

Taiwan FTC Newsletter



Creating a Quality Competition Environment in Taiwan

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Merger of Taiwan mobile co., Shengting co., and Kbro co., not prohibited by the FTC



Dissemination of patent infringement warning punished by the FTC



Inaccurate on-line price labels damage a business's reputation



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Merger of Taiwan Mobile Co., Ltd., Shengting Co., Ltd., and Kbro Co., Ltd. Not Prohibited by the FTC

During its 943rd Commissioners' Meeting on December 2, 2009, the FTC resolved the case in which Taiwan Mobile Co., Ltd. (hereinafter called the applicant) applied to merge with Shengting Co., Ltd., Kbro Co., Ltd. and 12 cable TV system operators controlled thereby. The merger was not prohibited, but constraints were attached pursuant to Article 12(2) of the Fair Trade Act.

The FTC indicated that the merger had a slight effect on mobile and fixed communications service markets. Even though there were concerns that the merger may restrict competition in the cable TV service and satellite TV program supply market, it would improve competition in the data communications service market (also referred to as the internet access service market.) The FTC reached the following conclusions after scrutiny. The merger 1) challenges the long dominant fixed and data communications service leader in telecommunications infrastructure and the Internet, which enhances competition in

internet service; 2) develops the digitalization of cable TV, which improves visual media industry and provides consumers with multiple selections; and 3) integrates mobile, broadband and cable TV resources, provides innovative digital convergence service, and helps the development of and competition within the digital convergence industry which are beneficial to the general economy. As for the cable TV system and satellite TV program supply markets, there are concerns that the applicant and its subordinate companies may abuse their market power, thus creating a closed market which imposes entry barriers to specific markets and restricts market competition. The FTC concluded that the concerns are to be alleviated with the advances in telecommunications technology, the digitalization of cable TV, competition with fixed communications enterprises which provide multi-media content service, the 4C market after digital convergence, the convergence of service, and ex ante regulation. In addition, the FTC

also consulted relevant authorities, experts and scholars, as well as the industry for opinions. Most of them confirmed the overall economic benefits of this merger. As a result, the FTC resolved to attach structural and behavioral constraints to eliminate potential disadvantages resulting from restrictive competition.

The FTC believes that the development of digital convergence will weaken the boundaries of telecommunications industries in the future. The concerns with restrictive competition in this case have to do with the cable TV service and satellite TV program supply market. The two markets are less concentrated and smaller, as compared to the fixed telecommunications service and data communications service markets. Hence, under the trend of digital convergence, the leader in the fixed communications internet service will expand to the visual media and other relevant industries, therefore largely affecting the structure of the telecommunications media industry after convergence takes place. According to the current

industry structure and future developments, only a competition structure that disregards the current restraints on business scale as defined by permits can make the relevant industries compete on the platform that is based on the infrastructure and communications network. Therefore, it is important to create a second broadband internet and to compete with market leaders in the fixed telecommunications network. Issues related to telecommunications regulations in the merger shall be reviewed by relevant authorities according to jurisdictions and regulations.

After considering the current legal framework, the relevant market structure and competition, different views, future technology developments, and the competitiveness after future digital convergence, the FTC concluded that the overall economic benefit was greater than the disadvantages of competitive restraint in this merger. As a result, the merger was not prohibited pursuant to Article 12(2) of the Fair Trade Act, but the following 10 constraints were attached:

1. The applicant shall, within 1 year since the second day after receiving this decision, report the shares it directly or indirectly controls in one of the cable TV systems.
2. The applicant and its subordinate companies shall not appoint representatives to be the director, supervisor, or general manager of Mangrove Cable TV Inc. within 3 years since the second day after receiving this decision.
3. The applicant and its subordinate companies shall not produce or sell 21 or more analog satellite TV programs within 3 years since the second day after receiving this decision.
4. The applicant and its subordinate companies may not refuse the authorization of satellite TV programs produced or licensed to other cable TV system operators, direct satellite TV service operators, multi-media content service providers, or other competitors in cable or



wireless internet signal transmission that provide channel service, and they may not engage in other differentiations without due cause.

5. The applicant and its subordinate companies may not sell at different prices or impose other conditions on the satellite TV programs produced or licensed to other cable TV system operators, direct satellite TV service operators, multi-media content service providers, or other competitors in cable or wireless internet signal

transmission that provide channel service without due cause.

6. The applicant shall, within 3 years since the second day after receiving the decision, submit the name and agent agreement of satellite TV programs produced or sold by the applicant and subordinate companies by each July 1 to the FTC.

7. The applicant shall, within 3 years since the




second day after receiving the decision, submit trading information such as the quote, license price, promotion, and sales target of satellite TV programs produced or sold by the applicant and subordinate companies by each July 1 to the FTC.

8. The applicant shall, within 3 years since the second day after receiving the decision, submit the trading information such as the retail and wholesale prices of internet service by the applicant and subordinate companies and the interconnection bandwidth charges for other major data communications service companies by each July 1 to the FTC.

9. The applicant and its subordinate companies shall, within 6 months since the second day after receiving the decision, adopt the pricing scheme based on information flow or provide adequate free connection in the quote of interconnection bandwidth charges for their cable TV internet

system.

10. The applicant and its subordinate companies shall, within a period of 3 years since the second day after receiving the decision, comply with the following items regarding their cable TV network, which are beneficial to the general economy: A. Actively complete the digitalization and two-way construction of a cable TV network to increase the consumer's free program selections; B. Construct the "standard open network platform," "user-end convergence interface," and "client service convergence platform" for telecommunications and the cable TV network as well as services to improve the open platform of digital convergence; and C. Provide relatively attractive prices, quantity and quality, or other trading conditions for the broadband internet service, compared to major data communications service companies (ISP). 

Dissemination of Patent Infringement Warning Punished by the FTC

During its 941st Commissioners' Meeting on November 18, 2009, the FTC resolved the following case. Mr. Delong Li failed to comply with the advance procedure confirming rights infringement before disseminating a warning letter alleging that the "water-saving devices for high-temperature dyeing machines" bought from the complainant infringed Mr. Li's patent. Such action sufficiently affected trading order and was obviously unfair. It violated Article 24 of the Fair Trade Act. An administrative fine of NT\$ 50,000 was imposed, and the illegal activity was ordered to cease immediately.

The FTC found that Mr. Delong Li was the actual representative of Hongying Enterprise Co.; he acquired the M306593 patent on "water-saving devices for dyeing machines" through patent assignment, and the patent certificate was completed on March 5, 2008 after the transfer and registration. Mr. Delong Li sent a certified letter notification through the post office on February 19, 2009 to two trading counterparts

of the complainant, alleging that the "water-saving devices for high-temperature dyeing machines" that the two companies bought from the complainant infringed the latter's patent and should be suspended. The two companies were told to stop using the disputed product to avoid potential patent infringement. Mr. Delong Li admitted that he did not send the target of the M306593 patent infringement to a specialized institute for assessment nor did he acquire the assessment report before sending the warning letter. Moreover, evidence of patent infringement was not determined by the court. In addition, the related party implied that the assessment report on patent infringement was not attached to the warning letter. Specific facts regarding the content, scope, and damage of patent infringement were not set forth in the warning letter for the recipient to acknowledge the potential right infringement. Mr. Delong Li sent a patent warning letter without first complying with the advance procedure for patent infringement; such inadequate exercise of patent rights is blamable under business ethics, is

sufficient to affect trading order and is obviously unfair. Therefore, it violated Article 24 of the Fair Trade Act.

After considering the following factors, namely, Mr. DeLong Li's motive, objectives, expected benefits resulting from the illegal behavior; the business scale, operation and market position; whether the central competent authority had

corrected or warned of such violations; the type/times/interval/penalty for law violations; the attitude after committing illegal activities and manner of cooperation, and other factors, the FTC ordered the illegal activities to be ceased immediately and imposed an administrative fine of NT\$ 50,000 pursuant to Article 41 of the Fair Trade Act.



Inaccurate On-line Price Labels Damage a Business's Reputation

The Internet provided an incomparable convenience to our society in the late 20th century and totally changed people's lifestyles and economic activities. Virtual stores are gradually replacing brick-and-mortar ones and have become the top shopping choice. However, the prices of online products frequently change, and incorrect price labels are found from time to time. If a company refuses to accept orders or make shipments due to incorrect price labels, this may result in disputes with consumers and also damage the business's reputation. To avoid such disputes, consumers expect the government to intervene, and the first candidate in mind is the FTC. However, is on-line market competition affected by incorrect price labels? Should the Fair Trade Act be invoked in such incidences?

In late June and early July 2009, a famous US computer company posted inaccurate price labels for LCD monitors and PCs on its website on two consecutive occasions. The large price gap attracted discussions in forums, and internet shoppers competed to place orders. The two incidents attracted 64,569 orders for more than



190,000 wrongly-labeled products, which involved a total amount of NT\$1,450,000,000. However, the computer company refused to accept the orders and make shipments, giving the excuse that the price labels were inaccurate. This caused a great uproar, and the company's business reputation was damaged after multiple news reports.

The FTC initiated investigations soon after the incidents on July 6, 2009, to determine whether such inaccurate price labels violated Article 21 of the Fair Trade Act. The FTC found that the wrong

price was due to errors in system operations. The FTC said that Article 21 of the Fair Trade Act was concerned with false, untrue, or misleading advertisements to prevent unfair competition, whereby an enterprise may mislead or deceive trading counterparts by using advertisements to form trading agreements with the advertiser.

However, in the two incidents involving incorrect price labels, the said computer company had not processed any orders at the wrong price. The untrue price was not a means of unfair competition to conceal true trading information or omit material trading information, as may be the case when certain trading counterparts conclude such an agreement with a computer company. Hence, the computer company did not create unfair competition by imposing incorrect price labels. As a result, the FTC concluded that the two incidents did not constitute unfair competition as regulated by the Fair Trade Act; there was merely a consumer dispute.

Even though by nature the two incidents involving incorrect price labels differed from the objective of regulating false advertisements under the Fair

Trade Act, consumers who had already placed an order could still exercise their rights under the Consumer Protection Act or Civil Procedure Act. Whether the company should compensate the consumer or not shall be determined on a case-by-case basis according to specific facts, which are to be determined by the consumer protection authorities and civil courts.

Although these types of disputes are not regulated by the Fair Trade Act, in order to protect consumer rights and maintain trading security, the Consumer Protection Commission of the Executive Yuan is reviewing the “Items to be or not be included in the standard on-line retail agreement.” Its future promulgation will enhance the consumer’s trust in business via the Internet, clarify the liability of incorrect price labels, and promote the development of the electronic business industry.

As a reminder, enterprises shall strengthen their internal controls and training programs to ensure accurate online pricing and avoid consumer disputes resulting from inaccurate price labels, which may damage a business’s long-established reputation.



Statistics on Commissioners' Meetings

1. Introduction to Commissioners' Meetings

The "Commissioners' Meeting" of the Fair Trade Commission (FTC), Executive Yuan is the highest decision-making unit of the FTC. The meeting runs by the collegiate system to incorporate different opinions and review important FTC policies. The Commissioners' Meeting is composed of 9 designated commissioners (including one chairman and one vice chairman), who shall each serve a three-year term and may be re-appointed for one more term. Its functions include:

- (1) the review of fair trade policies;
- (2) the deliberation over and review of the administration of fair trade programs;
- (3) the review of cases related to the public notice, approval, and disposition under the Fair Trade Law;
- (4) the deliberation over matters arising under the Fair Trade Law and regulations;
- (5) the review of proposals presented by any of the Commissioners; and

(6) other matters requiring resolution at meetings of Commissioners as prescribed by law.

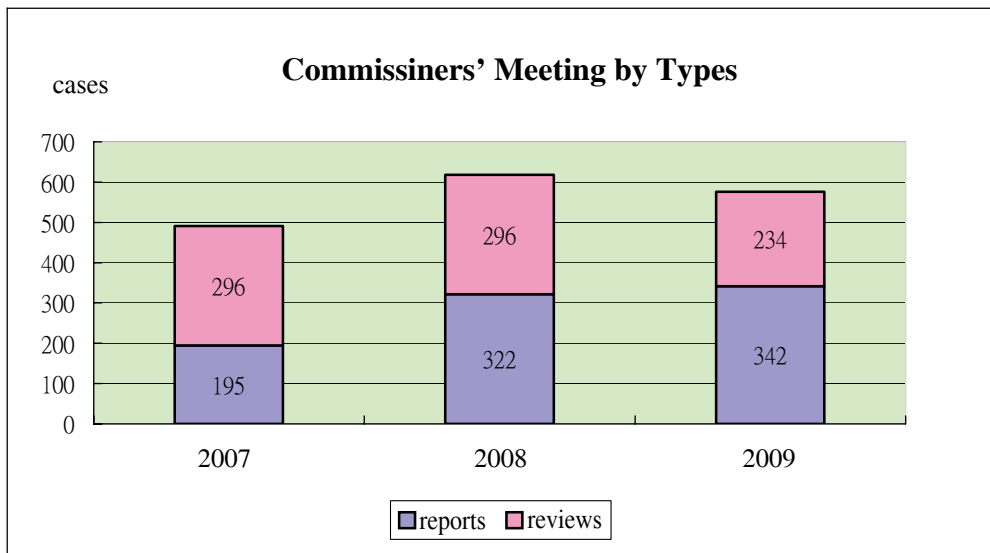
2. Commissioners' Meetings in 2009

In 2009, the FTC Commissioners' Meeting convened 52 times, in which there were 576 proposals, with 234 (40.6%) for review and 342 (59.4%) for reports. On average, there were 11.1 proposals in each meeting, of which 4.5 were reviews and 6.6 were reports.

The 234 reviews by type included 156 complaints and initiated investigations, 30 applications and notifications, 17 laws and regulations, 6 requests for explanation, 2 projects and plans, 2 studies, and 21 others. The reviews by results included 171 passed (73.1%), 49 modified (20.9%), 10 suspended (4.3%) and 4 others (1.7%).

If interested in the FTC Commissioners' Meeting, please visit the FTC website for more information:
<http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=199>






Reviews -- by type

Unit: Case; %

Year	Total	Laws & Regulations	Projects & Plans	Complaints and Initiated Investigations	Applications & Notifications	Requests for Explanation	Studies	Other
2007	296	22	-	220	39	1	6	8
2008	296	20	1	218	36	1	7	13
2009	234	17	2	156	30	6	2	21
Year	Percentage							
2007	100.00	7.43	-	74.32	13.18	0.34	2.03	2.70
2008	100.00	6.76	0.34	73.65	12.16	0.34	2.36	4.39
2009	100.00	7.26	0.85	66.67	12.82	2.56	0.85	8.97

FTC Activities in January 2010

- On January 5, the FTC invited Director Ming-Yen Tseng of the Polaris Research Institute to lecture on “Market Competition and Financial Globalization.”
- On January 19, the FTC invited Professor Chuen-Fa Chuang, Department of Finance, Jinwen University of Science and Technology to lecture on “Open Radio Market, Diversity, and Localization.”
- On January 25, the FTC held a workshop on “Competition Issues Regarding Separate Price Labels in Presold Housing”
- On January 28, the FTC held the “Sixth Farewell Party for Retired Commissioners.” 



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2. The FTC invited Professor Chuen-Fa Chuang, Department of Finance, Jinwen University of Science and Technology to lecture on “Open Radio Market, Diversity, and Localization.”
3. Retired Commissioners in the Sixth Farewell Party (from left to right): Dr. Rong-Chwan Chen, Dr. Hsin-Wu (Xin-Wu) Lin, Dr. Chih-Min (Andy) Chen, Acting Chief Secretary Shiow-Ming Wu, Ms. Ya-Shu Chou, and Dr. Mei-Ying Huang.
4. Chief Secretary of the FTC and retired Commissioners (from left to right): Commissioners Yi-Yu Lin, Rong-Chwan Chen, Chih-Min (Andy) Chen, Hsin-Wu (Xin-Wu) Lin, and Chief Secretary Cheng-Wuh Wu.

FTC International Exchanges in January 2010

- On January 12, the FTC took part in the conference call of the “ICN Merger Working Group”
- On January 14, the FTC took part in the conference call of the “ICN Competition Experience Sharing Plan -- Competition in the Financial Market in Mexico”
- On January 26, the FTC took part in the conference call of the “ICN Merger Working Group”
- On January 28, the FTC took part in the conference call of the “ICN Cartel Working 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. When completed, it would be appreciated if you would please send it by e-mail to ftcnl@ftc.gov.tw or directly fill in the questionnaire at the website (<http://www.ftc.gov.tw>). Thanks for your assistance and cooperation.

Fair Trade Commission
Regards

Taiwan FTC Newsletter (No.13 ~ No.25) Readers Survey

■ Nationality : _____

■ Category of your organization :

- Government Embassy Commerce Institute
 Private Corporation NGO
 Other (please specify) _____

1. What do you think of the design of the Taiwan FTC Newsletter, including characters, photos?

- Very Good Good Average
 Bad Very Bad

2. Are the texts clear and understandable, or too difficult?

- Very Clear Clear Average
 Difficult Too Difficult

3. Are you pleased 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 Development of Laws and Regulations
 FTC Statistics FTC Activites
 FTC International Exchanges

5. What more would you like to see in the Taiwan FTC Newsletter? For example what other subjects? Any other ideas?

Your advice :

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