

# *Competition Policy*

## *Newsletter*

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### ◆ News Section

#### ◎ 2006 Industrial Survey on Major Chain Convenience Stores

In order to understand the development status of the market for chain convenience stores, the FTC has undertaken industrial studies on major chain convenience stores within Taiwan for many years. The data thereby obtained have served as valuable reference for handling cases related to the Fair Trade Law. Based on the 2006 data, as of the end of 2006, the eight major chain convenience stores had a total of 9,029 business locations. The store-opening rate has been decreasing over the last 5 years, falling from 25.38% in 1999 to 4.21% in 2006. On an individual basis, as of the end of 2006, TSC Million was the No. 1 enterprise with the highest store

opening growth rate of 11.11%, followed by Hi-Life with 8.71%, Family Mart with 8.7%, and 7-Eleven with 8.62%, while Lai Lai Convenience Store (a.k.a. OK Convenience Store), Niko Mart and SJExpress had negative store growth rates of -2.44%, -16.67% and -95.6%, respectively. On the whole, compared with 2005, except for TSC Million that had a slightly higher store opening growth rate, the rest of the stores all had slower growth rates in 2006. Stores with smaller scales, such as SJExpress, recorded negative growth, and Wong Chai Chi and Everyday even closed down their businesses in 2005 and at the beginning of 2007, respectively. In light of the store structure, 1,705 stores were regular chain stores, or 18.88% of the total number of stores, while 7,324 stores were franchise stores, or 81.12% of total stores. Among the franchise stores, 3,553 stores were subject to license chains, or 39.35% of total stores; 3,565 stores were subject to franchise chains, or 39.48%, and the remaining 206 stores were subject to voluntary chains, or 2.28% of the total. Thus, the structure of the

chain convenience stores was such that it still mainly consisted of license chains and franchise chains. Franchise chain stores had a market share of 26.41% in 2002, which increased to 39.48% in 2006, a market share that was slightly higher than that of license chains. Based on the statistics mentioned above, it can be found that local citizens are increasingly willing to engage in entrepreneurship. In addition, participating in franchise operations costs less and involves less risk; therefore, nationals prefer franchise chains.

As for the numbers of stores in each chain system, at the end of 2006 7-Eleven had 4,385 stores, taking the No. 1 place among all enterprises, or 48.57% of the total store amount. Following 7-Eleven were Family Mart with 2,012 stores, with a 22.28% share; then Hi-Life with 1,260 stores, or 13.96%; Lai Lai Convenience Store, which was ranked fourth among all enterprises, with 839 stores, or 9.29%; and Niko Mart, which ranked fifth, with 300 stores, or 3.32%. From sixth through eighth were Chieh Yang with 206

stores, TSC Million with 20 stores, and SJExpress with 7 stores. The net number of stores that opened in 2006 was 324 for all chain systems, for which 7-Eleven was at the top of the list with 348 new stores, followed by Family Mart with 105 stores, and Hi-Life with 101 stores. Enterprises that saw reductions in the numbers of stores were Lai Lai Convenience Store with 20 stores, Niko Mart with 60, and SJExpress with 152. The highest net number of stores that opened in a single year in the past 10 years was that in 1999 when a total of 1,002 stores opened. The total number of stores that opened was reduced to 550 (in 2004), and was further reduced to 324 in 2006.

The FTC pointed out that the phenomenon whereby the various business activities conducted by major convenience stores, such as the receipt of payments, meal boxes, international gourmet food, New Year dish reservations, and pick-ups for books purchased online, are gradually reaching a mature stage clearly indicates that chain convenience stores create value

in addition to their business based on the characteristics of their distribution channels. The study also showed that these chain convenience stores were trying to find various ways of competing with those within the same field of business. According to the study, in addition, there are currently more than 9,000 chain convenience stores nationwide. The density of convenience stores is as high as one to every 2,700 of the population. As the market competition slowly reaches a climax, and a portion of the enterprises exit the market (such as Everyday), or integrate their operations with those of other convenience stores (such as Niko Mart and Family Mart), there is, however, a tendency that the market will gradually be integrated in the future. The FTC will therefore pay close attention to the change in market structure to prevent the restraints on competition or unfair competition that might be caused by such integration.

◎ **Investigation Report on the 2006 Overall Status of Multi-Level Sales Enterprises**

In order to stipulate counseling measures and management policies regarding multi-level sales enterprises, the FTC from March to April 2007 conducted a survey regarding the operating conditions of multi-level sales enterprises in 2006. Among 704 multi-level sales enterprises which completed their reporting to the FTC, the number of enterprises actually investigated by the FTC in 2006 was 249, after excluding the rescinded reports and the enterprises which did not operate during the investigation or whose operations temporarily ceased. The survey results were as follows:

1. Allocation of Enterprises' Registered Locations:

In 2006, northern Taiwan had the most enterprises, or a total of 157. According to their allocation among the counties/cities, about 60% of the enterprises were located in Taipei City

and Taichung City, the most populous metropolitan areas, with 44.98% of the enterprises being located in Taipei City and 15.66% in Taichung City. This shows that multi-level sales enterprises mainly rely on interpersonal relationships to expand their activities.

2. Business Volume:

(1) The total business volume in 2006 was NT\$55.34 billion. Compared with that in 2005 of NT\$68.373 billion, the amount decreased by NT\$13.033 million (or 19.06%). The main reasons for this were that the number of enterprises decreased by 13.54%, the business volume of a portion of the enterprises largely decreased due to operational problems, and the double cards effect that occurred in the financial industry affected a portion of purchasers who were accustomed to buying multi-level sales products with cards.

(2) There were 13 enterprises with a

business volume of more than one billion New Taiwan dollars (5.22% of all enterprises; compared with the number of such enterprises in 2005, the number decreased by 1). On the other hand, the accumulated business volume for these 13 enterprises was NT\$33.661 billion, which was 60.83% of the business volume of the industry. When compared with the corresponding volume in 2005 of 58.38%, this reflected an increase of 2.45%. This shows that the differences in the business scales of enterprises in 2006 were enlarged.

3. Number of Participants:

(1) The number of participants at the end of 2006 was 5,300,000, which was 242,000 (or 4.78%) more than that at the end of 2005 when it was 5,058,000. After eliminating duplicate numbers, the number of participants at the end of 2006 was 4,230,000, which was 193,000 more than that at the end of 2005, when it

was 4,037,000.

(2) 18.49 people out of every 100 had participated in multi-level sales activities (the sales participation rate was 18.49%) at the end of 2006. There was a 0.76% increase since the end of 2005, at which the rate was 17.73%.

(3) The number of new participants in the year 2006 was 791,000 (14.93% of all participants), which was 128,000 (13.93%) fewer than the corresponding number of new participants in the year 2005, or 919,000.

4. Scale of Enterprise Participants:

A total of 40.96% of the enterprises had fewer than 1,000 participants in 2006, while only 10 enterprises (4.02% of all enterprises, which accounted for 52.89% of all participants), the second largest category, had more than 100,000 participants. This shows that the scale of enterprise participation varied quite considerably.

5. Number of Participants Ordering Products:

There were 1,858,000 participants ordering products in 2006. Compared with the number in 2005, the figure had increased by 343,000. The ratio of the number of product ordering participants to the total number of participants in 2006 was 35.06%. Compared with the ratio in 2005 of 29.95%, the ratio increased by 5.11%.

6. Commissions/Bonuses:

(1) The total amount of commissions/bonuses given by the enterprises in 2006 was NT\$21.272 billion, which was 38.44% of the total business volume. Compared with the ratio in 2005, the ratio decreased by 3.20%.

(2) The number of participants who had received commissions/bonuses in 2006 was 712,000. Compared with the number in 2005, this was a reduction of 152,000. The ratio of the said number to the total number of participants in 2006 was 13.43%.

Compared with the ratio in 2005, it reflected a decrease of 3.65%.

(3) The average amount of commissions/bonuses received by each person was NT\$29,873 in 2006. Compared with the corresponding figure in 2005 of NT\$32,940, the amount decreased by NT\$3,067.

7. Product Sales Amount:

In 2006, health food products still had the largest sales amount which was NT\$28.383 billion or (51.29%). The rest were cosmetic products with NT\$10.4 billion (18.79%), clothing and accessories with NT\$3.64 billion (6.58%), and cleaning products with NT\$3.341 billion (6.04%).

8. Replenishment/Manufacturing Costs:

The amount of replenishment/manufacturing costs in 2006 was NT\$16.1 billion, which was 29.09% of the total business volume. Compared with the ratio in 2005 of 28.52%, the ratio increased by 0.57%.

### 9. Future Perspective of Operations (Multiple Options):

A total of 130 enterprises (52.21%) were anxious regarding the destruction that might be caused by non-multi-level sales enterprise destroyers; 49% thought that competition among similar products had increased and had an impact on their business operations; 48.59% thought that the market was in a state of depression; and 28.51% thought that the number of participants was gradually decreasing. However, a total of 45 enterprises (18.07%) had faith in their future operations.

#### ©Selected FTC Decisions

#### ☐Sinyi Real Estate Inc. violated Article 21(3) of the Fair Trade Law by placing untrue advertisements

During its 818th Commissioners' Meeting on July 12, 2007, the FTC resolved that the representations with regard to Sinyi's service quality in the

posters disseminated by Sinyi Real Estate Inc. (hereinafter called "Sinyi"), stating that it "Ranked first in the real estate industry for ten years – as a result of the investigation conducted by Commonwealth magazine," "Sinyi has won the first prize in the Management category for eleven years, as a result of investigation on five hundred large service industries conducted by Commonwealth Magazine," "Sinyi always ranked first in the real estate industry for each investigation," "It has the largest nationwide database on the conclusion of transactions on sales and rents of real estate," and "Sinyi is the house buyers' first choice and five times the frequency that the real estate ranked second," were false, untrue and misleading. Sinyi violated Article 21(3), applied mutatis mutandis to 21(1), of the Fair Trade Law. The FTC ordered Sinyi to cease the aforesaid unlawful act immediately and imposed an administrative fine of NT\$1,500,000 in accordance with the fore part of Article 41 of the Fair Trade Law.

The FTC indicated that Sinyi placed the advertisements at its shop in Puchien, Banciao, and shop in Hsinchuang in September and October of 2005, respectively. The advertisement in Banciao stated that it “Ranked first in the real estate industry for ten years – Result of the investigation conducted by Commonwealth magazine,” while the one at the shop in Hsinchuang claimed that “Sinyi always ranked first in the real estate industry for each investigation;” and it disseminated house sales information in the circulation flyers in Daan District, Zhongzheng District and Xinyi District in December 2005, which claimed that “Sinyi has won the first prize in the Management category for eleven years, as a result of investigation on five hundred large service industries conducted by Commonwealth magazine.” Nevertheless, the findings of the FTC after investigation showed that Sinyi had not ranked first in the real estate industry “for” ten years. The result of the investigation on five hundred large service industries conducted by Commonwealth magazine did not show that it had won

the first prize in the Management category “for” eleven years. In addition, it did not always rank first in the real estate industry for “each” investigation. The FTC held that the representations with regard to Sinyi’s service quality were false and untrue, and Sinyi violated Article 21(3), applied mutatis mutandis to 21(1), of the Fair Trade Law.

The FTC further indicated that the statement in the advertisement at the shop in Hsinchuang in October 2005, i.e., “It has the largest nationwide database on the conclusion of transactions on sales and rents of real estate,” was the result of being a VIP member of “Taiwan’s Real Estate Portal (GigaHouse),” as indicated by Sinyi. After the investigation, the FTC found that “Taiwan’s Real Estate Portal (GigaHouse)” is a multiple listing service on real estate; being a member of the portal allowed Sinyi and other members to jointly utilize the database on the conclusion of transactions and Sinyi did not own such a database. After observing the overall impression and effects of the



advertisement at the shop in Hsinchuang in October 2005, the FTC found that the representation in the advertisement could easily mislead the general public into believing that Sinyi owned the said largest nationwide database on the conclusion of transactions on sales and rents of real estate and it was sufficient to induce the public into erroneous cognition and to make wrong decisions. The FTC held that the representation regarding Sinyi's service quality was misleading and Sinyi violated Article 21(3), applied mutatis mutandis to 21(1), of the Fair Trade Law.

The FTC additionally indicated that the statement: "Sinyi is the house buyers' first choice and five times the frequency that the real estate ranked second," placed in the advertisement at the shop in Ren-ai in September and November 2005 and in the advertisement at the main store in Taishan in February 2006, was based on the result of a market investigation conducted by Viewpoint Research & Consulting Co. Ltd. in 2002, as indicated by Sinyi. The findings of the

FTC after investigation showed that the aforesaid result did not form part of the frequent reports of Viewpoint Research & Consulting Co. Ltd.. The report was, however, especially handled in 2002 with Sinyi's authorization. In addition, Sinyi did not disclose the source of information in the advertisements for the reference of the general public and the representation in the advertisement easily misled the general public into believing that the information, "Sinyi is the house buyers' first choice and five times the frequency that the real estate ranked second," was the result of the frequent investigations in the real estate market conducted by a neutral party. These viewpoints were sufficient to find that the representation regarding Sinyi's service quality was misleading, and Sinyi violated Article 21(3), applied mutatis mutandis to 21(1), of the Fair Trade Law.

**□ Fuyang Media Co. Ltd. violated Article 11(1) of the Fair Trade Law for its failure to file a merger report**

During its 819th Commissioners' Meeting on July 19, 2007, the FTC resolved that Fuyang Media Co. Ltd. (hereinafter called "Fuyang") continued to conclude agreements on behalf of Mangrove CATV Corp. (hereinafter called "Mangrove") in Danshuei Township, Taipei County, and Shin Ho Cable TV Co. Ltd. (hereinafter called "Shin Ho") in Hsinchuang Township, Taipei County, on December 31, 2004, and received a majority vote to take the positions of directors and supervisors, of Mangrove and Shin Ho simultaneously in April 2005 in order to continue to control the business operations and personnel appointments and dismissals of the aforesaid companies both directly or indirectly, after it underwent a disciplinary action in accordance with FTC Disposition (94) No. 093034 dated March 26, 2004 due to the fact that it took part in an illegal merger. In terms of the law, Fuyang should have filed a merger report but it did not; therefore it violated Article 11(1) of the Fair Trade Law. The FTC ordered Fuyang to move the related staff to other positions

other than the original positions, which held substantial control over Fuyang, Mangrove and Shin Ho simultaneously, within three months of the second day after the day when Fuyang received the Disposition. Fuyang was imposed with an administrative fine of NT\$4,000,000 for each of the said cases; in other words, an administrative fine of NT\$8,000,000 in total was imposed.

The FTC indicated that Fuyang controlled the business operations and personnel appointments and dismissals of Mangrove and Shin Ho both directly or indirectly by taking the full positions of directors and supervisors in Mangrove from February 17 to June 1, 2003 and in Shin Ho from March 12 to July 7, 2003. As a result, Fuyang should have filed a merger report, but it did not; and it therefore violated Article 11(1) of the Fair Trade Law. It was on record that Fuyang was to undergo a disciplinary action in accordance with FTC Disposition (94) No. 093034 dated March 26, 2004. Then the FTC received complaints successively

in 2006 and the findings of the FTC after investigation showed that North Coast Cable TV Corp. (hereinafter called “North Coast”) in Danshuei Township, Taipei County, and Mangrove indeed jointly operated the businesses and did not compete with each other; this circumstance also occurred in the case of Yeong Jia Leh Cable TV Co., Ltd. (hereinafter called “Yeong Jia Leh”) in Hsinchuang Township, Taipei County and Shin Ho. Besides, on behalf of Mangrove and Shin Ho, Fuyang concluded “Agreements on the Transmission of Basic Frequency Channels” and “Agreements on the Public Transmission of Cable TV” with related channel providers (agents) for the first half of the year 2005 (from January 1 to June 30) on December 31, 2004. Furthermore, Fuyang, which received a majority vote to take the positions of directors and supervisors in Mangrove and Shin Ho, sent its staff to assume these concurrent positions in April 2005. As a result, the FTC received complaints with regard to these two cases during the period of the investigation in 2006 stating that

Fuyang still held substantial control over Mangrove and Shin Ho and continued to directly or indirectly control their business operations and personnel appointments and dismissals. Fuyang, however, did not correct its acts or adopt necessary correction measures in accordance with FTC Disposition (94) No. 093034 dated March 26, 2004.

The FTC further pointed out that there were two cable TV enterprises in Danshuei Township, Taipei County, namely, North Coast and Mangrove, and two cable TV enterprises in Hsinchuang Township, Taipei County, namely, Yeong Jia Leh and Shin Ho. Mangrove which was controlled by Fuyang had a market share of 57.45% in Danshuei Township, Taipei County. As for the market in Hsinchuang Township, Taipei County, Yeong Jia Leh, over which Fuyang already held the right of control, had a market share of 79.75%. The amounts of these market shares had all exceeded the threshold for filing a merger report as set forth in Article 11(1) of the Fair Trade

Law. Article 11(1) provided that “one of the enterprises in the merger has one fourth of the market share.” Therefore, Fuyang, the controlling enterprise, should have filed a merger report to the FTC; and yet, it did not correct its acts or adopt necessary correction measures in accordance with the content of FTC Disposition (94) No. 093034 dated March 26, 2004. It also did not submit the merger report to the FTC. As a result, Fuyang violated Article 11(1) of the Fair Trade Law.

After considering the motive, purpose and anticipated improper profits of the unlawful acts of Fuyang; the degree and duration of the unlawful acts’ harm to market order; the benefits derived on account of the unlawful acts; the scale, operating condition and market position of the enterprise; whether or not the types of unlawful acts involved in the violation had been corrected or warned about by the Central Competent Authority; the types and numbers of and intervals between past violations, and the punishment for

such violations; the remorse shown for the acts and attitude of cooperation in the investigation; and other factors, the FTC ordered Fuyang to move the related staff to other positions other than the original positions, which held substantial control over Fuyang, Mangrove and Shin Ho simultaneously, within three months of the second day after the day when Fuyang received the Disposition, in accordance with Articles 13(1) and 40(1) of the Fair Trade Law. Fuyang was imposed with an administrative fine of NT\$4,000,000 for each of the said cases; in other words, an administrative fine totaling NT\$8,000,000 was imposed.

**□ The act of the stevedore enterprises’ joint conclusion of agreements in Taichung Harbour did not amount to a concerted action regulated by the Fair Trade Law**

During its 820th Commissioners’ Meeting on July 26, 2007, the FTC resolved that it would be difficult to regard the acts of stevedore enterprises

for general goods in Taichung Harbour as concerted actions set forth in Article 7 of the Fair Trade Law even though complaints were received that the enterprises were violating the Fair Trade Law. This was because the enterprises' act of jointly concluding agreements in writing on the basis of the understanding, "contribute NT\$8.95 per ton in terms of monthly gross operations," was to solve the problem of seniority which was to be paid to longshoremen in Taichung Harbour; additionally, it was also a result of intervention by the relevant business regulatory authorities.

The FTC indicated that three enterprises, namely, Taichung Harbour Warehousing & Stevedoring Co., Ltd., Te Lung Warehousing & Stevedoring Co., Ltd. and Chien Shing Harbour Service Co., Ltd., were the subject of complaints for taking part in concerted actions. After the investigation, it was found that, although the complainants agreed to draw out NT\$8.95 per ton, and that the loans from the bank would be

paid off by contribution in terms of the agreement, the purpose of the act was to solve the problem on seniority to be paid to longshoremen, which was caused by the opening up of the stevedoring of general goods in Taichung Harbour. In addition, it was also a result of substantial intervention of the relevant business regulatory authorities. The act was beneficial and had substantial effects on the promotion of opening up to competition in mooring, docking and anchoring operations in Taichung Harbour. Therefore, such agreements were not attributed to concerted actions regulated by the Fair Trade Law; and in terms of the existing evidence, it would be difficult to find them a violation of the Fair Trade Law.

#### **□ Merger of Family Mart Co. Ltd. and Niko Mart**

During its 824th Commissioners' Meeting on August 23, 2007, the FTC resolved that it would not prohibit

the merger of Family Mart Co. Ltd. (hereinafter called “Family Mart”) and Niko Mart (hereinafter called “Niko”) in terms of Article 12(1) of the Fair Trade Law while Family Mart undertook to file a merger report regarding its intention to merge with Niko. This was because the overall economic benefits brought by the merger would outweigh the disadvantages resulting from the competition restraints.

The FTC indicated that the merger of Family Mart and Niko, whereby Niko planned to assign its operation of license chains and franchise chains to Family Mart and a portion of Niko regular chain stores were to be franchised with Family Mart in the name of Niko Mart, fell under the type of merger set forth in Articles 6(1)(iii) and (v) of the Fair Trade Law. The provisions provide respectively that “an enterprise is assigned by another enterprise the major part of the business or properties of such other enterprise” and “directly or indirectly controls the business operation or the appointment or discharge of personnel of another

enterprise.” In addition, the sales for the preceding fiscal year of the enterprises involved in the merger all reached the threshold amount for the filing of the merger report as stipulated by Article 11(1)(iii) of the Fair Trade Law, and they did not fall within the circumstances set forth in Article 11-1. Therefore, the parties filed a merger report with the FTC in accordance with the law.

The FTC further pointed out that the market share of the chain convenience stores after the merger of Family Mart and Niko was only 21.48%, and therefore, compared with the market structure prior to the merger, there was no significant alteration in the market structure after the merger. In the same way, the market concentration showed no significant deterioration. After considering the merger in this case, the FTC found that Niko would not only improve the difficult situations on current financial loss and inadequate capital flow, but it would also avoid the reduction in trading opportunities of up- and down-stream

trading counterparts due to closing the business of the current stores. In the same way, it would be beneficial to Family Mart to adequately amplify the benefits and effects of economies of scale and effectively lower the operating cost. Therefore, the FTC found that the merger in this case would not cause substantial harm to the level of market competition and the overall economic benefits brought by the merger would outweigh the disadvantage resulting from the competition restraints. Therefore, in accordance with Article 12(1) of the Fair Trade Law, the FTC did not prohibit the merger of Family Mart and Niko.

**□ Hsien Peng Development Corp. and Hsien Hung Construction Co. Ltd. violated Article 21(1) of the Fair Trade Law by placing an untrue advertisement to sell a sumptuous mansion in an industrial zone**

During its 825th Commissioners' Meeting on August 30, 2007, the FTC resolved that the representation of the

uses of the products in the advertisement, "Garden of Double Oaks," of Hsien Peng Development Corp. (hereinafter called "Hsien Peng") and Hsien Hung Construction Co. Ltd. (hereinafter called "Hsien Hung") – the advertisement to sell a sumptuous mansion in a Type B Industrial Zone in Sinying City, Tainan County – was false, untrue and misleading. Hsien Peng and Hsien Hung were in violation of Article 21(1) of the Fair Trade Law; the FTC ordered them to cease the aforesaid act and with an administrative fine of NT\$ 3,500,000 was imposed on each of Hsien Peng and Hsien Hung.

The FTC pointed out that in accordance with Article 18 of the Province's Enforcement Rule Urban Planning Law, the Type B Industrial Zone was for the construction of factories which may cause slight environmental pollution, the necessary auxiliary facilities for factories and the facilities relevant to industrial development; besides, applications needed to be filed for the purpose of constructing

public service facilities, facilities for state-owned enterprises, and general commercial facilities. The industrial zone does not permit housing construction. In the event that houses are built in the zone, the local governments, or the township, town or county public institutes will impose administrative fines of more than NT\$60,000 and less than NT\$300,000 on the owners, users or administrators of the lands or buildings located in the jurisdiction of the aforesaid authorities, and officially force them to demolish, reconstruct, cease to use or restore them to the previous state, in accordance of Article 79 of the Urban Planning Law. “Garden of Double Oaks” in casu was located in a Type B Industrial Zone in the urban plan. However, the advertisement of “Garden of Double Oaks” juxtaposed the phrases and words, “Private Castle,” and “Shop Front for Retail Sales,” “Business Offices,” and it indicated that the descriptions applied to houses, i.e., “Super Sumptuous Mansion,” “Tailor-made Super Sumptuous Mansion,” “Beyond Super Sumptuous Mansion” and “RELAX

Private Castle For Rest and Travel,” with supporting diagrams picturing the landscape, living room, and bathroom and kitchen facilities. After observing the overall effect of the advertisement for “Garden of Double Oaks,” it was found that consumers were indeed easily misled into believing that the building was meant for the uses of shops and business offices as well as for general residence. The FTC indeed found that Hsien Peng and Hsien Hung violated Article 21(1) of the Fair Trade Law by placing false, untrue and misleading advertisements. In addition, when officials from the FTC conducted an investigation at the reception center of the construction work in casu, they found that the interior of the model exhibited at the center had space for a living room, kitchen and bedrooms and the reception personnel introduced the space of the pre-sale house by looking at the locale model – the receptionists emphasized that the construction work was for dual uses, i.e., for residence and commerce. These incidents helped prove that Hsien Peng and Hsien Hung misled people into



believing that their building was also suitable for residential use.

After the FTC considered the motive, purpose and anticipated improper profits of the unlawful acts of Hsien Peng and Hsien Hung; the degree and duration of the unlawful acts' harm to market order; the benefits derived on account of the unlawful acts; the scale, operating condition, turnover and market position of the enterprise; whether or not the types of unlawful acts involved in the violation have been corrected or warned about by the Central Competent Authority; the types and numbers of and intervals between past violations, and the punishment for such violations; the remorse shown for the acts and attitude of cooperation in the investigation; and other factors, it placed the aforementioned administrative actions against Hsien Peng and Hsien Hung in accordance with the fore part of Article 41 of the Fair Trade Law.

**□ Uni-President Enterprises Corporation, Wei Chuan Corp. and Kuang Chuan Dairy Co., Ltd. violated Article 24 of the Fair Trade Law by simultaneously raising the sales price of fresh milk**

During its 825th Commissioners' Meeting on August 30, 2007, the FTC resolved that Uni-President Enterprises Corporation, Wei Chuan Corp. and Kuang Chuan Dairy Co., Ltd. violated Article 24 of the Fair Trade Law by simultaneously raising the sales price of fresh milk on August 1, 2007. In accordance with the fore part of Article 41 of the Fair Trade Law, the FTC ordered them to cease the aforesaid act immediately. Administrative fines of NT\$4,500,000, NT\$3,500,000 and NT\$3,500,000 were imposed on Uni-President Enterprises Corporation, Wei Chuan Corp. and Kuang Chuan Dairy Co., Ltd. - the total of these fines was NT\$11,500,000.

As the media in July 2007 widely reported that the rise in the existing purchase price of milk by the competent authority, the Council of Agriculture,

Executive Yuan, caused the three large fresh milk enterprises to raise the sales price of fresh milk on August 1, the FTC immediately conducted an ex officio investigation with regard to the relevant matters. The findings of the FTC after investigation showed that the respondents were the three largest enterprises in the fresh milk market; they simultaneously raised the prices of fresh milk on April 1, 1999 for the increase of purchase price of milk. The FTC decided in advance to invite the respondents for a meeting in March each year to declare that simultaneously raising prices was an act in violation of the Fair Trade Law and was to be prohibited.

The FTC further indicated that all three large companies of milk products in this case admitted raising prices of fresh milk on August 1 this year and had issued letters to inform their downstream trading counterparts. Such an act had made the media extensively report the news since the middle of July and caused the nationwide consumers to

have a general knowledge that the prices of market fresh milk would be raised in full, thus causing the people to feel disturbed about the phenomenon. Since the three large milk companies already had a dominant position and the FTC had already proclaimed its position in front of the enterprises in the annual meeting, the enterprises had been well informed of the provisions of the Fair Trade Law. Hence, in terms of the spirit of the Fair Trade Law, the enterprises had the obligation to prevent the increase in prices from happening. Nevertheless, they did not prevent the phenomenon from happening; instead, they went against the essence and spirit of free competition in the market and damaged the benefits for consumers. This was an obviously unfair act sufficient to affect market order, and the said enterprises violated Article 24 of the Fair Trade Law. After the FTC considered the relevant factors, the motive, purpose and anticipated improper profits of the unlawful acts of the respondents, it placed the aforementioned actions against the parties.

The FTC also earnestly calls upon enterprises in every industry since, currently, it so happens that many living necessities and raw materials undergo glutflation, and in the consumer market, the public generally feel disturbed about the phenomenon. As for each enterprise in each industry, they shall on their own initiative consider each operating cost and condition in relation to its business and reflect on the changes in the prices of products in different channels or on the basis of different promotions for the purpose of mutual competition. In the event that an enterprise takes the opportunity to control prices or has improper acts which affect the market function to the extent that there will be concern that the nationals' stable livelihood will be affected and the whole social economic development will be impeded, it is obvious that the enterprise goes against the legislated purpose of the Fair Trade Law. In the event that the FTC has concrete evidence with regard to the violation of the Law after the investigation by the FTC, it will impose

a severe administrative penalty to the amount of NT\$25,000,000, mostly against the enterprise in accordance with Article 41 of the Fair Trade Law.

### ◆FTC Activities

- ◎ On July 2, the FTC held a seminar on the "Regulation in Relation to the Priority Supervision of Business Advertisements" in the Civil Service Department Institute.
- ◎ On July 5, the FTC held a seminar on the "Relationship between Disclosure of Real Estate Trade and Unfair Competition" .
- ◎ On July 17, the FTC held an "Advocacy Meeting on Getting Acquainted with Multi-level Sales Laws and Orders" for heads of townships, heads of villages, the heads of neighborhoods and officers of villages in the jurisdiction of the Taipei City Government in the Songshan District Office, Taipei City.
- ◎ On July 17, 20 and 27, the FTC held

<p>a “Workshop on the Study of the Regulation of Business Operations in the Financial Industry” in the Commissioners’ conference room of the FTC, the Taichung City Government and the Southern Region Service Center, Executive Yuan (Cabinet), respectively.</p> <p>◎ On July 20, the FTC held a seminar to advocate the regulation of advertisements for real estate in the lecture theater at the Women’s Center, Economic Affairs Bureau, Kaohsiung City Government.</p> <p>◎ On July 23-24, the FTC held a “2007 Research and Study Camp on Legal Systems” at the Taiwan Power Company Training Institute in Wulai, Taipei County.</p> <p>◎ On July 30-31, the FTC held a “Research and Study Camp on Competition in the Transportation and Tourist Industry” in Changhua County.</p> <p>◎ On August 6-7, the FTC held a “Research and Study Camp on Real</p>	<p>Estate Trade and Competition” in the Plaza International Hotel, Taichung City.</p> <p>◎ On August 13, the FTC held a seminar to advocate a research and study camp on multi-level sales laws and orders and cases in the northern area of the island in the NTUH International Convention Center.</p> <p>◎ On August 20-21, the FTC held a “Research and Study Camp on the Cross Operation of the Financial Service Industry” at the Chinatrust Hotel, Yi-Lan County.</p> <p>◎ On August 20-21, the FTC held the “2007 Conference on Cases and Methods of Handling Cases.”</p> <p>◎ On August 21, the FTC held a seminar to advocate a research and study camp on multi-level sales laws and orders and cases in the central area of the island in the Department of Civil Servant Development, Taichung City.</p> <p>◎ On August 24, the FTC held a seminar to advocate a research and study camp</p>
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on multi-level sales laws and orders and cases in the southern area of the island in the National Science and Technology Museum.

- ◎ On August 24, the FTC held education and training to intensively improve the fellow workers' ability to write and improve the quality of the FTC's decisions.
- ◎ On August 28, the FTC held a seminar to advocate the regulation of advertisements and the operations of banks in the Plaza International Hotel, Taichung City.
- ◎ The speeches handled by the Competition Policy Information and Research Center in July and August were as follows:

Date	Speaker	Subject
July 3, 2007	Assistant Professor Wei Hsin-Fang Department of International business, Chang Jung Christian University	A Discussion on the Regulation of Pricing International Roaming Services – Lessons Learned from the Enforcement Experience of Competition Law in the European Union
July 28, 2007	Dean Chen Jung-Lung Law School, Fu Jen Catholic University	Analysis of Cross-Strait Competitiveness in relation to the 2007 Property Law
August 28, 2007	President Liang Kuo-Yuan Polaris Research Institute	New Features of Product Markets under High Oil Prices

### ◆ **International Exchanges**

- ◎ On July 2, Inspector YEN Chia-Lin of the FTC attended the “National Conference on Competition and Development” which was organized by the Unfair Competition Regulatory Authority of Mongolia in Ulan Bator. She was also a lecturer at the conference.
  
- ◎ From July 3 to 6, the Head of the Competition Division, Competition Law and Policy, OECD, Mr. Bernard J. Phillips, interviewed the FTC and exchanged views on the competition evaluation plan.
  
- ◎ From August 13 to 17, representatives from the Commission for the Supervision of Business Competition of Indonesia arrived in Taiwan to attend the technical assistance program on competition law.

The Fair Trade Law was enacted in 1991 with the establishment of the Fair Trade Commission ( FTC ) a year later on February 4, 1992 as the implementing agency of this law. The mandate of the Commission is to maintain a fair trading order in the market and therefore to ensure the protection of consumer interests in a fair trade environment, the establishment of the Commission complements the government's economic policy of "competition policy in prime, industrial policy in aiding" and reflects the global trend of liberalization and internationalization of trade.

The FTC, to bring the gap closer between international counterparts and practitioners of competition law and policy under this trend of open markets and free competition, has established a Competition Policy Information and Research Center ( the CPIRC ) , on January 27, 1997.

The CPIRC is dedicated to collecting information of local and foreign competition law and policy. Locally, the CPIRC aims to offer professional information services and to provide relevant reference to the government agencies in the making of industrial policy. Internationally, the CPIRC serves as a focal point for available information on international competition law and policy issues and aims to facilitate research of competition law and policy all over the world.

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