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**Telecoms Selling Cell Phones at Similar Prices:
A Concerted Action?**

Case background

Every year when a new I brand cell phone is released, there are always huge numbers of consumers who want to try the latest cell phone swarming into the shops of telecom carriers to choose suitable cell phone plans with a new cell phone. The telecom companies offer promotional packages that include mobile communications services and Internet tariff plans at different prices and various cell phone discounts. However, the prices for I brand cell phones offered by different telecom businesses are usually rather similar. Therefore, the FTC initiated an ex officio investigation to see if the pricing for I brand cell phones by different telecom companies was the result of a concerted action in violation of the Fair Trade Act.

Telecom businesses follow suit in cell phone pricing in the oligopolistic market

According to the FTC's investigation, currently there are only five telecom businesses offering 4G mobile broadband services. Therefore, it is easy for consumers to compare the promotional prices of cell phone plans and service contents. Although the operating costs of telecoms differ, apart from taking its management cost into consideration, each telecom business has to determine the prices of its products and services in accordance with market supply and demand, the severity of competition as well as the pricing strategies of competitors in order to stay in the game and maintain its market share. For this reason, telecom carriers often set their product and service prices according to the prices of leading

businesses or competitors in the market to prevent the risk of losing customers as a result of offering prices that are inconsistent with the going rates in the market. Hence, the promotional cell phone prices that telecom businesses offer will eventually become consistent, and this phenomenon is closely associated with the structure of the oligopoly market and product characteristics.

Special offers provided by the telecom businesses remain different

The considerations of each telecom business in the determination of promotional prices for I brand cell phones are not entirely the same. Some businesses make reference to the listed prices of competitors and make comparisons and adjustments before setting their own prices. However, most telecom companies concur that market competition has to be taken into account. Meanwhile, each telecom business makes and announces its price decisions at different time points and some tariffs remain different. Besides, telecom carriers offer different cellphone promotion prices to different clienteles. In addition, some of them even accept customers' pre-orders, or attract customers by offering various types of special plan.

There are a large number of telecom service packages. Although the five telecom carriers offer

similar promotional prices for cell phones, the content of the mobile communications services they offer to attract consumers is not the same, and include standards for the calculation of text messages, the time and prices for voice calls, the amount of time for free calls and messages or other video-audio and value-added services. The services the tariff includes vary. Under similar tariffs and cell phone prices, the carriers use differentiated services to attract different clienteles and offer special packages and gifts to new and old users and special target groups to improve their shares in the 4G mobile broadband service market.

Conclusion

The competition between domestic telecom companies is vigorous. The relevant promotional information is transparent and open in the industry. Such a characteristic makes it easy for carriers to follow or launch the same or similar tariff plans, and thus constitutes similar contract prices for I-brand mobile phones. Though the telecom businesses are not in violation of the provisions of concerted actions stated in the Fair Trade Act, the FTC still emphasizes that telecom companies shall not communicate with each other in the future for sales information such as contract tariff plans for mobile phones which is in violation of the relevant provisions of the same Act. 

Use of Keyword Advertising by Chunghwa Telecom in Violation of the Fair Trade Act

The FTC decided at the 1,394th Commissioners' Meeting on Jul. 25, 2018 that Chunghwa Telecommunications Co., Ltd. (hereinafter referred to as Chunghwa Telecom) had violated Article 25 of the Fair Trade Act by using the name of a competitor in a keyword advertisement which included the wording "subscribing to Taiwan Mobile's 4G services to be eligible for a raffle every week and become one of the nearly 4,000 lucky people; prizes totaling over 10 million dollars." The practice was obviously unfair conduct able to affect trading order. The FTC imposed an administrative fine of NT\$200,000 on Chunghwa Telecom.

Chunghwa Telecom commissioned an advertising agent to apply the name of its competitor, Taiwan

Mobile, in a keyword advertisement to take advantage of the effort devoted in the market by the competitor for years in order to draw Internet users to search for information related to Taiwan Mobile but end up being on Chunghwa Telecom's website. The business logo of the competitor was displayed in the keyword advertisement to attract potential trading counterparts to click on the advertisement thus increasing transaction opportunities for Chunghwa Telecom. In addition, it caused consumers to have wrong ideas about the competitor that had nothing to do with the promotional activity. The practice was an exploitation of the effort of others and obviously unfair conduct sufficient to affect trading order. It was in violation of Article 25 of the Fair Trade Act. 

Chun Shin Ltd. Restricted Resale Prices of Distributors in Violation of Fair Trade Act

The FTC decided at the 1,385th Commissioners' Meeting on May 23, 2018 that Chun Shin Limited (hereinafter referred to as Chun Shin Ltd.) had violated Article 19(1) of the Fair Trade Act by restricting the resale prices of distributors. In addition to ordering the company to immediately cease the unlawful act, the FTC imposed on it an administrative fine of NT\$100,000.

Chun Shin Ltd. sold its products outright to the distributors. The contracts signed were not entirely the same, but there were always provisions associated with resale price maintenance (RPM). Some of them even included penalty provisions. The provisions apparently restricted the freedom of distributors to decide their resale prices.

Chun Shin Ltd. contested that the stipulations related to RPM were included in distribution contracts for backpacks and soap products to reduce disputes between distributors and help maintain customer service standards. Besides, there were no penalty clauses and in actual practice no resale price restrictions were applied. However, maintaining resale prices was likely to encourage collusion between distributors while Chun Shin Ltd. also did not explain or provide evidence to prove how RPM could help maintain customer service standards and promote competition. In other words, the argument of Chun Shin Ltd. could not justify the company's conduct.

Chun Shin Ltd. claimed that the stipulations related to RPM in the distribution contracts for roof racks and trunks were included as a result of safety considerations. Nonetheless, the company could not provide any details of service being provided by distributors to customers as a result of safety considerations as well as concrete data and evidence with regard to the cost associated with the aforesaid service. The FTC's investigation showed that some

of the distributors did not provide installation service. Meanwhile, according to the Directorate General of Highways, MOTC and the Vehicle Safety Certification Center, there was no law stipulating the registration of inspections or that changes made to vehicles be carried out by installation service providers. Neither was there any provision stipulating that installations of vehicle accessories had to be conducted by professional services. This means that consumers could install the accessories by themselves. In other words, the claim of traffic safety considerations by Chun Shin Ltd. was ungrounded. In the meantime, Chun Shin Ltd. also contested that the practice was preventing not only malicious competition, which affects service quality, but also improper installation, which shortens the life span of products and increases warranty costs. However, the FTC's investigation revealed that distributors compete for business opportunities according to whether they provide a charged installation service or not. Therefore, there was no evidence to prove that the RPM restrictions imposed by Chun Shin Ltd. had anything to do with encouraging distributors to pay more attention to product safety. Obviously, Chun Shin Ltd. could not justify its RPM practices.

Chun Shin Ltd. had by engaging in RPM deprived distributors of their freedom to decide their product prices independently. These businesses were unable to determine their product prices according to the competition that they faced, their management strategies and so on. As a consequence, intra-brand price competition between different marketing channels would be weakened, while there was no justification that competition could be promoted. The practice was in violation of Article 19(1) of the Fair Trade Act. Therefore, the FTC sanctioned Chun Shin Ltd. in accordance with the first section of Article 40(1) of the same Act.



Merger between TIPC and Five Other Companies to Set Up a New Joint Venture TIWTC Together not Prohibited

The FTC decided at the 1,399th Commissioners' Meeting on Aug. 29, 2018 not to prohibit the merger of Taiwan International Ports Corporation, Ltd. (hereinafter referred to as TIPC), Taiwan Power Company (hereinafter referred to as TPC), CWind Taiwan, China Steel Corporation (hereinafter referred to as CSC), China Shipbuilding Corporation (hereinafter referred to as CSBC) and Swancor Renewable Energy Co., Ltd. (hereinafter referred to as Swancor) to set up Taiwan International Windpower Training Corporation (hereinafter referred to as TIWTC) together in accordance with Article 13(1) of the Fair Trade Act.

The shareholding percentages of the six aforesaid companies in TIWTC ranged between 5% and 28%. The condition met the merger type described in Subparagraphs 4 and 5 of Article 10(1) of the Fair Trade Act. TIPC, TPC, CSC and CSBC all accounted for more than one quarter of the market and the sales of the four companies in the previous year were between NT\$15.7 billion and NT\$566.8 billion, reaching the thresholds specified in Subparagraphs 2 and 3 of Article 11(1) of the Fair Trade Act. TPC, CSC and Swancor had already been selected to be offshore wind farm developers. CSBC had submitted a bid, yet had not been selected. Thus the four companies were considered horizontal competitors. Meanwhile, as CSC and its affiliates participated in the upstream operations of the wind power industry supply chain, TPC engaged in power transmission, distribution and sales, CWind Taiwan engaged in wind power operation and management, TIPC provided port services and TIWTC would be responsible for

personnel training and certification. There would be vertical trading relations among these companies. Only Swancor was dedicated to offshore wind power development, yet the other enterprises' main business operations had nothing to do with wind power. Therefore, the merger was also a conglomerate one. For this reason, the seven above-mentioned enterprises acted according to Article 11 of the Fair Trade Act and filed a pre-merger notification with the FTC.

Offshore wind power in the country was still in the early stage of development. Related technologies, software and hardware, marine engineering and the supply chain for the industry were yet to be established. The merger had been developed in line with the government's green energy policy to fill the gap in fundamental safety training for the industry as well as promote the industrial chain being localized and taking root. As a consequence, related personnel could be trained domestically and did not need to travel overseas, and neither would the merged entity need to recruit certified foreign technicians. In the future, the training center would be able to train 800 to 1,000 offshore wind turbine operators and maintenance technicians. The merger would benefit the overall economy by promoting the development of wind power.

As stipulated in the Renewable Energy Development Act, feed-in tariffs and calculation formulas for offshore wind power are under the strict control of the government. The Ministry of Economic Affairs reviews the rates every year, and thus the businesses do not have the ability to raise prices unilaterally.

Furthermore, the signing of feed-in tariff contracts has to be conducted according to the feed-in tariff rate approved by the Ministry of Economic Affairs and no adjustment is allowed according to the law. Therefore, it is quite clear that businesses cannot jointly decide the price or volume. Moreover, offshore wind power operations can only be carried out in accordance with the timeline specified by the government. Businesses cannot enter the market at whim. Companies that constitute the parts of the merger neither have privileges in selection or advantages in competition, nor are they able to create market entry barriers. Although three of the merging enterprises in this case had already been selected to be offshore wind power developers, the installed capacity of the offshore wind power that they obtained together was only 22% of the total market share, way behind other foreign developers. They would therefore not have the ability to impede others from entering the market. Hence, the FTC decided that the merger would not lead to any concerns of competition being restricted in the domestic wind power market.

Finally, the FTC concluded that wind power safety training and certification was not a type of business requiring special permission. There would not be any technical barriers or large-scale capital investment in software and hardware. The industry was still in the early stage of development in the country, and therefore the market scale was small. With low threshold entry requirements, personnel attending the training courses would not be limited to the employees of the merging parties, but would be recruited publicly. At present, the international standard has been established by GWO, and is binding on its members. Around the world, there are already 225 GWO-certified training centers while there are also potential competitors in the country. Therefore, the FTC considered the merger was unlikely to lead to competition restrictions in the wind power personnel training and certification market. By combining the above-mentioned factors, the FTC decided that the overall benefit from the merger would outweigh the disadvantages from the competition restrictions thereof incurred and did not prohibit the merger. 

Mr. Wang Engaged in Multi-level Marketing without Filing with the FTC in Advance in Violation of the Multi-level Marketing Supervision Act

The FTC decided at the 1,381st Commissioners' Meeting on Apr. 25, 2018 that Mr. Wang had violated Article 6(1) of the Multi-level Marketing Supervision Act by engaging in multi-level marketing operations without filing with the FTC in advance and therefore imposed an administrative fine of NT\$100,000 on Mr. Wang.

ASEA, a US company, sells the RENU28 Skincare Gel and other products by means of multi-level marketing. In Jun. 2017, Mr. Wang became a participant of ASEA by signing up online, and started to hold product launches as well as to recruit others to join ASEA from Jul. 2017. Between Jul. and Nov. 2017, Mr. Wang held 10 launches in Kaohsiung City and Taipei City and distributed the "ASEA Participant Incentive Plan" and the "ASEA Membership Application Form" at the venues. According to the "ASEA Participant Incentive

Plan", there were 11 levels in the organization, ranging from the lowest participant rank to the highest triple diamond rank. The bonuses included a retail performance bonus, a most-favored customer bonus, a quick achievement bonus, a director bonus, a team bonus, an administrative momentum bonus and a check-matching bonus. ASEA set up its Taiwan branch and registered its multi-level marketing operation with the FTC in Jan. 2018. However, Mr. Wang began to recruit participants before ASEA Taiwan was registered. As set forth in Paragraph 2 of Article 4 of the Multi-level Marketing Supervision Act, Mr. Wang had to be considered a multi-level marketing enterprise as specified in Paragraph 1 of the same Article. Therefore, Mr. Wang had violated Article 6(1) of the same Act for failing to file with the FTC before engaging in operations.



Fenghe Estate Posted False Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1,389th Commissioners' meeting on Jun. 20, 2018 that Fenghe Estate Development Co., Ltd. (hereinafter referred to as Fenghe Estate) had violated the Fair Trade Act by posting on the Facebook wall of the "Association for Farmland and Farm Building Investment, Development and Utilization," a public group, an advertisement claiming the company was "the designated agent of the Strait Exchange Foundation responsible for finding industrial land, factory buildings and different types of real estate." The wording was a false and misleading representation with regard to quality of service and could also affect transaction decisions. The conduct was in violation of paragraph 4 of Article 21 of the Fair Trade Act and the regulation set forth in Paragraph 1 of the same Article was applicable mutatis mutandis. The FTC imposed an administrative fine of NT\$100,000 on the company.

The claim by Fenghe Estate that it was the designated agent of the Strait Exchange Foundation responsible for finding industrial land, factory buildings and different types of real estate gave the general public the impression that the company had been authorized by the Strait Exchange Foundation to look for industrial land, factory buildings and different types of real estate. According to Fenghe Estate, the company had been invited by the Strait Exchange Foundation to attend the "Meeting on Cooperation Mechanisms on Finding Land for Taiwanese Businesses Moving Back to Taiwan" and the "Dragon Boat Festival Gathering for Taiwanese Businesses on the Chinese Mainland," during which the Strait Exchange Foundation asked the company to provide assistance and find land for

Taiwanese businesses moving back to Taiwan, and the foundation also appointed certain personnel to be the contact window for Fenghe Estate. However, Fenghe Estate was unable to provide any meeting minutes or authorization contract to support its claim that the company had been designated by the Strait Exchange Foundation to find industrial land, factory buildings and different types of real estate for Taiwanese businesses moving back to Taiwan, and neither was there any record showing that the company had actually looked for land for Taiwanese businesses moving back to Taiwan. The FTC also sought verification with the Strait Exchange Foundation, but the foundation responded by saying that it had never commissioned Fenghe Estate to do anything. The company had indeed called on the foundation on Apr. 6, 2017, but it was just a normal visit, and not a meeting on cooperation mechanisms on finding land for Taiwanese businesses moving back to Taiwan. Both parties merely exchanged views on Taiwanese businesses moving back to invest in Taiwan. Although the foundation had invited Fenghe Estate to attend the "Dragon Boat Festival Gathering for Taiwanese Businesses in the Chinese Mainland," the event was a large gathering for Taiwanese businesses and the foundation did not particularly introduce any individual business or designate Fenghe Estate as the agent for finding land. In other words, the claim by Fenghe Estate that it had been designated by the Strait Exchange Foundation to find land, factory buildings and different types of land for Taiwanese businesses was inconsistent with the fact.

Fenghe Estate posted the aforesaid advertisement

and the company's business card on the Facebook wall of the group "Association for Farmland and Farm Building Investment, Development and Utilization" and claimed that it was designated by the Strait Exchange Foundation to look for industrial land, factory buildings and different types of real estate out of the intention to improve the company's corporate image. The conduct

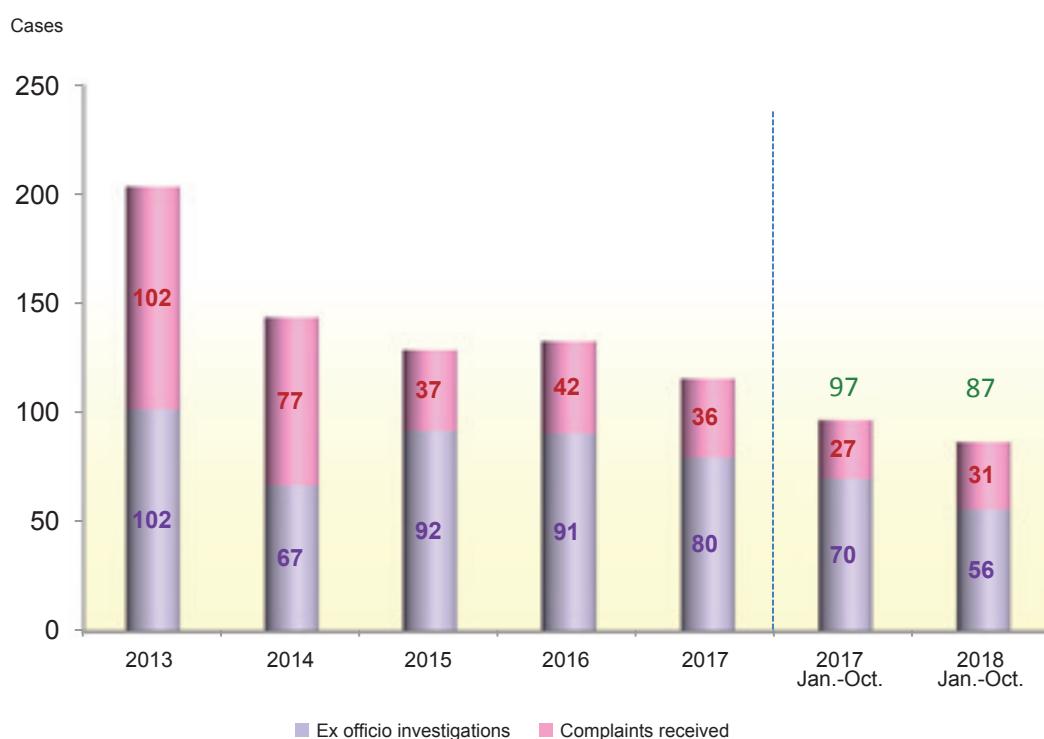
could have caused trading counterparts to have wrong perceptions and make wrong decisions. It was a false and misleading representation with regard to quality of service that could also affect transaction decisions, and thus was in violation of Paragraph 4 of Article 21 of the Fair Trade Act and Paragraph 1 of the same Article was applicable mutatis mutandis.



Statistics on Cases with Sanctions Administered

The FTC investigates practices suspected of being in violation of the Fair Trade Act and the Multi-level Marketing Supervision Act and administers sanctions on businesses or individuals for the violations in order to maintain trading order in society and ensure fair competition in the market. According to the statistics, the FTC closed 87 cases with sanctions administered between January and October in 2018, including 31 complaints and 56 cases in which ex officio investigations were initiated (Fig. 1). 98 dispositions were issued (95 of them with fines imposed). 129 enterprises were sanctioned and the fines totaled NT\$37 million.

Fig. 1 Cases with Sanctions Administered - Divided by Case Types



From 2013 to the end of October this year (2018) (hereinafter referred to as the five recent years), 862 dispositions in total were issued to offenders in violation of the regulations administered by the FTC. Judged by types of violation stated in the disposition (those involving multiple violations were calculated repeatedly), 424 cases (49.2%) of false or misleading advertising constituted the largest proportion, followed by 225 cases (26.1%) of illegal multi-level marketing, 100 cases (11.6%) of deceptive or obviously unfair conduct, and 31 cases (3.6%) of concerted actions. (Table 1).

Table 1 Cases with Dispositions Issued in the Five Recent Years – by Types of Violation

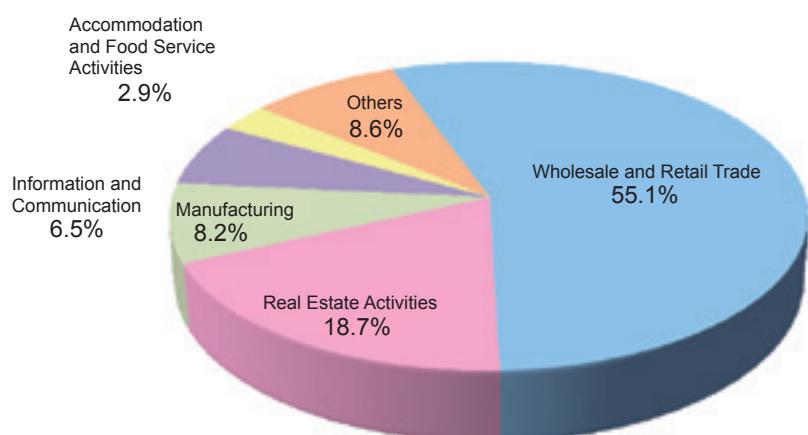
Year	Number of Dispositions Issued	Unit: case						
		Competition Restriction	Concerted Action	Unfair Competition	False or Misleading Advertising	Deceptive or Obviously Unfair Conduct	Illegal Multi-level Marketing	Others
Total (2013 to Oct. 2018)	862	113	31	517	424	100	225	9
2013	214	29	7	132	108	25	51	3
2014	150	27	6	95	74	26	28	1
2015	144	24	12	82	73	9	38	-
2016	140	11	4	96	77	20	33	-
2017	116	13	1	61	46	15	38	4
Jan.-Oct. 2018	98	9	1	51	46	5	37	1

Notes:

1. The number of cases with sanctions administered is inconsistent with the total number of different types of violation because some of the cases involved two or more violations.
2. Illegal multi-level marketing cases include practices in violation of the Multi-level Marketing Supervision Act which entered into force on Jan. 29, 2014.
3. "Others" refer to cases in which sanctions were imposed repeatedly and the concerned parties evaded, obstructed or refused investigations.

Judged by industry in terms of dispositions issued in cases with sanctions administered in the five recent years, 475 cases (55.1%) involving wholesale and retail trade made up the largest proportion, followed by the 161 cases (18.7%) involving real estate activities (Fig. 2). In the five recent years, the fines for sustained dispositions totaled NT\$15.26586 billion. The NT\$8.69666 billion (57.0%) imposed on manufacturing businesses accounted for the biggest proportion, followed by the NT\$6.0124 billion (39.4%) imposed on electricity and gas supply businesses.

Fig. 2 Cases with Dispositions Issued in the Five Recent Years – by Industry



FTC Activities in September and October 2018

- ↗ On Sep. 2, 19 and 24, the FTC conducted presentations on “Various Aspects of Trading Traps” respectively, at the Xuanzhen Folk Custom Association in Pingtung County, Chunri Township Indigenous Family Service Center in Pingtung County and Changlong Village of Shanhua District in Tainan City.
- ↗ On Sep. 7, the FTC held a workshop on the “Current Status of Competition and Tendencies for Future Development in the Gas Station Market” in Taichung City.
- ↗ On Sep. 7, the FTC conducted a presentation on the “Fair Trade Commission Regulations on Online Advertising” in Taichung City.
- ↗ On Sep. 11, President Lin Chien-fu of the Taiwan Institute of Economic Research gave a lecture on “Competition in the Era of the New Economy” at the invitation of the FTC.
- ↗ On Sep. 14, the FTC conducted a presentation on “Laws and Regulations Related to Multi-level Marketing” in Hsinchu County.
- ↗ On Sep. 19, the FTC and the Department of Education of Taipei City Government co-hosted the “Fair Trade Act Seed Teacher Workshop” for junior and senior high schools in Taipei City.
- ↗ On Sep. 26, the FTC held the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Money and Banking , National Kaohsiung First University of Science and Technology.
- ↗ On Sep. 28, the FTC conducted a presentation on the “Fair Trade Commission Disposal Directions (Guidelines) on Handling Promotional Advertisements” in Kaohsiung City.
- ↗ On Oct. 16, the FTC conducted a presentation on “Various Aspects of Trading Traps” at the Meihe Community in Pingtung County.
- ↗ On Oct. 17, the FTC held the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Economic and Financial Law, National University of Kaohsiung.
- ↗ On Oct. 22, the teachers and students of the Department of Law, Chinese Culture University attended the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” held by the FTC.



- 1.The FTC conducting presentations on “Various Aspects of Trading Traps” at the Chunri Township Indigenous Family Service Center in Pingtung County
- 2.The FTC holding a workshop on the “Current Status of Competition and Tendencies for Future Development in the Gas Station Market” in Taichung City



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- 3.The FTC conducting a presentation on the "Fair Trade Commission Regulations on Online Advertising" in Taichung City
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- 8.The teachers and students of the Department of Law, Chinese Culture University attending the "Fair Trade Act and Multi-level Marketing Supervision Act Training Camp" held by the FTC

International Exchanges in September and October 2018

- On Sep. 10, the FTC attended the teleconference held by the ICN Agency Effectiveness Working Group.
- On Sep. 13, the FTC attended the “10th Seoul International Competition Forum” organized by the Korea Fair Trade Commission in Seoul.
- On Sep. 26 and 27, the FTC Vice Chairperson Perng Shaw-Jiin led a delegation to hold the “Regional Antitrust Seminar on E-commerce and Competition” on the island of Bali, Indonesia.
- On Oct. 3, the FTC attended the teleconference held by the ICN Cartel Working Group.
- On Oct. 30, the FTC attended the teleconference held by the ICN Merger Working Group.



1. The FTC attending the “10th Seoul International Competition Forum” organized by the Korea Fair Trade Commission in Seoul



2. The FTC Vice Chairperson Perng Shaw-Jiin leading a delegation to hold the “Regional Antitrust Seminar on E-commerce and Competition” on the island of Bali, Indonesia

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