local Agencies" in New Taipei City



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3.The FTC conducting the "Various Aspects of Trading Traps" activity at the Nanxin Community Development Association in Qishan District, Kaohsiung City

4.The FTC conducting the "Various Aspects of Trading Traps" activity at the Beixing Community Development Association in Pingtung City, Pingtung County

5.The FTC holding the "Presentation on the Law Enforcement Approaches of the Fair Trade Commission Regarding Cable TV Services and Related Businesses" in Taipei City

6.The FTC holding the "Fair Trade Act Seed Teacher Workshop" at Xinpu Junior High School in New Taipei City

FTC International Exchanges in September and October 2019

- ↗ On Sep. 4, the FTC attended a teleconference held by the ICN Cartel Working Groups.
- ↗ On Sep. 4 to 6, the FTC attended the “Vertical Transaction Restrictions” competition law workshop held by the OECD-Korea Policy Centre Competition Programme in Ulan Bator, Mongolia.
- ↗ On Sep. 25 and 26, Vice Chairperson Perng Shaw-Jiin led a delegation to host the “International Antitrust Regional Workshop—Market Definition and Law Enforcement under the Digital Economy” in Kuala Lumpur, Malaysia.
- ↗ On Oct. 16 to 18, the FTC attended the “Competition Issues Associated with Digitization” competition workshop held by the OECD-Korea Policy Centre Competition Programme in Tokyo, Japan.
- ↗ On Oct. 29, the FTC attended a teleconference held by the ICN Merger Working Group.
- ↗ On Oct. 29 and 30, the FTC attended the 44th Taiwan-Japan Economic and Trade Conference held in Tokyo, Japan. After the conference, Commissioner Shieh Jhy-Yuan led a delegation to attend the Taiwan-Japan Competition Authority Bilateral Meeting with the Japan Fair Trade Commission.



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1.The FTC Vice Chairperson Perng Shaw-Jiin(first row, fourth from right) leading a delegation to host the “International Antitrust Regional Workshop—Market Definition and Law Enforcement under the Digital Economy” in Kuala Lumpur, Malaysia

2.The FTC Vice Chairperson Perng Shaw-Jiin(fourth from right) giving the opening speech at the International Antitrust Regional Workshop held in Kuala Lumpur, Malaysia

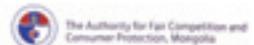
3.The FTC Vice Chairperson Perng Shaw-Jiin(on the right) having his picture taken with Mr. Encik Iskandar Bin Ismail, Chief Executive Officer of the Malaysia Competition Commission(on the left)



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OECD KPC Competition Law Workshop on Vertical Restraints

Ulaanbaatar, Mongolia, 4-6 September 2019



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- 4.The FTC Commissioner Shieh Jhy-Yuan(third from left) leading a delegation to attend the Taiwan-Japan Competition Authority Bilateral Meeting
- 5.The FTC Commission Shieh Jhy-Yuan(on the left) having his picture taken with Mr. Yamamoto Takeshi, Japan Fair Trade Commissioner(on the right)
- 6.The FTC attening the "Vertical Transaction Restrictions" competition law workshop held by the OECD-Korea Policy Centre Competition Programme in Ulan Bator, Mongolia

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