

NO **100**

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FTC International Exchanges in May and June 2021

Jing Bing Enterprise Co., Ltd. Violated the Fair Trade Act by Failing to Disclose Complete Franchise Information

The FTC decided at the 1,532nd Commissioners' Meeting on Mar. 24, 2021 that Jing Bing Enterprise Co., Ltd. had violated Article 25 of the Fair Trade Act by failing to provide prospective franchisees with information regarding the expenses needed to purchase products or raw materials before and during operation prior to contract signature when recruiting for the Tunjiang Japanese Ramen Chain. The practice had an effect on the transaction decisions and future interests of prospective franchisees. Therefore, the FTC imposed an administrative fine of NT\$100,000 on the company.

There are a variety of franchise operations and business is booming. Hence, joining a franchise has become a major channel for people in the country to make investments and start their own businesses. Franchisers have the responsibility to "say everything clearly" and disclose important franchise information in advance to allow interested parties to "think clearly" before making decisions. In particular, the expenses needed to join a franchise are very important transaction information that interested parties need to evaluate to decide whether they want to be part of the franchise. Franchisers can provide such information by writing it down on paper, sending it through email or texting it by using communications software such as Line for parties intending to join the franchise to understand.

When recruiting franchisees for the Tunjiang Japanese Ramen Chain, Jing Bing Enterprise Co., Ltd. did not fully disclose information regarding the expenses required to purchase products or raw materials before franchisees begin operation and are in operation. Parties interested in joining the chain would find it difficult to assess the amount of capital they had to put in before opening up a shop and the expenses they needed to pay to operate the shop afterwards. The situation impeded parties interested in joining the chain from making the right judgment and had an effect on their rights and interests. Moreover, it also reduced the opportunities for competitors to

recruit franchisees. The practice was obviously unfair conduct able to affect trading order. For this reason, the FTC imposed the NT\$100,000 fine.

The FTC would like to remind franchisers that they are startup partners with franchisees. When talking with parties interested in becoming part of their franchise, they should fully communicate and provide complete franchise conditions and cost information to establish good cooperative relations to jointly create a win-win situation that will benefit both sides and reduce franchise transaction disputes. 

Farglory Construction Violated Fair Trade Act by Adopting Deceptive Means to Market Presale Homes

To own a home is a dream for many people. However, buying a home is nothing like lining up to purchase delicacies or trying to grab a lucky bag in a department store.

The amounts involved in real estate transactions are huge and the rights and obligations in concern are complicated. Most people have rather limited experience of buying a home throughout their lives. Above all, presale homes cannot be seen or touched. When the housing market is booming and consumers are jostling to buy a home, builders and marketing agents all the more have the responsibility to fully provide important transaction information, so that consumers can have enough information to thoroughly consider a purchase before making decisions. If a business, before putting together all the transaction information, stirs up the atmosphere by creating scenes of people lining up to purchase homes to make consumers nervous about “not having another chance like this again” and takes advantage of the mentality of feeling lucky to win a raffle to push consumers to hastily make home-buying decisions, it may be violation of the Fair Trade Act.

The building license, base shape and location drawings, the layout of each floor, the sizes of the internal and external areas of each unit, the presale home purchase contract, the banks providing the loans, the restrictions on rezoned land and the expenses that homebuyers are responsible for are all important transaction information in presale home purchases. Therefore, when a builder starts marketing a housing project, such information should be ready, and the builder should say everything clearly to allow

consumers to think clearly before making transactions.

When the news about “A thousand people jostling to buy Farglory Ming Ri Zan (transliteration) presale homes” came out, the Ministry of the Interior and the consumer protection and land administration units of Tainan City Government immediately conducted a joint audit. Initially, they did not discover anything in violation of the Fair Trade Act. However, after the FTC performed a further investigation, it was found out that Farglory Construction and Farglory Realty had invited guests to attend the Ming Ri Zan presale home housing project celebration activity before putting together all the information about the products. Consumers carried NT\$100,000 checks to draw lots and pick their units. Originally, 373 teams of consumers had been notified, but 608 teams of consumers showed up to draw lots and place orders for the 205 units released. Before consumers made their choices, Farglory did not provide them with parking space drawings, contracts or information about the banks that would provide the loans.

The FTC thought that such an activity organized to receive guests to draw lots without complete information being provided could cause consumers jostling in the crowd to have positive opinions about the housing project and every person would follow suit. Furthermore, the activity that day developed in consumers the expectation to win the lottery and the mentality that they had to cherish the opportunity to win the lottery and it would be a pity not to make a purchase. The lot-drawing regulation was that each person had only one minute to make the choice; otherwise, the opportunity would be given to the next

group of guests. Under such pressure, consumers winning the lot drawing had to make a hasty decision. Even if they did not see a unit they really liked, they would not give up the right to choose one. Apparently, the decisions and judgments of consumers were affected.

Moreover, the home prices were not even certain on that day. The builder would confirm the prices later. In other words, the builder could adjust the prices according to the intensity of the consumers' response and the price negotiation capacity of consumers in the future would very likely be affected. All these aspects were unfair to consumers. In addition, the practice of Farglory Construction and Farglory Realty was also an act of unfair competition to other real estate businesses that began marketing homes after preparing all the important presale home transaction information.

The Fair Trade Act does not forbid the issuance by real estate businesses of deposit payment receipts to consumers or object to different creative marketing activities. Nonetheless, home buying concerns the lifetime happiness of consumers. When the housing

market is booming, consumers are jostling to buy a home, and selling new homes is not a problem, builders should all the more fulfill their responsibility to provide full product information. Well-known builders should especially serve as role models in the industry. In this case, Farglory conducted the activity for consumers to draw lots and choose units before preparing all the product information. It apparently had a negative effect on normal trading order when consumers made rational decisions after inspecting the presale home transaction information. Therefore, after discussion during the 1,533rd Commissioners' Meeting on Mar. 31, the FTC made the decision to impose administrative fines of NT\$2 million on Farglory Construction and NT\$1.5 million on Farglory Realty.

Buying a home is a lifetime event. The FTC urges all builders to prepare complete information for consumers to take a good look and think clearly before placing an order to buy a home. This will allow consumers to make their choice carefully and happily live in the home that they purchase. 

Merger between Hotai Motors and Hexing International Not Prohibited

The FTC decided at the 1,530th Commissioners' Meeting on Mar. 10, 2021 to approve the merger between Hotai Motor Co., Ltd. (hereinafter referred to as Hotai Motors) and Hexing International Auto Co., Ltd. (hereinafter referred to as Hexing International) by citing Article 13 (1) of the Fair Trade Act.

Hotai Motors and its subsidiary Chang Yuan Motor Co., Ltd. (together with Hotai Motors called Hotai Group hereinafter) intended to acquire more than half of the shares of Hexing International, a subsidiary of Hexin (transliteration) Investment Co., Ltd., to gain control of the management and personnel appointment and dismissal of Hexing International. The condition complied with the merger patterns described in Subparagraphs 2 and 5 of Article 10 (1) of the Fair Trade Act. Moreover, the market share of Hotai Motors also achieved the filing threshold specified in Subparagraph 2 of Article 11 (1) whereas the exemption regulation in Article 12 was not applicable. Therefore, Hotai Motors filed a merger notification with the FTC.

Hotai Group sold bus chassis and Hexing International was a new company set up in 2020. After the merger, the group would engage in bus body building and small truck modification. In the domestic bus market, auto body factories assembled the body

onto the chassis and sold the bus. As an upstream-downstream vertical relationship existed between bus chassis production and bus body building, the product markets associated with this merger were defined as the bus chassis market, bus body market and small truck modification market.

There were many suppliers in the bus chassis market and the bus body market for buyers to choose from. Hexing International was new in the bus chassis market in which buses were customized products and customer preferences could have significant effects on chassis and body specifications. For this reason, the concern about competition restraints occurring in the relevant markets would be low. Although Hexing International might enter the small truck modification market in the future, the likelihood of the company having an impact on important potential competition would not exist because it would be a new competitor.

After reviewing the case, the FTC concluded that the merger would not raise any significant concerns about competition restraints and the overall economic benefit would be greater than the disadvantages from the competition restraints thereof incurred. Hence, the FTC cited Article 13 (1) of the Fair Trade Act and did not prohibit the merger. 

Merger between Giant Heavy Machinery Service and Taiwan International Ports Corporation Not Prohibited

The FTC decided at the 1,533rd Commissioners' Meeting on Mar. 31, 2021 to approve the merger between Giant Heavy Machinery Service and Taiwan International Ports Corporation by citing Article 13 (1) of the Fair Trade Act.

Giant Heavy Machinery Service and Taiwan International Ports Corporation intended to set up and manage Taiwan International Ports Heavy Machinery Corporation jointly. Each would hold over one third of the shares of the joint venture and both companies would directly control the management and personnel appointment and dismissal of the new company. The condition complied with the merger-filing threshold; therefore, a merger notification was filed with the FTC.

The business operations of Taiwan International Ports Corporation and Giant Heavy Machinery Service did not overlap. The former ran port services and the latter provided transportation and stevedoring services. Hence, there was no possibility of potential competition. Although it could be expected that the operations of both Taiwan International Ports Heavy Machinery Corporation and Giant Heavy Machinery Service would involve transportation and loading and unloading of heavy objects in the future, the FTC's assessment indicated that the merger would have no significant influence on the market's structure and

competition. In addition, the quality of services that both companies provided would be different. Market entry barriers were low and there would not be any significant concern about competition restraints in the relevant market.

Meanwhile, Taiwan International Ports Corporation was a monopoly in the domestic port service market. It intended to set foot in the stevedoring service market, but the operations would not involve the company's duties to provide port services. Moreover, the company also clearly expressed that it would not impede competition in the transportation and stevedoring service market. In addition, the Ministry of Transportation and Communications, the competent authority, and the Ministry of Economic Affairs also concurred that the merger would lead to positive effects on the government's policy to develop the offshore wind power industry.

After reviewing the case, the FTC concluded that the merger would not arouse any significant concern about competition restraints and the overall economic benefit would outweigh any disadvantages from competition restraints thereof incurred. Therefore, the FTC cited Article 13 (1) of the Fair Trade Act and did not prohibit the merger. 

doTERRA Taiwan Violated the Multi-level Marketing Supervision Act by Changing its Sales System without Filing with the FTC in Advance

The FTC decided at the 1,521st Commissioners' Meeting on Dec. 30, 2020 that the Taiwan branch office of US-based doTERRA Co., Ltd. (hereinafter referred to as doTERRA Taiwan), a multi-level marketing business, had violated Article 7 (1) of the Multi-level Marketing Supervision Act by changing its product items and sales system without filing with the FTC in advance. The FTC imposed an administrative fine of NT\$200,000 on the company.

doTERRA Taiwan registered with the FTC in 2009 as a multi-level marketing business to sell beauty care products and essential oils. When the FTC's staff

members visited the main office of doTERRA Taiwan for business inspections on Mar. 27, 2020, however, they discovered the company had stopped marketing 12 product items that were part of the Sunshine Good Mood packages, had changed the prices and bonus points of the Four-season Three-treasure capsule food items, and had added vegetarian nutritional milkshakes to its product list without filing with the FTC in advance. The conduct was in violation of Article 7 (1) of the Multi-level Marketing Supervision Act. 

You Xuan Co., Ltd Violated the Fair Trade Act by Posting False Advertisements to Market Water Purification Products

Clean water is closely associated with people's health. The credibility of the certification conducted by the US National Sanitation Foundation (NSF) is an important consideration when most consumers shop for water purification products. However, does buying water purification products that are claimed to have been certified by the NSF really mean you will have healthy and clean water?

When marketing the US OLSMO PURE activated carbon on the Shopee shopping website, You Xuan Co., Ltd. claimed the product had been certified by the NSF. Nevertheless, related certification information could not be found on the NSF certification database or the company website of OLSMO PURE. In addition, both You Xuan Co., Ltd. and the importer of the product were unable to provide related evidence. In other words, the claim of You Xuan Co., Ltd. that the

product had been certified by the NSF would cause consumers to have the wrong perception that the product in question could have better quality and performance than other water purification products that had not been certified. It was in violation of Article 21 (1) of the Fair Trade Act and the FTC decided at the 1,534th Commissioners' Meeting on Apr. 7, 2021 to impose an administrative fine of NT\$50,000 on the company.

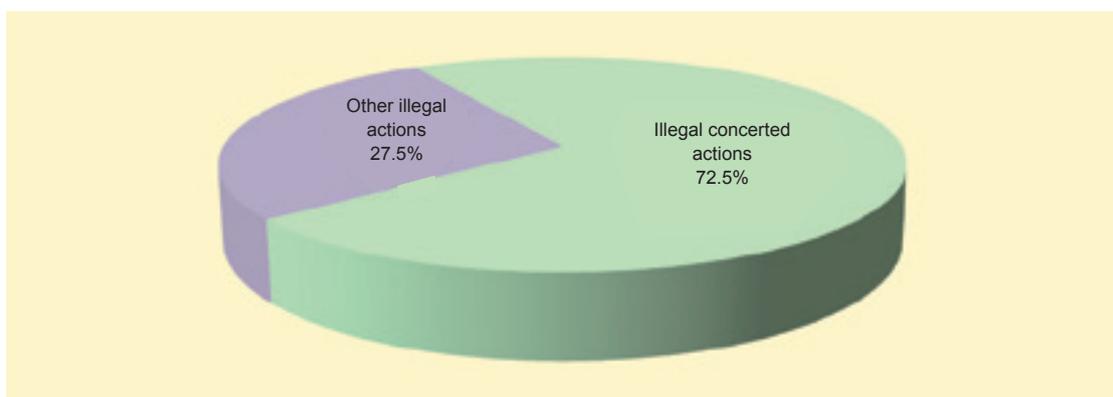
The FTC urges consumers to check thoroughly and make comparisons when shopping for water purification products in order to protect their own interests. At the same time, the FTC also reminds related businesses to make sure that the content of advertisements that they post is real, correct and complete in order not to break the law. 

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. To prevent competitors from engaging in concerted actions to impede market competition and infringe on consumers’ interests, it is clearly stipulated in the Fair Trade Act that concerted actions able to affect production, product transactions or supply-demand functions are strictly forbidden. However, joint practices that comply with the concerted actions listed in the Fair Trade Act as qualified for exceptional permission, likely to benefit the overall economy and public interest, and have been approved by the FTC are not included.

Statistics show that the FTC issued and maintained penalties for 4,728 cases between 1992 and the end of June 2021 with total fines of NT\$17,536,250,000. Of these, 1,219 companies were penalized in 193 cases (4.1%) involving concerted actions with total fines of NT\$12,719,640,000 (accounting for 72.5% of all fines). Each penalty averaged 6.3 companies with each company on average being fined NT\$10,430,000 (Fig. 1, Table 1).

Fig. 1 Ratio of fines for illegal concerted action cases to the total fine amount
To the end of June 2021



Judging by the distribution of the fine amounts, as of the end of June 2021, the majority of 114 cases (59.1%) had fine amounts of less than NT\$1 million followed by 46 cases (23.8%) with fine amounts between NT\$1 million and NT\$10 million. The total of the above cases accounted for up to 83% of all cases. In addition, there were only 10 cases for fine amounts of NT\$100 million and above, totaling NT\$11,895,780,000 and accounting for 93.5% of all fine amounts (Table 1).

Table 1 Illegal concerted action cases – Breakdown by fine amount
To the end of June 2021

Fine Amount	Number of Cases (a)		Number of Companies (b)		Fine Amount (10 thousand NT\$) (c)		Average Number of Companies Per Case (b)/(a)	Average Fine Per Company (10 thousand NT\$) (c)/(b)
		Percentage (%)		Percentage (%)		Percentage (%)		
Total	193	100.0	1,219	100.0	1,271,964	100.0	6.3	1,043
Less than NT\$1 million	114	59.1	503	41.3	1,990	0.2	4.4	4
NT\$1 million ~ NT\$10 million	46	23.8	387	31.7	12,810	1.0	8.4	33
NT\$10 million ~ NT\$100 million	23	11.9	258	21.2	67,586	5.3	11.2	262
NT\$100 million and above	10	5.2	71	5.8	1,189,578	93.5	7.1	16,755

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

When observing cases involving industries engaging in illegal concerted actions, other service industries accounted for the most cases (49 cases, 25.4%) followed by the manufacturing industry (45 cases, 23.3%). The electricity and gas supply industries accounted for the highest penalties with NT\$6,496,040,000 (51.1%) followed by the manufacturing industry with NT\$5,972,290,000 (47.0%) (Table 2)

**Table 2 Illegal Concerted Action Cases by industry
To the end of June 2021**

Unit: Case; Company; 10 thousand

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	193	4	45	13	3	11	19	16
Number of Companies	1,219	59	380	169	24	119	213	56
Fine Amount	1,271,964	825	597,229	649,604	1,940	890	5,883	2,209

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	5	5	3	1	4	1	4	49
Number of Companies	29	11	5	18	3	39	4	18	72
Fine Amount	8,896	200	90	254	-	274	20	500	3,150

Notes: 1. Penalties maintained for cases include unconfirmed cases that are still in 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 2021

- On May 5, 7, 10 and 11, the FTC conducted the “Various Aspects of Trading Traps” activity, respectively, at the Dayuan District Office, Taoyuan City, the Jidong (transliteration) Community Development Association, Meinong District, Kaohsiung City, Xinyi District Office, Taipei City, and the Guangfu Community Development Association, Qishan District, Kaohsiung City.
- On May 5 and 12, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp,” respectively, at the Department of Agribusiness Management, National Pingtung University of Science and Technology and the Graduate Institute of Science and Technology Law, National Kaohsiung University of Science and Technology.
- On May 6 and 7, the teachers and students of the Department of Finance and International Business, Fu Jen Catholic University and the Department of Financial and Economic Law, Chung Yuan Christian University, respectively, attended the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp.”



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1. The FTC conducting the “Various Aspects of Trading Traps” at the Jidong (transliteration) Community Development Association, Meinong District, Kaohsiung City.
2. The FTC conducting the “Various Aspects of Trading Traps” at the Guangfu Community Development Association, Qishan District, Kaohsiung City.
3. The FTC conducting the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Technology and the Graduate Institute of Science and Technology Law, National Kaohsiung University of Science and Technology.
4. The teachers and students of the Department of Financial and Economic Law, Chung Yuan Christian University attending the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp.”

FTC International Exchanges in May and June 2021

From Jun. 7 to 11, the FTC attended the June Routine Meeting of the OECD Competition Committee via videoconferencing.



1.The FTC sharing application of the relevant methodology in a case at the OECD Competition Committee.

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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