

NO **104**

TAIWAN FTC NEWSLETTER

2022.4

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Merger of FamilyMart Convenience Stores, E.Sun Commercial Bank and PI Mobile Technology Inc. Not Prohibited

The FTC decided at the 1,565th Commissioners' Meeting on Oct. 13, 2021 to cite Article 13 (1) of the Fair Trade Act and approve the intended joint venture of FamilyMart Convenience Stores, E-Sun Commercial Bank and PI Mobile Technology Inc. to set up All Win Fintech Co., Ltd. to run electronic payment operations.

FamilyMart Convenience Stores, E.Sun Commercial Bank and PI Mobile Technology operated in different fields and respectively managed convenience store chain business, banking business and third party payment business. However, each merging party provided mobile payment services. In addition, E.Sun Commercial Bank, the subsidiary of PI Mobile Technology Inc. and All Win Fintech Co., Ltd., the new company to be created, had all been approved by the Financial Supervisory Commission to run electronic payment business either as a sole operation or as a sideline. Therefore, the FTC evaluated the case from the angles of a horizontal merger and conglomerate merger.

As far as a horizontal merger was concerned, the content of the mobile payment services provided by and the marketing positioning of each merging party was not entirely the same. Competition in the relevant market to which each merging party belonged was fierce while there were also other powerful contenders. Consumers could easily change their trading counterparts. Hence, the merging parties would not have the ability to raise their product or service prices as a result of the merger. Meanwhile, the incentives for them to compete

with one another would not be reduced either and the possibility and timeliness for new competitors to enter the mobile payment market also existed.

As for the conglomerate merger part, regulatory measures, technological progress and cross-industry development plans were unlikely to have any influence on the potential competition in the relevant markets. With regard to the purposes of the merging parties to create a joint venture to manage mobile payment operations, FamilyMart wanted to provide consumers with diverse and convenient payment services, whereas E.Sun Bank and PI mobile Technology intended to increase their cooperation with retail businesses. For this reason, the merging parties had no incentives to decrease or refuse cooperation with existing businesses in the relevant markets. Moreover, other competitors could also develop their mobile payment services or collaborate with other enterprises to cope with the merging parties. For this reason, the merger would not suddenly change the structure of the relevant markets and the original market status. On the contrary, it could have the positive effect of promoting competition in the mobile payment service market.

In addition, the FTC also made assessments in accordance with the user information and accumulated data involved in this case as well as digital competition issues such as the protection of personal information while taking into account the types and characteristics of user information and data that the merging parties could obtain through the merger as well as the market conditions. Competitors could collect such information from other sources or replace it with other information. Therefore, the FTC found it hard to consider that the user information and data that the merging parties could get hold of would bring them a competitive edge that other competitors could not duplicate. At the same time, the merger could not lead to the elimination of the competition pressure of the merging parties as far as the protection of personal information was concerned. In other words, it was not possible for competition to be weakened due to the merging parties' use of privacy protection as a pretext.

After reviewing the case, the FTC concluded that the merger would not result in significant competition restraints and the overall economic benefit would be greater than the disadvantages thereof incurred. The FTC thus decided to approve the merger by citing Article 13 (1) of the Fair Trade Act. 

Agoda Violated the Fair Trade Act by Using a Competitor's Name to Post a Keyword Advertisement

The FTC decided at the 1,568th Commissioners' Meeting on Nov. 3, 2021 that Agoda Company Pte. Ltd. (hereinafter referred to as Agoda) had violated Article 25 of the Fair Trade Act by using the name of a competitor in a keyword advertisement and posting the name of "Easytravel" and the URL of Agoda. The practice was obviously unfair conduct in that it exploited the achievement of the efforts of another and was able to affect trading order. The FTC imposed an administrative fine of NT\$1 million on the company.

Agoda managed its website to provide online services for consumers to make room reservations at over two million hotels. Between 2017 and Mar. 17, 2021, the company used the name of its competitor Easytravel in a keyword advertisement. When consumers entered the word "Easytravel", the search results would display the name of the competitor, but the link appearing at the top or the bottom of the web page would connect to the website of Agoda.

The FTC's investigation showed that "Easytravel"

was the registered trademark of Easytravel. When the name Easytravel was used in the keyword advertisement, it could make consumers think that Easytravel and Agoda were the same company or affiliated enterprises. If consumers were confused and unknowingly clicked the keyword advertisement, they would be intercepted and connected to the online booking platform of Agoda. As a consequence, the chances for Easytravel to get potential customers were reduced and the economic interests behind the name of Easytravel were jeopardized. Agoda should not have used the advantages of its reputation to exploit the achievement of another and suppress or obstruct competition in the market.

After reviewing the case, the FTC concluded that Agoda's keyword advertisement purchases on Google and Yahoo! Kimo had affected the trading order in the online hotel room booking market in violation of Article 25 of the Fair Trade Act. Therefore, the FTC imposed an administrative fine of NT\$1 million on the company. 

Merger between Veolia S.A. and Suez S.A. Not Prohibited

The FTC decided at the 1,558th Commissioners' Meeting on Aug. 25, 2021 to cite Article 13(1) of the Fair Trade Act and not to prohibit the intended merger of French company Veolia Environnement S.A. (hereinafter referred to as Veolia S.A.) with French company Suez S.A. by making a public takeover offer to the latter.

Veolia S.A. intended to acquire more than half of the shares of Suez S.A. to control its business management or personnel appointment and dismissal. The condition achieved the filing threshold; therefore, Veolia S.A. filed a merger notification with the FTC.

Veolia S.A. and Suez S.A. were both the parent companies of businesses operating incineration plants in the country and had the final control. Through Onyx Ta-Ho Environmental Services Co., Ltd. and Hong Kong-based Suez NWS Ltd., they signed contracts with county and city governments to operate local incineration plants. At the same time, Suez S.A. was also a potential supplier of upstream materials and key equipment in the industrial water supply industry. Therefore, the case involved horizontal and vertical merger patterns.

Related businesses offered bids to obtain the right to manage incineration plants and there were many competitors. The merging parties had not always been leading companies in the profession. Furthermore, when the original contract expired, the new contract

would be put out to tender and the management right often changed hands. In other words, existing contract awardees would not necessarily retain their market status for a long time.

In addition, related regulations in the Waste Disposal Act and the trading counterparts (county and city governments) could also place such businesses under control. As a consequence, the disadvantages resulting from competition restraints in the horizontal competition market were not significant. The merger was expected to benefit waste disposal operations and upgrade related technologies.

As for the vertical merger part, the FTC thought that the market shares of Veolia S.A. and Suez S.A. were limited. They had to face competition from domestic and foreign businesses. The market entry conditions would not change as a result of the merger. The two companies would not be able to create foreclosure to increase the operating costs of their competitors. Hence, the impact on the industrial water supply market would not be significant.

After reviewing the case, the FTC concluded that the overall economic benefit of the merger would outweigh the disadvantages from competition restraints and, therefore, approved the merger by citing Article 13 (1) of the Fair Trade Act. 

PChome Online and Jing Deh Enterprises Posted False Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1,569th Commissioners' Meeting on Nov. 10, 2021 that PChome Online Inc. (hereinafter referred to as PChome Online) and Jing Deh Enterprise Co., Ltd. (hereinafter referred to as Jing Deh Enterprises) had posted false advertisements for the "Mika House micro-fiber kitchen water absorption pad" product on the PChome Online 24h shopping platform. Therefore, the FTC imposed administrative fines of NT\$100,000 and NT\$50,000 on the two companies, respectively.

PChome Online and Jing Deh Enterprises started to market the product in question in Mar. 2016. The product was originally manufactured in Taiwan. In Jan.

2019, the place of origin became China, but the two companies continued to post the claim of "place of origin: Taiwan" to indicate that it was made in Taiwan between Jan. 2019 and Jul. 2021. Since the place of origin was a factor to be considered when consumers made their purchase decisions, posting the false claim in the advertisement was in violation of Article 21 (1) of the Fair Trade Act.

The FTC would like to remind related businesses to check and revise the content of advertisements after changes are made to their products. They need to ensure that the content and the facts are consistent in order not to break the law. 

SoldOutSoon Posted False Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1,570th Commissioners' Meeting on Nov. 17, 2021 that SoldOutSoon Digital Marketing Co., Ltd. (hereinafter referred to as SoldOutSoon) had violated Article 21 (1) of the Fair Trade Act by claiming that the battery for the Uah cat litter box companion (a deodorizing device) marketed on quickbuy.com.tw was a second generation product with the capacity upgraded to 4,000mAh. The FTC imposed an administrative fine of NT\$50,000 on the company.

When consumers shopped for chargeable electrical appliances, the battery capacity was therefore an important consideration because it was related to charging frequency. If the battery capacity of a purchased product was not as claimed in

advertisements and the battery had to be charged more frequently, it could make consumers rather upset. SoldOutSoon claimed in the advertisement that the battery capacity had been upgraded to 4,000mAh, but the battery given to consumers was only 2,600mAh in capacity. The difference was too great. The claim was posted to attract trading counterparts and it caused consumers to have the wrong perception and make the wrong decision.

The FTC would like to remind related businesses not to exaggerate when posting advertisements. They need to make sure their product specifications are consistent with the claim in corresponding advertisements in order not to break the law. 

Statistics on Cases Involving Unfair Competition Practices

As a result of the fierce business competition nowadays, the use of advertisements by enterprises to feed consumers false information to stimulate purchases is a common phenomenon. Some companies even spread false messages to sabotage the reputation of others in order to obtain more customers. For this reason, the FTC has to keep a close watch on businesses engaging in unfair competition to bring them under control in order to protect trading order and consumers' interests and maintain fair competition.

Statistics show that between 2017 and the end of January 2022 (hereinafter referred to as the five recent years), the FTC handled 10,506 cases, including the ones reported by informants and those in which ex officio investigations were launched. 10,589 cases were closed (unclosed cases from the previous year were added). 1,192 cases (hereinafter referred to as cases in which investigations were launched) had to be deducted because they did not belong to the FTC's jurisdiction, the review process was suspended due to procedural inconsistency, or the cases involved repeated reporting. Judged by type of violation (with those involving multiple illegal practices being repeatedly calculated), 600 cases related to unfair competition (50.3%) formed the largest group, and were followed by 364 cases (30.5%) involving conduct that led to competition restraints (Table 1).

Table 1 Cases in which Investigations were launched in the Five Recent Years—Categorized according to type of violation

Unit: case; %

Types of Violation	2017	2018	2019	2020	2021	January 2022	Total	Percentages of the total number of cases in which investigations were launched (%)
								Practices leading to competition restraints
Conduct involving unfair competition	165	140	99	88	103	5	600	50.3%
Illegal multi-level marketing practices	55	47	59	40	28	2	231	19.4%
Others	3	6	-	1	1	-	11	0.9%

Note: Some cases involved two or more violations; therefore, the types of violation totaled more than 1,192 cases in which investigations were launched.

Among the cases in which investigations were launched in the five recent years, 600 of them involved unfair competition. When subdivided by type of violation (cases involving multiple violations calculated repeatedly), the 418 false or misleading advertising cases (69.7%) formed the largest group, and were followed by the 178 deceptive or obviously unfair competition cases (29.7%). Administrative sanctions were imposed in 223 cases, accounting for 37.2% of the unfair competition cases in which investigations were launched.

Among the cases in which administrative sanctions were imposed, the 184 false or misleading advertising cases were the largest group (accounting for 44.0% of the 418 cases in which investigations were launched), and the 40 deceptive or obviously unfair competition cases came second (22.5%) (Fig. 1).



Fig. 1 Percentages of Unfair Competition Cases in which Investigations were Launched and Administrative Sanctions Imposed in the Five Recent years

The FTC issued 240 dispositions against unfair competition practices in the five recent years to sanction 328 businesses and the fines totaled NT\$117.55 million. Judged by type of violation, the fines amounting to NT\$92.40 million (78.6%) imposed on companies posting false or misleading advertisements formed the largest proportion, to be followed by the NT\$25.15 million (21.4%) (Fig. 2) imposed for deceptive or obviously unfair conduct. When observed according to the average fine imposed, each company engaging in unfair competition was fined NT\$360,000. The NT\$570,000 imposed for deceptive or obviously unfair competition was the highest, followed by the NT\$330,000 imposed for false or misleading advertising.



The administrative fines imposed in the five recent years totaled NT\$117,550,000

Fig. 2 Fines Imposed for Unfair Competition in the Five Recent years – by Type of Violation

FTC Activities in January and February 2022

30 years has gone by since the FTC was established on Jan. 27, 1992. To celebrate the 30th anniversary, the FTC held a tea party under the title of “FTC—a Solid Foundation of Fair Trade for 30 Years” at the Chang Yung-Fa Foundation International Convention Center on Jan. 21, 2022. President Tsai Ing-wen and Premier Su Tseng-chang both attended and gave speeches. More than 100 other distinguished guests also participated to celebrate the FTC’s anniversary, including Minister of Economic Affairs Wang Mei-hua, Vice Chairperson Chen Chao-chien of the Central Election Commission, Deputy Minister Tsai Ching-piao of the Ocean Affairs Council, former FTC chairpersons, deputy chairpersons and commissioners, the acting Eswatini ambassador to Taiwan, the director of the New Zealand Commerce and Industry Office, the deputy director of the Ulaanbaatar Trade and Economic Representative Office, representatives from the National Federation of Industries, the General Chamber of Commerce, the Association of Multilevel Marketing and other industrial groups, as well as scholars and specialists.

During the tea party, a film showing the history of the FTC in the past three decades and a compilation of foreign competition authorities wishing the FTC a Happy Birthday were presented. The President, Premier, FTC Chairperson Li Mei and former chairpersons, and distinguished guests jointly lighted the crystal ball to celebrate the 30th Anniversary and encourage the FTC to continue to overcome challenges in the future. Photos were displayed along the hall way in the center to show the history of the FTC. With the enthusiastic participation and support of the distinguished guests, the event was an overall success.



1. President Tsai Ing-wen giving a speech during the FTC's 30th Anniversary Tea Party
2. Premier Su Tseng-chang giving a speech during the FTC's 30th Anniversary Tea Party



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- 3.FTC Chairperson Li Mei giving a speech during the FTC's 30th Anniversary Tea Party
- 4.The Crystal Ball Lighting Ceremony during the FTC's 30th Anniversary Tea Party
- 5.A group photo of all the guests attending the FTC's 30th Anniversary Tea Party
- 6.A group photo of current and past FTC chairpersons, deputy chairpersons and commissioners over the years attending the FTC's 30th Anniversary Tea Party

- 🚩 On Jan. 6 and 14, the FTC held the “Law Observance and Competition in the Manufacturing Industry” presentation in Taichung City and Taipei City, respectively.
- 🚩 On Feb. 9 and 10, the FTC attended the ICN “2022 Advocacy Workshop” (videoconferencing).
- 🚩 On Feb. 18, 21 and 22, the FTC attended meetings held by APEC’s Competition Policy and Law Group and Economic Committee (videoconferencing).
- 🚩 On Feb. 23, the FTC attended the “OECD Competition Open Day” meeting (videoconferencing).



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- 7.The FTC holding the“Law Observance and Competition in the Manufacturing Industry” presentation in Taichung City
- 8.The FTC holding the“Law Observance and Competition in the Manufacturing Industry” presentation in Taipei City

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 : _____

Taiwan FTC Newsletter

Publisher	Lee, May
Editor- in-Chief	Hu, Kuang-Yu
Deputy Editor-in-Chief	Hu, Tzu-Shun
Co-editor	Chiu, Shu-Fen Yang, Chia-Hui Wu, Ting-Hung Yeh, Tien-Fu Chen, Yuhn-Shan Li, Yueh-Chiao Hsueh, Kuo-Chin
Publishers & Editorial Office	Fair Trade Commission, R.O.C. Address:12-14 F., No. 2-2 Jinan Rd., Sec. 1, Taipei, Taiwan, R.O.C. Website: https://www.ftc.gov.tw Telephone: 886-2-2351-7588 Fax: 886-2-2397-5075 E-mail: sweetcc331@ftc.gov.tw
Date of Publication	April 2022
First Date of Publication	February 2008
Frequency of Publication	Bimonthly(the Chinese language edition during odd-number month, and the English language edition during even-number month.)
Price	NT\$ 15 per single copy, NT\$ 180 per year (both Chinese version and English version) and NT\$ 90 per language version
Subscription Phone Line	886-2-2351-0022
Subscription Fax	886-2-2397-4997
Exhibition Place	Service Center on the 13th Floor of the Commission Telephone:886-2-2351-0022 Address:13 F, No. 2-2 Jinan Rd., Sec. 1, Taipei, Taiwan, R.O.C. Wunan Book Co., Ltd. Telephone: 886-4-2226-0330 Address: No. 85, Sec. 2, Taiwan Blvd., Taichung City, Taiwan, R.O.C. Government Publications Bookstore Telephone: 886-2-2518-0207 Address: 1F, No. 209, Sung Chiang Rd., Taipei, Taiwan, R.O.C.
Printer	Hon Yuan Printing Co., Ltd. Address: 9F-1, No. 602, Pa The Rd., Sec 4 Taipei, Taiwan, R.O.C. Telephone: 886-2-2768-2833



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<https://www.ftc.gov.tw>

ISSN 2070124-1



9 772070 124009

GPN:2009700036
PRICE:NT\$15