NO 099

TAIWAN FTC NEWSLETTER

2021.6

Merger of Vie Show Cinemas, Showtime Cinemas, Ambassador Theatres and Shin Kong Cineplex Approved with Undertakings Attached

The FTC decided at the 1,519th Commissioners' Meeting on Dec. 16, 2020 to approve the merger of Vie Show Cinemas Co., Ltd. (hereinafter referred to as Vie Show Cinemas), Showtime Cinemas Inc. (hereinafter referred to as Showtime Cinemas), Ambassador Theatres Company (hereinafter referred to as Ambassador Theatres) and Shin Kong Cineplex Co., Ltd. (hereinafter referred to as Shin Kong Cineplex) by citing Article 13 (1) of the Fair Trade Act.

Vie Show Cinemas, Showtime Cinemas, Ambassador Cinemas and Shin Kong Cineplex intended to create a joint venture called Bole Film Production Firm (hereinafter referred to as Bole Film Productions) to jointly manage the production and release of local movies and to invest in filming projects. The four companies would directly or indirectly control the management and personnel appointment and discharge of Bole Film Productions. The condition complied with the merger patterns described in Subparagraphs 2, 4 and 5, Paragraph 1 of Article 10 of the Fair Trade Act. At the same time, one of the merging parties claimed over one quarter of the relevant product market and the condition achieved the merger filing threshold specified in Subparagraph 2, Paragraph 1 of Article 11 of the Fair Trade Act, whereas the exemption regulation in Article 12 of the same act was not applicable. Therefore, the merging parties filed a merger notification with the FTC.

All the merging parties mainly managed movie projection business

and Bole Film Productions would engage in the production and release of local movies. As the merger did not involve the movie projection business, the structure of the corresponding market would not change because of the merger. In addition, information about movie tick prices was generally open and transparent. It was easy for consumers to switch to different trading counterparts. Hence, the merging parties could not randomly increase prices. What is more, there were many factors in the decisions as to which movies to play, schedules and licensing fees. The basis of contract negotiation for each movie projection business varied. It would be difficult for the four businesses to act consistently in negotiating licensing terms. Meanwhile, Bole Film Productions, the joint venture, would be a new company. The movies in which it could invest and produce would account for a very small percentage of all the locally produced and released movies in each year. Moreover, the company would also face powerful competition from movies from overseas. The company would need more theaters to show its movies to increase box office earnings to recover invested capital. Under such circumstances, the FTC did not think the merging parties had the motive to impose transaction restrictions on other movie projection businesses through Bole Film Productions or had the capacity or incentive to block input elements upstream or marketing channels downstream. As for some of the merging parties already in the movie production business or release market before the merger, they would also not have the ability or incentive to create any foreclosure effect because their market shares were extremely small.

As mentioned above, the FTC thought there would be no significant concern about the merger leading to competition restraints. On the contrary, with movie projection businesses partaking in local movie production, the merger could effectively increase the scale, quantity and quality of locally-produced movies, help obtain projection channels for local movies and attract other investors to participate. It would improve the plight of the local film industry, increase consumer welfare and benefit the overall economy. After assessing the aforementioned considerations, the FTC concluded that the merger would not result in any significant concern about competition restraints and the overall economic benefit would outweigh the disadvantages from competition restraints. Therefore, the FTC cited Article 13 (1) of the Fair Trade Act and did not prohibit the merger.

Seeds Taiwan in Violation of Fair Trade Act by Restricting the Resale Prices of Online Sellers

The FTC decided at the 1,524th Commissioners' Meeting on Jan. 20, 2021 that pet food supplier Seeds Taiwan had violated Article 19 (1) of the Fair Trade Act by restricting the resale prices of online sellers for the company's Seeds pet food products without justifiable causes such as competition promotion. The FTC imposed an administrative fine of NT$300,000 on the company.

Seeds Taiwan specifically established a retail price list for the Golden Cat 170g canned cat food, the Golden Cat 80g canned cat food and 12 other canned cat food and dog food products. The list included single can bottom prices and box prices of the aforesaid products. When the company was informed that there were online sellers marketing the products at prices lower than the listed single can prices or box prices, it would send employees to request that the sellers make price adjustments. Those who failed to comply would have their supply disconnected immediately. In reality, some online sellers had indeed had their supply disconnected by Seeds Taiwan.

There were around one thousand retail outlets selling Seeds Taiwan's canned cat food products. The company was one of the major canned cat food suppliers in the country and its products played a rather important role in the business of retailers. Therefore, Seeds Taiwan was able to establish the retail price list, request online sellers marketing the company's products at rates lower than listed prices to make price adjustments, and disconnect supply for those failing to comply. The practice restricted the freedom of online sellers to determine product prices. Pet food consisted of common products. Pet keepers knew the ingredients and ways of use and would continue to purchase. They did not need retailers to provide before-sales or in-store services. Product prices were their concern, not competition between brands. Seeds Taiwan had sold Seeds pet food for years. Golden Cat 170g canned cat food and Golden Cat 80g canned cat food had been available for some time, and so the resale price restrictions were not imposed to help the company to set foot in the market. In other words, restricting the resale prices of online sellers did not have any justification such as encouraging retailers to upgrade the efficiency or quality of their before-sales services, preventing the free rider problem, facilitating the entry of a new business or brand, or promoting competition among brands. Therefore, the practice was in violation of Article 19 (1) of the Fair Trade Act.

An agent sent a letter to every major retail outlet to assert its rights and interests — prudence is needed!

Parallel importer A sold robot vacuum cleaners at every major retail outlet but discovered that some of the outlet operators had received emails from agent B saying that the products of parallel importer A involved intellectual property infringement and they had not passed the inspection performed by the Bureau of Standards, Metrology and Inspection. Moreover, parallel importer A and retail outlet operator D also received letters from a lawyer. Parallel importer A thought his interests were jeopardized and informed the FTC of the incident.

As set forth in Article 45 of the Fair Trade Act, "No provision of this Act shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Act, Trademark Act, Patent Act or other intellectual property laws." In other words, when owners of intellectual property exercise their rights, the Fair Trade Act is not applicable. Nonetheless, to prevent enterprises from making improper announcements that their competitors have infringed their intellectual property rights and caused unfair competition, the Fair Trade Commission has established the "Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement of Copyright, Trademark Rights and Patent Rights" to provide the basis for the assessment of whether the issuance of warning letters by an enterprise for intellectual property infringement is an unfair competitive practice. Therefore, before issuing warning letters, enterprises may refer to the aforesaid disposal directions to see if the intended conduct is legal.

1. Sending emails to express the legitimacy of authorized agency is not a violation of the Fair Trade Act:

Agent B had signed an exclusive agency agreement with the manufacturer to expand its marketing operations and seek cooperation opportunities. Therefore, it sent emails to a number of major retail outlets to inform them that the robot vacuum cleaners marketed by parallel importer A involved intellectual property infringement and also had not passed the inspection performed by BSMI. The FTC's investigation revealed that the intention of agent B was to express the legitimacy of the duly authorized agency that it had acquired from the manufacturer. Therefore, it was not a practice of issuance of warning letters for intellectual property infringement.

2. Taking preliminary procedures before sending warning letters will not cause competitors to lose transaction opportunities as a result of being incapable of defense:

Agent B sent an email to retail outlet operator C and claimed that the text on the web page used by parallel importer A to market robot vacuum cleaners was similar to the text associated with the copyright of agent B, but no authorization had been given. Hence, it was in violation of the Copyright Act. However, the FTC's investigation showed that agent B had issued a lawyer's letter to parallel importer A before sending an email to retail outlet operator C and it was clearly indicated in the letter that parallel importer A might have infringed the copyright of agent B. In other words, agent B had taken preliminary procedures described in the aforementioned disposal

directions and did not cause parallel importer A to lose transaction opportunities for being incapable of defense. For this reason, it was difficult to conclude that there was any violation of Article 25 of the Fair Trade Act.

3. Acting according to the Copyright Act to request retail outlets to eliminate infringement is a proper conduct of the exercise of rights pursuant to the provisions of the Copyright Act:

Agent B also sent a lawyer's letter to retail outlet operator D to point out that no authorization had been given to allow retail outlet operator D to use the aforementioned text to market robot vacuum cleaners online. The FTC's investigation indicated that the letter was intended to indicate that the publicizing material used by retail outlet operator D involved copyright infringement and the infringement had to be eliminated. It was proper conduct of the exercise of rights pursuant to the provisions of the Copyright Act.

Intellectual property owners may be entitled to exercise related rights to remove intellectual property infringement, but such exercise of rights cannot be abused. When an owner of intellectual property intends to issue letters to notify trading counterparts or retail outlet operators, it is necessary to be familiar with related procedures and regulations beforehand in order not to cross the line and violate the Fair Trade Act.

Merger between Qisda Corp. and SYSAGE Technology Approved with Undertakings Attached

The FTC decided at the 1,526th Commissioners' Meeting on Feb. 3, 2021 to approve the merger between Qisda Corporation (hereinafter referred to as Qisda Corp.) and SYSAGE Technology Co., Ltd. (hereinafter referred to as SYSAGE Technology) by citing Article 13 (1) of the Fair Trade Act.

Qisda Corp. intended to acquire more shares of SYSAGE Technology by making a tender offer to hold up to 55.24% of the latter after the merger. The condition complied with the merger patterns described in Subparagraphs 2 and 5, Paragraph 1 of Article 10 of the Fair Trade Act. Meanwhile, the sales of each of the merging parties also achieved the merger filing threshold specified in Subparagraph 3, Paragraph 1 of Article 11 of the Fair Trade Act, whereas the exemption regulation in Article 12 of the same act was not applicable; therefore, Qisda Corp. filed a merger notification with the FTC.

Qisda Corp. (subsidiaries included) mainly produced LCD monitors, projectors, POS system equipment, polarizers, Ethernet switches, wireless local area network equipment and webcams. SYSAGE Technology was a supplier of network infrastructure devices and integrated planning and solution packages associated with information security, data processing and server storage. The merger was a conglomerate one. In the meantime, since the market shares of the merging parties in the global and domestic relevant markets were not big and both companies focused on different consumer needs and clienteles, while their main products and services involved various functions, applications and customers, the original market structure or competition would not change after the merger. Therefore, after reviewing the case, the FTC concluded that the merger would not lead to any significant concerns about competition restraints and the overall economic benefit would be greater than the disadvantages resulting from competition restraints. Therefore, the FTC cited Article 13 (1) of the Fair Trade Act and did not prohibit the merger.

When obtaining more than one third of the shares of SYSAGE Technology and over half of the seats of the latter's board of directors in 2019, Qisda Corp. was required to file in advance but did not. Taking into consideration that Qisda Corp. had already made a late filing along with the notification of this merger through a tender offer while the earlier merger had not caused serious harm to market competition or jeopardized trading order, the FTC therefore did not make any sanction. However, the FTC still issued a warning to remind the company to abide by the filing regulations set forth in the Fair Trade Act when conducting mergers in the future.

Soar Culture in Violation of Fair Trade Act by Posting False Advertisements for Its US Dollar Bill Products

The FTC decided at the 1,513th Commissioners' Meeting on Nov. 4, 2020 that Soar Culture Co., Ltd. (hereinafter referred to as Soar Culture) had violated Article 21 (1) of the Fair Trade Act by posting an advertisement in the United Daily News and claiming, "Our Buddhist money bills are American uncut banknote sheets specifically released by the US Federal Reserve Bank for the exhibition tour of the bone relics of Sakyamuni in China." The wording was a false and misleading representation with regard to production and release of product and could also affect transaction decisions. The FTC imposed an administrative fine of NT$50,000 on the company.

Soar Culture posted the advertisement under the title "'World's No. 1 Buddhist Money Bills' 32 Uncut Sheets to Celebrate the New Year and Pray for Good Fortune." The advertisement carried the wording "Our Buddhist money bills are American uncut banknote sheets specifically released by the US Federal Reserve Bank for the exhibition tour of the bone relics of Sakyamuni in China" and "The US Department of the Treasury particularly instructed the Federal Reserve Bank to release a limited quantity of these uncut US dollar bills." The advertisement made people believe the uncut US dollar bills with a statue of Sakyamuni and the Chinese character "福 meaning 'fortune'" printed on them had really been released by the US Federal Reserve Bank. However, according to the Taichung City Field Division of the Investigation Bureau of the Ministry of Justice, the US Federal Reserve Bank never printed any US dollar bills carrying the picture of a Sakyamuni statue and the Chinese "福" character. Obviously, the content of the advertisement was inconsistent with the fact and could have caused the general public to have wrong perceptions or make wrong decisions. The practice was in violation of Article 21 (1) of the Fair Trade Act.

Sheng Yu Construction in Violation of Fair Trade Act by Posting False Advertisements to Market the "Fu Yu Wen Hui" Housing Project

The FTC decided at the 1,524th Commissioners' Meeting on Jan. 20, 2021 that Sheng Yu (transliteration) Construction Co., Ltd. (hereinafter referred to as Sheng Yu Construction) and Fang Yuan Real Estate Co., Ltd. (hereinafter referred to as Fang Yuan Real Estate) had violated Article 21 (1) of the Fair Trade Act by using dotted lines to mark the balcony space as part of the interior on the "B5 (A3) floor plan" and the "B3 (A5) floor plan" displayed in an advertisement for the "Fu Yu Wen Hui" (transliteration) housing project located in the East District of Hsinchu City. The practice was a false and misleading representation with regard to content and use of product. The FTC imposed administrative fines of NT$1.2 million on Sheng Yu Construction and NT$400,000 on Fang Yuan Real Estate.

The overall advertisement gave people the impression that homebuyers could legally use the balcony space as part of the interior as indicated in the advertisement, so they would make transaction decisions accordingly. However, according to the Hsinchu City Government, to turn the balcony space into part of a bedroom (or the living room) as shown in the as-built drawings would require that an application be made to the city government for approval to make changes to the building use permit in accordance with Article 73 of the Building Act. If the application were not approved, the space would have to be restored to suit the purpose originally approved. Under such circumstances, when the units were handed over, homebuyers would not know that changing the balcony space into part of the interior was illegal and they could not use the space as part of the bedroom as advertised. Apparently, the indication in the advertisement was inconsistent with the fact and it could have caused the general public to have wrong perceptions about the content and use of the units of the housing project or make wrong decisions. Therefore, the conduct was in violation of Article 21 (1) of the Fair Trade Act.

Statistics on Merger Cases

In order to improve management efficiency and international competitiveness, businesses merge through acquisition, joint management and capital contributions in order to benefit from economies of scale. However, to prevent excessive market concentration as a result of the expansion of business scale and avoid impediments to competition, it is stipulated in the Fair Trade Act that mergers involving enterprises reaching a certain scale are to be filed with the FTC in advance. In response to domestic economic development tendencies and international trends, the entire text of the Fair Trade Act was amended on Feb. 4, 2015. In that amendment, a certain amount of revision was made to the definition and range of a merger, the merger notification contents and the duration of review.

According to the statistics compiled by the FTC, there were 14 merger cases between January and March in 2021. A total of 18 of them were processed and closed. When judged by the handling results, 8 mergers were not prohibited, and a review was suspended in 10 cases. Between 2017 and the end of March 2021, the FTC processed and closed 251 merger cases. Judged by the handling results, 106 mergers (42.2%) were not prohibited, 2 were prohibited (0.8%), review was suspended in 143 cases (57.0%, of which 127 cases that did not meet the application standards, did not need to declare the merger or were combined outside the territory and did not affect our market accounted for the largest number of cases, or about 89%).

Table1 Statistics on Merger Cases

Unit: Case

Year	No. of Merger Cases	Processed and Closed				
		Total	Merger Not Prohibited	Merger Prohibited	Review Suspended	Case Combined with Another
Total (2017 to Mar. 2021)	255	251	106	2	143	-
2017	43	44	11	-	33	-
2018	69	67	26	1	40	-
2019	64	60	26	1	33	-
2020	65	62	35	-	27	-
Jan. to Mar. 2021	14	18	8	-	10	-

Between 2017 and the end of Mar. 2021, the FTC approved 106 mergers. When judged according to merger patterns (those complying with two or more patterns are calculated repeatedly), 94 cases involved the possession or acquisition of the shares of other enterprises or the making of capital contributions (Subparagraph 2 of Paragraph 1 of Article 10 of the Fair Trade Act), 80 cases involved the attainment of direct or indirect control of the management or personnel appointment and discharge (Subparagraph 5), 31 cases involved joint operation with another enterprise on a regular basis or entrustment by another enterprise to operate the latter's business (Subparagraph 4), 7 cases involved an enterprise and another enterprise merging into one (Subparagraph 1), and 6 cases involved businesses being assigned by or leasing from another enterprise the whole or the major part of the business or assets of such other enterprise (Subparagraph 3) (Table 2).

Table2 Statistics on Mergers Not Prohibited

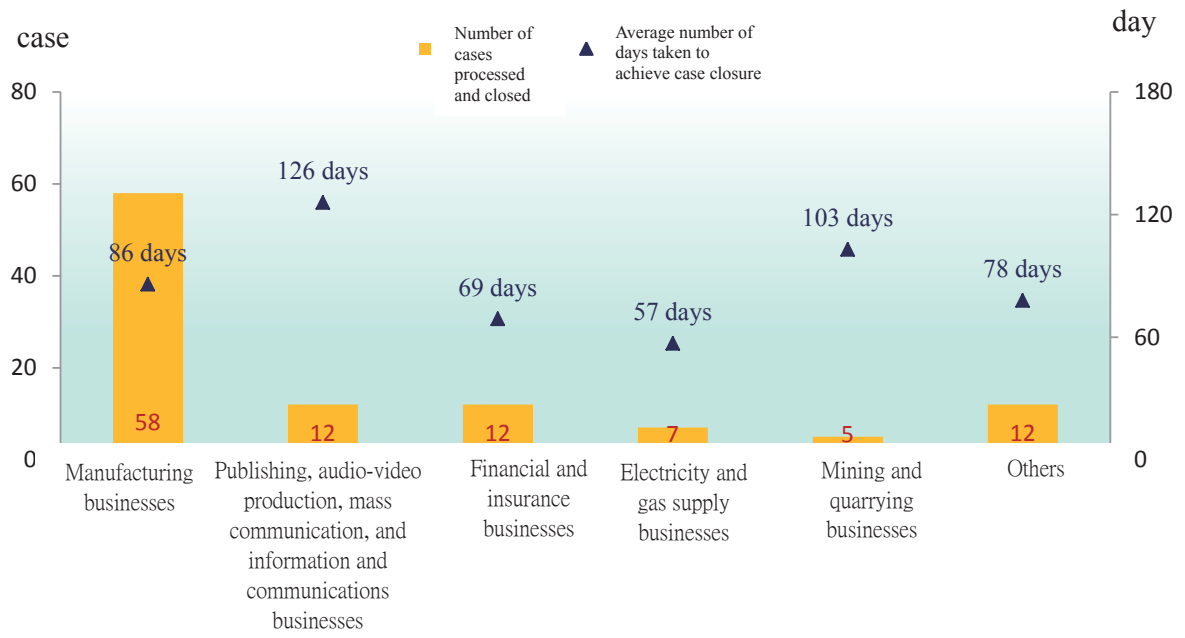
Unit: Case

Year	No. of Mergers Not Prohibited	Analyzed by Merger Type - Paragraph 1, Article 10 of the Fair Trade Act				
		Subparagraph 1	Subparagraph 2	Subparagraph 3	Subparagraph 4	Subparagraph 5
Total (2017 to Mar. 2021)	106	7	94	6	31	80
2017	11	1	7	1	3	5
2018	26	3	22	1	9	21
2019	26	2	22	4	8	17
2020	35	-	35	-	9	31
Jan. to Mar. 2021	8	1	8	-	2	6

Notes: Two or more types of merger were applicable to some of the mergers; therefore, the total number of merger cases is larger than the total number of mergers not prohibited.

A total of 58 mergers were not prohibited. Judged by industry, 58 cases (54.7%) involved Manufacturing businesses and formed the largest group. Publishing, audio-video production, mass communication, and information and communications businesses and Financial and insurance businesses had 12 cases (11.3%) each. These three groups together made up 77% of the prohibited mergers. The average number of days taken to achieve case closure was 88 days. The 126 days needed to close cases associated with the publishing industry, video and audio production industry, communication industry and information and communications service industry was the longest, followed by the 103 days taken to close cases related to the mining and quarrying sector (Figure 1).

Figure 1 Statistics on Mergers Not Prohibited from 2017 to March 2021—by Industry



Notes: The number of days taken to close a merger filing case is calculated starting from the date of receipt of the application to the date of case closure, and the number of days taken for supplementary documents to be turned in is included.

FTC Activities in March and April 2021

- On Mar. 15, The FTC held a seminar on “How to Improve Transparency and Efficiency in the Review of Mergers”.
- On Mar. 15, the FTC conducted the “Multi-level Marketing Supervision System Examination and Discussion” meeting.
- On Apr. 23, the FTC held the “2021 Fair Trade Commission Special Topic Lecture: An Analysis of Cases Involving the Fair Trade Act” in Hsinchu County.
- On Apr. 27, Senior Research Director Chiu Yinghsi of the Science and Technology Law Research Institute of the Institute for Information Industry gave a special topic speech on “Information Policy and Competition Law in the Big Data Environment – Starting with the Tendencies of Development in Europe” at the invitation of the FTC.

1.The FTC holding the “2021 Fair Trade Commission Special Topic Lecture: An Analysis of Cases Involving the Fair Trade Act” in Hsinchu County

2.The FTC inviting Senior Research Director Chiu Yinghsi of the Science and Technology Law Research Institute of the Institute for Information Industry to give a lecture entitled “Information Policy and Competition Law in the Big Data Environment – Starting with the Tendencies of Development in Europe”

FTC International Exchanges in March and April 2021

- On Mar. 2, the FTC attended a videoconference entitled “Approaches to be Taken by Competition Authorities in Digitization and Innovation” held by the ICN Agency Effectiveness Working Group.
- On Mar. 15, the FTC attended a videoconference held by the ICN Operational Framework Working Group.
- On Mar. 23, the FTC attended a videoconference entitled “Barriers to Entry into the Digital Market” held by the ICN Unilateral Conduct Working Group.
- On Mar. 30, the FTC attended a videoconference entitled “Agency Chiefs Workshop– Merger Correction Measures” held by the ICN Merger Working Group.
- On Apr. 6, the FTC attended a workshop entitled “OECD Draft Proposal Regarding the Transparency and Procedural Fairness of Competition Law Enforcement” through videoconferencing.
- On Apr. 12, the FTC attended a videoconference entitled “Draft ICN Operational Framework Amendment” held by the ICN Operational Framework Working Group.
- On Apr. 14, the FTC attended a videoconference entitled “The Relationship between Role Identification and Tension Solution: the Complex Relations between Competition, Consumer Protection and Privacy” held by the ICN Steering Group.

Dear Readers,

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

Regards
Fair Trade Commission

Taiwan FTC Newsletter Reader's Survey

- Nationality : _____
- Category of your organization
  ☐Government ☐Private Corporation☐Embassy☐NGO ☐Media ☐Scholars
  ☐Other (please specify)_____

1. What do you think of the design of the Taiwan FTC Newsletter, including style and photos?
   ☐ Very Good ☐ Good ☐ Average ☐ Bad ☐ Very Bad

2. Are the articles clear and understandable or difficult to understand?
   ☐ Very Clear ☐ Clear ☐ Average ☐ Difficult ☐ Too Difficult

3. Are you satisfied with the contents of the Taiwan FTC Newsletter, including choice of subjects, length and thoroughness of articles?
   ☐ Very satisfied ☐ Satisfied ☐ Average ☐ Dissatisfied ☐ Very Dissatisfied

4. Which section is your favorite one?
   ☐ Selected Cases ☐ FTC Statistics ☐ FTC Activities ☐ FTC International Exchanges

5. What more would you like to see in the Taiwan FTC Newsletter, e.g. different subjects? Do you have any other suggestions?

Your advice：_____

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