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▶ Selected Cases

- ▶ Non-Prohibition of Merger Microsoft and Skype
- ▶ Zhanyanting Co. Violated the Fair Trade Act for Unlawful Conduct
- ▶ RAYEE Tech. Issuing Unilateral Copyright Warning Notices Violated the Fair Trade Act
- ▶ Gas Bottlers Compelling Distributors to Raise Prices Get Fined!
- ▶ Qinghua Co. Failing to File with the FTC Violated the Fair Trade Act
- ▶ Groupon and Falken violated the Fair Trade Act for False, Untrue and Misleading Advertisement

▶ Regulation Report

Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases

▶ FTC Statistics

Statistics on Self-Initiated Investigations

▶ FTC Activities

FTC Activities in January and February 2012

▶ FTC International Exchanges

- ▶ FTC International Exchanges in January and February 2012

The FTC not Prohibit the Merger Between Microsoft and Skype

The FTC resolved at its 1041st committee meeting of 19 October 2011, that the proposed extraterritorial acquisition by the Microsoft Corporation (hereinafter referred to as Microsoft) of Skype Global S.à r.l. (hereinafter referred to as Skype), does not violate the provisions of Article 12 (1) of the Fair Trade Act, and thus shall not be prohibited.


The FTC relates that Microsoft's intended acquisition of 100% of the issued shares of Skype via its Microsoft International Holdings BV subsidiary conforms to the definition of "mergers" given in Article 6 (1) (ii) of the Fair Trade Act. In addition, the Microsoft operating system commands more than one-quarter of the market share in Taiwan, meeting the threshold for reporting mergers as stipulated by Article 11 (1) (ii) of the Fair Trade Act, and given that the exclusions given in Article 11 (1) of the same Law are not applicable, Taiwan Microsoft duly submitted an application on its behalf of the proposed acquisition.

The FTC notes that Microsoft and Skype are IT software services, whose merger primarily impacts the communications services

market of individual consumers. Upon review of the case, it was noted that numerous enterprises (such as Facebook, Google and Yahoo) are operating in this market in Taiwan at present, and given the free provision of related communications software this does not constitute the capacity for unilateral setting of higher price for goods or remuneration for services not subject to the restraints of market competition. Changes to the market structure following the proposed merger are limited, moreover at present Taiwan does not set legal restrictions or barriers to entry on the consumer communications services market, and a wide range of products and services exists. Hence, the proposed merger is not deemed to harm competition among existing businesses, and will not diminish the capacity of those involved in transactions to select the products or services of other companies, nor affect their negotiating capacity in the purchase of communications products or services.

The FTC further noted that no legal restrictions or barriers to entry have been instituted in Taiwan to date for communications products and services other than telecommunications services, that

the merger of Microsoft and Skype will not have an appreciable impact on the market, and that technological advances will not present difficulties to the related products and services of other cross-industry businesses. Further, although both Microsoft and Skype provide voice communications, instant messaging, and video messaging, only Skype Out can be utilized to place conventional telephone calls, so that the products and services of the two providers are mutually complementary. Microsoft's cross-enterprise operational development plan can be expected to be completed following the merger, and given that there are 62 enterprises in Taiwan that offer similar Internet-based telephone functions to Skype Out, the merger is not expected to have an appreciable detrimental effect on market competition.

The FTC concluded by saying that the extraterritorial merger of Microsoft and Skype does not raise concerns regarding significant restriction of competition, and that it can be considered to contribute overall economic benefit. Consequently, pursuant to the terms of Article 12 (1) of the Fair Trade Act the FTC will not prohibit the merger. 

Zhanyanting Co. Violated the Fair Trade Act for Unlawful Conduct

The FTC decided at its 1048th Commissioners' Meeting on 7 December 2011 that an Internet advertisement entitled "No Franchise Fees" published by Zhanyanting International Marketing Consulting Co., Ltd. (hereinafter to be referred as Zhanyanting) was a false and misleading representation in violation of Article 21 (3) (i) of the Fair Trade Act. In addition, prior to entering into franchise operation arrangements with transaction counterparts, Zhanyanting failed to provide written materials to transaction counterparts detailing such vital transaction data as "the total number and locations of franchisees of the same franchise system in the same county/city and the statistics on the ratios of contract cancellation and termination in the previous year," in violation of Article 24 of the Fair Trade Act. In addition to ordering Zhanyanting to cease the unlawful conduct

immediately, the FTC imposed a fine of NT\$100,000.


The FTC relates that Zhanyanting made the representation of "No Franchise Fees" on a Yahoo! Blog. However, Article 1 Section 1 of Zhanyanting's franchising agreement stipulates that each franchisee shall pay a franchising contract fee in the amount of NT\$170,000. Moreover, among Zhanyanting's 42 franchisees 40 have paid contract fees ranging from NT\$60,000 to \$170,000, obviously differing from the "no franchise fees" claim made in the aforementioned advertisement, and is deemed to be false and untrue representations in violation of Article 21 (3) (i) of the Fair Trade Act.

In addition, the franchising agreement for shops, estimate of start-up costs, Internet information and other such written information provided by



Zhanyanting did not delineate such vital transaction information as “the total number and locations of franchisees of the same franchise system in the same county/city and the statistics on the ratios of contract cancellation and termination in the previous year,” in accordance with the Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisers. The aforementioned data is vital for prospective franchisees to evaluate the growth prospects, competitiveness, and stability of a franchise brand before joining. Zhanyanting’s failure to provide the aforementioned complete written transaction information prior to transaction counterparts entering agreements to run franchise




operations inhibits counterparts from making accurate judgments on transactions, and therefore constitutes unfair conduct that is able to affect trading order, in violation of Article 24 of the Fair Trade Act. 

RAYEE Tech. Issuing Unilateral Copyright Warning Notices Violated the Fair Trade Act

The FTC decided at its 1048th Commissioners' Meeting on 7 December 2011 to impose a fine of NT\$300,000 on RAYEE Tech. Ltd. (hereinafter to be referred as RTL) for violation of Items 3 and 4 of the Fair Trade Commission Disposal Directions (Guidelines) on Enterprises Issuing Warnings of Copyright, Trademark or Patent Infringements regarding preliminary procedures to ascertain rights infringements by publicly issuing a warning letter claiming patent infringement by a competitor, constituting obviously unfair conduct that is able to affect trading order in violation of the terms of Article 24 of the Fair Trade Act. In addition to ordering RTL to cease the unlawful conduct immediately, the FTC imposed a fine of NT\$300,000.

The FTC relates that on 23 July 2010 RTL placed contents on its website claiming patent infringements by a competitor, also issuing a "Thwart Counterfeiting, Aggressively Collect Evidence" warning document to automobile parts and accessories distributors on 3 January 2010, which listed assorted specific competitors' products and models it claimed to

infringe its patents. RTL issued the aforementioned materials without having first submitted the products it claimed in the document were suspected of infringing on the company's patented products to a patent appraisal agency to obtain an appraisal report, and therefore issued the aforementioned warning notice without following preliminary procedures to ascertain rights infringements as stipulated in Items 3 and 4 of the Fair Trade Commission Disposal Directions (Guidelines) on Enterprises Issuing Warnings of Copyright, Trademark or Patent Infringements.


The FTC relates that investigations show that, following RTL's on-line notice and document cautioning industry colleagues to "Thwart Counterfeiting, Aggressively Collect Evidence," downstream businesses ceased ordering merchandise from competitors and returned goods that had already been received, thus the conduct cannot be considered to have had no impact on the trading order. Consequently, this obviously unfair conduct violated the terms of Article 24 of the Fair Trade Act. 

Gas Bottlers Compelling Distributors to Raise Prices Get Fined!

The FTC decided at its 1050th Commissioners' Meeting on 21 December 2011 that Shanghai Gas Corporation, Ltd. (hereinafter referred to as Shanghai Gas) and Beiyi Enterprises Corporation, Ltd. (hereinafter referred to as Beiyi Bottling) used improper means to impel gas operators in the Zhushan area of Nantou to go along with retail price hikes for bottled liquefied petroleum gas (LPG), and caused another enterprise to refrain from price competition, in violation of the terms of Article 19 (4) of the Fair Trade Act. In addition to ordering the above-mentioned businesses to immediately cease the unlawful conduct effective from the day after receiving the sanction, the FTC imposed fines of NT\$750,000 and NT\$1.5 million on Shanghai Gas and Beiyi Bottling, respectively.

The FTC relates that Shanghai Gas and Beiyi Bottling called a gathering of affiliated LPG distributors on 13 January 2011 to suggest the upward adjustment of LPG for residential use in central Taiwan from the Bureau of Energy of the Ministry of Economic Affairs (MOEABOE)'s listed retail price of NT\$784 to \$846 per canister to NT\$750 to 820, and from NT\$710 to \$780 per canister for commercial use, notifying gas

distributors to implement the new prices on January 20-21.

The FTC relates that, following the January 13 meeting, two gas distributors directly under the operation of the Shanghai Gas bottling facility raised prices to the upper limit indicated above precisely on January 20, and admitted notifying familiar gas distributors of the price hike goals and timeframe prior to the raise; likewise, on January 20 Beiyi Bottling informed its affiliated gas distributors of a price hike effective the following day, in both instances demonstrating intent to impel other gas distributors to go along with the upward price adjustment. Further, even gas distributors not in attendance at the gathering subsequently received notices from the two aforementioned gas distributors, causing gas distributors in the Zhushan area of Nantou to successively increase prices from 21 January 2011. In view that this inappropriate conduct not only damaged the interests of gas distributors in the Zhushan area, but also led customers unaffiliated with the two gas bottling facilities to follow the price increases, the FTC imposed the aforementioned sanctions. 

Qinghua Co. Failing to File with the FTC violated the Fair Trade Act

The 1044th FTC Commissioners' Meeting of 2 November 2011 determined that Qinghua International Energy Company, Ltd. (hereafter referred to as "Qinghua") engaged in multi-level sales, that it failed to file with the FTC before starting its operations, and that the contracts it signed with participants did not carry statutorily required information. These acts violated Article 5 (1) and Article 12 (1) of the Supervisory Regulations Governing Multi-level Sales provided by Article 23-4 of the Fair Trade Act. In addition to ordering the company to desist from


the unlawful conduct, the FTC imposed a fine of NT\$100,000 on Qinghua.

The FTC relates that, pursuant to the terms of Article 5 (1) of the Supervisory Regulations Governing Multi-level Sales, enterprises engaging in multi-level sales must provide statutorily required information in a report to the FTC before commencing operations. Further, pursuant to Article 12 (1) of the same Regulations, enterprises must enter a written agreement with participants regarding statutorily required information prior to any participant joining a



multi-level sales organization or program. Qinghua held an informational session for prospective business partners to promote its “electromagnetic powered vehicle.” The distributors’ system consisted of participants paying a security deposit of no less than NT\$100,000 in order to become a Qinghua distributor. Each month NT\$4200 of this sum could be recovered, plus an additional sum of NT\$2,800 in promotional fees would be received from Qinghua, totaling NT\$7,000. Further, distributors were to be ranked on four levels as “independent operators,” “distributors,” “sales agents,” and “regional sales agents” according to the amount of the security deposit paid, or NT\$100,000, \$300,000, \$600,000, or \$1,000,000, respectively. For each new sales channel introduced, participants could receive a commission bonus of at least NT\$10,000, depending on ranking. Further, a so-called two-tier system was employed to calculate the limited sum of commissions given each week. Qinghua engaged in multi-level sales, and admitted to

having recruited at least 239 distributors, engaging in sales organization rankings, and paying out bonuses. However, the company’s failure to file with the FTC was found in violation of the terms of Article 5 (1) of the Supervisory Regulations Governing Multi-level Sales. Furthermore, Qinghua’s written contract with participating distributors did not contain statutorily required information, in violation of the terms of Article 12 (1) of the Supervisory Regulations Governing Multi-level Sales.

The FTC relates that participants in Qinghua’s aforementioned distribution system received commissions, bonuses, or other economic benefits largely for introducing others to join, not reasonable market compensation for promotion or sales of merchandise or labor expended. It is thereby suspected of illegal multi-level sales (also known as a “pyramid scheme”), and has been referred to the Taiwan High Prosecutors Office for investigation. 

Groupon and Falken violated the Fair Trade Act for False, Untrue and Misleading Advertisement

The FTC decided at its 1047th Commissioners' Meeting on November 30 that Groupon Taiwan (hereinafter referred as "Groupon") and Falken International Co., Ltd. (hereinafter referred as "Falken") violated the terms of Article 21 (1) of the Fair Trade Act for false and misleading representations regarding "California Sun U.S. Pacific Northwest Washington Cherries" jointly sold on the Groupon website. In addition to ordering Groupon and Falken to cease the aforementioned unlawful conduct immediately from the day following receipt of the sanction, fines of NT\$500,000 and NT\$100,000 were imposed on Groupon and Falken, respectively.

The FTC relates that the special promotion advertisement for "California Sun U.S. Pacific Northwest Washington Cherries" ("the product") jointly offered for sale on the Groupon


website by Groupon and Falken made such statements as: "Enjoy 1800 grams of 'California Sun' Washington cherries from the U.S. Pacific Northwest valued at NT\$1649 for NT\$900"; "Original price NT\$1649, save NT\$749 instantly with 46 percent discount"; "For NT\$900 enjoy 'California Sun' 10ROW Washington cherries – U.S. Pacific Northwest originally

priced at NT\$1649"; "Product weight: 1.8 kilograms/case." The overall impression of such statements was that for NT\$900 one could purchase 1.8 kilograms of 10ROW size cherries originally sold for NT\$1,646 by the California Sun Fruit Company, Ltd. However, upon investigation it was learned that the NT\$1,649 original price had been jointly derived by Groupon and Falken upon discussion, and that the supplier, California Sun Fruit Company, Ltd. had never sold the product in question for NT\$1,649; further, investigation indicated that the stated weight of the cherry product of 1800 grams included the outer packaging, and was not sold as a net weight of 1.8 kilograms, facts about which Groupon and Falken were aware prior to the placement of the advertisement in question. In addition, according to the supplier, California Sun Fruit Company, Ltd., the container used to



package the cherries weighs 259 grams, accounting for 14.38% of the 1800-gram gross weight of the product, significantly higher than most counterparts in transactions can accept.

In view of the above, the representations contained in the advertisement in question are misleading to transaction counterparts concerning the price and

weight of the cherry product and could be used as the basis for transaction decisions. Upon review, the FTC deemed this conduct to constitute false and misleading representations regarding the price and contents of goods, in violation of the terms of Article 21 (1) of the Fair Trade Act. 

Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases

On 23 November 2011 the FTC completed the fifth amendments to Article 35(1) of the Fair Trade Act, introducing a major weapon in the arsenal of competition law used by various countries to investigate and punish concerted actions – namely Leniency Program/Policy clauses. In accordance with the third paragraph of the article, the execution of this policy in practice is to be determined by the FTC. In line with this authorization, the FTC on 6 January 2012 issued statutory regulations on implementation of leniency policy, the Regulations on Immunity and Reduction of Fines in Unlawful Concerted Action Cases.

The FTC accepted the recommendations of peers from over 70 worldwide supervisory agencies compiled on 9 February 2006 at the OECD Global Forum on Competition, in particular the suggestion that Taiwan introduce a sound leniency policy to effectively fight against hard core cartels. Indeed, over the course of policy implementation in the 20 years since the promulgation of the Fair Trade Act, the FTC has encountered increasing difficulty in conducting investigation of direct evidence and compiling evidence regarding cases of covert concerted action between and among businesses. In light of this and trends in international competition law, Article 35(1) of the revised Fair Trade Act promulgated on 23 November 2011 introduces a leniency policy practiced

among supervisory agencies in various nations intended to effectively discourage unlawful concerted action.

In the effort to make execution of the leniency policy more precise, in line with the authorities provided by Subparagraph 2 of the above amended Article, the FTC formulated the Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases (the Regulations). Consisting of 21 articles, in practice the Regulations are legal statutes. Generally speaking, Articles 2 through 9 consist of regulations governing the leniency policy in practice, whilst Articles 10 through 20 consist of applicable procedural regulations. Key points contained in the Regulations are detailed as follow:

I. Subjects and Negative Factors (Article 2)

The Regulations do not apply to any parties that have not coerced other enterprises to take part in concerted actions or to remain part of concerted actions. In addition, enterprises that destroy, forge, alter, or conceal evidence related to the concerted action in which they are involved prior to applying for immunity or reduction of fines, or who directly or indirectly disclose to other parties their intention to apply for immunity or reduction of fines to the detriment of the central competent authority's investigation are not

eligible to apply for leniency.

II. Requirements for Application and Evidence (Articles 3 to 5)

Enterprises meeting the requirements for applying for immunity or reduction of fines must initiate an application in accordance with the terms of the Regulations. The content and evidence must be able to facilitate the competent authority to initiate an investigation prior to the FTC becoming aware of the evidence or initiating an investigation; enterprises applying for fine immunity during the investigation of the central competent authority shall provide related information and evidence capable of proving the violation of the concerted action in question.

III. Conditional Agreement and Related Contents (Article 6)

Following initial review of applications from enterprises, those deemed by the FTC to comply with the requirements may be approved for immunity from or reduction of the fines to be imposed on them by procedural decision (not final decision) with conditions attached. Following consent to permit the enterprises to meet the set conditions, the FTC makes a final decision on immunity or reduction of fines. The content of the appended conditions concerns the assistance the applicant is obliged to provide the competent authority over the course of investigations sufficient to give the FTC easily obtainable evidence of the facts capable of proving the existence of the concerted action in question.

IV. Requirements for immunity from fines (Article 7)

Given that immunity from fines is the greatest incentive for enterprises to submit applications, in order that enterprises make applications in timely fashion the Regulations set the benchmarks for immunity from fines as prior to initiation of investigation by the FTC, the “first to apply,” and any enterprise that “agree(s) to the attached conditions stated in Paragraph 1 of Article 6, and fulfills all the conditions attached.” If no enterprise fulfills such requirements as given, then the first enterprise to submit an application “during the investigation” by the central competent authority, and that meets the same stated requirements may also be granted full fine immunity.

V. Requirements for “Reduction” of Fines and Degree (Article 8)

Enterprises not eligible for fine immunity may apply for fine reductions. Any enterprise applying for fine reductions, and agreeing to all the attached conditions, and fulfilling all the conditions attached, may apply for fine reductions. The proportions of fine reductions are determined by order of application, up to a maximum of four enterprises, where the first to apply shall be granted a 30-50% reduction, the second shall be granted a 20-30% reduction, the third shall be granted a 10-20% reduction, and the fourth shall be granted a reduction of up to 10% of the fine to be imposed.

VI. Immunity or Reduction of Fines for Directors or Representatives (Article 9)

The board of directors, representatives, managers of an involved enterprise or others with the authority to represent the enterprise who by the definition set forth in Paragraphs 1 and 2 of Article 15 or Article 16 of the Administrative Penalty Act are to be jointly penalized. However, those meeting the requirements may be granted immunity or reduction of fines at the same time.

VII. General Application Procedures (Article 10)

As consideration for granting immunity or reduction of fines to enterprises involves such factors as timing, information, and evidence presented in the application, Regulations stipulate that information and evidence must be presented in a certain format (by registered mail or delivered in person, and done so individually) prescribed by the FTC.

VIII. Applications for Preservation of Status (Article 11)

Applications for preservation of status refer to enterprises intending to apply for fine immunity but currently having incomplete information and evidence. Such enterprises may apply to preserve priority status for immunity upon presenting the complete requisite information and evidence within the time period designated by the FTC.

IX. Application Methods for Reduction Exceptions (Article 12)

Any enterprise that has already provided the required information and evidence while the FTC is conducting investigation, and that applies for reduction of fines in accordance with the Regulations may be regarded as having applied in line with terms for granting exceptions.

X. Production of Letter of Approval with Conditions and Rejection of Application (Articles 13, 14)

In order to safeguard the rights and privileges of applicants, the FTC shall produce an approval with conditions in writing, and state the contents of said conditions; enterprises the FTC considers impossible to approve with conditions shall similarly receive notice of rejection of application in writing.

XI. Time and Order of Applications (Article 15)

In order to encourage enterprises to submit applications for immunity or reduction of fines in a timely fashion, enterprises may be granted priority application of immunity or reduced fines in line with the time of application submission. The time of application filing refers to the time when the FTC receives the application; the enterprise may request a receipt on which the time and date the application is accepted are indicated.

XII. Final Decisions on Immunity or Reduction of Fines (Articles 16, 17)

When the investigation is concluded, the FTC shall grant immunity or reduction of fines imposed

to applicants deemed to meet the requirements. Conversely, the FTC may reject applications it deems do not meet the requirements for immunity or reduction of fines.


XIII. Disposition of Sanctioned Offender Identity or Related Documents (Article 18)

In the effort to prevent the disclosure of information related to applicants for immunity or fine reductions in sanction judgments for concerted actions or related documents to avoid potential harm, the Regulations explicitly state that sanction judgments and related documents include measures to preserve confidentiality of the applying enterprise's identity.

XIV. Revocation of Approval to Grant Immunity with Conditions (Article 19)

If an applying enterprise is found with one of the situations sufficient to revoke approval during the investigation, the Regulations stipulate that approval with attached conditions shall be revoked immediately; if changes to the priority status of other applying enterprises occur when the FTC revokes approval to grant immunity or reduction of fines, the FTC shall notify the concerned enterprises in writing.

XV. Confidentiality of Applying Enterprise Identity (Article 20)

To prevent reprisals against applying enterprises by other enterprises engaged in unlawful conduct, and conceal the identity of applicants during investigations or administrative relief procedures, the Regulations expressly protect the identity of applying enterprises pursuant to Articles 11 and 15 of the Witness Protection Act. 

Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases

Enacted and promulgated per Kung-Fa-Tzu Order No. 10015614641 on January 6 2012

Article 1 These Regulations are enacted in accordance with Paragraph 2, Article 35-1 of the Fair Trade Act (hereinafter referred to as the Act).

Article 2 The subjects in which immunity or reduction of fines applies as set forth in Paragraph 1, Article 35-1 of the Act refer to enterprises partaking in concerted actions and with concrete evidence to show that they have not coerced other enterprises to participate in or remain part of the actions.

Enterprises found with one of the following situations during the period from their having the intention to apply for immunity or reduction of fines to the time the central competent authority initiates the corresponding investigation may not apply for immunity or reduction of fines:

1. Destroying, forging, altering or concealing evidence related to the concerted action in which they are involved;
2. Directly or indirectly disclosing to other parties their intention to apply for immunity or reduction of fines or any content of the information they intend to provide to the central competent authority to apply for immunity or reduction of fines.

Article 3 Enterprises meeting the requirements described in the preceding article may apply for immunity or reduction of fines according to these Regulations.

The application requirements are as follows:

1. For those applying according to Subparagraph 1, Paragraph 1, Article 35-1 of the Act, the concrete content of the violation and evidence submitted must be able to assist the central competent authority to initiate an investigation.
2. For those applying according to Subparagraph 2, Paragraph 1, Article 35-1 of the Act, the concrete content of the violation and evidence submitted must be able to assist the central competent authority establish that the involved enterprises have violated Paragraph 1, Article 14 of the Act.

If the central competent authority has already obtained enough evidence to initiate the investigation or the investigation has already been conducted when an application is submitted according to Subparagraph 1 of the preceding paragraph, the application may be rejected. The same principle applies if the central competent authority has already obtained enough evidence to establish the involved enterprises' violation of Paragraph 1, Article 14 of the Act when an application is submitted according to Subparagraph 2 of the preceding paragraph.

Article 4 The initiation of investigation mentioned in the preceding article shall be the date when the central competent authority begins to send out notifications or dispatch personnel to investigate in accordance with Article 27 of the Act.

The requirement of the content and evidence being able to facilitate the competent authority to initiate an investigation as stated in Subparagraph 1, Paragraph 1 of the preceding article refers to that the applicants must provide concrete details of the concerted action in which they have been involved, along with related evidence, which the central competent authority does not possess or is unaware of, to give an outline of the concerted action in question as well as the time and location where the mutual understanding has been established and the content of the mutual understanding or other related matters for the competent authority to initiate an investigation.

Article 5 The requirement of the content and evidence being able to help the central competent authority establish the violation by the involved enterprises as stated in Subparagraph 2, Paragraph 1 of Article 3 refers to one of the following situations:

1. The applicant provides a written statement of concrete details of the concerted action in question, along with evidence that the applicant has already obtained at the time of application and is capable of proving the violation of the said concerted action.
2. The content of the statement and evidence from the applicant are able to assist the central competent authority in the investigation on the concerted action in question.

Enterprises applying for fine immunity during the investigation of the central competent authority shall provide related information and evidence according to Subparagraph 1 of the preceding paragraph; those applying for fine reduction shall provide related information and evidence according to Subparagraph 2 of the preceding paragraph.

The period of investigation stated in the preceding paragraph shall begin from the date the central competent authority initiates the investigation to the date the final decision on the case is made.

Article 6 With applications from enterprises complying with the four preceding articles, the central competent authority may approve immunity from or reduction of the fines to be imposed on them with conditions attached.

The attached conditions stated in the preceding paragraph shall include the following information:

1. The applicant shall withdraw from the concerted action in question immediately upon filing the application or at the time specified by the central competent authority.
2. From the time the application is filed until the case is concluded, the applicant shall follow the instructions of the central competent authority and provide honest, full and continuous assistance during the investigation. The assistance shall include the following:
 - (1) The enterprise shall provide the central competent authority at the earliest time with all the information and evidence regarding the concerted action in question that it currently possesses or may obtain in the future. For those applying for fine reduction, the information and evidence provided must be of significant help in the central competent authority's investigation on the concerted action in question or able to enhance the probative value of the evidence the central competent authority has already obtained.
 - (2) The enterprise shall follow the instructions of the central competent authority and provide prompt description or cooperation to help the investigation on related facts capable of proving the existence of the concerted action in question.
 - (3) If necessary, the enterprise must allow its staff members or representatives having participated in activities related to the concerted action in question to be questioned by the competent authority.

(4) The content of the statement, information or evidence provided may not contain any untruthfulness and no destruction, forgery, alteration or concealment of any information or evidence related to the concerted action in question shall be tolerated.

(5) Without the consent of the central competent authority, the applicant may not disclose to any other parties about filing the application or any content of the application before the case is concluded.

3. Other matters specified by the central competent authority.

The time of case conclusion stated in the preceding paragraph refers to the date when the central competent authority reaches the final decision on the case in question.

Article 7 Under one of the following circumstances, full fine immunity shall be granted:

1. The enterprise is the first to apply according to Subparagraph 1, Paragraph 1, Article 35-1 of the Act, agrees to the attached conditions stated in Paragraph 1 of Article 6, and fulfills all the conditions attached.

2. The enterprise is the first to apply in according to Subparagraph 2, Paragraph 1, Article 35-1 of the Act while the preceding subparagraph is not applicable to any other enterprises, agrees to the attached conditions stated in Paragraph 1 of Article 6, and fulfills all the conditions attached.

Article 8 Enterprises applying for fine reduction according to Subparagraph 2, Paragraph 1, Article 35-1 of the Act, agreeing to the attached conditions, and fulfilling all the conditions attached shall be granted reduction of the fine to be imposed.

The proportions of the fine reduction stated in the preceding paragraph are as follows:

1. The first applying enterprise who meets the requirements shall be granted a 30% to 50% reduction of the fine to be imposed.

2. The second applying enterprise who meets the requirements shall be granted a 20% to 30% reduction of the fine to be imposed.

3. The third applying enterprise who meets the requirements shall be granted a 10% to 20% reduction of the fine to be imposed.

4. The fourth applying enterprise who meets the requirements shall be granted a reduction up to 10% of the fine to be imposed.

Article 9 The board directors, representatives, managers of an involved enterprise or others with the authority to represent the enterprise who by the definition set forth in Paragraphs 1 and 2 of Article 15 or Article 16 of the Administrative Penalty Act are to be jointly penalized but meet the following requirements may be granted immunity or reduction of fines at the same time:

1. The involved enterprise complies with the two preceding articles and may be granted immunity or reduction of fines.
2. The said parties provide honest and full statements with regard to the unlawful act.
3. The said parties follow the instruction of the central competent authority and provide honest, full and continuous assistance during the investigation before the case is concluded.

Article 10 Enterprises applying for immunity or reduction of fines in accordance with these Regulations shall present the information and evidence stated in Articles 3 to 5, provide the following information in the format prescribed by the central competent authority, and individually present the materials to the central competent authority by registered mail or in person.

1. The name of the enterprise, the uniform invoice number, the paid-in capital, the annual revenue, the name of the representative or person in charge, the company address, and the date of company registration;
2. The product or service involved, the form of the concerted action, the geological areas affected, and the duration of the action;
3. The names, company addresses, representatives or persons in charge of the other involved enterprises;
4. The job titles and names of the people representing the enterprise to participate in the concerted action in question;
5. The list of related information and evidence and the corresponding contents;
6. Other referential materials.

Two or more enterprises that by the definition set forth in the Company Act are affiliated enterprises may act according to the preceding paragraph and jointly file the application and shall be regard as one enterprise in the consideration of order of applications and other matters subject to these Regulations.

When the content of the application, information or evidence does not comply with the preceding paragraph or is incomplete, the application shall be rejected. If the situation is deemed rectifiable, the central competent authority may order the enterprise in concern to make the rectification or supplementation within a specified period. If the rectification or supplementation is not completed within the specified period or the rectification is incomplete, the application shall be rejected. Applications submitted by means other than registered mail or in person or not individually presented shall also be rejected.

Enterprises may delegate an agent to submit the application stated in Paragraph 1.

Article 11 Enterprises intending to apply for fine immunity but currently having no information and evidence stated in Article 3 to 5 and therefore unqualified to file the application as set for in Paragraph 1 of the preceding article may present a written statement carrying the information prescribed in Subparagraphs 1 to 3 of Paragraph 1 of the same article to apply to the central competent authority and request for preservation of the priority status for fine immunity that they may be granted.

Enterprises given the priority status preservation stated in the preceding paragraph shall provide the information and evidence according to Articles 3 to 5 within the specified period or they shall lose the priority status preserved.

Article 12 Enterprises that do not apply for fine reduction in accordance with Paragraph 1 of Article 10 but have already provided the information and evidence stated in Subparagraph 2, Paragraph 1 of Article 5 and requested for fine reduction according to these Regulations when providing the said information and evidence shall be regarded as having applied and the time when the said information and evidence are provided shall be regarded as the time when the application is filed. In the circumstance stated in the preceding paragraph, enterprises are still required to provide the application documents set forth in Paragraph 1 of Article 10. Those failing to provide such documents within the period specified by the central competent authority shall be denied application.

Article 13 The central competent authority shall immediately issue a letter of approval on immunity or reduction of fines with conditions attached when deciding to approve the applications from enterprises with conditions attached.

The letter of approval stated in the preceding paragraph shall be in writing and contain the following information:

1. The priority status of the enterprise for immunity or reduction of fines and the circumstances under which the priority status may be changed;
2. The time at which the enterprise shall withdraw from the concerted action in question;
3. The concrete contents of the attached conditions stated in Subparagraph 2, Paragraph 2 of Article 6;
4. The specified period within which the enterprise is to provide or supplement related evidence;
5. The circumstances under which the central competent authority may revoke its approval to grant the immunity or reduction of fines.

Article 14 The central competent authority shall reject applications that it considers impossible to approve with conditions attached in accordance with Paragraph 1 of Article 6.

The rejection stated in the preceding paragraph shall be conducted in writing. When an application for fine immunity is rejected, the enterprise in concern may file a written request for permission to take the procedure for fine reduction application and reapply and retain its priority status based on the time of its application for fine immunity.

Article 15 The priority status shall be determined in accordance with the times the applications are filed when there are a number of enterprises applying for immunity or reduction of fines over the same concerted action.

The time of application stated in the preceding paragraph refers to the time when the central competent authority receives the application filed by an enterprise according to Article 10 or 11. At the time of filing, the enterprise may request the central competent authority for a receipt on which the date and time the application is accepted are indicated.

Article 16 When the investigation is concluded, the central competent authority shall grant full fine immunity to enterprises that it considers meeting the requirements set forth in Paragraph 1 of Article 7 for full fine immunity and none of the situations defined in Article 19 for the central competent authority to revoke the immunity approval with conditions attached exists.

The central competent shall reject applications from enterprises that it considers incompatible with the preceding paragraph and full fine immunity will not be granted. Once the application is rejected, the concerned enterprise may not apply according to these Regulations to request for immunity from or reduction of the fine to be imposed.

Article 17 When the investigation is concluded, the central competent authority shall act according to Paragraph 2 of Article 8 and grant fine reduction to enterprises that it considers meeting the requirements set forth in Paragraph 1 of Article 8 for fine reduction and none of the situations defined in Article 19 for the central competent authority to revoke the immunity approval with conditions attached exists.

The central competent authority shall reject applications from enterprises that it considers incompatible with the preceding paragraph and fine reduction will not be granted. Once the application is rejected, the concerned enterprise may not apply according to these Regulations to request for reduction of the fine to be imposed.

Article 18 When acting according to the two preceding articles and achieving the final decision of granting an enterprise immunity or reduction of fines, the central competent authority may adopt the following measures to complete the dispositions or other written documents and send them to the offenders.

1. With the consent of the applying enterprise, indicate the name of the enterprise, the fine imposed, and the amount of fine reduced and the reasons.

2. Without the consent of the applying enterprise, use codes and other confidential means to indicate the identity of the enterprise in question and avoid giving any information that may indicate the identity of the enterprise in question.
3. Establish a disposition for each offender and the main text regarding the fine refers only to the enterprise in question and contains no information about other offenders involved in the same case.
4. Other means to keep the identity of the applying enterprise confidential.

Article 19 If an applying enterprise is found with one of the following situations during the investigation, the central competent authority may revoke the approval to grant immunity or reduction of fines with conditions attached as set forth Paragraph 1 of Article 6:

1. Article 2 is found inapplicable to the enterprise.
2. The enterprise fails to provide or supplement related evidence within the specified period without justifiable causes or fails to follow the instructions of the competent authority to assist the central competent authority in the investigation.
3. The enterprise fails to fulfill the attached conditions set forth in Paragraph 2 of Article 6.

If there are changes to the priority status of other applying enterprises when the central competent authority acts according to the preceding paragraph and revokes the approval to grant immunity or reduction of fines, the concerned enterprises shall be notified in writing

Article 20 The identity of an enterprise applying for immunity or reduction of fines shall be kept confidential unless the enterprise agrees otherwise in advance.

Covers shall be made for conversation records or original documents carrying information on the identity of the applicant. The same measure shall be taken for other documents that may indicate the identity of the applicant.

Unless otherwise stipulated, the conversation records and documents stated in the preceding paragraph may not be provided to any agencies, groups or individuals other than investigation and judicial agencies.

Article 21 These Regulations shall enter into force on the day it is promulgated.

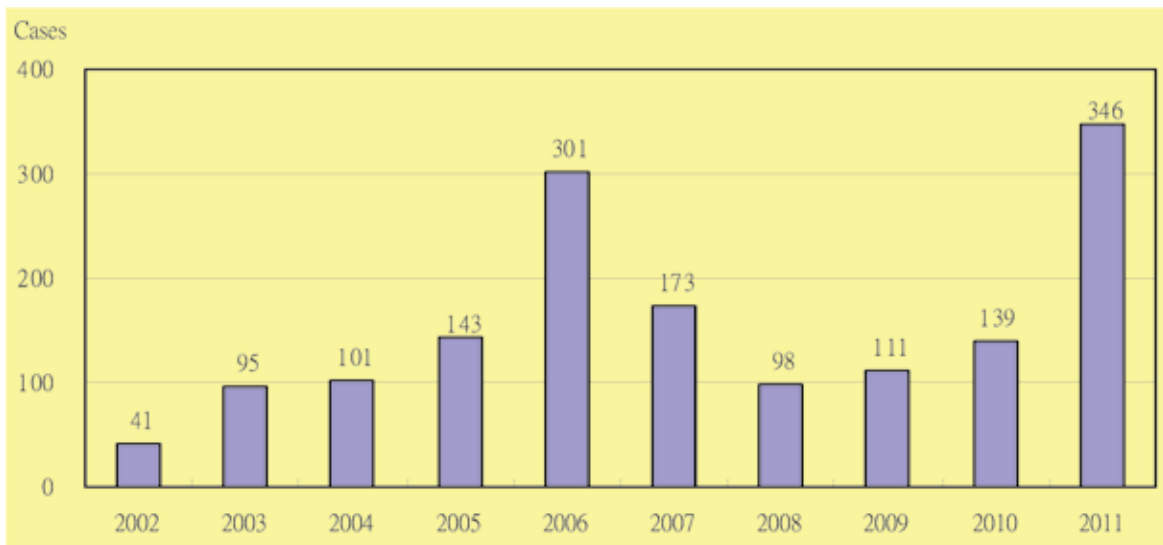
Statistics on Self-Initiated Investigations

In addition to reported cases, applications for concerted actions, mergers, and appeals for interpretations, the Fair Trade Commission may also in the course of its duties and authorities follow set procedures to self-Initiated investigations of possible violations of the Fair Trade Act. A total of 346 self-Initiated investigations were opened in 2011, setting a new a historical high. The cumulative number of self-Initiated investigations as of the end of 2011 was 1,851, 1,777 of which had been handled for a 96% resolution rate.

Self-Initiated Investigation Prosecution Statistics

Year	Cases Opened	Cases Completed	Outcome					
			Sanctions		Not Sanctioned	Administrative Sanction	Terminated Investigation	Others
			Cases	Decision Judgments				
Total	1 851	1 777	733	859	470	102	321	151
1992 - 2001	303	280	171	229	37	31	41	-
2002	41	42	29	29	5	6	2	-
2003	95	76	33	64	9	8	26	-
2004	101	84	34	34	16	8	26	-
2005	143	128	44	44	27	10	41	6
2006	301	259	58	74	131	4	35	31
2007	173	176	66	72	32	23	34	21
2008	98	115	61	68	27	1	21	5
2009	111	168	42	43	31	2	25	68
2010	139	122	44	46	41	2	28	7
2011	347	327	151	156	114	7	42	13

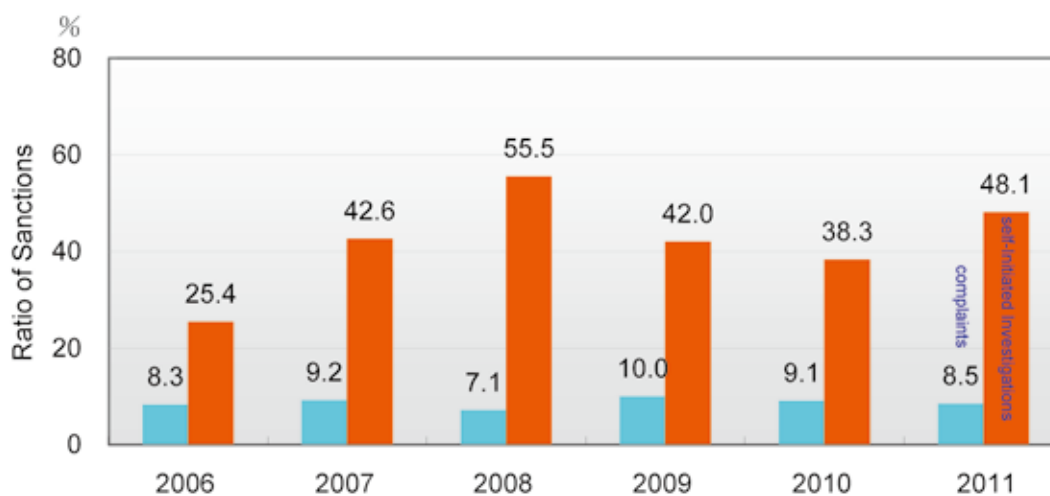
Fig. 1. Statistics on Self-Initiated Investigation Cases Initiated in Recent Years



Further, looking at the investment of resources, 327 self-Initiated investigations were completed in 2011, involving 3,024 people time (including organization, assistance, review and approval), two hearings or symposia, and numbering 1,016 enterprises under investigation. Of the 327 self-Initiated investigations initiated, 151 were sanctioned for unlawful conduct (46.2%; 156 penalty judgments were issued, with 230 enterprises sanctioned), 114 were not sanctioned, 7 were given administrative penalties, and investigation of 42 cases was terminated; as of the end of 2011 self-Initiated investigations were completed on 1,777 cases, with 733 sanctions given (accounting for 41.3% of all cases), 859 penalty judgments were issued, and 1,209 enterprises sanctioned in total.

Observing the ratio of sanctions in recent years for self-Initiated investigations and reported cases, minus consolidated cases, the rate of sanctions for self-Initiated investigations exceeded that of reported cases, demonstrating the FTC's performance in conducting self-Initiated investigations.

Fig. 2. Decision Rate



Among self-Initiated investigations of unlawful violations in 2011, the predominant case type consisted of violations of Article 21 of the Fair Trade Act for false or unfair representations in advertising, at 83 cases (accounting for 53.2%), followed by violations of Article 23 for unlawful multi-level sales at 54 cases (or 34.6%). As of the end of 2011 a cumulative total of 859 sanction judgments had been issued, unlawful conduct in violation of Article 21 of the Fair Trade Act for false or unfair representations in advertising accounted for the largest quantity, at 298 cases (34.7%), followed by 164 cases (19.1%) in violation of Article 24 prohibiting deceptive or obviously unfair conduct. Statistics on the FTC's self-Initiated investigations have been uploaded to the official website at www.ftc.gov.tw, covering statistics for viewing at your leisure.



FTC Activities in January and February 2012

- ▣ On January 3 the FTC held the Seminar on the Applicability of Article 24 of the Fair Trade Act Concerning TV Shopping Channel Operators, On-line Shopping Platform Operators and Suppliers Colluding to Pass on Fines.
- ▣ On January 9 the FTC held a reception to celebrate the twentieth anniversary of its founding.
- ▣ On January 10 the FTC held the “Academic Symposium on 20 Years of Fair Trade Law Implementation and Future Prospects.”
- ▣ On January 16 the FTC held a “Special 2012 Information Session on the Latest Revisions to Legal Regulations and Analysis – Clemency Policy” in Taipei.
- ▣ On February 14 the FTC invited Professor Yang Tzu-han of the Finance Department at the Taipei University Public Affairs Institute to lecture on “Transnational Businesses and East Asian Economic Integration.”
- ▣ On February 17 the FTC held a “Special 2012 Information Session on the Latest Revisions to Legal Regulations and Analysis – Clemency Policy” in Taichung.



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1. The FTC convened a Seminar on the Applicability of Article 24 of the Fair Trade Act Concerning TV Shopping Channel Operators, On-line Shopping Platform Operators and Suppliers Colluding to Pass on Fines.
2. Vice Premier Chun Chen delivered remarks at the FTC's twentieth anniversary reception.
3. FTC Chairperson, Dr. Wu Shioh-Ming (second from left) reviewed publications on display at the “Academic Symposium on 20 Years of Fair Trade Law Implementation and Future Prospects.”
4. The FTC held the “Academic Symposium on 20 Years of Fair Trade Law Implementation and Future Prospects” at the Civil Service Development Institute.



- 5. Participating guests at the second session of the "Academic Symposium on 20 Years of Fair Trade Law Implementation and Future Prospects."
- 6. "Special 2012 Information Session on the Latest Revisions to Legal Regulations and Analysis – Clemency Policy" in Taipei.
- 7. The FTC invited Professor Yang Tzu-han of Taipei University to lecture on "Transnational Businesses and East Asian Economic Integration."
- 8. "Special 2012 Information Session on the Latest Revisions to Legal Regulations and Analysis – Clemency Policy" in Taichung.

FTC International Exchanges in January and February 2012

- ▶ On January 19 the FTC participated in a teleconference of the International Competition Network (ICN) Merger Working Group.
- ▶ On February 2, 9, 16, 23 and 29, the FTC participated in teleconferences for Group 1 of the ICN Cartel Workshop, Group 2 of the Cartel Workshop, the Operational Framework Working Group, and Merger Sub-group.
- ▶ From February 12 to 15, the FTC attended the Competition Policy and Law Group (CPLG) and Economic Committee (EC) meetings at the APEC conference in Moscow, Russia.
- ▶ On February 13 and 17, the FTC participated in the regular meeting of the OECD Competition Committee and 11th Global Forum on Competition in Paris, France.



▶ FTC representative (second from right) pictured with Mr. Yukinari Sugiyama Director, International Affairs Division Japan Fair Trade Commission (first on left) while attending the Competition Policy and Law Group and Economic Committee meetings at the APEC conference in Moscow.

▶ FTC Commissioner Sun Li-chyun attended the regular meeting of the OECD Competition Committee and 11th Global Forum on Competition in Paris.



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